CITY COUNCIL SPECIAL MEETING
NOTICE & AGENDA
Monday, May 23, 2011
5:30 PM
PINE CONFERENCE ROOM

MUNICIPAL OFFICE COMPLEX
8401 W. MONROE STREET
PEORIA, AZ 85345

CITY COUNCIL:

Mayor
Bob Barrett

Mesquite District
Cathy Carlat, Vice Mayor

Acacia District
Tony Rivero

Ironwood District
Dave Pearson

Palo Verde District
Ron Aames

Pine District
Carlo Leone

Willow District
Joan Evans

City Manager
Carl Swenson

CONVENE:
PLEDGE:
ROLL CALL:

FINAL CALL TO SUBMIT SPEAKER REQUEST FORMS:

REGULAR AGENDA

NEW BUSINESS

1R **Assignment, Ground Lease Agreement, Premises at Rio Vista Community Park by Wells Fargo, N.A., to Rio Vista Property, LLC.**

Discussion and possible action to approve the assignment of the existing Ground Lease Agreement dated March 14, 2005 for premises located at Rio Vista Community Park by Wells Fargo, N.A., to Rio Vista Property, LLC, an Arizona limited liability company.

2R **Amended Ground Lease, Premises at Rio Vista Community Park, Rio Vista Property, LLC**

Discussion and possible action to approve and authorize the City Manager to execute a First Amended and Restated Ground Lease for premises located at Rio Vista Community Park by and between the City of Peoria and Rio Vista Property, LLC, an Arizona limited liability company, consistent with previously approved deal points.

City Council Meetings can be viewed live on Channel 11 (Cox Cable) and are also available for viewing on demand at http://www.peoriaaz.gov/content2.aspx?id=2151.

3R **Assignment, Ground Lease Agreement, Premises on Paradise Lane by Wells Fargo, N.A., to Peoria Sports Complex Property, LLC**

Discussion and possible action to approve the assignment of the existing First Amended and Restated Ground Lease Agreement dated July 11, 2006 for premises located on Paradise Lane by Wells Fargo, N.A., to Peoria Sports Complex Property, LLC, an Arizona limited liability company.

4R **Amended Ground Lease Agreement, Premises on Paradise Lane, Peoria Sports Complex Property, LLC**

Discussion and possible action to approve and authorize the City Manager to execute a Second Amended and Restated Ground Lease Agreement for premises located on Paradise Lane by and between the City of Peoria and Peoria Sports Complex Property, LLC, an Arizona limited liability company, consistent with previously approved deal points.

CALL TO THE PUBLIC: (NON-AGENDA ITEMS)

Your comments pertaining to City Council business are welcome. However, if you wish to address the City Council, please complete a Speaker Request Form and return it to the clerk before the call to order for this meeting. The City Council is not authorized by state law to discuss or take action on any issue raised by public comment until a later meeting.

ADJOURNMENT

NOTE: Documentation (if any) for items listed on the Agenda is available for public inspection, a minimum of 24 hours prior to the Council Meeting, at any time during regular business hours in the Office of the City Clerk, 8401 W. Monroe Street, Room 150, Peoria, AZ 85345.

Accommodations for Individuals with Disabilities. *Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 8401 West Monroe Street, Room 150, Peoria, Arizona 85345 (623)773-7340, TDD (623)773-7221, or FAX (623) 773-7304. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.*

CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

CC: 1R
Amend No. _____

Date prepared: May 6, 2011 **Council Meeting Date: May 23, 2011**

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: Scott Whyte, Economic Development Services Director

SUBJECT: Discussion and possible action to approve the assignment of the Ground Lease Agreement for premises located at Rio Vista Community Park by Wells Fargo, N.A., to Rio Vista Property, LLC, an Arizona limited liability company.

RECOMMENDATION:

Approval of the assignment of the Ground Lease Agreement dated March 14, 2005 for premises located at Rio Vista Community Park (LCON 01103E) by Wells Fargo, N.A., to Rio Vista Property, LLC, an Arizona limited liability company, consistent with previously approved deal points. City Council approval will authorize the City Manager to execute the necessary documents on behalf of the City.

SUMMARY:

This communication is the third of four actions to assign and amend the leases from the former tenant, Chili Davis Premier Baseball to Dr. Dana Seltzer and It's All in the Game. Details of the project are listed in the first communication.

CONTACT: Maria Laughner at 623-773-5121

CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

CC: 2R
Amend No. _____

Date prepared: May 16, 2011 **Council Meeting Date: May 23, 2011**

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: Scott Whyte, Economic Development Services Director

SUBJECT: Discussion and possible action to approve the First Amended and Restated Ground Lease for Premises Located at Rio Vista Community Park by and between the City of Peoria and Rio Vista Property, LLC, an Arizona limited liability company.

RECOMMENDATION:

Approval of the First Amended and Restated Ground Lease for Premises Located at Rio Vista Community Park by and between the City of Peoria and Rio Vista Property, LLC, an Arizona limited liability company, consistent with previously approved deal points. City Council's approval will authorize the City Manager to execute the necessary documents on behalf of the City.

SUMMARY:

This communication is the fourth of four actions to assign and amend the leases from the former tenant, Chili Davis Premier Baseball, to Dr. Dana Seltzer and It's All in the Game. Details of the project are listed in the first communication.

ATTACHMENT: The ground lease is attached for your review.

CONTACT: Maria Laughner at 623-773-5121

FIRST AMENDED AND RESTATED GROUND LEASE FOR PREMISES LOCATED AT RIO VISTA COMMUNITY PARK, PEORIA, ARIZONA

This First Amended and Restated Ground Lease for Premises Located at Rio Vista Community Park, Peoria, Arizona ("Restated Lease Agreement") is made as of the ___ day of May 2011, by and between the City of Peoria, Arizona, an Arizona charter municipality ("Lessor"), and Rio Vista Property, LLC, an Arizona limited liability company, or nominee ("Tenant"). Lessor and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Lessor is the owner of the Rio Vista Community Park located north of Thunderbird Road and 99th Avenue in the City of Peoria, Arizona ("Rio Vista").

WHEREAS, by a Ground Lease Agreement dated March 14, 2005 (LCON01103) ("Original Rio Vista Lease"), Lessor leased a portion of Rio Vista to MAGDAWG, LLC (the "Original Tenant"), a now defunct Arizona limited liability company, dba "Chili Davis Premier Baseball," for development of a retail store with associated concessions and merchandise and a batting cage facility.

WHEREAS, the Original Tenant borrowed funding for development of these facilities from Wells Fargo Bank, N.A. ("Wells Fargo"), and secured the loan by providing a lien upon its leasehold interest under the Original Rio Vista Lease, fixtures, and trade equipment.

WHEREAS, the Original Tenant defaulted on its loan obligation to Wells Fargo, and Wells Fargo foreclosed on its secured interest as evidenced by a Trustee's Deed and Bill of Sale recorded with the Office of the Maricopa County, Arizona Recorder on July 29, 2010, at document number 2010-0647765.

WHEREAS, by operation of the foreclosure and recordation of the Trustee's Deed and Bill of Sale, Wells Fargo succeeded to the interest of the Original Tenant as tenant under the Original Rio Vista Lease, as permitted by Section 6.4 of the Original Rio Vista Lease.

WHEREAS, Wells Fargo and Tenant have entered into an agreement whereby Wells Fargo has agreed to sell and Tenant has agreed to purchase Wells Fargo's interest in the Original Rio Vista Lease and the tenant improvements.

WHEREAS, Lessor approves of the conveyance and transfer of the leasehold interest to Tenant, and has negotiated amended terms to the Original Rio Vista Lease with Tenant, which are set forth below in this Restated Lease Agreement and which will become effective upon the conveyance of such leasehold interest.

NOW, THEREFORE, the Parties agree to amend and restate the Original Rio Vista Lease in its entirety, as follows:

AGREEMENT

1. Demised Premises. For good and valuable consideration – the receipt and sufficiency of which is hereby acknowledged – and subject to the promises, terms and conditions contained in this Restated Lease Agreement, Lessor hereby leases the Demised Premises (defined below) to Tenant.

1.1 Definition. The "Demised Premises" consist of that certain parcel of real property situated in Peoria, Arizona consisting of approximately twenty-four thousand eight hundred eighty-four square feet (24,884 s.f.) within the Lessor's Rio Vista Community Park north of Thunderbird Road and 99th Avenue, as further identified on ***Exhibit "A"*** attached hereto and incorporated herein by this reference.

1.2 Condition. Tenant acknowledges that it has inspected the Demised Premises, is familiar with its condition and accepts the same "as is" in its present condition.

1.3 Warranties of Lessor. Lessor hereby makes the following representations and warranties, each of which is material and is being relied upon by Tenant in entering into this Restated Lease Agreement and is true in all respects as of the date hereof:

1.3.1 Lessor owns the real property included within the Demised Premises.

1.3.2 Lessor is not now involved in or aware of any pending or threatened proceeding, claim or controversy, which affects or may affect the real property included within the Demised Premises in any way whatsoever.

1.3.3 Except as provided elsewhere herein, to the extent of Lessor's actual knowledge, there are no agreements, contracts, leases or restrictions that would limit, restrict, impair or prevent the construction of Tenant's structures or improvements on the real property included within the Demised Premises or Tenant's contemplated use of the Demised Premises.

1.3.4 To the extent of Lessor's actual knowledge, neither this Restated Lease Agreement nor Tenant's contemplated use of the Demised Premises, as contemplated by this Restated Lease Agreement, violates any contract, agreement or instrument to which Lessor is a party, or any law, regulation, order or decree to which Lessor is subject to by which Lessor is bound.

1.3.5 To the extent of Lessor's actual knowledge, the Demised Premises are in full compliance with all applicable laws, including but not limited to those relating to the environment.

1.3.6 All rent and all other charges to be paid under the Original Rio Vista Lease are current as of the date of this Restated Lease Agreement.

1.3.7 There is no current default by Wells Fargo or Lessor under the Original Rio Vista Lease, nor has any event or omission occurred which, with

the giving of notice or the lapse of time, or both, would constitute a default thereunder.

1.3.8 All of the obligations under the Original Rio Vista Lease for the construction of improvements to the property (as amended by this Restated Lease Agreement) have been complied with as of the date hereof.

1.3.9 No third party has any option or preferential right to purchase all or any part of the Demised Premises.

1.3.10 Lessor has not received or given any written notice that the Demised Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Lessor aware of any such violation. The Permitted Uses (defined below) are permitted under the zoning classification currently in effect for the Demised Premises.

1.4 No Other Warranties. Tenant acknowledges and covenants to Lessor that it has made a complete investigation of the real property included within the Demised Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is." Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Lessor or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

1.5 Quiet Possession. Upon Tenant performing all covenants of this Restated Lease Agreement to be performed by Tenant, Tenant shall have quiet possession of the Demised Premises, without hindrance or ejection by any person lawfully claiming by, through or under Lessor. This right to quiet possession is subject, however, to the provisions of this Restated Lease Agreement and to the provisions of any: (a) covenants, conditions and restrictions of record as of the date of this Restated Lease Agreement; and (b) any mortgage or other lien of record which this Restated Lease Agreement is or may be subordinated, so long as Tenant is provided reasonable assurance that its rights hereunder will not be disturbed so long as Tenant is not in default.

1.6 Unsubordinated Ground Lease. This is an unsubordinated ground lease agreement. Lessor is not and shall not be obligated to subordinate its rights and ownership interest in the real property included within the Demised Premises to any loan or money encumbrance that Tenant shall place against Tenant's leasehold interest.

1.7 Net Lease. As long as the City of Peoria shall remain the Lessor, it is the intention of the Parties hereto that this Restated Lease Agreement shall be a net lease and that Lessor shall receive the rents herein reserved and all sums which shall or may become payable hereunder by Tenant free from all taxes, charges, expenses, damages and deductions of every kind or sort whatsoever and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Restated Lease Agreement,

would have been chargeable against the Demised Premises and payable by Lessor. Tenant, however, shall not be under any obligation to pay any principal or interest on any mortgage or mortgages which may be placed by Lessor on the real property included within the Demised Premises, nor shall Tenant be under any obligation to pay any income taxes which may become payable by Lessor by reason of the income derived hereunder, nor shall this Restated Lease Agreement be subordinated to any such Lessor's mortgage.

2. Use of Premises.

2.1 Permitted Uses.

2.1.1 Definition. The following are the "Permitted Uses":

2.1.1.1 A single or multi- (as limited by the zoning) story facility (the "Store"), for uses which may include retail, concessions, vending, a game room, a customer service area, and a baseball/softball training facility. The Store may contain skate merchandise and repair facilities, but skate rentals are not permitted. The Store may be partially subleased by Tenant to vendors approved by the Lessor.

2.1.1.2 Caged training facilities (the "Cages"; the Store and the Cages are, collectively, the "Building"). The Cages currently include five (5) baseball and softball hitting cages and two (2) pitching mounds, but such facilities may be expanded (at Tenant's option) to include ten (10) hitting cages in total, and two (2) soft toss areas.

2.1.1.3 Two (2) outside restrooms (the "Restrooms"), including a women's room having two (2) stalls, one (1) sink and a baby changing area and including a men's room having one (1) stall, one (1) urinal, one (1) sink and a baby changing area.

2.1.1.4 Landscaping (the "Landscaping"), of size, type, and scope matching the existing park.

2.1.2 Terms. Tenant shall use the Demised Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Lessor, which will not be unreasonably withheld, conditioned or delayed. Tenant shall not use or permit the Demised Premises to be used in violation of the laws, ordinances, regulations and requirements of the United States of America, the State of Arizona, the County of Maricopa, the City of Peoria, Arizona or any subdivision or department thereof or any other authority or agency having jurisdiction over the Demised Premises. Tenant agrees, at its sole expense, to comply with and conform to all requirements of any governmental entity having jurisdiction over the Demised Premises, throughout the entire term, including any applicable extensions, of this Restated Lease Agreement. Use of the Demised Premises in violation of the terms hereof shall cause Tenant to be in default hereunder; however, Tenant shall have the right to cure said default pursuant to the provisions of this Restated Lease Agreement.

2.1.3 Limits. Tenant shall not use the Demised Premise to operate an adult movie theatre, an adult live cabaret or any other form of adult

use as that term is defined in Chapter 11 of the Peoria City Code (1992) and shall not permit performances containing specified sexual activities or specified anatomical areas as those terms are defined in Chapter 11 of the Peoria City Code (1992).

2.1.4 Use of Rio Vista Facilities. Tenant or its designee shall have the right to utilize the Rio Vista sports facilities that are adjacent to the Demised Premises as follows:

2.1.4.1 Commencing in 2012, during the entire Spring Training Season each year, Tenant or its designee will, upon Lessor giving at least two weeks advance notice, have access to at least one (1) field at Rio Vista for the use of clinics, training, and/or tournament games on Mondays through Fridays from 8:00 a.m. to 5:30 p.m. and as may be available when other tournaments, league play, or practices are not scheduled, on Saturdays and Sundays from 8:00 a.m. to 5:30 p.m. For purposes of this Restated Lease Agreement, Spring Training Season shall run from January 1 through April 1 each year.

2.1.4.2 Commencing in 2012, for periods other than Spring Training Season, Tenant or its designee shall have a right senior to all other users, except for the City of Peoria leagues, other City-sponsored events, and longstanding users of Rio Vista listed on ***Exhibit "C"*** who have scheduled events for at least two consecutive years prior to the execution of this Restated Lease Agreement ("Existing Users"), field use at Rio Vista for at least one (1) weekend per month for use by Tenant or its designee in conjunction with tournaments and/or training camps. Tenant or its designee will have the right to schedule dates for its usage on an annual basis in September for the following year. At either Party's request, Tenant's usage will be reviewed annually to compare the number of users through Tenant activities to that of past historical users.

2.1.4.3 From and after the Effective Date, Lessor will cooperate with Tenant's requests for field usage for dates during the 2011 season that are not already booked, as well as any 2011 dates that are cancelled by other users.

2.1.4.4 Tenant or its designee, at its expense, will be responsible for leaving all used Rio Vista sports facilities used by Tenant or its designee pursuant to this Section in a clean and orderly fashion and all structures in a pre-event condition (with the exception of normal wear and tear). If Tenant or its designee requests that City of Peoria staff to perform services beyond those normally provided in connection with the operation and maintenance the Rio Vista sports facilities such services shall be performed at Lessor's customary hourly rates per staff member. As of the Effective Date, such rate is $15/hour/staff member, but the City may increase such rate annually to reflect increased costs and shall notify Tenant of any such increase when usage dates are established in September.

2.1.4.5 Tenant or its designee shall pay to Lessor a charge for each field used pursuant to this Section as set forth in this Section, which shall include lights and initial field preparation. For 2011 and 2012, the cost charged to Tenant or its designee shall not exceed $20/hour/field for youth use (i.e., participants under 18 years of age) and $40/hour/field for adult use (i.e., participants over 18 years of age). Thereafter, the rate for field usage shall be agreed to by the Parties at the time the fields are scheduled in September, but such rates shall not exceed the then prevailing fees charged by the City of Peoria to residents for field usage for youth or adult programs, as applicable. The charge for field usage shall be paid within thirty (30) days following use of any field by Tenant or its designee. For any tournaments conducted by Tenant at Rio Vista, Tenant will also pay to Lessor fifty percent (50%) of (i) gate admission, if any, charged by Tenant, (ii) sponsorship fees, and (iii) retail sales that are not tournament specific and that occur inside the Rio Vista gate (e.g., team pictures, batting gloves); provided, however, (a) in no event will Tenant be required to pay a percentage for such items in excess of what is being charged to Existing Users or others operating tournaments at Rio Vista (and such percentage shall be reduced to match such lower percentage) and (b) in no event shall Tenant be required to pay such percentage on any sales that occur on the Demised Premises and which are included in Gross Revenues for the purpose of calculating the Gross Revenues pursuant to Section ***§ 4.2.2***.

2.2 Tenant's Construction and Maintenance of Buildings and Improvements.

2.2.1 Ownership. All equipment previously installed within the Demised Premises pursuant to the Original Rio Vista Lease or installed within the Demised Premises pursuant to this Restated Lease Agreement following the Effective Date are fixtures thereof, and upon installation became, or in the case of future improvements shall become, part of the Demised Premises. In order to qualify under A.R.S. §§ 42-6201 *et seq*., the Original Tenant transferred title of record to the Building to the Lessor immediately following the issuance of a certificate of occupancy therefor, provided however the Demised Premises shall be deemed to include the Building, and Tenant shall have the exclusive right to use the Building during the Term.

2.2.2 Lessor's Representative. Any additions or alterations which affect the exterior of any buildings, structures or improvements included within the Demised Premises shall be subject to the prior written approval of Lessor, through its designated representative, the City Manager or his designee ("Lessor's Representative"), which shall include, but not be limited to, approval by Lessor's Representative of such conformity and compliance of all site plans, grading, landscaping and building materials. Tenant shall submit all designs for any additions or alterations to the Lessor prior to bidding the construction thereof, and Lessor shall review such designs within fourteen (14) calendar days of receipt for consistency with the design and purpose of the Lessor's activities,

infrastructure, and improvements within Rio Vista. Lessor's approval under this Section shall not be unreasonably withheld, conditioned or delayed. Designs received by the City but not responded to within the allotted time shall be deemed approved.

2.2.3 Ancillary Improvements. Tenant shall be allowed to landscape and install moveable property in and on the Demised Premises (which moveable property shall remain the property of Tenant) subject to complying with City regulations and obtaining any City approval as required hereby. Tenant shall be responsible, at its sole expense, for all maintenance and repair of the landscape during the Term of this Restated Lease Agreement.

2.2.4 Alterations. Subject to the provisions hereof, Tenant shall have the right to make alterations and additions to any buildings, structures or improvements included within the Demised Premises, provided that (a) whether in connection with alterations and additions or otherwise, no substantial portion of any buildings, structures or improvements may be demolished or removed (other than in connection with restoration following a casualty) without the prior written approval of Lessor's Representative; and (b) the general character of the Demised Premises shall not be changed nor the fair market value and fair rental value reduced below their value immediately before such alterations or additions without the prior written approval of Lessor's Representative. If Lessor's Representative does not respond to the request to alter or add to the Demised Premises within ten (10) business days (unless Lessor's Representative reasonably requests additional time because of the complexity of the alteration or addition), then the request shall be deemed approved. Approval under this Section shall not be unreasonably withheld, conditioned or delayed.

2.2.5 Licenses. Tenant, or its designated contractors, subcontractors and employees, shall perform any additions or alterations in a good and workmanlike manner and in all respects in accordance with all applicable legal requirements, permits or approvals, as the case may be.

2.2.6 Maintenance and Repair. The Building shall be maintained, cleaned, repaired, and (as required) replaced by the Tenant; except that the Lessor shall be responsible for the cleaning and repairing of the Restrooms. If Lessor fails to clean or repair the Restrooms, Tenant may, following written notice to Lessor, clean or repair the same, and deduct the actual cost thereof from the next installment(s) of Rent. On and after the fifth (5th) anniversary of the Effective Date, the Lessor is entitled to conduct an annual inspection of the Building and any repairs required by the Lessor pursuant to any such annual inspection shall be made by Tenant within ninety (90) calendar days by Tenant at Tenant's sole cost. In the event that Tenant believes that the repairs required by the Lessor are not necessary or appropriate, Tenant may appeal such requirement in writing to the Community Services Director. The Community Services Director will consider the appeal and modify the repair requirement if good cause is found, and must render a decision in writing within fifteen (15) business days from the date the informal appeal is filed. The decision

of the Community Services Director may be appealed to a hearing officer by filing a formal appeal in the manner provided by the following procedures:

2.2.6.1 A formal appeal shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the lease, a detailed statement of the legal and factual grounds of the appeal, including copies of all relevant documents and the specific relief requested.

2.2.6.2 The appeal shall be filed within five (5) business days following the date Tenant receives the Community Services Director's decision or the end of the fifteen (15) business day period, if no decision was issued.

2.2.6.3 The formal appeal shall be heard by a hearing officer appointed by the City for such purposes within ten (10) business days after filing of the date of appeal, unless extended by the hearing officer.

2.2.6.4 The hearing officer may reject the appeal, sustain the appeal or reject or sustain in part and shall provide for an appropriate remedy.

2.2.6.5 In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the inspection or required repairs, including, but not limited to the seriousness of the maintenance deficiency, the good faith of the Parties, the extent of performance, costs to the City, the urgency of the repairs, and the impact of the relief upon the City.

2.3 Signs and Advertising. Any exterior signs or insignia placed, erected or installed on the Demised Premises shall conform to Lessor requirements. Lessor acknowledges that any signs currently installed on the Demised Premises are acceptable.

2.4 Operating Covenant.

2.4.1 Continuous Operation. Tenant covenants and agrees that commencing on the thirtieth (30th) day following the execution of this Restated Lease Agreement and during the remainder of the Term it will continuously and without interruption, operate and conduct within the Demised Premises, the business which it is permitted to operate and conduct under the provisions of this Restated Lease Agreement, except (i) during any holidays when Rio Vista Community Park is closed and (ii) during any period when the Demised Premises are untenable by reason of fire, other Force Majeure Event or by eminent domain ("Operating Covenant"). Tenant shall fully utilize the Demised Premises for its business (namely, the business of operating the Permitted Uses) and shall at all times have available to the Demised Premises competent personnel and trade fixtures to service and supply the ordinary demands and requirements of its customers, to the level of availability which conforms to commercially reasonable management practices for comparable facilities. Ordinarily, the Building will be open for business from 9 a.m. to park closing on Monday through Saturday and from noon to park closing on Sunday, but Tenant may alter such hours based on

customer demand (e.g., Tenant may open later on Monday through Saturday during the school year if opening at 9:00 a.m. would result in Tenant operating the Demised Premises at a loss).

2.4.2 Breach. If Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Lessor's exclusive remedy for such failure, Lessor may terminate this Restated Lease Agreement upon thirty (30) days prior written notice to Tenant after which all obligations of Tenant and Lessor under this Restated Lease Agreement shall terminate and be of no further force and effect.

2.5 Construction Coordination. Tenant must schedule the construction of any addition or alteration with the Lessor so as to avoid interference with the Lessor's operations and activities in the vicinity of the Demised Premises.

3. Term.

3.1 Effective Date. The "Effective Date" shall mean the date that Tenant acquires the leasehold interest in the Demised Premises from Wells Fargo. Tenant shall promptly notify Lessor when it acquires the leasehold interest by providing documentation evidencing same to Lessor. Lessor shall thereafter send a written communication to Tenant confirming the Effective Date.

3.2 Term. The lease term shall commence on the Effective Date and continue thereafter for a period of forty (40) years (the "Term"), unless such Term shall be sooner terminated as hereinafter provided.

3.3 Extension of Term.

3.3.1 In the final year of the Term but at least one hundred eighty (180) days prior to expiration of the Term, Tenant may request in writing that this Restated Lease Agreement be extended for an additional fifteen (15) years upon the same terms (unless Tenant is then in default under this Restated Lease Agreement beyond the expiration of any applicable cure period). In the final year of the first extension but at least one hundred eighty (180) days prior to expiration of the first extension, Tenant may request in writing that this Restated Lease Agreement be extended for an additional fifteen (15) years upon the same terms (unless Tenant is then in default under this Restated Lease Agreement beyond the expiration of any applicable cure period). The notices in the preceding two sentences shall each be referred to as an "Extension Notice."

3.3.2 Lessor (in the exercise of its reasonable judgment) shall have the right to disapprove of Tenant's request for an extension by giving written notice to Tenant (a "Disapproval Notice") within ten (10) days following receipt of an Extension Notice specifying the reason for its disapproval, which must be related solely to Tenant's performance under this Restated Lease Agreement. In no event may Lessor condition its approval on modifications or amendments to this Restated Lease Agreement. If Lessor delivers a Disapproval Notice, the Parties shall meet and confer within ten (10) days following the Disapproval Notice in an effort to resolve Lessor's objections to Tenant's

performance. If Lessor's objections are not resolved to Lessor's reasonable satisfaction, Lessor shall notify Tenant in writing (the "Withdrawal Notice") within five (5) days following the meeting or in the absence of such a meeting, the ten (10) day period for such meeting to occur, and upon issuance of a Withdrawal Notice the Extension Notice shall be deemed withdrawn. If Lessor fails to deliver either a Disapproval Notice or Withdrawal Notice within the applicable time period, Lessor will be deemed to have approved the extension of the Term.

3.3.3 If Lessor issues a Withdrawal Notice, Lessor shall pay to Tenant the fair market value of the Building and all other improvements then located on the Demised Premises (the "FMV"). If the Parties are unable to agree on the FMV within thirty (30) days following issuance of a Withdrawal Notice, then the FMV shall be determined by a single appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years' experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party. If the Parties are unable to agree on a single appraiser within forty-five (45) days following issuance of a Withdrawal Notice, either Party may request that the presiding judge of the Maricopa County Superior Court select an appraiser having the qualifications set forth above. The appraiser shall have thirty (30) days following selection to notify the Parties in writing of its determination of the FMV. Neither Party shall have any ex parte communication with the appraiser, but each Party may submit to the appraiser no later than ten (10) days following his/her selection a memorandum supporting such Party's opinion as to FMV. The appraiser's determination of FMV shall be binding on both Parties. Each Party shall pay one-half (1/2) of the appraiser's fee. Lessor shall pay the FMV to Tenant within ten (10) days following agreement by the Parties or determination by the appraiser, as applicable. If the FMV is not determined prior to the expiration of the Term of this Restated Lease Agreement, then at Tenant's option, this Restated Lease Agreement shall be extended until the FMV is determined and the FMV payment is received by Tenant.

3.3.4 Any extensions exercised by Tenant are considered part of the "Term" for the purposes of this Restated Lease Agreement.

4. Lease Charges.

4.1 General Terms.

4.1.1 Payee. The Rent and Additional Charges shall be paid in lawful money of the United States of America to the "City of Peoria, Arizona" payable at 8401 W. Monroe, Peoria, Arizona 85345 and should be delivered to the attention of the City of Peoria, Arizona, Chief Financial Officer, or to such other place or person as Lessor may from time to time designate in writing.

4.1.2 Breach. If Tenant shall fail or neglect to pay any amount due and payable to Lessor hereunder, and the delinquency shall continue for five (5) days after such amount is due (or in the case of payments other than Rent, within five (5) days after Tenant receives written notice of such amount), then

beginning on the sixth (6th) day, Tenant shall pay to Lessor a late payment charge in the amount of five percent (5%) of the delinquent amount; and said late payment charge shall be in addition to, and not in lieu of, any other rights Lessor may have.

4.1.3 No Counterclaim or Abatement of Rent. Except as expressly provided herein, Rent, Additional Charges, and all other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

4.2 Rent.

4.2.1 Rent Schedule. All Rent is payable in immediately available funds to the Lessor in four (4) quarterly installments, in arrears, on the thirtieth (30th) business day of January (for revenues realized from October to December), April (for revenues realized from January to March), July (for revenues realized from April to June), and October (for revenues realized from July to September). No Rent shall be due and payable for the first six months of the Term (the "Free Rent Period"). Payment of Rent shall commence in January 2012, but only for revenues realized following the expiration of the Free Rent Period. Rent shall be payable thereafter in quarterly installments in accordance with the preceding schedule.

4.2.2 Components of Rent. "Gross Revenues" means the entire amount of accrued income actually received from operations at the Demised Premises before any deductions or expenses are made. The Rent consists of percentages of the Gross Revenues of the following activities at the following rates, and is earned by the Lessor as soon as the revenue is accrued to the Tenant:

Vending machines	5%
Cages	5%
Concessions (wholesale cost of goods sold excluded from gross revenue in this category only)	5%
Camps, Clinics, and educational programs (less any amount paid to the City for rental of the field)	5%
All other revenue generating activities except for sublease activities	5%
Concessions (excluding the paid invoice cost of this concession's goods)	5%
Revenue to Tenant from any sublease, including, *e.g.*, skate merchandise or repair	5%
All other revenue generating activities from sublease activities	5%

Gross Revenues shall not include, or if included there shall be deducted (but only to the extent they have been included in Gross Revenues): (i) the amount of any city, county, state or federal sales, use, gross receipts, transaction privilege, or other tax on such sale which is both added to the selling price (or absorbed in the price) and paid to the taxing authorities by Tenant and/or its sublessee; (ii) income from inventory returned to suppliers; (iii) the redemption of gift certificates

(but not the purchase of gift certificates); (iv) the net amount of any cash or credit refunds or credit allowed on services upon any sale form the Premises where the merchandise sold, or some part thereof, is returned by the purchaser after the sale (not exceeding in amount the selling price of the item in question); (v) service charges, interest and collection expenses received or receivable from customers for sales on credit and service, credit card and other charges or fees (exclusive, however, of any service charges payable to banks) paid by Tenant or its sublessee to credit card companies, banks and similar organizations resulting from use of credit or debit cards by customers; (vi) food or beverages provided to employees for which Tenant or its sublessee does not receive reimbursements; (vii) insurance proceeds from casualty losses, including, but not limited to all sums and losses received from insurance companies in settlement of claims for losses or damages to the Demised Premises or merchandise or trade fixtures or equipment; (viii) the amount of any tips, gratuities or service charges paid to employees; or (ix) uncollected accounts and bad debts.

4.2.3 Calculation of Rent. On the fifth (5th) business day of each month, Tenant shall provide a detailed accounting of its Gross Revenues in each of the above categories to the Lessor, in form acceptable to the Lessor and consistent with Generally Accepted Accounting Principles. On any month in which Rent is due to be paid, the accounting for that month will also include summary information for all months included within the quarterly payment. After the first quarter in which the Tenant realizes Gross Revenues and remits rent to Lessor, Lessor, at its expense, may audit the books and records of the Tenant with respect to the Gross Revenues at any time with ten (10) days notice, and Tenant will cooperate and assist in such audit. Any such audit shall be completed within one year following receipt of a statement of Gross Revenues.

4.3 Additional Charges. All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which Lessor may suffer or incur for which Tenant is liable under this Restated Lease Agreement, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Restated Lease Agreement on Tenant's part to be performed, shall be referred to herein as "Additional Charges" and, in the event of their nonpayment, Lessor shall have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Lessor shall accrue interest at twelve percent (12%) per annum from their due date until paid.

4.4 Taxes, Assessments and Utilities.

4.4.1 Tenant's Obligation. Subject to ***§* 4.4.2** below, Tenant shall pay and discharge, as and when the same shall become due and payable

without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes, assessments (but not assessments for any presently existing public improvements or benefits); and all other governmental taxes, impositions and charges of every kind and nature, general or special, unforeseen or foreseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Restated Lease Agreement shall be or become due and payable by Lessor or Tenant and which shall be levied, assessed or imposed:

4.4.1.1 Upon or with respect to, or shall be, or become liens upon, the Demised Premises, or any portion thereof or any interest of Lessor or Tenant therein or under this Restated Lease Agreement other than liens created or granted by Lessor;

4.4.1.2 Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Demised Premises, or any portion thereof; and

4.4.1.3 Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Demised Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

4.4.2 Property Tax Exemption. Lessor and Tenant desire and intend, but Lessor does not warrant or guarantee, that the Demised Premises and the Building will be exempt from ad valorem taxes and from other property-related taxes or assessments, including, but not limited to, Government Property Lease Excise Tax or any payments in lieu of any such taxes or assessments (collectively, "Property Taxes") during the Term of this Restated Lease Agreement. Lessor and Tenant will cooperate in good faith to ensure that any applicable exemptions are at all times in effect with respect to the Demised Premises and the Building during the Term of this Restated Lease Agreement. In addition, Lessor and Tenant will cooperate in good faith to eliminate any Property Taxes regarding the Demised Premises and the Building during the Term of this Restated Lease Agreement. If any Property Taxes are levied or assessed (or levy or assessment is attempted) against the Demised Premises and the Building, or any portion thereof, for any period of time during the Term of this Restated Lease Agreement, then (a) Lessor and Tenant shall cooperate in good faith to defend against such taxes or assessments, and (b) Lessor will join with Tenant in any administrative proceedings and appeals at Tenant's request. Notwithstanding anything contained herein to the contrary, Tenant's obligation to pay real estate taxes on the Demised Premises and the Building or other improvements located thereon during the Term of this Restated Lease Agreement, shall be limited to the real estate taxes owed as long as the City of Peoria remains the owner of the Demised Premises. If a sale or other transfer of the Demised Premises results in any increase in real estate taxes from that which may otherwise be owed if the City of Peoria remained the owner, such increase in real estate taxes shall be paid by the successor Lessor, and Tenant

may deduct such additional taxes from the Rent or other amounts payable to Landlord hereunder.

4.4.3 Certification. Tenant, upon Lessor's written request, shall furnish to Lessor, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Lessor shall have the obligation to pay under the provisions of this ***§ 4***.

4.4.4 Utilities. Tenant shall be solely responsible for, and shall pay the cost of, constructing or installing utility hookups from existing utility installations to the Demised Premises and shall be solely responsible for, and shall pay the cost of, all utility services consumed by all users of the Demised Premises.

4.5 Payment of Costs and Expenses. Whenever, in this Restated Lease Agreement, anything is to be done or performed by Tenant or Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Tenant or Lessor as the case may be.

5. Preservation of the Property.

5.1 Maintenance and Repairs.

5.1.1 Primary Improvements. Tenant at all times during the Term of this Restated Lease Agreement shall keep and maintain in good order and repair and in a clean and sanitary condition the real property, buildings, structures and improvements included within the Demised Premises, and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur. All repairs, replacements and renewals shall be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Demised Premises at Lessor's expense, it being understood that Lessor shall in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, structures, or improvements on the Demised Premises, or to any equipment or appurtenances located thereon, shall have been as a result of Lessor's negligent or intentional actions, Lessor shall pay the cost therefor to Tenant.

5.1.2 Ancillary Improvements. Tenant at all times during the Term shall (a) keep and maintain in good order and repair all landscaped areas and the exterior painted surfaces of all buildings, structures and improvements included within the Demised Premises; and (b) keep and maintain in good order and repair any driveway constructed by the Tenant on the real property included within the Demised Premises.

5.1.3 Dumpsters. Tenant shall provide and maintain trash dumpsters, with covers thereon, about the Demised Premises in which to place any trash, and cause such trash to be removed as often as is required to maintain a sanitary condition. Tenant (and any subtenants) is obligated to utilize

City of Peoria commercial solid waste services at rates established by the City Council, for so long as the City is willing to continue to provide such services.

5.2 Regulatory Requirements.

5.2.1 Tenant Obligation. Tenant shall promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Demised Premises or any part thereof and of all insurance companies writing policies covering the Demised Premises or any part thereof. Without limiting the generality of the foregoing, Tenant shall also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Demised Premises or required in connection with any building, structure or improvement now or hereafter erected thereon. Notwithstanding the foregoing, nothing contained herein shall be deemed to grant either Lessor or Tenant the right to alter the terms of the Restated Lease Agreement without the express written consent of both Parties.

5.2.2 Hazardous Materials. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Demised Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Restated Lease Agreement:

5.2.2.1 "Hazardous Materials" includes but is not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws;

5.2.2.2 "De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (a) does not constitute a violation of any Hazardous Materials Laws and (b) is customarily employed in, or associated with, similar projects in Maricopa County, Arizona; and

5.2.2.3 "Hazardous Materials Laws" means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq*.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq*.; the Resource Conservation and Recovery Act, 42 U.S.C.

Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq*.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601 *et seq*.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

5.2.3 Phase I Report. Lessor will provide Tenant with a copy of a "Phase I Environmental Site Report for the Demised Premises from when Lessor purchased the Demised Premises, if any.

5.2.4 Cooperation. Lessor agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Demised Premises. Tenant shall indemnify and save Lessor harmless from any expense or loss whatsoever occasioned by Lessor's presence as a party to any such instrument, application or permit.

5.3 Liens.

5.3.1 No Liens. Tenant shall have no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Lessor in the real property included within the Demised Premises, provided however that Tenant shall not be prohibited from entering into any contracts in Tenant's capacity as a tenant, rather than as the title holder of, said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to be made on the Demised Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Lessor nor the real property included within the Demised Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

5.3.2 Release. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Lessor, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the real property included within the Demised Premises or against Lessor (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Lessor, as the case may be, shall, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either shall have received from the other a written notice requesting such discharge.

5.4 Property and Public Liability Insurance. Tenant shall at all times, throughout the Term of this Restated Lease Agreement, keep the Demised Premises insured against perils. Tenant shall ensure that all insurance policies in effect for the Demised Premises name the City of Peoria as an additional insured.

5.4.1 General. The insurance policies required by this ***§ 5.4*** shall be written by insurance companies with an A.M. Best's Key Rating Guide of A- or better, authorized to do business in the State of Arizona, and shall be written on an occurrence basis or in a form satisfactory to Lessor.

5.4.1.1 As often as any such policy shall expire or otherwise terminate, renewal or additional policies shall be procured and maintained by Tenant and its contractor(s) to provide uninterrupted coverage. Tenant agrees and shall cause its contractor(s) to agree to provide Lessor with certificates of insurance evidencing such insurance policies providing coverage for the Demised Premises upon Lessor's request.

5.4.1.2 Certificates of insurance evidencing all of the coverages required in this ***§ 5.4*** shall be delivered to Lessor prior to the start of any alterations or additions to any buildings, structures or improvements on or in the Demised Premises and renewal certificates of insurance shall be delivered to Lessor at least thirty (30) days prior to the expiration dates of the respective policies. Such certificates shall also provide that Lessor will receive written notice at least ten (10) days prior to any cancellation, non-renewal or reduction in coverage. Lessor reserves the right to require Tenant to furnish proof, satisfactory to Lessor, that any and all insurance policies for the Demised Premises remain in full force and effect.

5.4.1.3 At Tenant's election, the insurance required hereby may be provided under a blanket policy.

5.4.1.4 Tenant further covenants and agrees to increase the required insurance hereunder to such additional commercially reasonable and available amounts as Lessor may from time to time require in conformance with that customarily required for comparable office buildings in the Phoenix, Arizona area.

5.4.1.5 In the event of loss or destruction under any such policy or policies, Tenant shall promptly proceed with the repair and restoration of the damaged or destroyed buildings, structures or improvements in accordance with and subject to the provisions hereof. The insurance proceeds, if less than Fifty Thousand Dollars ($50,000.00) shall be paid to Tenant for application to such repair and restoration and, if in excess of Fifty Thousand Dollars ($50,000.00) shall be paid to Tenant and thereafter endorsed over to Tenant's mortgagee, if any, to be held in trust by a bank or title companies designated by such mortgagee, but subject to Lessor's reasonable approval, to be paid out during restoration, as restoration is performed, upon architect's certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repairing or restoring the buildings, structures or improvements damaged or destroyed; provided, however, that in the event that such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair or restoration, Tenant shall provide Lessor reasonable assurances of the availability of sufficient funds to complete before any such repair and restoration are commenced so that it shall appear to the reasonable satisfaction of Lessor

that the amount of insurance money in the hands of said trustee shall at all times be sufficient to pay for the completion of said repairs or restoration free and clear of liens. Upon the completion of said repair or restoration, free and clear of all liens, any surplus of insurance monies shall be paid to Tenant, provided that Tenant is not then in default under this Restated Lease Agreement. In the event that this Restated Lease Agreement shall have been terminated for any default of Tenant under any of the terms and provisions contained in this Restated Lease Agreement, subject to the rights of any Tenant's mortgagee, all insurance proceeds in the hands of said trustee and all claims against insurers shall be and become the absolute property of Lessor.

5.4.2 Tenant Insurance. Tenant, during the entire Term of this Restated Lease Agreement, shall provide, secure, pay for and maintain all of the following insurance coverage, indemnification and waivers as set forth immediately below.

5.4.2.1 Statutory workers' compensation insurance, in an amount required by the State of Arizona and any and all applicable insurance required by any employee benefit acts or other statutes as will protect Tenant's employees from any and all liability under the aforementioned acts and statutes for work performed at the Demised Premises.

5.4.2.2 Commercial general liability insurance in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor. If the permitted use permits the sale of alcoholic beverages on the Demised Premises, then during any period that Tenant offers alcoholic beverages for sale on the Demised Premises, Tenant shall obtain a liquor liability endorsement to said commercial general liability policy in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate.

5.4.2.3 Tenant (including also anyone holding under Tenant and any and all subtenants and other occupants of the Demised Premises), as the case may be, shall: (a) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing the same from any and all liability for any and all bodily injury, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (b) require any and all insurers for the Demised Premises to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all liability insurance policies required hereunder; and, (c) require that Tenant (including also anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and all insurers providing policies of insurance hereunder waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and

employees. The above-referenced waivers of liability and subrogation shall not apply to negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees, but said waivers of liability and subrogation shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Tenant (including anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and their respective insurers for work performed on, or services provided to, the Demised Premises). This insurance must cover liability arising from repair of skate-related products, if Tenant elects to repair such.

5.4.2.4 Should Tenant utilize any steam or pressure boilers, or other similar apparatus on the Demised Premises, Tenant shall maintain boiler and machinery coverage, to include explosion insurance, with respect to any steam or pressure boilers and similar apparatus located on the Demised Premises in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate and insurance against such other hazards and in such amounts as Lessor may reasonably require for its protection.

5.4.3 Contractor Insurance. During the entire Term of this Restated Lease Agreement, except in the case of usual and customary maintenance, repair and replacement of the Demises Premises, Tenant shall require any general contractor performing work or services to the Demised Premises with Tenant's consent or approval, to provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in ***§§ 5.4.3.1*** through ***5.4.3.5*** (inclusive) immediately below.

5.4.3.1 Statutory workers' compensation insurance, with limits of not less than $100,000.00 on an occurrence basis, $100,000.00 disease for each employee, $500,000.00 disease policy limit and any and all insurance required by any employee benefit acts or other statutes applicable where the work is to be performed as will protect said contractor's employees and subcontractors from any and all liability under the aforementioned acts and statutes.

5.4.3.2 Commercial general liability insurance in an amount not less than $3,000,000.00 combined single limit per occurrence and not less than $5,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor.

5.4.3.3 Comprehensive automobile liability insurance, including coverage for the ownership, maintenance and operation of any automobile equipment owned, hired or non-owned, which is assigned to or used by the contractor) in the performance of work on, or services provided to, the

Demised Premises, in an amount not less than $1,000,000.00 combined single limit per accident.

5.4.3.4 Either of the following: (a) owner's and contractor's protective liability insurance with limits of not less than $1,000,000.00 combined single limit per occurrence and not less than $5,000,000.00 general aggregate as will insure Lessor as named insured against any and all claims for bodily injury, including death resulting therefrom, personal injury or damage to the property of others, arising from or in any way connected to Tenant's contractor(s) performance of work on, or services provided to, the Demised Premises or (b) in lieu of the foregoing owner's and contractor's protective liability insurance specified herein, an endorsement to the commercial general liability insurance specified above providing for a separate general aggregate limit of insurance of not less than $5,000,000.00 on an occurrence basis.

5.4.3.5 Tenant shall cause the above-referenced contractor(s) and sub-contractor(s) (and their respective insurers) to: (a) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death resulting therefrom, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (b) require the above-referenced contractor(s) and sub-contractor(s) to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all liability insurance policies required hereunder; and, (c) require that the contractor(s), sub-contractor(s) and all insurers providing policies of insurance hereunder waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to Lessor's negligent or intentional acts but shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected officials and employees by operation of law as a result of the action or non-action of Tenant's contractor(s), sub-contractor(s) and their respective insurers for work performed on, or services provided to, the Demised Premises).

5.4.3.6 Subcontractors. Tenant shall require the general contractor to cause all subcontractors to provide insurance coverage as is generally provided in comparable projects in the metropolitan Phoenix area.

5.5 Indemnification.

5.5.1 Tenant Obligation. Tenant shall protect, indemnify and hold Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against Lessor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following

(unless resulting from negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees): (a) any use, nonuse or condition of the Demised Premises or any part thereof; (b) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Demised Premises or any part thereof; (c) any failure on the part of Tenant to perform or comply with any of the terms of this Restated Lease Agreement; (d) performance of any labor or services or the furnishing of any materials or other property with respect to the Demised Premises or any part thereof; or (e) any failure on the part of Tenant to comply with any of the matters set forth herein, including but not limited to any failure by Tenant to clean up any Hazardous Materials.

5.5.1.1 Duty to Defend. In the event Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any of the occurrences described in this ***§ 5.5***, Tenant shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by Lessor. If any such action, suit or proceeding should result in a final judgment against Lessor, Tenant shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Tenant under this ***§ 5.5*** arising by reason of any such occurrence taking place while this Restated Lease Agreement is in effect shall survive any termination or other form of cancellation of this Restated Lease Agreement.

5.5.1.2 Continuing Duty to Defend. Notwithstanding the terms and conditions contained herein, Tenant shall be required to protect, defend, indemnify, satisfy or hold harmless Lessor, its agents, representatives, officers, directors, elected and appointed official, and employees in the event negligence is imputed by operation of law against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

5.5.2 Lessor Obligation. Except for any responsibility alleged or allocated to Lessor by reason of its failure to enforce the terms of this Restated Lease Agreement, Lessor shall protect, indemnify and hold Tenant harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including reasonable attorney's fees and expenses) imposed upon or asserted against Tenant by reason of the negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees.

5.5.2.1 Duty to Defend. In the event Tenant should be made a defendant in any action, suit or proceeding brought by reason of the negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees, Lessor shall at its own

expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Lessor. Except to the extent of negligent or intentional actions of Tenant, its agents, representatives, officers, directors, or employees, if any such action, suit or proceeding should result in a final judgment against Tenant, Lessor shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Lessor under this ***§ 5.5*** arising by reason of any such occurrence taking place while this Restated Lease Agreement is in effect shall survive any termination or other form of cancellation of this Restated Lease Agreement.

5.5.2.2 Limitation. Notwithstanding the obligations imposed upon Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees shall not be required to protect, defend, indemnify, satisfy any judgment or hold Tenant harmless for any negligence imputed against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

5.6 Damage or Destruction.

5.6.1 Notice. In the event of damage to or destruction of any of the buildings, structures or improvements included within the Demised Premises by fire or other casualty, Tenant shall give Lessor and any mortgagee immediate notice thereof and shall at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements shall be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

5.6.2 Termination. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Demised Premises should be rendered untenable by fire or other casualty during the last five (5) years of the Restated Lease Agreement, or the last two (2) years of any extension, to the extent of a loss of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Restated Lease Agreement, provided however, subject to any rights of any mortgagees of Tenant's leasehold interest, that Tenant shall pay over to Lessor all casualty insurance or eminent domain proceeds received or receivable by reason of the destruction of said buildings, structures or improvements. Tenant's option to terminate shall be evidenced by a written notice given to Lessor within sixty (60) days after the occurrence of such damage or destruction.

5.7 Key Acts.

5.7.1 Memorandum for Recording. Within ten (10) calendar days after the Effective Date of the Restated Lease Agreement, Lessor and Tenant shall execute and cause to be placed of record with the Maricopa County Recorder's Office, and any other public or private official, a memorandum in recordable form evidencing the existence of this Restated Lease Agreement substantially in the form attached hereto as ***Exhibit "B"***.

5.7.2 Estoppel Certificate. Lessor or Tenant, as the case may be, will execute, acknowledge and deliver to the other within fifteen (15) days following request therefor, a certificate certifying (a) that this Restated Lease Agreement is unmodified and in full force (or, if there have been modifications, that the Restated Lease Agreement is in full force and effect, as modified, and stating the modifications), and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, and (c) that no notice has been received by Lessor or Tenant of any default which has not been cured, except as to defaults specified in said certificate. Any prospective purchaser or encumbrancer of the Demised Premises or any part may rely upon any such certificate thereof. Either Party's failure to deliver such certificate within the time permitted hereby shall be conclusive upon such Party that this Restated Lease Agreement is in full force and affect, except to the extent any modification has been represented by the requesting Party, and that there are no uncured defaults in such Party's performance, and that not more than one month's rent has been paid in advance.

6. Changes in Leasehold Control.

6.1 Parties Bound. This Restated Lease Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Restated Lease Agreement.

6.2 Assignment and Subletting.

6.2.1 Consent Required. Tenant shall not transfer or assign this Restated Lease Agreement or any interest in this Restated Lease Agreement without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted transfer or assignment, including any involuntary transfers or assignments by operation of law, without such written consent shall be void and confer no rights upon any third person, in which event said third person shall occupy the Demised Premises as a tenant at sufferance. No transfer, assignment or subletting shall relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Restated Lease Agreement unless otherwise agreed in writing by Lessor. Nothing in this Restate Lease Agreement shall apply to any transferee, assignee or subtenant. The provisions of this ***§ 6.2***, however, shall not preclude Tenant's mortgaging or otherwise hypothecating its

leasehold estate in accordance herewith or entering into subleases in the ordinary course of business.

6.2.2 Technical Requirements. Each transfer, assignment, and subletting to which there has been consent, or to which no such consent is required shall, shall be by an instrument in writing in a form satisfactory to Lessor, and shall be executed by the transferor, assignor or sublessor; and the transferee, assignee, or subtenant shall agree in writing, for the benefit of Lessor, to assume, be bound by, and to perform the terms, covenants and conditions of this Restated Lease Agreement to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Lessor. Consent to any transfer or assignment shall not constitute a waiver or discharge of the provisions of this paragraph with respect to a subsequent transfer or assignment from becoming effective. The acceptance of Rent or Additional Charges from any other person shall not be deemed to be a waiver of any of the provisions of this Restated Lease Agreement or consent to the transfer, assignment or subletting of the Demised Premises.

6.3 Assignment of Rents, Income and Profits. Tenant hereby absolutely and irrevocably assigns to Lessor all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Demised Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant shall have the right to collect and retain such rents, income and profits. Lessor shall apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Demised Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to ***§ 6.4*** and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of the Restated Lease Agreement, the assignment herein shall be junior to the assignment in favor of the mortgagee.

6.4 Hypothecation of Leasehold Estate.

6.4.1 Right to Mortgage. Tenant shall have the right to mortgage its interest in this Restated Lease Agreement (but in no event the fee interest of the real property included within the Demised Premises, which may be assigned, encumbered and mortgaged only by Lessor) to a bank, insurance company or other bona fide lender provided that any leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder. As used herein, the noun "mortgage" includes a deed of trust, the verb "mortgage" includes the creation of a deed of trust, and the word "mortgagee" includes the beneficiary under a deed of trust.

6.4.2 Notice. If Tenant shall mortgage this Restated Lease Agreement in accordance with ***§ 6.4.1*** and shall have furnished Lessor the name and mailing address of the mortgagee, then Lessor shall not be empowered to

terminate this Restated Lease Agreement by reason of the occurrence of any default hereunder, unless Lessor shall have given the mortgagee under such leasehold mortgage a copy of its notice to Tenant of such default and the default shall continue for twenty (20) days after the mortgagee has been given such notice.

6.4.3 Right to Remedy. The leasehold mortgagee shall have the right to remedy any default under this Restated Lease Agreement and Lessor shall accept such performance by or at the instance of such leasehold mortgagee as if Tenant had made the same.

6.4.4 Foreclosure. In case of default, Lessor shall not be empowered to terminate this Restated Lease Agreement by reason of the occurrence of such default if leasehold mortgagee, within twenty (20) days after the giving of notice of such default, shall commence foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Restated Lease Agreement and shall thereafter diligently prosecute the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, leasehold mortgagee shall remedy any existing defaults under this Restated Lease Agreement, shall pay to Lessor, when due, all Rent, Additional Charges and other sums due hereunder and shall perform or cause to be performed all other agreements, terms, covenants and conditions arising out of or contained herein in this Restated Lease Agreement.

6.4.5 Status of Mortgagee. The leasehold mortgagee may become the legal owner and holder of the leasehold estate under this Restated Lease Agreement by foreclosure of its leasehold mortgage or as a result of the assignment of this Restated Lease Agreement in lieu of foreclosure. Upon becoming the owner and holder of the leasehold estate, leasehold mortgagee shall have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee shall have the right to assign its interest under this Restated Lease Agreement and, provided the assignee shall assume and agree to perform and be bound by all of the terms hereof, to be relived of further liability hereunder.

6.4.6 Insurance. Lessor agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Restated Lease Agreement, and the mortgagee may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Restated Lease Agreement.

6.4.7 New Lease. Lessor agrees that in the event of termination of this Restated Lease Agreement by reason of the bankruptcy of Tenant or any uncured default by Tenant, that Lessor will enter into a new lease for the Demised Parcel with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Restated Lease

Agreement, subject to the rights, if any, of the parties then in possession of any part of the Demised Parcel, provided:

6.4.7.1 The mortgagee or its nominee shall make written request upon Lessor for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Lessor of such termination and the Rent due and unpaid. The written request shall be accompanied by any then due payments of Rent under this Restated Lease Agreement; and the mortgagee or nominee shall execute and deliver the new lease agreement within thirty (30) days after Lessor has delivered it.

6.4.7.2 The mortgagee or its nominee shall pay to Lessor, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Restated Lease Agreement but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Lessor shall have incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

6.4.7.3 The mortgagee or its nominee shall perform and observe all covenants in this Restated Lease Agreement to be performed by Tenant and shall further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Restated Lease Agreement that are capable of being remedied by the leasehold mortgagee.

6.4.7.4 The new lease agreement shall be expressly made subject to the rights that survive, if any, of Tenant under this Restated Lease Agreement and the rights of any subtenants.

6.4.7.5 The tenant under the new lease agreement shall have the same right, title and interest in and to the Demised Parcel as Tenant has under this Restated Lease Agreement.

6.4.8 Exercise of Remedies. If, after receiving a notice of default under this Restated Lease Agreement, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Lessor agrees to forebear from the exercise of any remedies available to Lessor under this Restated Lease Agreement for so long as the leasehold mortgagee pays all Rent hereunder, and otherwise performs or causes to be performed the obligations of Tenant hereunder, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Demised Parcel pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Notwithstanding anything to the contrary, Lessor agrees to recognize as "Tenant" under this Restated Lease Agreement the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure, provided that (a) prior to any foreclosure or deed in lieu of foreclosure, Lessor shall be given the right, exercisable at Lessor's sole option, to terminate this Restated Lease Agreement and purchase the improvements located on the Demised Premises free and clear

of any interest of Tenant or lien in favor of such leasehold mortgagee at a purchase price equal to the amount then due and payable to such leasehold mortgagee and secured by its mortgage encumbering Tenant's interest in this Restated Lease Agreement (and Tenant hereby agrees to execute all documents and take such other actions as may be necessary to give effect to the foregoing right of Lessor), and (b) such leasehold mortgagee, nominee or purchaser promptly cures all defaults that are curable by the payment of money and upon obtaining possession of the Demised Parcel proceeds with diligence to cure all other defaults capable of cure by such leasehold mortgagee, nominee or purchaser.

6.4.9 Liability of Leasehold Mortgagee. Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under ***§ 6.4.7*** above, or any purchase, assumption or other acquisition in ***§ 6.4.8*** above, a leasehold mortgagee shall not, as a condition to the exercise of its rights hereunder, be required to assume any personal liability for the payment and performance of the obligations of Tenant hereunder, and any such payment or performance or other act by the leasehold mortgagee hereunder shall not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

7. Defaults by Tenant.

7.1 Events. Each of the following occurrences shall be an event of default hereunder:

7.1.1 If Tenant shall fail to pay any Rent or Additional Charges or any sum due hereunder promptly when due and such failure shall continue for ten (10) days after notice thereof in writing to Tenant.

7.1.2 If default shall be made by Tenant in any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant (not including the occurrence of any event referred to in ***§§ 7.1.3*** through ***7.1.6***) and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

7.1.3 If Tenant shall voluntarily file any petition, or have an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or shall file an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in default if Tenant shall continue to pay all Rent and Additional Charges and comply with all other terms and conditions of this Restated Lease Agreement.

7.1.4 If a trustee or receiver shall be appointed for Tenant or for a major portion of its property or for any portion of the Demised Premises.

7.1.5 If any court shall have taken jurisdiction of a major portion of the property of Tenant or any potion of the Demised Premises in any involuntary proceeding for dissolution, liquidation or winding up of Tenant and such jurisdiction shall not be relinquished or vacated within sixty (60) days.

7.1.6 If Tenant shall make an assignment for the benefit of its creditors.

7.2 Right of Reentry. Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, Lessor shall have the right, at its election, to reenter the Demised Premises and the buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the premises and enjoy the same as in their former estate and to take full possession of and control over the Demises Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Lessor shall be deemed an acceptance of a surrender of this Restated Lease Agreement, nor shall it absolve or discharge Tenant from any liability under this Restated Lease Agreement. Upon such reentry, all rights of Tenant to occupy or possess the Demised Premises shall cease and terminate.

7.3 Right to Terminate. Upon the occurrence of any default and at any time thereafter, Lessor shall have the right, at its election, with or without reentry as provided in ***§ 7.2***, to give written notice to Tenant stating that this Restated Lease Agreement and the real property hereby demised shall terminate on the date specified by such notice, and upon the date specified in such notice this Restated Lease Agreement and the real property hereby demised and all rights of Tenant hereunder shall terminate. Upon such termination, Tenant shall quit and peacefully surrender to Lessor the Demised Premises and the buildings, structures and improvements then situated thereon.

7.4 Right to Relet. At any time and from time to time after such reentry, Lessor may relet the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Lessor or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Restated Lease Agreement), and on such conditions (which may include concessions or free rental) as Lessor, in its reasonable discretion, may determine and may collect and receive the rental therefor. Even though it may relet the Demised Premises, Lessor shall have the right thereafter to terminate this Restated Lease Agreement and all of the rights of Tenant in or to the Demised Premises.

7.5 Damages. Tenant shall pay such damages to Lessor monthly on the first day of each month, and Lessor shall be entitled to recover from Tenant monthly, as the same shall arise. Tenant shall be liable for such damages on a monthly basis, whether or not in any prior month or months the net proceeds described below shall have exceeded the Annual Rental and Additional Charges described below. Unless Lessor shall have notified Tenant in writing that it has elected to terminate this Restated Lease Agreement, no such reentry or action in lawful detainer or otherwise to obtain possession of the Demised Premises shall relieve Tenant of its liability and obligations under this Restated Lease

Agreement; and all such liability and obligations shall survive any such reentry. In the event of any such reentry, whether or not the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, shall have been relet, Tenant shall pay to Lessor the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Restated Lease Agreement, and thereafter Tenant, until the end of what would have been the Term of this Restated Lease Agreement in the absence of such reentry, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed damages for Tenant's default:

7.5.1 The amount of Annual Rental and Additional Charges which would be payable under this Restated Lease Agreement by Tenant if this Restated Lease Agreement were still in effect (assuming that gross revenue would be equivalent to the average gross revenue over the preceding three years in which gross revenue was realized and rent was paid), less

7.5.2 The net proceeds of any reletting, after deducting all of Lessor's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

7.6 Other Rights. In the event of any breach by Tenant of any of the terms, covenants or agreements contained in this Restated Lease Agreement, Lessor shall have, in addition to any specific remedies provided in this Restated Lease Agreement, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

7.7 Rights Cumulative. Each right and remedy of Lessor provided for in this Restated Lease Agreement shall be cumulative and in addition to every other right or remedy provided for in this Restated Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Lessor of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Restated Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

7.8 Subtenant Breach. Any violation of any covenant or provision of this Restated Lease Agreement, whether by act or omission, by any subtenant or any other persons occupying any portion of the Demised Premises or any buildings, structures or improvements thereon under the rights of Tenant shall be deemed a violation of such provision by Tenant and a default under this Restated Lease Agreement. Any such violation shall not be deemed to be a default hereunder if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said default.

7.9 Incurable Default. If in any one period of twelve (12) consecutive months, Tenant shall have been in default in the payment of Rent or Additional Charges herein more than three (3) times and Lessor, because of such defaults,

shall have served upon Tenant within said twelve (12) month period three (3) or more notices, then the fourth default shall be deemed to be an incurable default and Lessor shall be entitled to immediate possession of the Demised Premises.

7.10 Diligent Commencement. Notwithstanding any other provision of this ***§ 7***, Lessor agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) day period for rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant, within such period of thirty (30) days, shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to effect such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

7.11 Disputes. Notwithstanding any other provision of this ***§ 7***, any dispute by Tenant, during the time that the City of Peoria remains the Lessor, regarding a default under this Restated Lease Agreement or Lessor's Representative's failure to provide approval as may be required herein, shall be submitted in writing to Lessor's Representative within ten (10) business days of Lessor's written notification to Tenant of the event giving rise to the default under this Restated Lease Agreement. After receipt of such written notice of dispute from Tenant, Lessor shall schedule a formal or informal hearing to allow Tenant the opportunity to explain the nature of the dispute and seek resolution. If Lessor's Representative, after the hearing with Tenant, issues a decision upholding the default, Tenant may, within five (5) business days after receipt of the written decision by Tenant, appeal the decision to a hearing officer by filing a formal appeal in the manner provided by the following procedures:

7.11.1 A formal appeal shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the lease, a detailed statement of the legal and factual grounds of the appeal, including copies of all relevant documents and the specific relief requested.

7.11.2 The appeal shall be filed within five (5) business days following the date Tenant receives the Lessor's Representatives decision or the end of the fifteen (15) business day period, if no decision was issued.

7.11.3 The formal appeal shall be heard by a hearing officer appointed by the City for such purposes within ten (10) business days after filing of the date of appeal, unless extended by the hearing officer.

7.11.4 The hearing officer may reject the appeal, sustain the appeal or reject or sustain in part and shall provide for an appropriate remedy.

7.11.5 In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the disputed default.

7.11.6 If however, Tenant shall fail to give Lessor's Representative written notice of the disputed default within the required time frame or fail to file a written appeal of the decision of Lessor's Representative to

the a hearing officer within the required time frame, the default shall be deemed admitted by Tenant.

7.12 Right to Cure Tenant's Defaults. Except with respect to Tenant's failure to operate its business, in the event Tenant shall be in default of this Restated Lease Agreement, which default remains uncured during any applicable cure period provided herein, Lessor may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Lessor at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or proceedings to enforce Lessor's rights under this Restated Lease Agreement or otherwise, the sum or sums so paid by Lessor, with all interest, costs and damages, shall be deemed to be Additional Charges and shall be due from Tenant to Lessor on the first day of the month following the incurring of such expenses or the payment of such sums.

7.13 Delay of Performance. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the control of the Party obligated to perform (a "Force Majeure Event"), shall excuse the performance by such Party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Restated Lease Agreement.

8. Miscellaneous.

8.1 Corporate Status of Tenant. Tenant covenants that it is a valid and existing limited liability company under the laws of the State of Arizona, that it is duly qualified and licensed to do business in the State of Arizona and in the City of Peoria, Arizona, and that it has full right and authority to enter into this Restated Lease Agreement.

8.2 Tenant's Statutory Rights. In the event of any termination of the Term of this Restated Lease Agreement (or any repossession of the Demised Premises) Tenant, so far as permitted by law, waives any notice of reentry with or without the institution of legal proceedings to that end.

8.3 Waiver of Performance. No failure by Lessor or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Lessor of full or partial Rent or Additional Charges during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Restated Lease Agreement, which shall continue in full force and effect, nor the respective rights of Lessor or Tenant with respect to any other then existing or subsequent breach.

8.4 Remedies Cumulative. Each right, power and remedy provided for in this Restated Lease Agreement or now or hereafter existing at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Restated Lease Agreement or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Restated Lease Agreement shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

8.5 Attorneys Fees. In the event Lessor should bring suit for possession of the Demised Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Restated Lease Agreement, or in the event Tenant should bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Restated Lease Agreement, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.6 Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given within (1) day after the same has been mailed by electronic mail (provided that a copy must also be sent via another approved form of delivery), within three (3) days after the same has been mailed by registered or certified mail, postage prepaid, or within two (2) days after delivery by a nationally recognized overnight courier service (e.g., UPS, Federal Express) or personally delivered to the respective Party, at the address shown below:

To Tenant: Rio Vista Property, LLC
3101 N Manor Dr. West
Phoenix, AZ 85014
Attention: Dana G. Seltzer, M.D.
Email: doc4jox@cox.net

To Lessor:	City Manager City of Peoria, AZ 8401 W. Monroe St. Peoria, Arizona 85345 Email: carl.swenson@peoriaaz.gov
With a Copy to:	City Attorney City of Peoria, AZ 8401 W. Monroe St. Peoria, Arizona 85345 Email: steve.kemp@peoriaaz.gov

or at such other address as either Party shall from time to time designate in writing to the other.

8.7 Time of Essence. Time is declared to be of the essence of this Restated Lease Agreement.

8.8 Section Headings; References; Interpretation. The section headings contained in this Restated Lease Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

8.9 Severability. If any provision of this Restated Lease Agreement is declared void, unenforceable or against public policy, such provision shall be deemed stricken and severed from this Restated Lease Agreement, with the remainder of the Restated Lease Agreement remain in full force and effect.

8.10 Provisions Subject to Applicable Law. All rights, powers and remedies provided herein shall be exercised only to the extent that the exercise thereof shall not violate any applicable law and are intended to be limited to the extent necessary so that they shall not render this Restated Lease Agreement invalid or unenforceable under any applicable law. If any term or condition of this Restated Lease Agreement shall be held to be invalid, illegal or unenforceable or against public policy, such provision shall be deemed stricken from this Restated Lease Agreement and the validity of the other terms of this Restated Lease Agreement shall in no way be affected thereby and this Restated Lease Agreement, absent the stricken provision, shall otherwise remain in full force and effect.

8.11 Governing Law and Choice of Forum. This Restated Lease Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any

provision of this Restated Lease Agreement shall be commenced and maintained in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action.)

8.12 Brokers or Agents. Tenant represents and warrants to Lessor that Tenant has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Restated Lease Agreement and Tenant covenants to pay, hold harmless and indemnify Lessor from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

8.13 Consent or Approval. Except as otherwise expressly provided herein, any consent or approval required in this Restated Lease Agreement shall not be unreasonably withheld or delayed. The requesting Party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under the Restated Lease Agreement, but in no event shall Lessor or Tenant be responsible for damages to anyone for such failure to give consent or approval.

8.14 Relationship. This is a ground lease agreement. This Restated Lease Agreement shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Lessor and Tenant, and it shall be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

8.15 Further Instruments and Documents. Lessor and Tenant shall, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Restated Lease Agreement.

8.16 Intended Agreement. This Restated Lease Agreement is the result of arms-length negotiations between Parties of roughly equivalent bargaining power and expresses the complete, actual and intended agreement of the Parties. This Restated Lease Agreement shall not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Restated Lease Agreement or of any exhibits or documents prepared to carry out the intent of this Restated Lease Agreement.

8.17 Integration Clause; No Oral Modification. This Restated Lease Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Restated Lease Agreement are hereby revoked and superseded by this Restated Lease Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Restated Lease Agreement.

This Restated Lease Agreement may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Lessor and Tenant. Any attempt at oral modification of this Restated Lease Agreement shall be void and of no effect.

8.18 Conflict of Interest. This Restated Lease Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

8.19 Right of First Refusal. Notwithstanding anything to the contrary contained herein, in the event Lessor proposes to sell or otherwise transfer its interest in the Demised Premises, (including but not limited to fee title to the real estate and this leasehold) at any time during the Term hereof, Lessor shall so notify Tenant in writing and include a copy of the proposed terms and conditions of said transfer and the identity of the proposed transferee (if any), and Tenant shall have forty five (45) days from receipt of such notice in which to elect to purchase the Demised Premises (including but not limited to fee title to the real estate and leasehold) on the same terms and conditions contained in said notice. Failure of Tenant to elect in writing to so purchase shall be deemed a waiver of Tenant's right to so purchase, provided that Lessor completes such sale or transfer on the terms contained in said notice within one hundred eighty (180) days of the delivery of such notice, and upon failure of Lessor to complete such sale or transfer within such 180-day period or upon any change to the terms and conditions specified in the Lessor's notice, Tenant's right to so purchase shall be reinstated and remain in effect.

8.20 Effect of Amendment. This Restated Lease Agreement is an amended and restated lease agreement and, effective as of the conveyance of the leasehold interest by Wells Fargo to Tenant, will replace in its entirety the Original Rio Vista Lease with respect to all actions of all predecessor tenants and the Parties hereto from the date of such conveyance. If Wells Fargo has not conveyed the leasehold interest to Tenant by July 31, 2011, this Restated Lease Agreement shall be of no further force and effect.

[Signatures appear on following page]

[Signature Page for First Amended and Restated Ground Lease for Premises Located at Rio Vista Community Park, Peoria, Arizona]

IN WITNESS WHEREOF, the Parties have executed this Restated Lease Agreement on the date listed below.

City of Peoria, Arizona, an Arizona municipal corporation

By: _____
Carl Swenson, City Manager

APPROVED AS TO FORM:

By: _____
Steve Kemp, City Attorney

ATTEST:
By: _____
Wanda Nelson, City Clerk

Rio Vista Property, LLC, an Arizona limited liability company

By:
_____
Dr. Dana Seltzer, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Restated Lease Agreement was acknowledged before me this ___ day of _____, 2011, by Dr. Dana Seltzer, Manager of Rio Vista Property, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

MY COMMISSION EXPIRES:

Exhibit "A"
Demised Premises

A portion of that parcel of land described in Instrument No. 2000-0960346, records of Maricopa County, Arizona, located in the Southeast quarter of Section 10, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and more particularly described as follows:

COMMENCING at the South quarter corner of said Section 10, an ADOT aluminum cap, whence the North quarter corner of said Section 10, a 1/2 inch rebar, bears North 00 degrees 28 minutes 17 seconds East, a distance of 5280.07 feet;

THENCE along the North-South midsection line of said Section 10, North 00 degrees 28 minutes 17 seconds East, a distance of 1500.66 feet to the Southwest corner of said parcel;

THENCE leaving said North-South midsection line, along the South line of said parcel, North 89 degrees 14 minutes 12 seconds East, a distance of 939.33 feet;

THENCE leaving said South line, North 00 degrees 45 minutes 48 seconds West, a distance of 35.05 feet to the TRUE POINT OF BEGINNING;

THENCE North 24 degrees 28 minutes 29 seconds West, a distance of 126.52 feet to a point of intersection with a non-tangent curve concave to the West;

THENCE Northerly 82.86 feet along the arc of said curve, said curve having a radius of 48.00 feet, a central angle of 98 degrees 54 minutes 24 seconds and a chord that bears North 02 degrees 31 minutes 03 seconds East, a distance of 72.95 feet to the beginning of a reverse curve concave to the East;

THENCE Northerly 3.91 feet along the arc of said curve, said curve having a radius of 3.00 feet, a central angle of 74 degrees 35 minutes 23 seconds and a chord that bears North 09 degrees 38 minutes 27 seconds West, a distance of 3.64 feet to the beginning of a reverse curve concave to the Northwest;

THENCE Northeasterly 71.79 feet along the arc of said curve, said curve having a radius of 560.00 feet, a central angle of 07 degrees 20 minutes 44 seconds and a chord that bears North 23 degrees 58 minutes 52 seconds East, a distance of 71.75 feet to the beginning of a reverse curve concave to the Southeast;

THENCE Northeasterly 85.61 feet along the arc of said curve, said curve having a radius of 100.00 feet, a central angle of 49 degrees 03 minutes 10 seconds and a chord that bears North 44 degrees 50 minutes 05 seconds East, a distance of 83.02 feet to a point of intersection with a non-tangent line;

THENCE South 09 degrees 57 minutes 18 seconds East, a distance of 49.41 feet to the beginning of a curve concave to the Northwest;

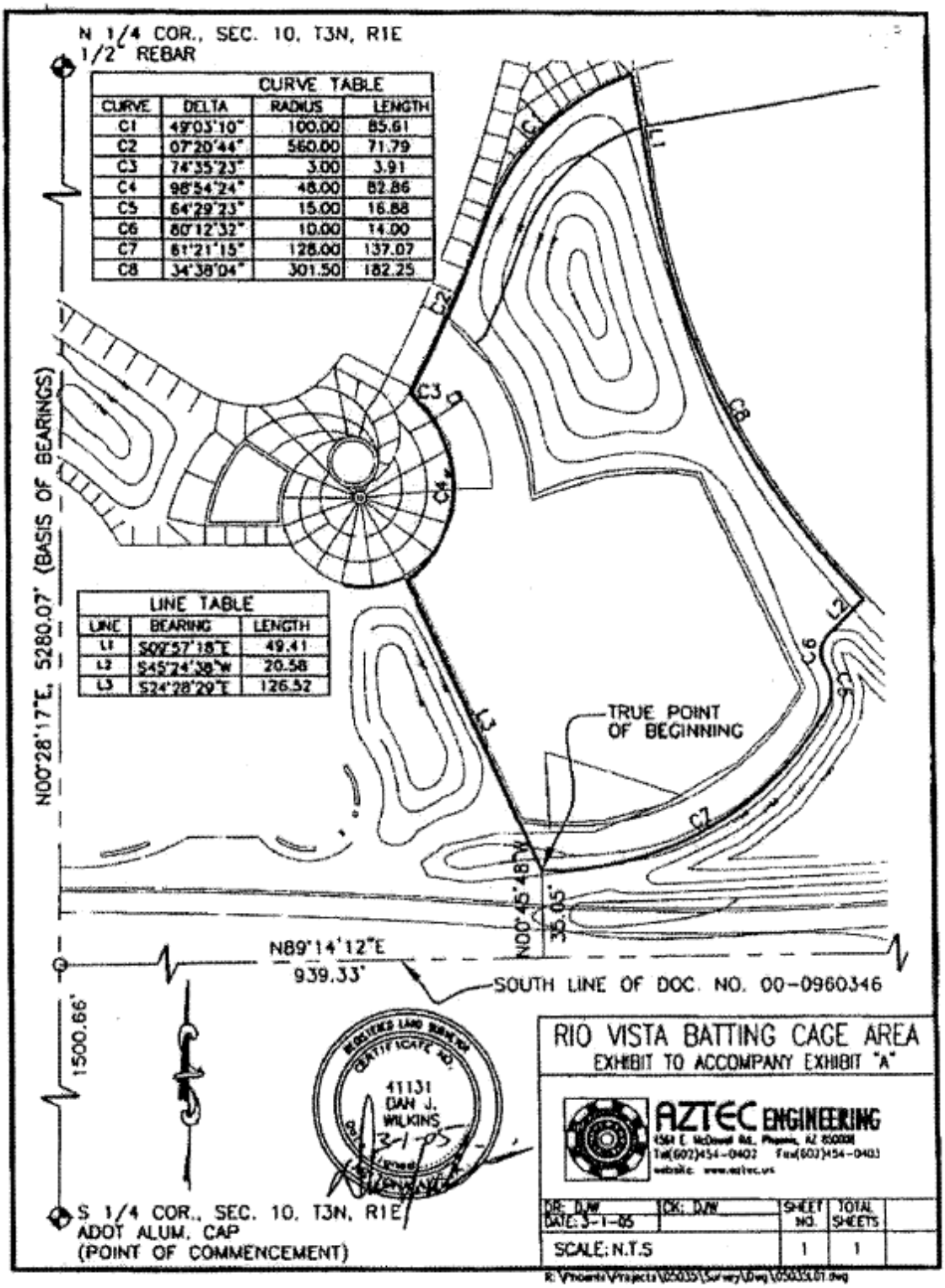
THENCE Southeasterly 182.25 feet along the arc of said curve, said curve having a radius of 301.50 feet, a central angle of 34 degrees 38 minutes 04 seconds and a chord that bears South 27 degrees 16 minutes 20 seconds East, a distance of 179.49 feet to a point of intersection with a non-tangent line;

THENCE South 45 degrees 24 minutes 38 seconds West, a distance of 20.58 feet to the beginning of a curve concave to the East;

THENCE Southerly 14.00 feet along the arc of said curve, said curve having a radius of 10.00 feet, a central angle of 80 degrees 12 minutes 32 seconds and a chord that bears South 05 degrees 18 minutes 22 seconds West, a distance of 12.88 feet to the beginning of a reverse curve concave to the West;

THENCE Southerly 16.88 feet along the arc of said curve, said curve having a radius of 15.00 feet, a central angle of 64 degrees 29 minutes 23 seconds and a chord that bears South 02 degrees 33 minutes 12 seconds East, a distance of 16.01 feet to the beginning of a compound curve concave to the Northwest;

THENCE Southwesterly 137.07 feet along the arc of said curve, said curve having a radius of 128.00 feet, a central angle of 61 degrees 21 minutes 15 seconds and a chord that bears South 60 degrees 22 minutes 07 seconds West, a distance of 130.61 feet to the TRUE POINT OF BEGINNING.


N 1/4 COR., SEC. 10, T3N, R1E
1/2" REBAR
CURVE TABLE
CURVE | DELTA | RADIUS | LENGTH
C1 | 49°03'10" | 100.00 | 85.61
C2 | 07°20'44" | 560.00 | 71.79
C3 | 74°35'23" | 3.00 | 3.91
C4 | 98°54'24" | 48.00 | 82.86
C5 | 64°29'23" | 15.00 | 16.88
C6 | 80°12'32" | 10.00 | 14.00
C7 | 61°21'15" | 128.00 | 137.07
C8 | 34°38'04" | 301.50 | 182.25
LINE TABLE
LINE | BEARING | LENGTH
L1 | S09°57'18"E | 49.41
L2 | S45°24'38"W | 20.58
L3 | S24°28'29"E | 126.52
N00°28'17"E, 5280.07' (BASIS OF BEARINGS)
TRUE POINT OF BEGINNING
N00°45'48"W
36.05'
N89°14'12"E
939.33'
SOUTH LINE OF DOC. NO. 00-0960346
1500.66'
S 1/4 COR., SEC. 10, T3N, R1E
ADOT ALUM. CAP
(POINT OF COMMENCEMENT)
RIO VISTA BATTING CAGE AREA
EXHIBIT TO ACCOMPANY EXHIBIT "A"
AZTEC ENGINEERING
DR: DJW
DATE: 5-1-05
CK: DJW
SHEET NO. 1
TOTAL SHEETS 1
SCALE: N.T.S

12723199.6

Exhibit "B"
Memorandum of Lease

WHEN RECORDED RETURN TO:

Office of the Peoria City Clerk
8401 W. Monroe Street
Peoria, Arizona 85345

MEMORANDUM OF LEASE AGREEMENT

This is a Memorandum of that certain First Amended and Restated Ground Lease dated the ___ day of _____, 2011, wherein the City of Peoria, Arizona, an Arizona municipal corporation ("Lessor"), demised and leased to Rio Vista Property, LLC, an Arizona limited liability company ("Tenant"), the real property described on ***Exhibit A*** attached hereto for a term of forty (40) years with two (2) fifteen (15)-year options to renew.

The offices of Lessor and Tenant are as follows:

Lessor: City Manager
City of Peoria, Arizona
8401 W. Monroe St.
Peoria, Arizona 85345

Tenant: Dr. Dana Seltzer
Rio Vista Property, LLC
3101 N Manor Dr. West
Phoenix, AZ 85014

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease Agreement effective as of the _____ day of _____, 2011.

City of Peoria, Arizona, an Arizona municipal corporation

By: _____
Carl Swenson, City Manager

Rio Vista Property, LLC, an Arizona limited liability company

By: _____
Dr. Dana Seltzer, Manager

APPROVED AS TO FORM:

By: _____
Stephen M. Kemp, City Attorney

ATTEST:

By: _____
Wanda Nelson, City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Memorandum of Lease Agreement was acknowledged before me this ___ day of _____, 2011, by Dr. Dana Seltzer, Manager of Rio Vista Property, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

My Commission Expires:

Exhibit "C"

Long-Standing Rio Vista Users

1. USSSA Adult Softball
2. USSSA Baseball
3. USSSA Fast pitch Softball
4. Top Choice Baseball
5. Salt River Project
6. Arizona Senior Olympics
7. Sun Cities Sidewinders
8. ASA Fast Pitch Softball
9. Peoria Unified School District
10. Little League

CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

CC: 3R

Amend No. _____

Date prepared: May 16, 2011 **Council Meeting Date: May 23, 2011**

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: Scott Whyte, Economic Development Services Director

SUBJECT: Discussion and possible action to approve the assignment of the existing ground lease for premises located on Paradise Lane by Wells Fargo, N.A., to Peoria Sports Complex Property, LLC, an Arizona limited liability company.

RECOMMENDATION:

Approval of the assignment of the existing First Amended and Restated Ground Lease Agreement dated July 11, 2006 (LCON 01103F) for premises located on Paradise Lane by Wells Fargo, N.A., to Peoria Sports Complex Property, LLC, an Arizona limited liability company. City Council's approval will authorize the City Manager to execute the necessary documents on behalf of the City.

SUMMARY:

This is the first of four related items that collectively would result in the former Chili Davis facilities on Paradise Lane and at Rio Vista Community Park being assigned to business entities owned by Dr. Dana Seltzer, chairman of the Orthopedic Department and Director of Orthopedic Trauma at St. Joseph's Hospital. Dr. Seltzer's business is It's All in the Game, LLC, which would operate sports training (with a baseball emphasis), medical, restaurant, and related retail facilities at both locations. The ground leases would be held by Peoria Sports Complex Property, LLC, and Rio Vista Property, LLC, respectively. The recommended actions by the City Council this evening are approval of assignments of both existing ground leases to Dr. Seltzer's businesses and approval of new amended ground leases for both locations. Each item requires separate consideration and action by the City Council.

The City entered into two ground leases with Chili Davis Premier Baseball in the mid-2000s for development of sports-related businesses at two City-owned locations—one on Paradise Lane and one at Rio Vista Community Park (the batting cages outside Rio Vista Recreation Center). Chili Davis substantially developed and operated the Rio Vista location, but never completed the necessary improvements at the Paradise Lane location. Chili Davis eventually defaulted on its obligations under both ground leases and on its financial obligations to its lender, Wells Fargo, N.A., which resulted in Wells Fargo foreclosing on both ground lease interests and becoming the successor tenant at

each location by operation of the lease terms. Wells Fargo then sought purchasers for both locations.

Dr. Seltzer first approached the City in the fall of 2010 with his idea to convert the vacant former Chili Davis site on Paradise Lane into a baseball academy that focuses on player development and sports training. Having served as the medical director for many professional sports teams, including the Phoenix Coyotes, Dr. Seltzer has significant experience with sports medicine and has composed a business team that includes Luis Gonzalez and Foothills Physical Therapy. The business venture is called It's All in the Game. Dr. Seltzer submitted a full price offer to Wells Fargo Bank, the current owner of the vacant former Chili Davis building and improvements, and that offer has been accepted.

Dr. Seltzer has also requested an option on the 4.91 acre parcel south of the Arizona Broadway Theater. His vision is to bring the multi-specialty St. Joseph's Hospital Medical Group, which consists of more than 200 medical providers over 12 medical specialties, to this site. Both Catholic Healthcare West (the parent of St. Joseph's) and the medical group are looking to expand into the West Valley.

The existing ground lease agreements originally executed with Chili Davis Premier Baseball have been acquired by Wells Fargo by foreclosure, and therefore, need to be assigned to Dr. Seltzer's business entities. The existing ground leases also need to be amended to be consistent with the previously approved deal points, which were presented to City Council during executive session. The agreed upon deal points have now been memorialized in revised ground leases for both locations, with that for Paradise Lane including a purchase options for both the demised premises and the adjacent 4.91 acre parcel.

The base terms of the new ground lease agreement for the Paradise Lane location include:

- Term – Original term of forty (40) years with two (2) fifteen (15) year extension options
- Monthly rental – None first year of Lease Term; years 2-5 lease is $3000.00 per month; years 6-10 lease is $4,684.16 per month; years 11-40 and any extensions (rent shall increase 10% every five years beginning in year 11)
- Purchase Option: The then fair market value determined through an appraisal
- Option Parcel Purchase (for 4.91 acre parcel south of Arizona Broadway Theater): The then fair market value determined through an appraisal
- Current Permitted Uses of Demised Premises: Orthopedic and Sports Medicine; Sports and Performance Athletic Training; Indoor and Outdoor Baseball Training; Retail Food and Restaurant; Retail Sporting and Related Goods
- Current Permitted Uses of Option Parcel: Orthopedic and Sports Medicine; General Medical, Out-Patient, Surgical, or Hospital Facility. Additional permitted uses include Sports and Performance Athletic Training, Retail Food and Restaurant, and Office.
- Tenant's designated use of the Peoria Sports Complex baseball fields

The base terms of the new ground lease for the Rio Vista location are substantially

similar to the original agreement with Chili Davis Premier Baseball, as follows:

- Term – Original term of forty (40) years with two (2) fifteen (15) year extension options
- Rent – None first six months of Lease Term; thereafter 5% of gross revenues payable quarterly.
- Tenant's designated use of Rio Vista Community Park facilities.

Presented this evening are four separate Council actions that are necessary to transfer these ground lease interests from Wells Fargo to Peoria Sports Complex Property, LLC, and Rio Vista Property, LLC, respectively and effectuate modified lease terms for both locations:

A. City Council approval of Wells Fargo's assignment of the existing ground lease for the Paradise Lane location to Peoria Sports Complex Property, LLC
B. City Council approval of the new Second Amended and Restated Ground Lease for the Paradise Lane location between the City and Peoria Sports Complex Property, LLC, that includes mutually agreed upon negotiated terms.
C. City Council approval of Wells Fargo's assignment of the existing ground lease for the Rio Vista location to Rio Vista Property, LLC.
D. City Council approval of the new First Amended and Restated Ground Lease for the Rio Vista location between the City and Rio Vista Property, LLC, that includes mutually agreed upon negotiated terms.

CONTACT: Maria Laughner at 623-773-5121

CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION

CC: 4R

Amend No. _____

Date prepared: May 16, 2011 **Council Meeting Date: May 23, 2011**

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: Scott Whyte, Economic Development Services Director

SUBJECT: Discussion and possible action to approve a Second Amended and Restated Ground Lease Agreement for premises located on Paradise Lane by and between the City of Peoria and Peoria Sports Complex Property, LLC, an Arizona limited liability company.

RECOMMENDATION:

Approval of the Second Amended and Restated Ground Lease Agreement for premises located on Paradise Lane by and between the City of Peoria and Peoria Sports Complex Property, LLC, an Arizona limited liability company, consistent with previously approved deal points. City Council's approval will authorize the City Manager to execute the necessary documents on behalf of the City.

SUMMARY:

This communication is the second of four actions to assign and amend the leases from the former tenant, Chili Davis Premier Baseball, to Dr. Dana Seltzer and It's All in the Game. Details of the project are listed in the first communication.

ATTACHMENT: The ground lease is attached for your review.

CONTACT: Maria Laughner at 623-773-5121

SECOND AMENDED AND RESTATED GROUND LEASE AGREEMENT FOR PREMISES LOCATED ON PARADISE LANE IN PEORIA, ARIZONA

This Second Amended and Restated Ground Lease for Premises Located on Paradise Lane in Peoria, Arizona ("Restated Lease") is made as of the ___ day of May 2011, by and between the City of Peoria, Arizona, an Arizona charter municipality ("Lessor"), and Peoria Sports Complex Property, LLC., an Arizona limited liability company ("Tenant"). Lessor and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Lessor is the owner of certain real property with improvements consisting of approximately 4.19 acres located at 7797 W. Paradise Lane in Peoria, Arizona (the "Demised Premises"). The Demised Premises are described and identified on ***Exhibit "A"*** attached hereto and incorporated herein by this reference, along with all easement rights appurtenant thereto.

WHEREAS, Lessor also is the owner of certain unimproved real property consisting of approximately 4.5 acres located adjacent to and southeast of the Demised Premises (the "Option Parcel"). The Option Parcel is described and identified on ***Exhibit "B"*** attached hereto and incorporated herein by this reference, along with all easement rights appurtenant thereto.

WHEREAS, by a First Amended and Restated Ground Lease Agreement dated July 11, 2006 (LCON01103F) ("Original Lease"), Lessor leased the Demised Premises to MAGDAWG, LLC (the "Original Tenant"), a now defunct Arizona limited liability company, dba "Chili Davis Premier Baseball," for development of a multi-use amusement, baseball training, retail, and restaurant facility.

WHEREAS, the Original Tenant borrowed funding for development of these facilities on the Demised Premises from Wells Fargo Bank, N.A. ("Wells Fargo"), and secured the loan by, among other collateral, providing a lien upon its leasehold interest and the improvements under the Original Lease, fixtures, and trade equipment.

WHEREAS, the Original Tenant defaulted on its loan obligation to Wells Fargo, and Wells Fargo foreclosed on its secured interest as evidenced by a Trustee's Deed and Bill of Sale recorded with the Office of the Maricopa County, Arizona Recorder on July 29, 2010, at document number 2010-0647764.

WHEREAS, by operation of the foreclosure and recordation of the Trustee's Deed and Bill of Sale, Wells Fargo succeeded to the interest of the Original Tenant as tenant under the Original Lease, as permitted by Section 18 of the Original Lease.

WHEREAS, Wells Fargo and Tenant have entered into an agreement whereby Wells Fargo has agreed to sell and Tenant has agreed to purchase Wells Fargo's interest in the Original Lease and the tenant improvements.

WHEREAS, Lessor approves of the conveyance and transfer of the leasehold interest to Tenant, and has negotiated amended terms to the Original Lease with Tenant, which are set forth below in this Restated Lease and which will become effective upon the conveyance of such leasehold interest.

NOW, THEREFORE, the Parties agree to amend and restate the Original Lease in its entirety, as follows:

SECTION 1–FUNDAMENTAL LEASE PROVISIONS

Date:	May ___, 2011.
Lessor:	City of Peoria, Arizona, an Arizona charter municipal corporation.
Tenant:	Peoria Sports Complex Property, LLC, an Arizona limited liability company
Lease Term:	An original term of forty (40) years, with two (2) fifteen (15) year extension options.
Demised Premises:	See ***Exhibit A*** attached hereto.
Option Parcel:	See ***Exhibit B*** attached hereto.
Monthly Rental:	Commencing on the Rent Commencement Date and continuing until the 1st anniversary thereof: $0 (no rent payable); Commencing on the 2nd anniversary of the Rent Commencement Date and continuing until the 5th anniversary thereof: $3,000.00 per month Commencing on the 6th anniversary of the Rent Commencement Date and continuing until the 10th anniversary thereof: $4,684.16 per month; and Commencing on the 11th anniversary of the Rent Commencement Date (the "Rent Adjustment Date") and on each 5th anniversary of the Rent Adjustment Date, the Monthly Rental shall increase 10% over the preceding monthly rental.
Address of Lessor:	City of Peoria, Arizona 8401 W. Monroe Street Peoria, Arizona 85345

Address of Tenant:	Peoria Sports Complex Property, LLC c/o Dr. Dana Seltzer 3101 N. Manor Dr. West Phoenix, Arizona 85014
Current Permitted Uses of Demised Premises:	Orthopedic and Sports Medicine; Sports and Performance Athletic Training; Indoor and Outdoor Baseball and Other Sports Training; Physical Therapy and Rehabilitation; Multi-Use Facility, including, but not limited to Health Club and Gym; Retail Food and Restaurant, Retail Sporting and Related Goods
Permitted Uses of Option Parcel:	Required Uses: Orthopedic and Sports Medicine; General Medical, Out-Patient, Surgical, or Other Medical Facility. Additional Permitted Uses: Sports and Performance Athletic Training; Indoor and Outdoor Baseball and Other Sports Training; Physical Therapy and Rehabilitation; Multi-Use Facility, including, but not limited to Health Club and Gym; Retail Food and Restaurant, Retail Sporting and Related Goods; Office.

The foregoing Fundamental Lease Provisions are an integral part of this Restated Lease, and each reference in the body of this Restated Lease to any Fundamental Lease Provision shall be construed to incorporate all of the terms set forth above with respect to such Provisions.

SECTION 2–DEMISED PREMISES

2.1 For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the promises, terms and conditions contained in this Restated Lease, Lessor hereby leases to Tenant that certain parcel of real property situated in Peoria, Arizona, described and identified at ***Exhibit A*** attached hereto and incorporated herein by this reference, along with all easement rights appurtenant thereto. Said real property together with all buildings, structures and other improvements now or hereafter located thereon shall hereinafter be referred to as the "Demised Premises." Tenant acknowledges that it has inspected the Demised Premises, is familiar with its condition and accepts the same "as is" in its present condition. Lessor hereby acknowledges that all prior leases, rentals or other grant of possession of the Demised Premises, if any, shall terminate and be of no further force or effect as of the Effective Date of this Restated Lease. Should such prior lease(s) exist,

and any tenant rights thereunder be in a third party, Lessor covenants and warrants that the same shall be terminated as provided for in this ***§ 2***.

2.2 In accordance with ***Exhibit C***, Lessor shall allow Tenant access to and use of the Peoria Sports Complex.

SECTION 3–TERM

3.1 The lease term commences on the Effective Date and shall continue thereafter for a period of forty (40) years, unless such lease term shall be sooner terminated or extended as hereinafter provided. Provided Tenant is not then in default hereunder beyond the expiration of any applicable cure period, Tenant shall have the option to extend the lease term for two (2) successive terms of fifteen (15) years each, upon the same terms and conditions set forth in this Restated Lease. In order to exercise any such extension option, Tenant shall give to Lessor written notice of its election to do so not less than six (6) months prior to the commencement date of the applicable extension period. Failure to exercise any extension right shall terminate Tenant's rights to exercise all subsequent extension rights. The lease term, as well as any extension hereunder is hereafter referred to as the "Term."

3.2 The "Effective Date" shall mean the date that Tenant acquires the leasehold interest in the Demised Premises from Wells Fargo. Tenant shall promptly notify Lessor when it acquires the leasehold interest by providing documentation evidencing same to Lessor. Lessor shall thereafter send a written communication to Tenant confirming the Effective Date.

SECTION 4–RENT

4.1 For a period commencing on the Rent Commencement Date and continuing until the first anniversary of the Rent Commencement Date, Tenant shall pay no rent.

4.2 Beginning on the second anniversary of the Rent Commencement Date and continuing through the fifth anniversary of the Rent Commencement Date, Tenant shall pay to Lessor a monthly Rent of $3,000.00.

4.3 Beginning on the sixth anniversary of the Rent Commencement Date through the tenth anniversary of the Rent Commencement Date, Tenant shall pay to Lessor a monthly Rent of $4,684.16, which represents 110% of the Effective Date Appraised Value ($730,000) multiplied by 7% and divided by 12.

4.4 Beginning on the eleventh anniversary of the Rent Commencement Date through the end of the Term and including any properly exercised extensions of the Term, Tenant shall pay to Lessor a monthly Rent that shall increase by ten percent (10%) every five (5) years beginning on the eleventh anniversary of the Rent Commencement Date at $5,152.58.

4.5 As used in this Restated Lease, "Rent Commencement Date" shall mean the earlier of the date a certificate of occupancy is issued for the improvements constructed on the Demised Premises or the ninetieth (90th) day following the Effective Date.

4.6 The Rent and Additional Charges (hereinafter provided for in ***§ 5***), shall be paid in lawful money of the United States of America to the "City of Peoria, Arizona" payable at 8401 W. Monroe, Peoria, Arizona 85345 and should be delivered to the attention of the City of Peoria, Arizona Chief Financial Officer, or to such other place or person as Lessor may from time to time designate in writing.

4.7 If Tenant shall fail or neglect to pay any amount due and payable to Lessor hereunder, and the delinquency shall continue for five (5) days after such amount is due (or in the case of payments other than Rent, within five (5) days after Tenant receives written notice of such amount), then beginning on the sixth (6th) day, Tenant shall pay to Lessor a late payment charge in the amount of five percent (5%) of the delinquent amount; and said late payment charge shall be in addition to, and not in lieu of, any other rights Lessor may have.

SECTION 5–ADDITIONAL CHARGES All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which Lessor may suffer or incur for which Tenant is liable under this Restated Lease, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Restated Lease on Tenant's part to be performed, shall be referred to herein as "Additional Charges" and, in the event of their nonpayment, Lessor shall have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Lessor shall accrue interest at twelve percent (12%) per annum from their due date until paid.

SECTION 6–NO COUNTERCLAIM OR ABATEMENT OF RENT Except as expressly provided herein, Rent and Additional Charges and all other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

SECTION 7–TAXES, ASSESSMENTS AND UTILITIES

7.1 It is the intention of the Parties hereto that, insofar as the same may be lawfully done, Lessor shall be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Restated Lease shall yield net to Lessor not less than the Rent reserved hereunder, throughout the Term. Subject to ***§ 7.2*** below, Tenant shall pay and discharge, as and when the same shall become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes, assessments (but not assessments for any presently existing public improvements or benefits); and all other governmental taxes, impositions and charges of every kind and nature, general

or special, unforeseen or foreseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Restated Lease shall be or become due and payable by Lessor or Tenant and which shall be levied, assessed or imposed:

a. Upon or with respect to, or shall be or become liens upon, the Demised Premises, or any portion thereof or any interest of Lessor or Tenant therein or under this Restated Lease other than liens created or granted by Lessor;

b. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Demised Premises, or any portion thereof; and

c. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Demised Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

7.2 Lessor and Tenant desire and intend, but Lessor does not warrant or guarantee, that the Demised Premises and the Building will be exempt from ad valorem taxes and from other property taxes or assessments, including, but not limited to, Government Property Lease Excise Tax (collectively, "Property Taxes") during the Term of this Restated Lease. Lessor and Tenant will cooperate in good faith to ensure that any applicable exemptions are at all times in effect with respect to the Demised Premises and the Building during the Term of this Restated Lease. In addition, Lessor and Tenant will cooperate in good faith to eliminate any Property Taxes regarding the Demised Premises and the Building during the Term of this Restated Lease. If any Property Taxes are levied (or levy is attempted) against the Demised Premises and the Building, or any portion thereof, during the term of this Restated Lease, then (a) Lessor and Tenant shall cooperate in good faith to defend against such taxes or assessments, and (b) Lessor will join with Tenant in any administrative proceedings and appeals at Tenant's request. Notwithstanding anything contained herein to the contrary, Tenant's obligation to pay real estate taxes on the Demised Premises and the Building or other improvements located thereon during the Term of this Restated Lease, shall be limited to the real estate taxes owed as long as the City of Peoria remains the owner of the Demised Premises. If a sale or other transfer of the Demised Premises during the Term of this Restated Lease to a party other than Tenant pursuant to ***§ 26*** or ***§ 28*** hereof results in any increase in real estate taxes from that which may otherwise be owed if the City of Peoria remained the owner, such increase in real estate taxes shall be paid by the successor Lessor, and Tenant may deduct such additional taxes from the Rent or other amounts payable to Lessor hereunder.

7.3 Tenant, upon Lessor's written request, shall furnish to Lessor, within twenty (20) days thereafter, proof of the payment of any taxes, impositions

or charges which Tenant and not Lessor shall have the obligation to pay under the provisions of ***§ 7***.

7.4 Tenant shall be solely responsible for, and shall pay the cost of, constructing or installing utility hookups from existing utility installations to the Demised Premises and shall be solely responsible for, and shall pay the cost of, all utility services consumed by Tenant on the Demised Premises.

SECTION 8–USE OF PREMISES

8.1 Tenant shall use the Demised Premises solely for the permitted uses and not for any other purpose without the prior written consent of Lessor, which consent will not be unreasonably withheld, conditioned or delayed. Tenant shall not use or permit the Demised Premises to be used in violation of the laws, ordinances, regulations and requirements of the United States of America, the State of Arizona, the County of Maricopa, the City of Peoria, Arizona or any subdivision or department thereof or any other authority or agency having jurisdiction over the Demised Premises. Tenant agrees, at its sole expense, to comply with and conform to all requirements of any governmental entity having jurisdiction over the Demised Premises, throughout the entire term, including any applicable extensions, of this Restated Lease. Use of the Demised Premises in violation of the terms of ***§ 8*** shall cause Tenant to be in default hereunder; however, Tenant shall have the right to cure said default pursuant to the provisions of ***§ 19*** of this Restated Lease.

8.2 Tenant shall not use the Demised Premise to operate an adult movie theatre, an adult live cabaret or any other form of adult use as that term is defined in Chapter 11 of the Peoria City Code (1992) and shall not permit performances containing specified sexual activities or specified anatomical areas as those terms are defined in Chapter 11 of the Peoria City Code (1992).

8.3 Lessor agrees for a period of ten (10) years from the Effective Date not to lease or sell any real property within a five (5) mile radius of the Peoria Sports Complex for the use of orthopedic and/or sports medicine or for the use (outside City parks) of indoor baseball training facilities without the prior written consent of Tenant. Lessor further agrees for a period of ten (10) years from the Effective Date not to lease or sell any real property that is located between a five (5) mile radius and ten (10) mile radius of the Peoria Sports Complex for the use of for-profit orthopedic and/or sports medicine or for the use (outside City parks) of indoor baseball training facilities without having first offered to Tenant and Tenant having (within 30 days) declined to lease or purchase the real property on the same terms Lessor intends to offer the real property to any other person. Within City parks, Lessor agrees for twelve (12) months from the Effective Date to not lease or sell real property within five (5) miles of the Peoria Sports Complex for the use of for-profit orthopedic and/or sports medicine or indoor or outdoor baseball training facilities without having first offered to Tenant and Tenant having (within 30 days) declined to lease or purchase the real property on the same terms Lessor intends to offer the real property to any other person. If Tenant exercises its option to lease or purchase property in a City park pursuant

to this Section, Tenant acknowledges that the transaction documents may include provisions prohibiting Tenant from constructing any improvement or engaging in any business within any City park that affects the tax-exempt status of the bonds issued to fund the park. If Tenant declines to lease or purchase real property pursuant to this Section and Lessor fails to consummate a lease or purchase of such property within 180 days from the offer to Tenant or Lessor modifies the terms and conditions of the sale or lease, Tenant's right to so purchase shall be reinstated and remain in effect.

8.4 A portion of the Demised Premises depicted on ***Exhibit E*** as the "West Encroachment Area" is subject to a non-exclusive storm drain outfall easement (the "Drainage Easement") for the benefit of both the Demised Premises and certain land to the west which is owned by Lessor and leased for the operation of a restaurant known as the Salty Senorita (the "Salty Senorita Parcel"). The lessee of the Salty Senorita Parcel has installed a fence and volleyball courts (the "Additional Improvements") within the West Encroachment Area. Following the Effective Date, Lessor will cooperate with Tenant to amend the Drainage Easement in a manner that is mutually acceptable to Lessor and Tenant in order to permit the Additional Improvements to remain in the West Encroachment Area.

8.5 With the consent of Lessor, the prior lessee of the Demised Premises installed a fence in a manner that includes a portion of the Peoria Sports Complex depicted on ***Exhibit F*** as the "PSC Parcel" and which is not part of the Demised Premises to facilitate access to the adjacent practice fields known as the P8 half-field, P4, and P5. During the Term, Tenant will continue to have the right to use the PSC Parcel together with the Demised Premises, subject, however, to the absolute right of Lessor to own, possess, and control its water control facilities located within the PSC Parcel, including water detention, retention, and drainage. If Tenant acquires the Demised Premises pursuant to the Right of First Refusal in ***§ 26*** or the Purchase Option provided for in ***§ 28***, Lessor will grant to Tenant an easement to permit the continued use of the PSC Parcel as permitted in this ***§ 8.5***.

8.6 Adjacent to the Demised Premises to the east is a parcel owned by Lessor and leased for the operation of the Arizona Broadway Theatre (the "ABT Parcel"). Along the eastern boundary of the Demised Premises is a driveway depicted on ***Exhibit G*** as the "Driveway Parcel" which is used by both Tenant and the lessee of the ABT Parcel. Following the Effective Date, Lessor will cooperate with Tenant to grant an easement over the Driveway Parcel for the benefit of the ABT Parcel on terms and conditions mutually acceptable to Lessor and Tenant and with the acceptance of both Tenant and the lessee of the ABT Parcel (the "Driveway Easement"). Until the Driveway Easement is executed, Lessor will, at Lessor's expense, maintain the Driveway Parcel in good condition and repair in accordance with those City of Peoria standards applicable to maintenance of City-owned driveway areas.

8.7 If requested by Tenant, Lessor will cooperate with Tenant to grant Tenant a construction easement across Lessor's Peoria Sports Complex

property during times and at a location determined by Lessor to allow Tenant to enter through the P4 field single gate or P5 field double gate to construct outdoor batting cages and a fast pitch practice infield north of the P4 field and P8 half field on the Demised Premises. Tenant shall bear all costs associated with establishing and utilizing any construction easement including restoring any portion of Lessor's Peoria Sports Complex property that is damaged during construction. Lessor may decline to grant a construction easement during Spring Training or during any other time that Lessor determines would unreasonably interfere with the operation of the Peoria Sports Complex. Any construction that takes place in the easement area of the vicinity of the P8 half field must be approved by Lessor and Tenant prior to starting and the design must be approved by Lessor. All improvements must comply with City Codes. Liability for any persons injured traversing the easement area will be borne solely by Tenant unless resulting from the negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees.

SECTION 9–TENANT'S CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

9.1 Tenant, at its sole expense, may cause to be constructed and installed buildings, structures and other leasehold improvements, fixtures, equipment and furniture on the real property included within the Demised Premises in compliance with the City of Peoria zoning laws which are consistent with the use of the Demised Premises as permitted herein. Tenant shall pursue diligently any such construction or other improvements to completion. Title to all improvements constructed by Tenant on any property owned or leased by Lessor shall become the property of Lessor upon the termination for any reason (except for exercise by Tenant of the Right of First Refusal provided for in ***§ 26*** or the Purchase Option provided for in ***§ 28***) of this Restated Lease, free and clear of all encumbrances of any kind (except as otherwise provided herein).

9.2 Any construction or any additions or alterations which affect the exterior of any buildings, structures or improvements included within the Demised Premises shall be subject to the prior written approval of Lessor, through its designated representative, the City Manager or his designee ("Lessor's Representative"), which shall include, but not be limited to, approval by Lessor's Representative of all site plans, grading, landscaping and building materials. Tenant shall submit all designs for any construction, additions or alterations to Lessor prior to bidding the construction thereof, and Lessor shall review such designs within ten (10) Business Days of receipt. Lessor's approval under this Section shall not be unreasonably withheld, conditioned or delayed. Designs received by the City but not responded to within the allotted time shall be deemed approved.

9.3 Tenant shall be allowed to landscape and install non-permanent fixtures in and on the Demised Premises subject to complying with City regulations and obtaining Lessor's approval as required pursuant to the provisions of ***§ 9.2***. Tenant acknowledges that should Lessor conduct any repair

work in these areas, Lessor shall be responsible, at its sole expense, for all repairs to the landscape following the Lessor's repair work.

9.4 Subject to the provisions of ***§ 9.2***, Tenant shall have the right to make alterations and additions to any buildings, structures or improvements included within the Demised Premises with the prior written approval of Lessor's Representative within ten (10) Business Days (unless Lessor's Representative reasonably requests additional time because of the complexity of the alteration or addition), so long as the general character of the Demised Premises is not changed and the fair market value and fair rental value are not reduced below their value immediately before such alterations or additions. If Lessor's Representative does not respond to the request to alter or add to the Demised Premises within the allotted time, then the request shall be deemed approved. Approval under this Section shall not be unreasonably withheld, conditioned or delayed. For purposes of this Restated Lease, "Business Days" shall mean any day the administrative offices of the City of Peoria located at City Hall are open for business.

9.5 Tenant, or its designated contractors, subcontractors and employees, shall perform all construction and installations on the Demised Premises in a good and workmanlike manner under the supervision of a licensed architect or engineer and in all respects in accordance with all applicable legal requirements, permits or approvals, as the case may be.

SECTION 10–FENCES Tenant shall be allowed to construct fencing in and around the Demised Premises in compliance with City zoning and building regulations.

SECTION 11–MAINTENANCE AND REPAIRS

11.1 Tenant at all times during the Term of this Restated Lease shall keep and maintain in good order and repair and in a clean and sanitary condition the real property, buildings, structures, driveways, landscaped areas, and other improvements included within the Demised Premises, and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur. All repairs, replacements and renewals shall be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Demised Premises at Lessor's expense, it being understood that Lessor shall in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, structures, or improvements on the Demised Premises , or to any equipment or appurtenances located thereon, shall have been as a result of Lessor's negligent or intentional actions, Lessor shall pay the cost therefor to Tenant.

11.2 Tenant at all times during the Term shall (a) keep and maintain in good order and repair all landscaped areas and the exterior painted surfaces of all buildings, structures and improvements included within the Demised Premises; and (b) keep and maintain in good order and repair Tenant's customer

parking lot and driveway constructed by the Tenant on the real property included within the Demised Premises.

11.3 Tenant shall provide and maintain trash dumpsters, with covers thereon, about the Demised Premises in which to place any trash, and cause such trash to be removed as often as is required to maintain a sanitary condition.

SECTION 12–REGULATORY REQUIREMENTS

12.1 Tenant shall promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Demised Premises or any part thereof and of all insurance companies writing policies covering the Demised Premises or any part thereof. Without limiting the generality of the foregoing, Tenant shall also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Demised Premises or required in connection with any building, structure or improvement now or hereafter erected thereon. Notwithstanding the foregoing, nothing contained herein shall be deemed to grant either Lessor or Tenant the right to alter the terms of this Restated Lease without the express written consent of both Parties.

12.2 Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Demised Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Restated Lease (1) the term "Hazardous Materials" shall include but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term "De Minimis Amounts" shall mean, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities in Maricopa County, Arizona; and (3) the term "Hazardous Materials Laws" shall mean any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the

Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

12.3 Lessor agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Demised Premises. Tenant shall indemnify and save Lessor harmless from any expense or loss whatsoever occasioned by Lessor's presence as a party to any such instrument, application or permit.

12.4 Lessor agrees to provide Tenant with a copy of Lessor's most recent Phase I Environmental Report for the Demised Premises and the Option Parcel, if any exist.

SECTION 13–LIENS

13.1 Tenant shall have no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Lessor in the real property included within the Demised Premises, provided however that Tenant shall not be prohibited from entering into any contracts in Tenant's capacity as a tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to be made on the Demised Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Lessor nor the real property included within the Demised Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

13.2 If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Lessor, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the real property included within the Demised Premises or against Lessor (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Lessor, as the case may be, shall, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either shall have received from the other a written notice requesting such discharge.

SECTION 14–PROPERTY AND PUBLIC LIABILITY INSURANCE

14.1 Tenant shall at all times, throughout the Term of this Restated Lease, keep the Demised Premises insured against perils. Tenant shall ensure

that all insurance policies in effect for the Demised Premises name the City of Peoria as an additional insured.

14.2 The insurance policies required by this ***§ 14*** shall be written by insurance companies with an A.M. Best's Key Rating Guide of A- [minus] or better, authorized to do business in the State of Arizona, and shall be written on an occurrence basis or in a form satisfactory to Lessor. As often as any such policy shall expire or otherwise terminate, renewal or additional policies shall be procured and maintained by Tenant and its contractor(s) to provide uninterrupted coverage. Tenant agrees and shall cause its contractor(s) to agree to provide Lessor with certificates of insurance evidencing such insurance policies providing coverage for the Demised Premises upon Lessor's request.

14.3 Tenant, during the entire Term of this Restated Lease, shall provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in subsections a through e (inclusive) immediately below.

a. Statutory workers' compensation insurance, in an amount required by the State of Arizona and any and all applicable insurance required by any employee benefit acts or other statutes as will protect Tenant's employees from any and all liability under the aforementioned acts and statutes for work performed at the Demised Premises.

b. Commercial general liability insurance in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor. If the permitted use permits the sale of alcoholic beverages on the Demised Premises, then during any period that Tenant offers alcoholic beverages for sale on the Demised Premises, Tenant shall obtain a liquor liability endorsement to said commercial general liability policy in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate.

c. Tenant (including also anyone holding under Tenant and any and all subtenants and other occupants of the Demised Premises), as the case may be, shall: (i) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing the same from any and all liability for any and all bodily injury, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require any and all insurers for the Demised Premises to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees

as Additional Insureds in all insurance policies required under this ***§ 14.3***.; and, (iii) require that Tenant (including also anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and all insurers providing policies of insurance under this ***§ 14.3*** waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees, but said waivers of liability and subrogation shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Tenant (including anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and their respective insurers for work performed on, or services provided to, the Demised Premises).

d. Tenant shall maintain Errors & Omissions coverage in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate.

e. Should Tenant utilize any steam or pressure boilers, or other similar apparatus on the Demised Premises, Tenant shall maintain boiler and machinery coverage, to include explosion insurance, with respect to any steam or pressure boilers and similar apparatus located on the Demised Premises in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $3,000,000.00 general aggregate and insurance against such other hazards and in such amounts as Lessor may reasonably require for its protection.

14.4 During the entire Term of this Restated Lease except in the case of usual and customary maintenance, repair and replacement of the Demised Premises, Tenant shall require any general contractor(s) performing work or services to the Demised Premises with Tenant's consent or approval, to provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in subsections a through f (inclusive) immediately below.

a. Statutory workers' compensation insurance, with limits of not less than $100,000.00 on an occurrence basis, $100,000.00 disease for each employee, $500,000.00 disease policy limit and any and all insurance required by any employee benefit acts or other statutes applicable where the work is to be performed as will protect said contractor's employees, and subcontractors from any and all liability under the aforementioned acts and statutes.

b. Commercial general liability insurance in an amount not less than $3,000,000.00 combined single limit per occurrence and not less than $5,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor.

c. Comprehensive automobile liability insurance, including coverage for the ownership, maintenance and operation of any automobile equipment owned, hired or non-owned, which is assigned to or used by the contractor(s) in the performance of work on, or services provided to, the Demised Premises, in an amount not less than $1,000,000.00 combined single limit per accident.

d. Either of the following: (i) owner's and contractor's protective liability insurance with limits of not less than $1,000,000.00 combined single limit per occurrence and not less than $5,000,000.00 general aggregate as will insure Lessor as named insured against any and all claims for bodily injury, including death resulting therefrom, personal injury or damage to the property of others, arising from or in any way connected to Tenant's contractor(s) performance of work on, or services provided to, the Demised Premises or (ii) in lieu of the foregoing owner's and contractor's protective liability insurance specified in this ***Subsection 14.4 (d)***, an endorsement to the commercial general liability insurance specified in subsection b above of this paragraph providing for a separate general aggregate limit of insurance of not less than $5,000,000.00 on an occurrence basis.

e. Tenant shall cause the above-referenced contractor(s) and sub-contractor(s) (and their respective insurers) to: (i) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death resulting therefrom, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require the above-referenced contractor(s) and sub-contractor(s) to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all insurance policies required under this ***§ 14.4***; and, (iii) require that the contractor(s), sub-contractor(s) and all insurers providing policies of insurance under this ***§ 14.4*** waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to Lessor's negligent or intentional acts but shall be applicable to any negligence imputed to

Lessor, its agents, representatives, officers, directors, elected officials and employees by operation of law as a result of the action or non-action of Tenant's contractor(s), sub-contractor(s) and their respective insurers for work performed on, or services provided to, the Demised Premises).

f. Tenant's contractor(s) and sub-contractor(s) performing work on, or providing services to, the Demised Premises shall maintain Errors & Omissions coverage in an amount not less than $1,000,000.00 combined single limit per occurrence and not less than $5,000,000.00 general aggregate.

14.5 At Tenant's election, the insurance required by this **§ 14** may be provided under a blanket policy.

14.6 Certificates of insurance evidencing all of the coverages required in this ***§ 14*** shall be delivered to Lessor prior to the start of construction of any buildings, structures or improvements on or in the Demised Premises and renewal certificates of insurance shall be delivered to Lessor at least thirty (30) days prior to the expiration dates of the respective policies. Such certificates shall also provide that Lessor will receive written notice at least ten (10**)** days prior to any cancellation, non-renewal or reduction in coverage. Lessor reserves the right to require Tenant to furnish proof, satisfactory to Lessor, that any and all insurance policies for the Demised Premises remain in full force and effect.

14.7 Tenant further covenants and agrees to reasonably increase the required insurance hereunder to such additional amounts that the Lessor requires of all similarly situated Tenants of the Lessor.

14.8 In the event of loss or destruction under any such policy or policies, Tenant shall promptly proceed with the repair and restoration of the damaged or destroyed buildings, structures or improvements in accordance with and subject to the provisions of ***§ 15*** of this Restated Lease. The insurance proceeds, if less than Fifty Thousand Dollars ($50,000.00) shall be paid to Tenant for application to such repair and restoration and, if in excess of Fifty Thousand Dollars ($50,000.00) shall be paid to Tenant and thereafter endorsed over to Tenant's mortgagee, or if none, to Lessor to be held in trust by a bank or title companies designated by Lessor, to be paid out upon architect's certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repairing or restoring the buildings, structures or improvements damaged or destroyed; provided, however, that in the event that such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair or restoration, Tenant shall have paid a sufficient portion of such cost to Lessor before any such repair and restoration are commenced so that it shall appear to the satisfaction of Lessor that the amount of insurance money in the hands of said trustee shall at all times be sufficient to pay for the completion of said repairs or restoration free and clear of liens. Upon the completion of said repair or restoration, free and clear of all liens, any surplus of insurance monies shall be paid to Tenant, provided that Tenant is not then in default under this Restated

Lease. In the event that this Restated Lease shall have been terminated for any default of Tenant under any of the terms and provisions contained in this Restated Lease, all insurance proceeds in the hands of said trustee and all claims against insurers shall be and become the absolute property of Lessor.

SECTION 15–DAMAGE OR DESTRUCTION

15.1 In the event of damage to or destruction of any of the buildings, structures or improvements included within the Demised Premises by fire or other casualty, Tenant shall give Lessor and any mortgagee immediate notice thereof and shall at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements shall be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

15.2 Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Demised Premises should be rendered untenable by fire or other casualty during the last five (5) years of the Restated Lease, or the last two (2) years of any option, to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Restated Lease, provided however, that Tenant shall pay over to Lessor all casualty insurance proceeds received or receivable by reason of the destruction of said buildings, structures or improvements. Tenant's option to terminate shall be evidenced by a written notice given to Lessor within sixty (60) days after the occurrence of such damage or destruction.

15.3 Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Demised Premises should be rendered untenantable by fire or other casualty, to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, during a Lease Year other than that referred to in ***§ 15.2***, Tenant and Lessor, subject to the approval of the Peoria City Council if the City is still the Lessor, may mutually agree in writing that Tenant is relieved of any obligation to rebuild on the real property included within the Demised Premises and is further relieved of all obligations under this Restated Lease. Tenant shall pay over to Lessor all casualty proceeds received or receivable by reason of the destruction of said buildings, structures or improvements under this provision. As used in this Restated Lease, "Lease Year" shall mean each period of twelve (12) consecutive months commencing on the Effective Date hereunder and ending at midnight on the day prior to each successive anniversary of the Effective Date.

SECTION 16–INDEMNIFICATION

16.1 Tenant shall protect, indemnify and hold Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees harmless from and against all liabilities, obligations, claims, suits,

damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against Lessor, its agents, representatives, officers, directors, elected or appointed officials, and employees**,** by reason of any of the following (unless resulting from negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees): (i) any use, nonuse or condition of the Demised Premises or any part thereof; (ii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Demised Premises or any part thereof; (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Restated Lease; (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Demised Premises or any part thereof; or (v) any failure on the part of Tenant to comply with any of the matters set forth in ***§12*** of this Restated Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials.

16.2 In the event Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this ***§ 16***, Tenant shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by Lessor. Except for the negligent or intentional acts of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Lessor, Tenant shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Tenant under this ***§ 16*** arising by reason of any such occurrence taking place while this Restated Lease is in effect shall survive any termination or other form of cancellation of this Restated Lease.

16.3 Notwithstanding the terms and conditions contained in ***§ 16.2*** above, Tenant shall be required to protect, defend, indemnify, satisfy or hold harmless Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees in the event negligence is imputed by operation of law against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

16.4 Tenant shall indemnify and hold any Authorized User harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against an Authorized User by Tenant or its employees, agents, representatives, directors, officials, customers, vendors, guests, licensee and invitees whose person or personal property are struck by baseballs, baseball bats or other equipment used by the

players, managers, or coaches during a baseball game, practice session or preseason training. This indemnification shall extend to injuries sustained at any location on the Demised Premises. "Authorized User" shall mean any baseball organization, including without limitations, its owners, officers, employees, managers, coaches and players, with whom Lessor has specifically contracted to use the practice baseball fields directly south of and adjacent to the Demised Premises.

16.5 Except for any responsibility alleged or allocated to Lessor by reason of its failure to enforce the terms of this Restated Lease, Lessor shall protect, indemnify and hold Tenant harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including reasonable attorney's fees and expenses) imposed upon or asserted against Tenant by reason of the negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees. In the event Tenant should be made a defendant in any action, suit or proceeding brought by reason of Lessor's, its agents', representatives', officers', directors', elected and appointed officials', and employees' negligence, Lessor shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Lessor. Except to the extent of the negligent or intentional actions of Tenant, its agents, representatives, officers, directors, or employees, if any such action, suit or proceeding should result in a final judgment against Tenant, Lessor shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Lessor under this ***§ 16*** arising by reason of any such occurrence taking place while this Restated Lease is in effect shall survive any termination or other form of cancellation of this Restated Lease.

16.6 Notwithstanding the obligations imposed upon Lessor pursuant to ***§ 16.4*** above, Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees shall not be required to protect, defend, indemnify, satisfy any judgment or hold Tenant harmless for any negligence imputed against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

SECTION 17–ASSIGNMENT AND SUBLETTING

17.1 Tenant shall not transfer or assign this Restated Lease or any interest in this Restated Lease or sublet the Demised Premises or any portion thereof without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. However, Tenant may sublet portions of the Demised Premises for those permitted uses set forth in the Fundamental Lease Provisions without first obtaining the written consent of Lessor, but a copy of the sublease shall be provided to Lessor within thirty (30) days following execution thereof. Any attempted transfer or assignment,

including any involuntary transfers or assignments by operation of law, without such written consent shall be void and confer no rights upon any third person, and at the option of Lessor, shall cause a termination of this Restated Lease, in which event said third person shall occupy the Demised Premises as a tenant at sufferance. No such transfer, assignment or subletting shall relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Restated Lease unless otherwise agreed to by Lessor. A consent by Lessor to one transfer, assignment or subletting shall not operate as a waiver of this ***§ 17*** as to any future transfer, assignment or subletting, and this ***§ 17*** shall apply to any transferee, assignee or subtenant. The provisions of this ***§ 17***, however, shall not preclude Tenant's mortgaging or otherwise hypothecating its leasehold estate in accordance with the provisions of ***§ 18***.

17.2 Each transfer, assignment, and subletting to which there has been consent shall be by an instrument in writing in a form satisfactory to Lessor, and shall be executed by the transferor, assignor or sublessor; and the transferee, assignee, or subtenant shall agree in writing, for the benefit of Lessor, to assume, be bound by, and to perform the terms, covenants and conditions of this Restated Lease to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Lessor. A consent to any transfer, assignment or subletting shall not constitute a waiver or discharge of the provisions of this paragraph with respect to a subsequent transfer, assignment or subletting from becoming effective. The acceptance of Rent or Additional Charges from any other person shall not be deemed to be a waiver of any of the provisions of this Restated Lease or consent to the transfer, assignment or subletting of the Demised Premises.

17.3 Tenant agrees to reimburse Lessor for Lessor's reasonable costs, not to exceed $1,500 (including but not limited to attorneys' fees), in conjunction with the processing of any request for consent under this ***§ 17***.

SECTION 18–HYPOTHECATION OF LEASEHOLD ESTATE

18.1 Tenant shall have the right to mortgage its interest in this Restated Lease (but in no event the fee interest of the real property included within the Demised Premises, which may be assigned, encumbered and mortgaged only by Lessor) to a bank, insurance company or other bona fide lender provided that any leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder. As used in this ***§ 18*** and throughout this Restated Lease, the noun "mortgage" shall include a deed of trust, the verb "mortgage" shall include the creation of a deed of trust, and the word "mortgagee" shall include the beneficiary under a deed of trust.

18.2 If Tenant shall mortgage this Restated Lease in accordance with ***§ 18.1*** and shall have furnished Lessor the name and mailing address of the mortgagee, then Lessor shall not be empowered to terminate this Restated Lease by reason of the occurrence of any default hereunder, unless Lessor shall have given the mortgagee under such leasehold mortgage a copy of its notice to

Tenant of such default and the default shall continue for twenty (20) days after the mortgagee has been given such notice.

18.3 The leasehold mortgagee shall have the right to remedy any default under this Restated Lease and Lessor shall accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant.

18.4 In case of default, Lessor shall not be empowered to terminate this Restated Lease by reason of the occurrence of such default if leasehold mortgagee, within twenty (20) days after the giving of notice of such default as provided in ***§ 18.2***, shall commence foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Restated Lease and shall thereafter diligently prosecute the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, leasehold mortgagee shall remedy any existing defaults under this Restated Lease, shall pay to Lessor, when due, all Rent, Additional Charges and other sums due hereunder and shall perform or cause to be performed all other agreements, terms, covenants and conditions arising out of or contained herein in this Restated Lease.

18.5 The leasehold mortgagee may become the legal owner and holder of the leasehold estate under this Restated Lease by foreclosure of its leasehold mortgage or as a result of the assignment of this Restated Lease in lieu of foreclosure. Upon becoming the owner and holder of the leasehold estate, leasehold mortgagee shall have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee shall have the right to assign its interest under this Restated Lease and, provided the assignee shall assume and agree to perform and be bound by all of the terms hereof, to be relived of further liability hereunder.

18.6 Lessor agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Restated Lease, and the mortgagee may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Restated Lease.

18.7 Lessor agrees that in the event of termination of this Restated Lease by reason of the bankruptcy of Tenant or any uncured default by Tenant, that Lessor will enter into a new lease for the Demised Parcel with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Restated Lease, subject to the rights, if any, of the parties then in possession of any part of the Demised Parcel, provided:

a. The mortgagee or its nominee shall make written request upon Lessor for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Lessor of such termination and the Rent due and unpaid. The written request shall be accompanied by any then due payments of Rent under this

Restated Lease; and the mortgagee or nominee shall execute and deliver the new lease agreement within thirty (30) days after Lessor has delivered it.

b. The mortgagee or its nominee shall pay to Lessor, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Restated Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Lessor shall have incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

c. The mortgagee or its nominee shall perform and observe all covenants in this Restated Lease to be performed by Tenant and shall further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Restated Lease that are capable of being remedied by the leasehold mortgagee.

d. The new lease agreement shall be expressly made subject to the rights that survive, if any, of Tenant under this Restated Lease and the rights of any subtenants.

e. The tenant under the new lease agreement shall have the same right, title and interest in and to the Demised Parcel as Tenant has under this Restated Lease.

f. If, after receiving a notice of default under this Restated Lease, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Lessor agrees to forebear from the exercise of any remedies available to Lessor under this Restated Lease for so long as the leasehold mortgagee pays all Rent hereunder, and otherwise performs or causes to be performed the obligations of Tenant hereunder, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Demised Parcel pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Notwithstanding anything to the contrary, Lessor agrees to recognize as "Tenant" under this Restated Lease the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure, provided that (a) prior to any foreclosure or deed in lieu of foreclosure, Lessor shall be given the right, exercisable at Lessor's sole option, to terminate this Restated Lease and purchase the improvements located on the Demised Premises free and clear of any interest of Tenant or lien in favor of such leasehold mortgagee at a purchase price equal to the amount then due and payable to such leasehold mortgagee and secured by its mortgage

encumbering Tenant's interest in this Restated Lease (and Tenant hereby agrees to execute all documents and take such other actions as may be necessary to give effect to the foregoing right of Lessor), and (b) such leasehold mortgagee, nominee or purchaser promptly cures all defaults that are curable by the payment of money and upon obtaining possession of the Demised Parcel proceeds with diligence to cure all other defaults capable of cure by such leasehold mortgagee, nominee or purchaser.

18.8 Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under **§ 18.7** above, or any purchase, assumption or other acquisition in ***§ 18.7*** above, a leasehold mortgagee shall not, as a condition to the exercise of its rights hereunder, be required to assume any personal liability for the payment and performance of the obligations of Tenant hereunder, and any such payment or performance or other act by the leasehold mortgagee hereunder shall not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

SECTION 19–DEFAULTS BY TENANT

19.1 Each of the following occurrences shall be an event of default hereunder:

a. If Tenant shall fail to pay any Rent or Additional Charges or any sum due hereunder promptly when due and such failure shall continue for ten (10) days after notice thereof in writing to Tenant.

b. If default shall be made by Tenant in any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant (not including the occurrence of any event referred to in subparagraphs (c) through (f) of this ***§ 19.1***) and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

c. If Tenant shall voluntarily file any petition, or have an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or shall file an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in default if Tenant shall continue to pay all Rent and Additional Charges and comply with all other terms and conditions of this Restated Lease.

d. If a trustee or receiver shall be appointed for Tenant or for a major portion of its property or for any portion of the Demised Premises.

e. If any court shall have taken jurisdiction of a major portion of the property of Tenant or any potion of the Demised Premises in any involuntary proceeding for dissolution, liquidation or winding up of Tenant and such jurisdiction shall not be relinquished or vacated within sixty (60) days.

f. If Tenant shall make an assignment for the benefit of its creditors.

19.2 Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, Lessor shall have the right, at its election, to reenter the Demised Premises and the buildings, structures and improvements then situated thereon, or any part thereof, either with or without process of law, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the premises and enjoy the same as in their former estate and to take full possession of and control over the Demised Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Lessor shall be deemed an acceptance of a surrender of this Restated Lease, nor shall it absolve or discharge Tenant from any liability under this Restated Lease. Upon such reentry, all rights of Tenant to occupy or possess the Demised Premises shall cease and terminate.

19.3 Upon the occurrence of any default and at any time thereafter, Lessor shall have the right, at its election, with or without reentry as provided in ***§ 19.2***, to give written notice to Tenant stating that this Restated Lease and the real property hereby demised shall terminate on the date specified by such notice, and upon the date specified in such notice this Restated Lease and the real property hereby demised and all rights of Tenant hereunder shall terminate. Upon such termination, Tenant shall quit and peacefully surrender to Lessor the Demised Premises and the buildings, structures and improvements then situated thereon.

19.4 At any time and from time to time after such reentry, Lessor may relet the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Lessor or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Restated Lease), and on such conditions (which may include concessions or free rental) as Lessor, in its reasonable discretion, may determine and may collect and receive the rental therefor. Even though it may relet the Demised Premises, Lessor shall have the right thereafter to terminate this Restated Lease and all of the rights of Tenant in or to the Demised Premises.

19.5 Tenant shall pay such damages to Lessor monthly on the first day of each month, and Lessor shall be entitled to recover from Tenant monthly, as the same shall arise. Tenant shall be liable for such damages on a monthly basis, whether or not in any prior month or months the net proceeds described in subparagraph (b) below shall have exceeded the Rent and Additional Charges described in subparagraph (a) below. Unless Lessor shall have notified Tenant in writing that it has elected to terminate this Restated Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Demised Premises shall relieve Tenant of its liability and obligations under this Restated Lease; and all such liability and obligations shall survive any such reentry. In the

event of any such reentry, whether or not the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, shall have been relet, Tenant shall pay to Lessor the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Restated Lease, and thereafter Tenant, until the end of what would have been the Term of this Restated Lease in the absence of such reentry, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed damages for Tenant's default:

a. The amount of Rent and Additional Charges which would be payable under this Restated Lease by Tenant if this Restated Lease were still in effect, less

b. The net proceeds of any reletting, after deducting all of Lessor's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

19.6 In the event of any breach by Tenant of any of the terms, covenants or agreements contained in this Restated Lease, Lessor shall have, in addition to any specific remedies provided in this Restated Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

19.7 Each right and remedy of Lessor provided for in this Restated Lease shall be cumulative and in addition to every other right or remedy provided for in this Restated Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Lessor of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Restated Lease or now or hereafter existing at law or in equity or by statute or otherwise.

19.8 Any violation of any covenant or provision of this Restated Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Demised Premises or any buildings, structures or improvements thereon under the rights of Tenant shall be deemed a violation of such provision by Tenant and a default under this Restated Lease. Any such violation shall not be deemed to be a default hereunder if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said default.

19.9 If in any one period of twelve (12) consecutive months, Tenant shall have been in default in the payment of Rent or Additional Charges herein more than three (3) times and Lessor, because of such defaults, shall have served upon Tenant within said twelve (12) month period three (3) or more notices, then the fourth default shall be deemed to be a noncurable default and Lessor shall be entitled to immediate possession of the Demised Premises.

19.10 Notwithstanding any other provision of this ***§ 19***, Lessor agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) day period for rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant, within such period of thirty (30) days, shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to effect such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

19.11 Notwithstanding any other provision of this ***§ 19***, any dispute by Tenant, during the time that the City of Peoria remains the Lessor, regarding a default under this Restated Lease or Lessor's Representative's failure to provide approval as may be required herein, shall be submitted in writing to Lessor's Representative within ten (10) Business Days of Lessor's written notification to Tenant of the event giving rise to the default under this Restated Lease. After receipt of such written notice of dispute from Tenant, Lessor shall schedule a formal or informal hearing to allow Tenant the opportunity to explain the nature of the dispute and seek resolution. If Lessor's Representative, after the hearing with Tenant, issues a decision upholding the default, Tenant may, within five (5) Business Days after receipt of the written decision by Tenant, appeal the decision to a hearing officer by filing a formal protest in the manner provided by the following procedures:

a. A formal protest shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the lease, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.

b. The appeal shall be filed within five (5) Business Days following the date Tenant receives the Lessor's Representative's decision or the end of the fifteen (15) Business Day period, if no decision was issued.

c. The formal appeal shall be heard by a hearing officer appointed by the City for such purposes within ten (10) Business Days after filing of the date of appeal, unless extended by the hearing officer.

d. The hearing officer may reject the protest, sustain the protest or reject or sustain in part and shall provide for an appropriate remedy.

e. In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the disputed default.

f. If however, Tenant shall fail to give Lessor's Representative written notice of the disputed default within the required time frame or fail to file a written appeal of the decision of Lessor's Representative to

a hearing officer within the required time frame, the default shall be deemed admitted by Tenant.

SECTION 20–OPERATING COVENANT

20.1 Tenant covenants and agrees that following completion of the improvements contemplated by this Restated Lease and for the remainder of the Term, it will continuously and without interruption offer for sublease any vacant space within the improvements that is intended to be operated for retail or other commercial uses and shall have available to the Demised Premises competent personnel (who may be employees or independent contractors) to sublease and maintain the improvements in a manner which conforms to commercially reasonable management practices for comparable facilities, ("Operating Covenant"); provided, however, that the Operating Covenant shall not apply during (i) weekends and holidays and (ii) any period when the Demised Premises are untenable by reason of fire, other Force Majeure Event or by eminent domain. Tenant acknowledges that the occurrence of vacancies from time to time shall not constitute a breach of the Operating Covenant.

20.2 If Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Lessor's exclusive remedy for such failure, Lessor may terminate this Restated Lease upon thirty (30) days prior written notice to Tenant after which all obligations of Tenant and Lessor under this Restated Lease shall terminate and be of no further force and effect; provided, however, that if Lessor elects to terminate this Lease then Tenant may exercise its option to purchase the Demised Premises pursuant to ***§ 28*** in which event this Restated Lease shall not terminate until the purchase is consummated.

SECTION 21–ASSIGNMENT OF RENTS, INCOME AND PROFITS Tenant hereby absolutely and irrevocably assigns to Lessor all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Demised Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant shall have the right to collect and retain such rents, income and profits. Lessor shall apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Demised Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to ***§ 18.1*** and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of this Restated Lease, the assignment herein shall be junior to the assignment in favor of the mortgagee.

SECTION 22–CORPORATE STATUS OF TENANT Tenant covenants that it is a valid and existing limited liability company under the laws of the State of Arizona, that it is duly qualified to do business in the State of Arizona, and that it has full right and authority to enter into this Restated Lease.

SECTION 23–TENANT'S STATUTORY RIGHTS In the event of any termination of the Term of this Restated Lease (or any repossession of the Demised Premises pursuant to ***§ 19***) Tenant, so far as permitted by law, waives any notice of reentry with or without the institution of legal proceedings to that end.

SECTION 24–WAIVER OF PERFORMANCE No failure by Lessor or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Lessor of full or partial Rent or Additional Charges during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Restated Lease, which shall continue in full force and effect, nor the respective rights of Lessor or Tenant with respect to any other then existing or subsequent breach.

SECTION 25–REMEDIES CUMULATIVE Each right, power and remedy provided for in this Restated Lease or now or hereafter existing at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Restated Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Restated Lease shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

SECTION 26–CONVEYANCE BY LESSOR

26.1 If Lessor (or any successor Lessor) intends to list or market for sale, or shall otherwise intends to sell, convey or dispose of the real property included within the Demised Premises, Tenant shall be given prompt written notice of such intent with respect to the real property included within the Demised Premises ("Notice of Sale"). Until the later of (i) ninety (90) days after receipt of a Notice of Sale from Lessor or successor Lessor or (ii) ten (10) days following the determination of FMV in accordance with this Section (the "Negotiation Period"), Tenant shall have first right to purchase the real property included within the Demised Premises at the fair market value ("FMV") of the real property comprising the Demised Premises exclusive of any improvements thereon (with the Demised Premises being valued as if it was raw land) and on such other terms and conditions as the Parties may determine. In the Notice of Sale, Lessor shall advise Tenant of its estimate of the FMV. If Tenant disputes Lessor's estimate of FMV, it shall notify Lessor within thirty (30) days following receipt of a Notice of Sale (an "Objection Notice") and the Parties shall meet and confer within ten (10) days following Tenant's Objection Notice in an effort to agree on the FMV. If the Parties are unable to agree on the FMV within thirty (30) days following issuance of an Objection Notice, then the FMV shall be determined by a single appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years' experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party. If the Parties are unable to agree on a single

appraiser within forty-five (45) days following issuance of an Objection Notice, either Party may request that the presiding judge of the Maricopa County Superior Court select an appraiser having the qualifications set forth above. The appraiser shall have thirty (30) days following selection to notify the Parties in writing of its determination of the FMV. Neither Party shall have any ex parte communication with the appraiser, but each Party may submit to the appraiser no later than ten (10) days following his/her selection a memorandum supporting such Party's opinion as to FMV. The appraiser's determination of FMV shall be binding on both Parties as the purchase price for the Option Parcel. Each Party shall pay one-half (1/2) of the appraiser's fee.

26.2 If Tenant elects not to purchase the real property included within the Demised Premises within the Negotiation Period or if the Parties are unable to agree upon the terms of sale, Lessor (or any successor Lessor) may proceed to solicit and accept other offer(s) to purchase the real property included within the Demised Premises or otherwise sell, convey or dispose of the real property included within the Demised Premises without further notice to Tenant except that if either of the following occur, then Lessor shall again be required to offer Tenant the opportunity to purchase the real property included within the Demised Premises: (a) Lessor fails to sell or otherwise convey or dispose of the real property included within the Demised Premises within one (1) year of such Notice of Sale, or (b) the purchase price at which Lessor proposes to sell the Demised Premises is less than the FMV. In the event Lessor or any successor Lessor shall accept an offer to purchase or otherwise sell, convey or dispose of the real property included within the Demised Premises it shall thereupon be released from all liabilities and obligations imposed upon Lessor under this Restated Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the real property included within the Demised Premises, which owner shall be deemed to have assumed Lessor's obligations under this Lease, including the obligation to offer the real property included within the Demised Premises to Tenant in the event of any future sale.

26.3 If Tenant does not exercise its option to purchase the real property included within the Demised Premises, Tenant may, within ninety (90) days after the transfer of ownership of the real property included within the Demised Premises, provide written notice to the successor Lessor of Tenant's intent to terminate this Restated Lease. In such event, Tenant shall have twelve (12) months from the date of the written notice to vacate and terminate this Restated Lease to remove any buildings, structures or improvements and return the real property included within the Demised Premises to its original condition, normal wear accepted. During the twelve (12) month period, all other terms and conditions of this Restated Lease shall remain in effect.

SECTION 27–TITLE TO BUILDINGS AND IMPROVEMENTS Provided that Tenant is not in default of this Restated Lease, and specifically excluding the real property on the Demised Premises, title to the buildings, structures, equipment in or appurtenant thereto, improvements, and all changes, additions and alterations

therein, and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the real property included within the Demised Premises by Tenant, shall be and remain in Tenant until the expiration of the Term of this Restated Lease, unless sooner terminated as herein provided. As long as the City of Peoria remains the owner of the real property included within the Demised Real Property, the buildings, structures and improvements existing, erected, constructed, installed or placed upon the real property included within the Demised Premises during the Term of this Restated Lease, including all extensions thereto, shall become the property of the City of Peoria upon termination of Tenant's leasehold interest. If, prior to the termination of Tenant's leasehold interest, the City of Peoria transfers ownership of the real property included within the Demised Premises, then upon the expiration or sooner termination of this Restated Lease and provided that Tenant is not in default of this Restated Lease, title to all such property on the real property included within the Demised Premises, except for the real property, shall automatically pass to, vest in and belong to Tenant without further action on the part of either Party, without cost or charge to Lessor, and without further conveyance or transfer to Lessor; provided, however, that Tenant shall repair and replace, at its sole cost and expense, any portion of the real property included within the Demised Premises which is damaged by said removal and shall deliver to Lessor quiet and peaceable possession of the real property included within the Demised Premises, cleared of all persons and property not belonging to Lessor, in substantially the same condition as the real property included within the Demised Premises was received by Tenant. In addition, if requested by Lessor, Tenant shall execute any instruments or documents reasonably required by Lessor to evidence the vesting of title to such property in Lessor. While this Restated Lease remains in effect, Tenant alone shall be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Demised Premises, and all renewals and replacements thereof, for all taxation purposes.

SECTION 28-PURCHASE OF DEMISED PREMISES AND OPTION PARCEL BY TENANT Provided Tenant is not then in default under this Restated Lease beyond any permitted notice and cure period, Lessor grants to Tenant the option to purchase the Demised Premises and the Option Parcel at any time between August 1, 2013 and July 31, 2023 in accordance with this ***§ 28***.

28.1 Tenant shall be required to purchase the Option Parcel prior to or simultaneously with the Demised Premises.

28.2 Tenant shall provide written notice (an "Option Notice") to Lessor of its intent to exercise its right to purchase the Option Parcel and/or the Demised Premises. Each Option Notice shall include the date by which Tenant desires to close on the purchase. The written notice for the Option Parcel shall be accompanied by a detailed development plan showing that the Option Parcel will be developed consistent with the Fundamental Lease Provisions. In that regard, the plan for the Option Parcel shall include at least one of the Required Uses and may include any of the Additional Permitted Uses.

28.3 If Tenant exercises the purchase option for the Option Parcel prior to August 1, 2015, the purchase price of the Option Parcel shall be $710,000. If Tenant exercises the purchase option for the Demised Premises prior to August 1, 2015, the purchase price of the Demised Premises shall be $730,000. If Tenant exercises a purchase option for either the Option Parcel or the Demised Premises following August 1, 2015, the Option Notice shall be accompanied by a then current real estate appraisal completed at Tenant's cost supporting the proposed purchase price prepared by an appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years' experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party.

28.4 Lessor shall promptly review the real estate appraisal (if any) and detailed plan and advise Tenant within thirty (30) days whether the proposed purchase is acceptable, with such approval not to be unreasonably withheld, conditioned or delayed. If Lessor accepts Tenant's real estate appraisal (or if Lessor fails to notify Tenant of its objection within such 30-day period), the appraised value shall be the purchase price. If Lessor objects to Tenant's appraisal in writing (the "PP Objection Notice") within such thirty (30) day period, the Parties shall meet and confer within ten (10) days following the PP Objection Notice in an effort to agree on the purchase price for the Option Parcel and/or Demised Premises, as applicable. If the Parties are unable to agree on the purchase price for the Option Parcel and/or Demised Premises, as applicable, within thirty (30) days following issuance of a PP Objection Notice, then the Option Parcel and/or Demised Premises, as applicable, shall be determined by a single appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years' experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party. If the Parties are unable to agree on a single appraiser within forty-five (45) days following issuance of a PP Objection Notice, either Party may request that the presiding judge of the Maricopa County Superior Court select an appraiser having the qualifications set forth above. The appraiser shall have thirty (30) days following selection to notify the Parties in writing of its determination of the purchase price for the Option Parcel and/or Demised Premises, as applicable. Neither Party shall have any ex parte communication with the appraiser, but each Party may submit to the appraiser no later than ten (10) days following his/her selection a memorandum supporting such Party's opinion as to the purchase price for the Option Parcel and/or Demised Premises, as applicable. The appraiser's determination of the purchase price for the Option Parcel and/or Demised Premises, as applicable, shall be binding on both Parties as the purchase price for the Option Parcel and/or Demised Premises. Each Party shall pay one-half (1/2) of the appraiser's fee.

28.5 Once the purchase price for the Option Parcel ("Option Parcel Price") and/or the Demised Premises ("Demised Premises Price") has been

determined in accordance with this ***§ 28***, Lessor shall open escrow and provide Tenant with a title report for the Option Parcel and/or Demised Premises, as applicable, and within thirty (30) days of the opening of escrow. Within thirty (30) days of receiving Lessor's title report, Tenant shall give notice in writing to Lessor of any defects in or objections to the title as so evidenced, and Lessor shall clear the title defects and objections so specified.

28.6 Upon payment of the Option Parcel Price and/or the Demised Premises Price, as applicable, Lessor shall convey the Option Parcel and/or Demised Premises, as applicable, to Tenant by general warranty deed, that may include, at Lessor's option, deed restrictions limiting development of the Option Parcel and/or Demised Premises, as applicable, to those uses set forth in the Fundamental Lease Provisions.

28.7 Following the Closing of the sale of the Demised Premises, Tenant will continue to have the rights set forth on Exhibit C and Lessor will, if requested, execute a document evidencing the same. Lessor will also execute an easement permitting usage of the PSC Parcel as set forth in ***§ 8.5***.

28.8 Upon delivery of the general warranty deed for the Demised Premises by Lessor to Tenant, this Restated Lease shall terminate. The Parties shall thereafter execute and deliver one to the other any and all necessary documents to evidence the termination of this Restated Lease and the Memorandum hereof.

28.9 Tenant may not sell, assign, convey, or transfer the option rights set forth in this ***§ 28*** without the prior, express, and written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Any sale, assignment, conveyance, or transfer of this option made, attempted, or suffered, by operation of law or otherwise, without such prior written consent, shall render the option rights of no further force or effect. The failure of Lessor, for any reason, to notify Lessor in writing of its objections to any such sale, assignment, conveyance, or transfer within twenty (20) Business Days from the date the consent is requested shall be conclusive evidence of Lessor's consent.

SECTION 29–ATTORNEYS FEES In the event Lessor should bring suit for possession of the Demised Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Restated Lease, or in the event Tenant should bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Restated Lease, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 30–PROVISIONS SUBJECT TO APPLICABLE LAW All rights, powers and remedies provided herein shall be exercised only to the extent that the exercise thereof shall not violate any applicable law and are intended to be limited to the extent necessary so that they shall not render this Restated Lease

invalid or unenforceable under any applicable law. If any term or condition of this Restated Lease shall be held to be invalid, illegal or unenforceable or against public policy, such provision shall be deemed stricken from this Restated Lease and the validity of the other terms of this Restated Lease shall in no way be affected thereby and this Restated Lease, absent the stricken provision, shall otherwise remain in full force and effect.

SECTION 31–RIGHT TO CURE TENANT'S DEFAULTS Except with respect to Tenant's failure to operate its business, in the event Tenant shall be in default of this Restated Lease, which default remains uncured during any applicable cure period provided herein, Lessor may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Lessor at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or proceedings to enforce Lessor's rights under this Restated Lease or otherwise, the sum or sums so paid by Lessor, with all interest, costs and damages, shall be deemed to be Additional Charges and shall be due from Tenant to Lessor on the first day of the month following the incurring of such expenses or the payment of such sums.

SECTION 32–NOTICES All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given within three (3) days after the same has been mailed by registered or certified mail, postage prepaid, or within two (2) days after delivery by electronic mail (provided that a copy must also simultaneously be sent via another approved form of delivery) or a nationally recognized overnight courier service (e.g., UPS, Federal Express) or personally delivered to the respective Party, at the address shown below:

To TENANT: Peoria Sports Complex Property, L.L.C.
3101 N. Manor Dr. West
Phoenix, Arizona 85014
Attention: Dana G. Seltzer, M.D.
Email: doc4jox@cox.net

To LESSOR: City Manager
City of Peoria, Arizona
8401 W. Monroe St.
Peoria, Arizona 85345
Email: carl.swenson@peoriaaz.gov

With a Copy to: City Attorney
City of Peoria, Arizona
8401 W. Monroe St.
Peoria, Arizona 85345
Email: steve.kemp@peoriaaz.gov

or at such other address as either Party shall from time to time designate in writing to the other.

SECTION 33–SIGNS AND ADVERTISING Any exterior signs or insignia placed, erected or installed on the Demised Premises shall conform to requirements applicable generally within the City of Peoria. If Tenant conducts any print or billboard advertising to publicize Tenant's business at the Demised Premises, Tenant agrees to include "Peoria, Arizona" or "next to the Peoria Sports Complex" in at least fifty percent (50%) of such advertising.

SECTION 34–WARRANTIES OF LESSOR

34.1 Lessor hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Tenant in entering into this Restated Lease, and (ii) is true in all respects as of the date hereof:

a. Lessor owns the real property included within the Demised Premises.

b. Lessor has the full right, power and authority to enter into and perform Lessor's obligations pursuant to this Restated Lease and to lease the real property included within the Demised Premises to Tenant in the manner contemplated in this Restated Lease subject only to the consent and approval of the Peoria City Council.

c. No other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Demised Premises.

d. To the extent of Lessor's actual knowledge, there are no existing, proposed or contemplated assessments for or plans to widen, modify or realign any street or highway or any existing, proposed or contemplated eminent domain proceeding which would affect the Demised Premises or Tenant's use thereof in any way whatsoever.

e. Lessor is not now involved in or aware of any pending or threatened proceeding, claim or controversy, which affects or may affect the real property included within the Demised Premises in any way whatsoever.

f. Except as provided elsewhere herein, to the extent of Lessor's actual knowledge, there are no agreements, contracts, leases or restrictions that would limit, restrict, impair or prevent the construction of Tenant's buildings, structures or improvements on the real property included within the Demised Premises or Tenant's contemplated use of the Demised Premises.

g. To the extent of Lessor's actual knowledge, neither this Restated Lease nor Tenant's contemplated use of the Demised Premises, as contemplated by this Restated Lease, violates any contract, agreement or instrument to which Lessor is a party, or any law,

regulation, order or decree to which Lessor is subject to by which Lessor is bound.

h. To the extent of Lessor's actual knowledge, there are no contracts or employment, management, maintenance, service or supply and no union contracts which affect the Demised Premises or Tenant's contemplated use thereof.

i. To the extent of Lessor's actual knowledge, the Demised Premises are in full compliance with all applicable laws, including but not limited to those relating to the environment.

j. All rent and all other charges to be paid under the Original Lease are current as of the date of this Restated Lease.

k. There is no current default by Wells Fargo or Lessor under the Original Lease, nor has any event or omission occurred which, with the giving of notice or the lapse of time, or both, would constitute a default thereunder.

l. No third party has any option or preferential right to purchase all or any part of the Demised Premises.

m. Lessor has not received or given any written notice that the Demised Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Lessor aware of any such violation. The Permitted Uses (defined below) are permitted under the zoning classification currently in effect for the Demised Premises.

34.2 Upon Tenant performing all covenants of this Restated Lease to be performed by Tenant, Tenant shall have quiet possession of the Demised Premises, without hindrance or ejection by any person lawfully claiming by, through or under Lessor, subject, however, to the provisions of this Restated Lease and to the provisions of any (a) covenants, conditions and restrictions of record, and (b) any mortgage or other lien of record which this Restated Agreement is or may be subordinated.

SECTION 35–NONSUBORDINATED GROUND LEASE This is a nonsubordinated Ground Lease Agreement. Lessor is not and shall not be obligated to subordinate its rights and ownership interest in the real property included within the Demised Premises to any loan or money encumbrance that Tenant shall place against Tenant's leasehold interest.

SECTION 36–ESTOPPEL CERTIFICATE Lessor or Tenant, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) days following request therefor, a certificate certifying (a) that this Restated Lease is unmodified and in full force (or, if there have been modifications, that the lease agreement is in full force and effect, as modified, and stating the modifications), and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, and (c) that no notice has been received by

Lessor or Tenant of any default which has not been cured, except as to defaults specified in said certificate. Any such certificate may be relied upon by any prospective purchaser or encumbrancer of the Demised Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby shall be conclusive upon such Party that this Restated Lease is in full force and affect, except to the extent any modification has been represented by the requesting Party, and that there are no uncured defaults in such Party's performance, and that not more than one month's rent has been paid in advance.

SECTION 37–NET LEASE As long as the City of Peoria shall remain the Lessor, it is the intention of the Parties hereto that this Restated Lease shall be a net lease and that Lessor shall receive the rents herein reserved and all sums which shall or may become payable hereunder by Tenant free from all taxes, charges, expenses, damages and deductions of every kind or sort whatsoever and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Restated Lease, would have been chargeable against the Demised Premises and payable by Lessor. Tenant, however, shall not be under any obligation to pay any principal or interest on any mortgage or mortgages which may be placed by Lessor on the real property included within the Demised Premises, nor shall Tenant be under any obligation to pay any income taxes which may become payable by Lessor by reason of the income derived hereunder.

SECTION 38–MEMORANDUM FOR RECORDING Within ten (10) days after the Effective Date of this Restated Lease, Lessor and Tenant shall execute and cause to be placed of record with the Maricopa County Recorder's Office, and any other public or private official, a memorandum in recordable form evidencing the existence of this Restated Lease substantially in the form of ***Exhibit D***.

SECTION 39–PARTIES BOUND This Restated Lease shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Restated Lease.

SECTION 40–TIME OF ESSENCE Time is declared to be of the essence of this Restated Lease.

SECTION 41-SECTION HEADINGS; REFERENCES; INTERPRETATION The section headings contained in this Restated Lease are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

SECTION 42–LESSOR DEFINED The word "Lessor" shall include not only the original Lessor but also any person or entity hereafter acquiring the Lessor's interest in this Restated Lease.

SECTION 43–SEVERABILITY If any provision of this Restated Lease is declared void, unenforceable or against public policy, such provision shall be deemed stricken and severed from this Restated Lease, with the remainder of the Restated Lease to remain in full force and effect.

SECTION 44–GOVERNING LAW AND CHOICE OF FORUM This Restated Lease shall be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Restated Lease shall be commenced and maintained in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action).

SECTION 45–PAYMENT OF COSTS AND EXPENSES Whenever, in this Restated Lease, anything is to be done or performed by Tenant or Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Tenant or Lessor as the case may be.

SECTION 46–NO WARRANTIES Tenant acknowledges and covenants to Lessor that it has made a complete investigation of the real property included within the Demised Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is" except as provided in ***§ 2***. Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Lessor or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

SECTION 47–BROKERS OR AGENTS Tenant represents and warrants to Lessor that Tenant has had no dealings or discussions with any broker or agent (licensed or otherwise) In connection with this Restated Lease and Tenant covenants to pay, hold harmless and indemnify Lessor from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

SECTION 48–CONSENT OR APPROVAL Except as otherwise expressly provided herein, any consent or approval required in this Restated Lease shall not be unreasonably withheld or delayed. The requesting Party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under this Restated Lease, but in no event shall Lessor or Tenant be responsible for damages to anyone for such failure to give consent or approval.

SECTION 49–DELAY OF PERFORMANCE Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the control of the Party obligated to perform (a "Force Majeure Event"), shall excuse the performance by such Party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Restated Lease.

SECTION 50–INTENDED AGREEMENT This Restated Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the complete, actual and intended agreement of the Parties. This Restated Lease shall not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Restated Lease or of any exhibits or documents prepared to carry out the intent of this Restated Lease.

SECTION 51–RELATIONSHIP This is a ground lease agreement. This Restated Lease shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Lessor and Tenant, and it shall be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

SECTION 52–FURTHER INSTRUMENTS AND DOCUMENTS Lessor and Tenant shall, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Restated Lease.

SECTION 53–INTEGRATION CLAUSE; NO ORAL MODIFICATION This Restated Lease represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Restated Lease are hereby revoked and superseded by this Restated Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Restated Lease. This Restated Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Lessor and Tenant. Any attempt at oral modification of this Restated Lease shall be void and of no effect.

SECTION 54–CONFLICT OF INTEREST This Restated Lease shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

SECTION 55–EFFECT OF AMENDMENT This Restated Lease is an amended and restated lease agreement and, effective as of the conveyance of the leasehold interest by Wells Fargo to Tenant, will replace in its entirety the Original Lease with respect to all actions of all predecessor tenants and the

Parties hereto from the date of such conveyance. If Wells Fargo has not conveyed the leasehold interest to Tenant by July 31, 2011, this Restated Lease Agreement shall be of no further force and effect.

[Signatures appear on following page]

[Signature Page for Second Amended and Restated Ground Lease for Premises Located on Paradise Lane in Peoria, Arizona]

IN WITNESS WHEREOF, the Parties have executed this Restated Lease on the date listed below.

City of Peoria, Arizona, an Arizona municipal corporation

By: _____
Carl Swenson, City Manager

Peoria Sports Complex Property, LLC, an Arizona limited liability company

By: _____
Dr. Dana Seltzer, Manager

APPROVED AS TO FORM:

By: _____
Stephen M. Kemp, City Attorney

ATTEST:

By: _____
Wanda Nelson, City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Second Amended and Restated Ground Lease Agreement was acknowledged before me this ___ day of _____, 2011, by Dr. Dana Seltzer, Manager of Rio Vista Property, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

My Commission Expires:

Exhibit A
Demised Premises

A parcel of land situated in the North half of Section 2, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the North quarter corner of said Section 2;

Thence North 90 degrees 00 minutes 00 seconds East, an assumed bearing and basis of bearing, along the North line of said Section 2, a distance of 490.18 feet to the Northeast corner of NORTH VALLEY POWER CENTER, according to the plat recorded in Book 346 of Maps, page 50, records of Maricopa County, Arizona;

Thence South 02 degrees 08 minutes 45 seconds East along the East line of said NORTH VALLEY POWER CENTER, said East line also being the West line of the East 830.00 feet of the West half of the Northeast quarter of said Section 2, a distance of 1140.25 feet to the Southeast corner of said NORTH VALLEY POWER CENTER and the Northeast corner of a storm drain outfall easement as recorded in Instrument No. 92-446744, records of Maricopa County, Arizona;

Thence South 89 degrees 21 minutes 02 seconds West along the Northerly line of said storm drain easement, being coincident with the monument line of Paradise Lane, a distance of 17.05 feet to a point being a tangent point of curvature on a circular curve concave Southerly and having a radius point which bears South 00 degrees 38 minutes 58 seconds East a distance of 1000.00 feet;

Thence Westerly along said Northerly line of said storm drain outfall easement, being coincident with the monument line of Paradise Lane, along the arc of said curve through a central angle of 00 degrees 10 minutes 10 seconds for an arc distance of 2.96 feet to the Northwest corner of said storm drain outfall easement and the monument line of said Paradise Lane;

Thence South 02 degrees 08 minutes 45 seconds East along the West line of said storm drain outfall easement a distance of 35.01 feet to a point on the Southerly right-of-way line of said Paradise Lane, said point being the TRUE POINT OF BEGINNING;

Thence continuing South 02 degrees 08 minutes 45 seconds East along the West line of said storm drain outfall easement a distance of 256.97 feet;

Thence South 38 degrees 25 minutes 24 seconds East (recorded), South 38 degrees 10 minutes 39 seconds East (measured), a distance of 184.58 feet;

Thence South 63 degrees 46 minutes 15 seconds East (recorded), South 63 degrees 31 minutes 24 seconds East (measured), a distance of 54.43 feet;

Thence South 40 degrees 19 minutes 00 seconds East (recorded), South 40 degrees 04 minutes 12 seconds East (measured), a distance of 48.87 feet;

Thence North 89 degrees 21 minutes 02 seconds East a distance of 210.92 feet;

Thence North 00 degrees 38 minutes 58 seconds West a distance of 465.84 feet to a point on the Southerly right-of-way line of said Paradise Lane;

Thence South 89 degrees 21 minutes 02 seconds West along said Southerly right-of-way line, being 35.00 feet Southerly and parallel to monumented line of said Paradise Lane, a distance of 407.50 feet to a point of tangent curve, from which the radius point bears South 00 degrees 38 minutes 58 seconds East a distance of 965.00 feet;

Thence Westerly along said curve of said Southerly right-of-way line of Paradise Lane, through a central angle of 00 degrees 07 minutes 17 seconds for an arc distance of 2.04 feet to the TRUE POINT OF BEGINNING.

Exhibit B

Option Parcel

A PARCEL OF LAND LOCATED WITHIN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 2 (ALSO KNOWN AS THE SOUTHEAST CORNER OF G.L.O. LOT 2 OF SAID SECTION 2);
THENCE SOUTH 02 DEGREES 08 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 2, A DISTANCE OF 501.01 FEET TO THE **TRUE POINT OF BEGINNING**;
THENCE CONTINUING SOUTH 02 DEGREES 08 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 287.36 FEET TO THE NORTH LINE OF SKUNK CREEK WASH;
THENCE SOUTH 71 DEGREES 28 MINUTES 45 SECONDS WEST, ALONG SAID NORTH LINE OF SKUNK CREEK WASH, A DISTANCE OF 716.01 FEET;
THENCE NORTH 50 DEGREES 21 MINUTES 27 SECONDS EAST, A DISTANCE OF 93.03 FEET TO A POINT OF CURVE, FROM WHICH THE RADIUS POINT OF SAID CURVE, BEARS NORTH 39 DEGREES 38 MINUTES 33 SECONDS WEST, A DISTANCE OF 235.00 FEET;
THENCE ALONG SAID CURVE, TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90 DEGREES 25 MINUTES 39 SECONDS, AN ARC DISTANCE OF 370.89 FEET TO THE TANGENT POINT OF SAID CURVE;
THENCE NORTH 40 DEGREES 04 MINUTES 12 SECONDS WEST, A DISTANCE OF 150.91 FEET;
THENCE NORTH 89 DEGREES 21 MINUTES 02 SECONDS EAST, A DISTANCE OF 663.81 FEET TO THE **TRUE POINT OF BEGINNING**.

THE ABOVE DESCRIBED LEASE PARCEL HAVING AN AREA OF 215,186 SQUARE FEET / 4.94+/- ACRES GROSS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
12600
WADE H.
SHAFFER
Date Signed 2-9-11
ARIZONA U.S.A.
Expires 6/30/2013

Exhibit C

Tenant's Use of Peoria Sports Complex

1. A depiction of fields P1 through P8 is attached hereto as Schedule C-1. Tenant shall have access to and use of the Peoria Sport Complex's infield (also known as the P8 half field) adjacent to the Demised Premises (the "Infield") as listed below, except for facility maintenance periods and Lessor-sponsored events and activities scheduled on an annual basis in May of each year. Tenant's right to schedule the use of the Infield shall be superior to all parties other than the Peoria Sports Complex Major League Baseball tenants (currently, the San Diego Padres and the Seattle Mariners) and the Lessor (for City-sponsored non-proprietary events). Tenant shall have no access to the Infield during Spring Training and other Seattle Mariners and San Diego Padres exclusive use periods, typically scheduled from February 1st to April 15th of each year. In no event may Tenant's use of the Infield interfere with the rights of the Peoria Sports Complex Major League Baseball tenants under their agreements with the Lessor. Tenant understands that in addition to its existing contracts with Major League Baseball teams, Lessor is bound by current commitments to other existing users as more particularly described on Schedule C-2 (the "Existing Users"). Tenant's usage is subject to the scheduled usage by the Existing Users.

2. Except as expressly set forth in this Exhibit C, due to existing contracts with the Seattle Mariners and San Diego Padres professional baseball teams, there can be no guarantee by the Lessor as to how many of the other fields will be available during any scheduled use period. However, the Lessor shall exercise its good faith efforts to accommodate Tenant's field requests and scheduled starting times.

3. Lessor has the right to cancel any and all scheduled games of play and specified use times due to any construction schedule for field, stadium, clubhouse, expansion, reconstruction, and/or City-sponsored events and activities. Lessor will inform Tenant of such a situation at least sixty (60) days prior to the start of the use period, if known, or in the event of an emergency, as soon thereafter as such condition becomes known. Lessor will use reasonable efforts to avoid interference with previously scheduled events when scheduling construction activities.

4. Tenant shall have access to and use of the Peoria Sport Complex's fields adjacent to the Demised Premises (the P4 and P5 fields and the P8 half-field). From January 1 to April 15 of Spring Training, there shall be a "Black Out" period during which time Tenant may not use fields P4, P5, and P8 at the Sports Complex unless the MLB teams are not using all or some of the P4, P5, and P8 fields during this time period, in which event such fields may be utilized by Tenant based on a mutually agreed schedule.

5. During the Fall and Winter period (November 1 through December 31), Tenant shall have the right to schedule access and use of the P8 field for games and/or workouts for a maximum of eight hours per day with the standard

times of 9:30 a.m. as the earliest start time and 5:30 p.m. as the latest start time (unless Lessor approves the use of lighting, such approval not to be unreasonably withheld). All other times must be approved by the Peoria Sports Complex prior to usage. Fields P4 and P5 are not available for use from the conclusion of the Veteran's Day Tournament through December 31st so as to permit yearly scheduled overseeding maintenance.

6. During the Spring and Summer period (April 15 through October 31), Tenant shall have the right to schedule access to and use of the P4, P5 and P8 fields for (a) a maximum of three 3-hour games or four 2 ½ hour games per day (less any period of time when such fields are used by Tenant for workouts), and (b) a maximum of nine workout hours per day (less any period of time when such fields are used by Tenant for games) with the standard start time at 7:30 a.m. as the earliest start time and 8:30 p.m. as the latest start time (unless Lessor approves the use of lighting, such approval not to be unreasonably withheld). All other times must be approved by the Peoria Sports Complex prior to usage.

7. There will be no additional costs to Tenant for use of the P8 half field, if used for clinics, training, camps, and practices. Tenant will be charged 50% of the most-favorable rental rate charged to any other party using the P4 or P5 field, if used for clinics, training, camps, and practices. If lights or Peoria Sports Complex staff are used during regular time usage, Tenant will be notified of the cost prior to the regular time usage. These costs may vary from year to year should Peoria Sports Complex incur cost increases (lights, staffing). Tenant shall be notified of these increases or decreases prior to tournament and/or regular usage dates. In no event shall Tenant be charged a rate that exceeds the most-favorable rate charged to any other party using such fields at the time of such usage.

8. If the P8 half field or P4 and P5 fields are used for tournament use, Tenant must notify Peoria Sports Complex staff that it is having a tournament and pay the then prevailing fees charged, which shall not exceed the most-favorable rate charged to any other party using such fields at the time of such usage. If lights or Peoria Sports Complex staff is used during tournaments, Tenant will be notified of the cost prior to the tournament. These costs may vary from year to year should Peoria Sports Complex incur cost increases (lights, staffing). Tenant shall be notified of these increases or decreases prior to tournament dates. In no event shall Tenant be charged a rate that exceeds the most-favorable rate charged to any other party using such fields at the time of such usage.

9. During the approved times any time when Tenant is permitted to use the fields other than for tournament usage, Peoria Sports Complex staff will prepare the fields in the morning at no extra cost to Tenant. If Tenant needs more preparation time on the fields beyond the standard morning preparation, Tenant will be subject to a charge by Peoria Sports Complex, but not to exceed the most-favorable preparation charge charged to any other party using such fields at the time of such usage.

10. Tenant's employees (but not guests or other users) will be allowed free access to view games and tournaments solely sponsored and produced by the City. Tenant's employees must be able to show proper identification and/or be wearing Tenant's staff shirts to enter the Sports Complex at no charge.

11. Concession rights shall be exclusively held by the City for all events taking place on the Peoria Sports Complex property, unless mutually agreeable written arrangements have been made with the Sports Complex staff; provided, however, that nothing shall limit Tenant from delivering food to employees or patrons at the Peoria Sports Complex property if ordered from the Demised Premises.

12. In the event of inclement weather, Lessor staff shall have the right to deny access to the fields if, in their sole, but reasonable judgment, the fields are unsafe or would be damaged by use. This will include an evaluation of potential field damage and projected costs for material. If Lessor allows Tenant to use the fields during or after inclement weather, Tenant shall indemnify the Lessor and pay for additional material required in such an instance.

13. Tenant, at its expense, will be responsible for leaving all use areas in a clean and orderly fashion and all structures in a pre-event condition (with the exception of normal wear). All field maintenance, including but not limited to, dragging, chalking and watering, will be performed only by Sports Complex maintenance personnel.

14. During the entire Spring Training season, Tenant will have access to at least one (1) field at Rio Vista Park in the City on Monday to Friday from 8:00 a.m. to 5:30 p.m., and, when available, Saturday and Sunday from 8:00 a.m. to 5:30 p.m.

15. Tenant and City of Peoria officials will cooperate to promote mutually beneficial events and relationships designed to benefit the community of Peoria. This may include items such as drink and food sponsors, hotel and restaurant arrangements, and corporate sponsorships.

16. Tenant or its members (individually or with other parties) may form a separate entity to run the clinics, training, camps, practices, tournaments and other sports operations, Tenant may delegate its rights under this Exhibit C to such affiliated entity, but not to third parties unrelated to Tenant.

Schedule C-1

Depiction of Fields

12707895.8

Schedule C-2

Description of Current Commitments and Existing Agreements

[See attached]

Peoria Sports Complex - Baseball Usage List

Organization	History (Yrs.)	2011 Dates
Classic Baseball Ted Heid	15	6/2 - 6/5 7/7 - 7/10 7/21 - 7/24 10/6 - 10/9 10/13 - 10/16 10/20 - 10/23 10/27 - 10/30
Top Choice / USSSA Rick Perreault	10	5/28 - 5/30 6/11 - 6/12 9/3 - 9/5 11/11 - 11/13 12/27 - 12-31
USA Baseball Jeff Singer	9	6/13 - 6/25
MSBL World Series Steve Sigler	10	10/17 - 10/19 10/24 - 10/26 10/31 - 11/4
NABA World Series Joe Collins	10	9/29 - 10/4
Perfect Game Taylor McCollough	1	9/23 - 9/26
AZMSBL John Salingo	2	5/1, 8, 15, 22 6/26 7/17, 31 8/7, 14, 21, 28 9/11
AZ Collegiate Wood Bat Eric Doble	1	6/13 - 6/17 6/25 - 7/1 7/5 - 7/6 7/11 - 7/15 7/18 - 7/20 7/25 - 7/28
Peoria Adult League	15+	4/9 - 4/10 4/16 - 4/17

		4/30 - 5/1 5/7 - 5/8 5/14 - 5/15 5/21 - 5/22 7/30 - 7/31 8/6 - 8/7 8/13 - 8/14 8/20 - 8/21 8/27 - 8/28 9/10 - 9/11
Peoria Little League	15+	4/4 - 4/8 4/11 - 4/15 4/18 - 4/22 4/25 - 4/29 5/2 - 5/7 5/10 - 5/14 5/16 - 5/21 5/23 - 5/26 5/31 - 6/1 6/7 - 6/9 6/28 - 6/30 7/5 - 7/6

Exhibit D
Memorandum of Lease

WHEN RECORDED RETURN TO:
Office of the Peoria City Clerk
8401 W. Monroe Street
Peoria, Arizona 85345

MEMORANDUM OF SECOND AMENDED AND RESTATED GROUND LEASE AGREEMENT

This is a Memorandum of that certain Second Amended and Restated Ground Lease Agreement dated the ____ day of _____, 2011, wherein the City of Peoria, Arizona, an Arizona municipal corporation ("Lessor"), demised and leased to Peoria Sports Complex Property, LLC, an Arizona limited liability company ("Tenant"), the real property described on ***Exhibit A*** attached hereto for an original term of forty (40) years from the ___ day of _____, 2011, with two (2) fifteen (15) year extension options.

The offices of Lessor and Tenant are as follows:

Lessor: City Manager
City of Peoria, Arizona
8401 W. Monroe Street
Peoria, Arizona 85345

Tenant: Dr. Dana Seltzer
Peoria Sports Complex Property, LLC
3101 N. Manor Drive West
Phoenix, Arizona 85014

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Second Amended and Restated Ground Lease Agreement effective as of the ____ day of _____. 2011.

City of Peoria, Arizona, an Arizona municipal corporation

By: _____
Carl Swenson, City Manager

Peoria Sports Complex Property, LLC, an Arizona limited liability company

By: _____
Dr. Dana Seltzer, Manager

APPROVED AS TO FORM:

By: _____
Stephen M. Kemp, City Attorney

ATTEST:
By: _____
Wanda Nelson, City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Memorandum of Second Amended and Restated Ground Lease Agreement was acknowledged before me this ___ day of _____, 2011, by Dr. Dana Seltzer, Manager of Peoria Sports Complex Property, LLC, an Arizona limited liability, on behalf of the company.

_____
Notary Public

My Commission Expires:

EXHIBIT E

WEST ENCROACHMENT AREA

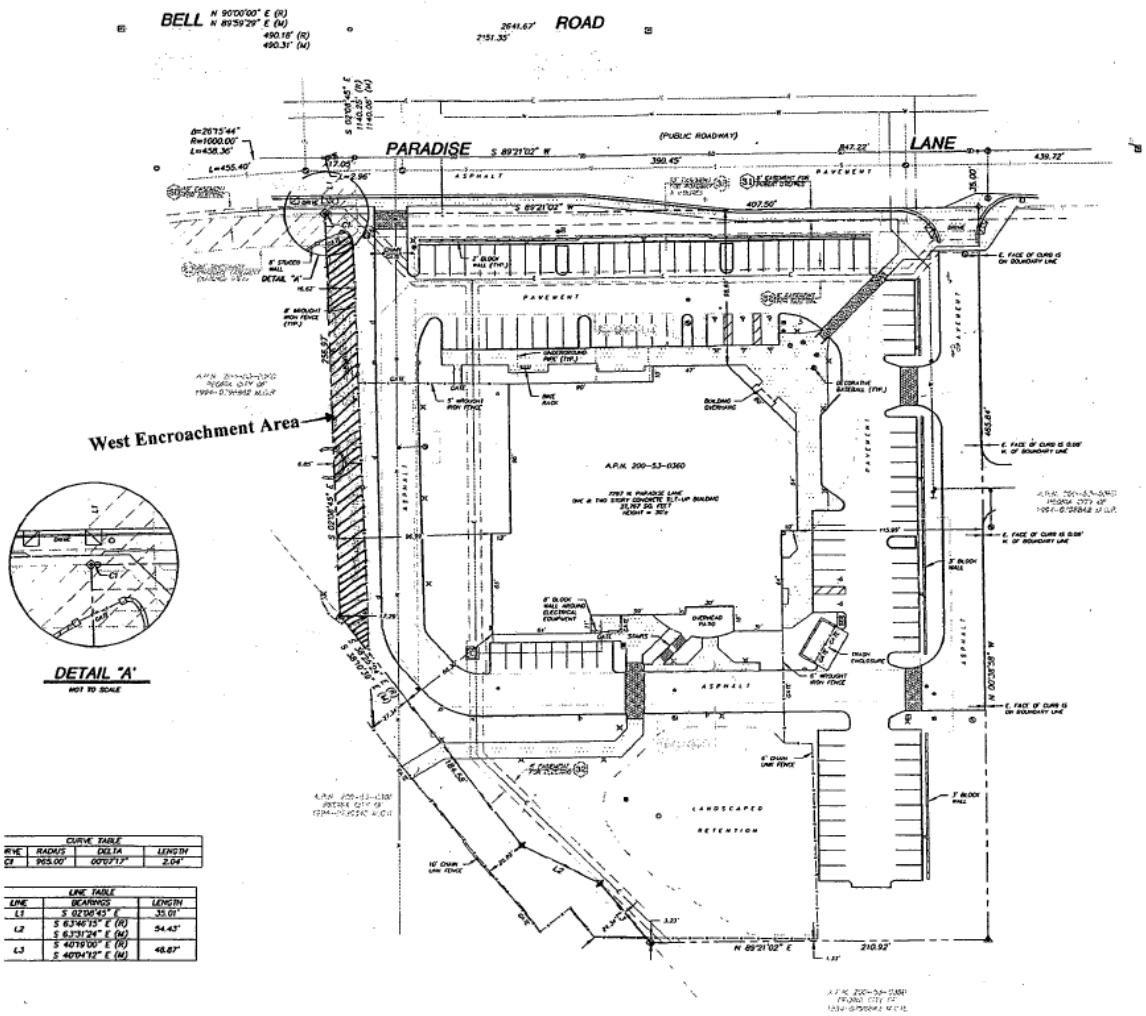


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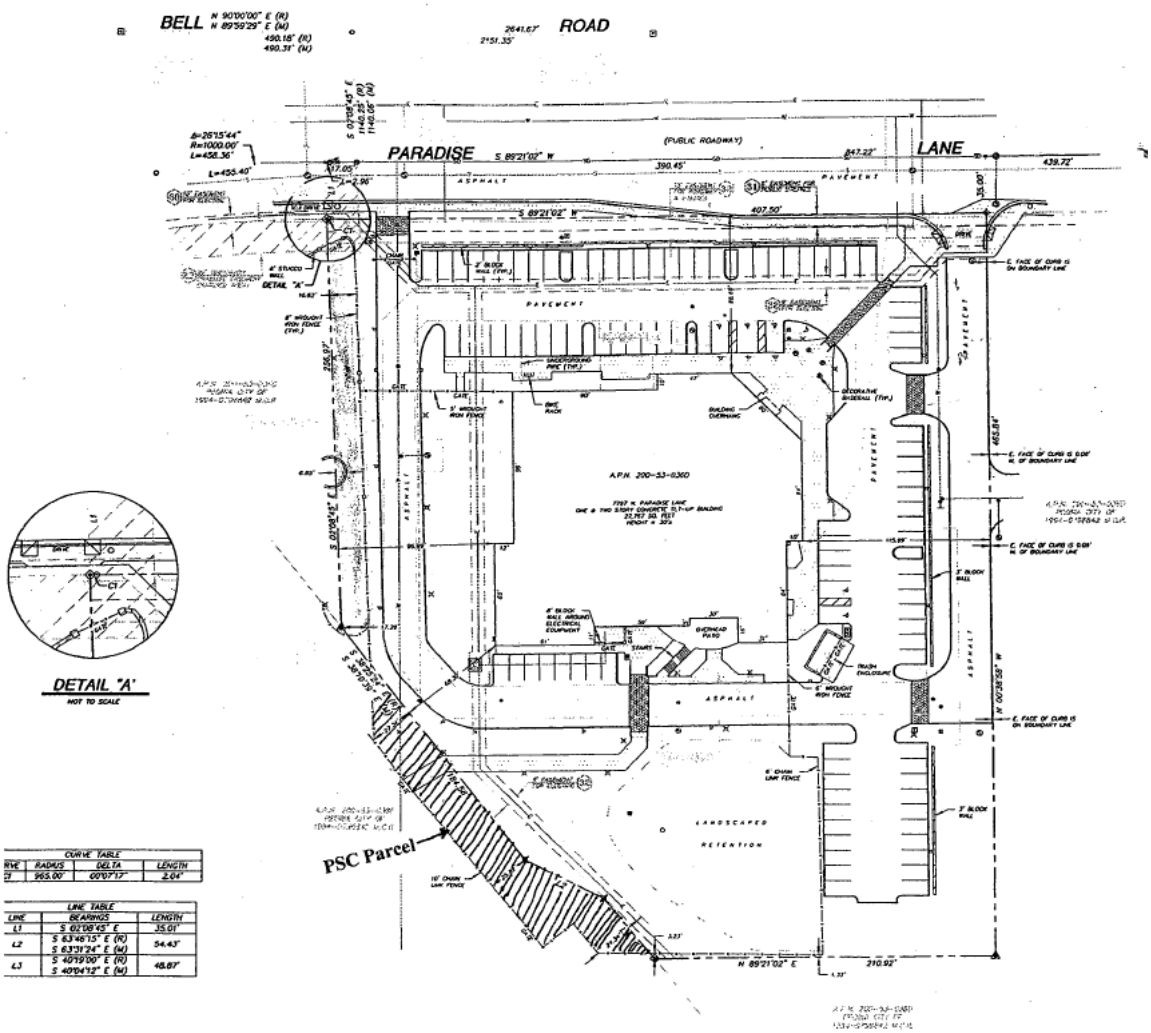
EXHIBIT F

PSC PARCEL



CURVE TABLE			
RVE	RADIUS	DELTA	LENGTH
2	965.00'	00°07'17"	2.04'

LINE TABLE		
LINE	BEARINGS	LENGTH
L1	S 61°08'45" E	35.01'
L2	S 63°46'15" E (R) S 63°31'24" E (M)	54.43'
L3	S 40°19'00" E (R) S 40°04'12" E (M)	48.87'

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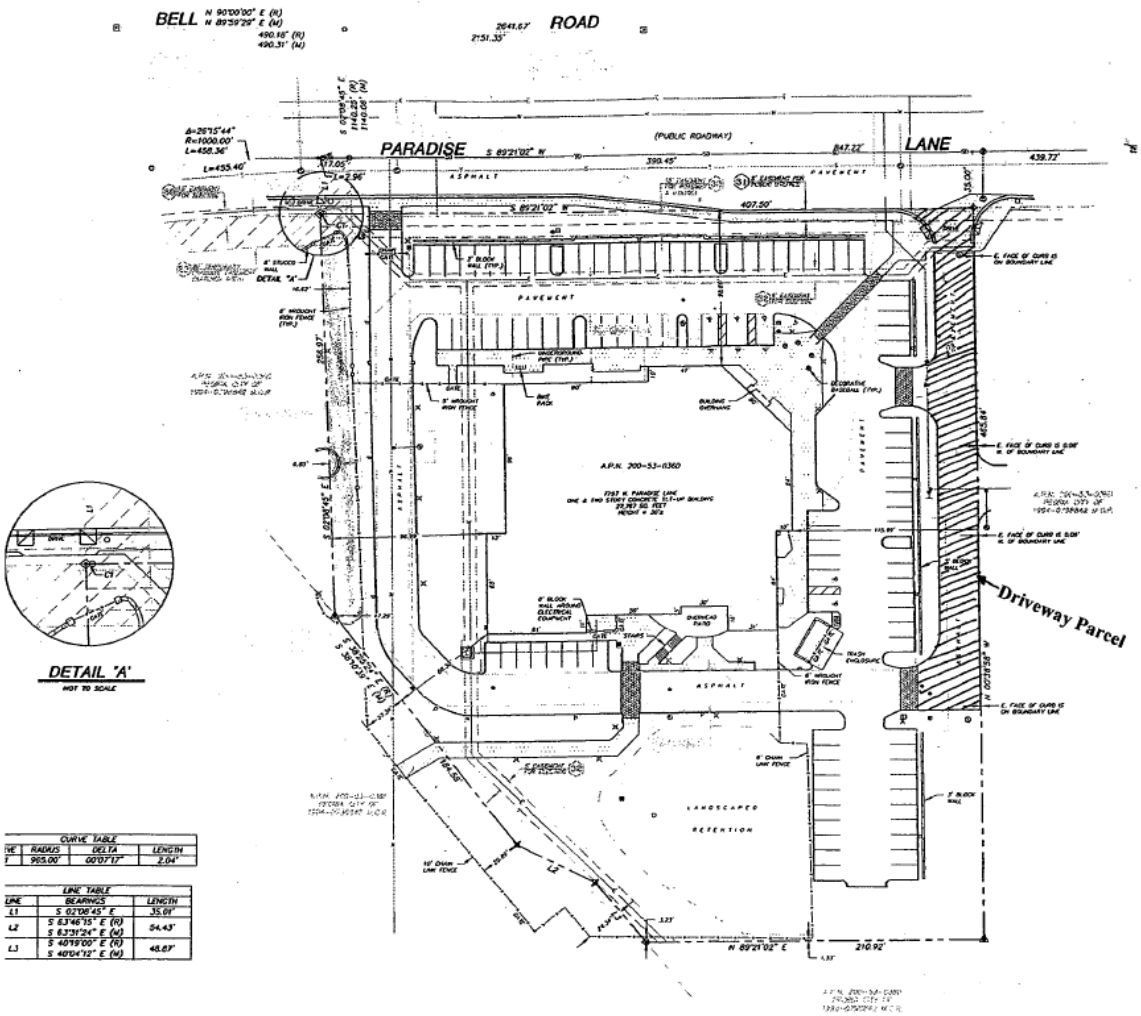
EXHIBIT G

DRIVEWAY PARCEL



CURVE TABLE			
VE	RADIUS	DELTA	LENGTH
T	965.00'	00°07'17"	2.04'

LINE TABLE		
LINE	BEARINGS	LENGTH
L1	S 02°08'45" E	35.01'
L2	S 63°46'15" E (R) S 63°31'24" E (M)	54.43'
L3	S 40°19'00" E (R) S 40°04'12" E (M)	48.87'

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