

Execution Final

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2010-1035

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**GROUND LEASE**

by and between

**CITY OF HOUSTON, TEXAS and HARRIS COUNTY, TEXAS,  
AS TENANTS-IN-COMMON AND INDIVIDUALLY,**

as Landlord,

and

**HARRIS COUNTY-HOUSTON SPORTS AUTHORITY,  
as Tenant**

Houston, Harris County, Texas

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EXHIBIT B	Lease and Development Agreement
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## **GROUND LEASE**

This GROUND LEASE (this "Agreement") is made and entered into as of the 18th day of February, 2011 (the "Effective Date"), by and between the City of Houston, Texas, a home-rule city organized under the laws of the State of Texas (the "City") and Harris County, Texas a political subdivision of the State of Texas (the "County") each with an undivided fifty percent (50%) interest as tenants-in-common (collectively, the "Landlord") and individually, and Harris County-Houston Sports Authority, a sports and community venue district created under Chapter 335 of the Texas Local Government Code ("Tenant" or the "Sports Authority"). Tenant and Landlord are referred to herein collectively as the "Parties" and individually as a "Party."

## **RECITALS**

A. The City, the County and the Sports Authority have entered into an Interlocal Agreement dated March \_\_, 2010 (the "Interlocal Agreement"), setting forth certain agreements regarding the development of a multipurpose sports and entertainment facility (the "Stadium"), including acquisition and preparation of the Stadium Site (as hereinafter defined).

B. This Agreement is the ground lease contemplated by, and the premises described on Exhibit A-1 attached hereto and made a part hereof and depicted on Exhibit A-2 attached hereto and made a part hereof (the "Site"; the Site, together with all subsurface rights, air rights, air space and appurtenances associated therewith, collectively being the "Stadium Site"), which is being demised to Tenant hereunder, is the site of the proposed Stadium referenced in, the Interlocal Agreement.

C. Tenant intends to cause the Stadium and certain related improvements on the Stadium Site to be constructed in accordance with the terms of that certain Lease and Development Agreement of even date herewith, by and between Tenant and Subtenant, as the same may be amended, supplemented, modified, renewed or extended from time to time (the "Lease and Development Agreement") a copy of which is attached as Exhibit B hereto and made a part hereof for all purposes.

D. As contemplated by the Interlocal Agreement, Landlord acknowledges that, upon completion of the Stadium in accordance with the terms of the Lease and Development Agreement, Tenant intends to lease, sublease and license (as applicable) to the Subtenant, the Stadium and certain related tangible and intangible personal property, equipment and other rights associated with the ownership, use and/or enjoyment of the Stadium.

## **AGREEMENTS**

For and in consideration of the respective covenants and agreements of Landlord and Tenant set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant do hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

#### Section 1.1 Certain Definitions.

The following terms shall have the meaning set forth below in this Section 1.1:

- (a) Act. Chapter 335, Texas Local Government Code.
- (b) AV Taxes. Any and all property and ad valorem taxes assessed against the Leased Premises or Tenant's interest therein, but not including payments required to be made by a private operator under Section 335.074(d) of the Act.
- (c) City Council. The acting City Council of the City.
- (d) Commencement Date. The Commencement Date for this Agreement as set forth in Section 3.1 of this Agreement.
- (e) Encumbrances. Any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Leased Premises, whether evidenced by written instrument or otherwise evidenced.
- (f) Environmental Event. The occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Leased Premises caused by a third party; (iii) any event on, at or from the Leased Premises or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; or (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Leased Premises which may cause a threat or actual injury to human health, the environment, plant or animal life.
- (g) Environmental Law(s). Any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic

Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

(h) Execution Date. The date first above written, on which date this Agreement has been fully executed and delivered by Landlord and Tenant.

(i) Governmental Authority. Any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, or any quasi-governmental authority, agency or entity (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under any Governmental Rule, pursuant to the terms of this Agreement or by separate agreement of the parties with an interest in such dispute.

(j) Governmental Rule. Any statute, law, treaty, rule, code, ordinance or regulation applicable to Persons, facilities or activities within the jurisdiction of the Governmental Authority promulgating the same, any permit, interpretation, certificate or order of any Governmental Authority pursuant to the foregoing or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority with respect to any of the foregoing.

(k) Hazardous Materials. (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment including soil and construction debris that may contain any of the materials described in this definition.

(l) Impositions. AV Taxes and any other taxes and assessments against the Leased Premises that accrue during and are applicable to the Term (including payments required to be made in lieu of ad valorem taxes under Section 335.074(d) of the Act).

(m) Improvements. Means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways,

lien for Impositions, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including, but not limited to, Mechanic's Liens and claims.

(s) Mechanic's Liens. Any Lien or claim of Lien, whether choate or inchoate filed or which any third party may be entitled to file against the interest of Landlord or Tenant in the Leased Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises and/or the Stadium.

(t) Person. Any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

(u) Pre-Existing Environmental Conditions. The Hazardous Materials and other environmental conditions that existed on or under the Land and/or the Leased Premises prior to the Commencement Date (and were not caused by or under Tenant or Subtenant).

(v) Stadium. The multipurpose sports and entertainment facility, as more fully described in the Lease and Development Agreement, which Subtenant intends to construct on the Stadium Site in accordance with the Lease and Development Agreement.

(w) Subtenant. Dynamo Stadium, LLC, a Delaware limited liability company.

(x) Term. The term of this Agreement as provided in Section 3.1 of this Agreement.

Section 1.2 Certain Other Defined Terms. Any initially capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to such terms in the Lease and Development Agreement.

## ARTICLE 2

### LEASE GRANT; POSSESSION; QUIET ENJOYMENT; USE

Section 2.1 Lease Grant; Additional Easements and Licenses. Upon and subject to the terms and provisions contained herein, Landlord does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby take, lease and rent from Landlord, the Leased Premises, to have and to hold such Leased Premises for the Term as hereinafter provided. Without in any manner limiting the foregoing, Landlord hereby agrees to enter into, execute and deliver such easement, license and right of way agreements (each in form and content reasonably acceptable to Landlord, Tenant and Subtenant) as may be requested by Tenant or Subtenant to more fully and particularly evidence the rights described generally in clause (ii) of the definition of the Leased Premises.

Section 2.2 Delivery of Possession. On the Commencement Date, Landlord shall deliver to Tenant exclusive possession, use and occupancy of the Leased Premises, free of all tenancies and parties in possession of the Leased Premises (other than those arising by, through or under Tenant) and Ready for Construction (as defined in Schedule 2.2), subject only to (i) the

driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

(n) Indoor Show. Any concert, family show or other publicly ticketed touring event (excluding rodeos, monster truck/truck pull events and up to one UFC fight per year if and to the extent that the UFC has previously indicated a preference to present that event in an outdoor venue) which (i) is presented as part of a tour that includes (A) a minimum of five (5) performances (including Houston) in at least three (3) U.S. cities (in addition to Houston) during the period commencing three (3) months prior to the Houston performance and ending three (3) months after the Houston performance or (B) a minimum of three (3) performances (including Houston) in at least two U.S. cities (in addition to Houston) during the period commencing two (2) weeks prior to the Houston performance and ending two (2) weeks after the Houston performance and (ii) plays at least sixty percent (60%) of its U.S. dates in indoor venues.

(o) Landlord Entity. Landlord or any Governmental Authority to whom Landlord's power to levy, assess or collect ad valorem taxes is transferred by law or contract.

(p) Lease Expiration Date. The date which is thirty (30) years after the Operating Term Commencement Date.

(q) Leased Premises. The Stadium Site, together with (i) any and all other rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, any and all (a) rights, privileges, easements and appurtenances of Landlord as the owner of fee simple title to the Stadium Site now or hereafter existing, (b) subsurface rights below the surface of the Stadium Site, (c) reversions which may hereafter accrue to Landlord as owner of fee simple title to the Stadium Site by reason of the closing of any adjacent street, sidewalk or alley or the abandonment of any rights by any Governmental Authority, and (d) strips and gores relating to the Stadium Site; and (ii) such other easements, rights of way, licenses and other rights as may hereafter be entered into or granted by Landlord pursuant to Section 2.1 hereof (including, without limitation, air and subsurface rights above and below the public streets, roads and rights of way adjacent to the Stadium Site) for the installation, operation, repair, maintenance and continued use of loading docks, any related ramps, bridges, tunnels, sidewalks and other means of access and any other Improvements contemplated by the Project Documents, including, without limitation, easements and rights of way for the installation, operation, maintenance, repair and continued use of utilities, communication and other lines, with such other easements, rights of way, licenses and other rights being subject to the express terms and conditions of the instruments creating or granting same.

(r) Liens. With respect to any property, any mortgage, lien, pledge, charge or security interest, and with respect to the Leased Premises, the term Lien shall also include any

(j) Entertainment (including theaters, movie theaters and arcades), museum and educational uses;

(k) Conducting day-to-day business operations in Tenant's office space within the Stadium by Tenant or Subtenant, Affiliates of Tenant or Subtenant and any of their subtenants and licensees;

(l) Studio and related facilities for radio, television and other broadcast and entertainment media within the Stadium, including support and production facilities, transmission equipment, antennas and other transceivers and related facilities and equipment primarily for the broadcast or other transmission of games and other events taking place at the Stadium or elsewhere;

(m) Storage of maintenance equipment and supplies used in connection with the operation of the Leased Premises or all other Permitted Uses;

(n) Construction Work permitted or required pursuant to the terms of this Lease;

(o) The use and enjoyment of the rights and licenses granted to Tenant under this Lease regarding any intangible property rights;

(p) Presentation and broadcasting (or other transmission) of sporting events and activities related thereto, including training, practices and exhibitions, promotional activities and events, community and public relations, advertising, and other marketing of games and events, ticket sales, and any and all other activities which, from time to time, are customarily conducted by or are related to the presentation and broadcasting of sporting events; and

(q) Other uses reasonably related or incidental to any of the foregoing or not inconsistent with any of the foregoing that are not Prohibited Uses.

Section 2.5 Prohibited Uses. Tenant shall not use, or permit the use of, the Leased Premises for any of the following (collectively, the "Prohibited Uses"):

(a) Create, cause, maintain or permit any public or private nuisance in, on or about the Leased Premises; provided, however, in no event will Landlord be entitled to assert that a Permitted Use held in compliance with Applicable Law creates a public or private nuisance;

(b) Use or allow the Leased Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Leased Premises any store or other facility, a principal or significant portion of the business of which is an "Enterprise," as such term is defined in Section 28-121 of the City of Houston Municipal Code, as same may be amended from time to time during the Term, or any similar business;

rights of Landlord under this Agreement, and (ii) the easements and other encumbrances or restrictions of record set forth on Exhibit C attached hereto and made a part hereof (collectively, the "Permitted Encumbrances").

Section 2.3 Covenant of Quiet Enjoyment. Effective as of the Commencement Date, Landlord covenants that Tenant, upon keeping, observing and performing the terms, covenants and conditions of this Agreement to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use, and enjoy the Leased Premises without ejection or interference by or from Landlord or any other Person (other than Persons claiming by, through or under Tenant), subject only to the Permitted Encumbrances.

Section 2.4 Use. Tenant (and the Subtenant) shall have the exclusive right (but not the obligation) to use and occupy the Leased Premises throughout the Term, subject to the terms and provisions of the Lease and Development Agreement, for any lawful purpose other than the Prohibited Uses (as hereinafter defined), including without limitation for the following purposes (collectively, the "Permitted Uses") but in all cases consistent with the Operating Standard and Applicable Laws:

(a) The operation of the Franchise including the playing, exhibition, presentation and broadcasting (or other transmission) of Home Games and activities related thereto, including training, practices and exhibitions, All-Star Games, promotional activities and events, community and public relations, the exhibition, broadcasting, advertising, and other marketing of games and other events, ticket sales, fantasy camps and any and all other activities which, from time to time, are customarily conducted by or are related to the operation of the business of the Franchise;

(b) The exhibition, presentation and broadcasting (or other transmission) of, other amateur or professional sporting events, exhibitions and tournaments, musical performances, theater performances and other forms of live entertainment, public ceremonies, fairs, markets, shows or other public or private exhibitions and activities related thereto;

(c) Constructing, operating and displaying any signs on the interior, exterior or any other portion of the Stadium or the Stadium Site as Tenant or Subtenant deems necessary or desirable;

(d) Restaurants, clubs and bars (including brew pubs and sports bars);

(e) Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in sports and entertainment facilities;

(f) Operation of a museum or hall of fame open to the public;

(g) Conducting public tours of the Stadium and the Leased Premises;

(h) Parking in any parking facilities located on the Leased Premises;

(i) Retail uses, including such uses located in the Stadium, along the street level on the Stadium Site and in kiosks, carts and similar movable or temporary retail facilities;

(c) Use or allow the Leased Premises to be used for the sale or display of any lewd, offensive or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive or immoral activities, including sexually immoral activities;

(d) Use or allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;

(e) Use or allow the Stadium or the Leased Premises to be used as a place of permanent residence by any Person;

(f) Use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold or used in connection with Tenants' operations permitted hereunder shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or permit the Leased Premises to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial operation or use;

(g) Use or permit the use of the Leased Premises as a casino (or other establishment in which gambling is permitted or games of chance are operated), a gentlemen's club (or other establishment that allows full or partial nudity), a massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor; or

(h) Prior to January 1, 2019, directly or indirectly, solicit, present, book, house or let/license any Indoor Show at, on or around the Leased Premises.

### ARTICLE 3

#### TERM

Section 3.1 Term. The term of this Lease (the "Term") shall commence at 12:00 a.m. on the day immediately following the date that is the later of (i) the date on which all of the Conditions to Commencement described in Section 8.1 of the Lease and Development Agreement have been fully satisfied and (ii) the date Landlord receives written certification from Tenant, stating that all of the Conditions to Commencement described in Section 8.1 of the Lease and Development Agreement have been satisfied (the "Commencement Date"), and expire on the Lease Expiration Date or such earlier termination of this Agreement in accordance with the terms of this Agreement.

Section 3.2 Early Access. Notwithstanding that the Term has not commenced, Subtenant shall have the right to access the Stadium Site and perform certain work thereon so long as Subtenant complies with the terms and conditions of Appendix E to the Lease and Development Agreement with regard thereto. Subtenant agrees that Landlord shall be a third-party beneficiary of the terms and conditions of such Appendix E with the right to enforce Subtenant's obligations and liabilities thereunder.



## ARTICLE 4

### RENT; IMPOSITIONS; UTILITIES

Section 4.1 Rent. Landlord hereby acknowledges the receipt of Rent for the Term in the amount One Hundred and No/100 Dollars (\$100.00) which Tenant has pre-paid for the entire Term (the "Rent").

Section 4.2 Payment of Impositions. Except as provided elsewhere in this Article 4, Tenant shall pay (or caused to be paid) all Impositions before the same become delinquent. Tenant shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Landlord agrees to cooperate with Tenant in seeking the delivery of all notices of Impositions to Tenant directly from the applicable taxing authorities. In no event shall Tenant be in default under this Agreement for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been delivered to Landlord and not forwarded or delivered to Tenant at least thirty (30) days before the date the same become delinquent.

Section 4.3 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Tenant to be improper, illegal or excessive, or if Tenant desires in good faith to contest the Impositions for any other reason, Tenant may, at Tenant's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Tenant shall deem necessary or appropriate; provided, however, that Tenant shall not permit any Lien which may be imposed against the Leased Premises for contested Impositions to be foreclosed. Subject to the foregoing, any item of contested Imposition need not be paid until it is finally adjudged to be valid. Tenant shall be entitled to any refund of any Imposition (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest. Landlord hereby acknowledges that the Lease and Development Agreement grants similar contest rights to the Subtenant, and Landlord hereby consents to such grant and to the exercise of such rights by the Subtenant in accordance with the provisions of the Lease and Development Agreement.

Section 4.4 Standing. If Tenant or Subtenant determines that it lacks standing to contest any Impositions imposed by a Governmental Authority other than a Landlord Entity or to obtain an extended payment period for any such non-Landlord Entity Impositions, Landlord (to the maximum extent allowed by law) shall join in such contest or otherwise provide Tenant and/or Subtenant with sufficient authority to obtain such standing.

#### Section 4.5 Certain Provisions Related to Ad Valorem Taxes.

(a) Landlord and Tenant acknowledge that the Leased Premises presently are exempt from AV Taxes under the Act, and it is the intention of the Parties that during the Term, neither Tenant nor Subtenant incur any AV Taxes relating to the Leased Premises or Tenant's or Subtenant's interest in the Leased Premises. Landlord, at the request of Tenant (or Subtenant), agrees to jointly take and pursue such lawful actions with Tenant (or Subtenant), including, if necessary, judicial actions, as may be available and appropriate, to protect and defend the title of Landlord and the leasehold interest of

Tenant and Subtenant in and to the Leased Premises, against the levy, assessment or collection of AV Taxes so long as the Act provides such exemptions.

(b) If, for any reason, the Leased Premises or the interest of Landlord, Tenant or Subtenant in and to any portion of the Leased Premises should no longer be exempt from AV Taxes by reason of a change of law or otherwise, and any Governmental Authority levies and assesses an AV Tax against the Leased Premises or the interest of Landlord, Tenant or Subtenant in the Leased Premises, then Tenant shall pay (or cause Subtenant to pay) such AV Taxes before they become delinquent, subject to Tenant's or Subtenant's right of contest as provided in Section 4.3 above.

Section 4.6 Payment by Subtenant. Notwithstanding anything herein to the contrary, Landlord and Tenant agree that so long as the Lease and Development Agreement remains in effect, Tenant shall have no obligation, responsibility or liability with respect to Impositions and Landlord shall look only to Subtenant for payment thereof.

Section 4.7 Utilities. At all times during the Term, Tenant shall pay or cause to be paid all bills for utility services furnished to the Leased Premises (including, but not limited to, bills for water, electricity, gas, telephone, internet and sewer service); provided, however, that Landlord and Tenant agree that so long as the Lease and Development Agreement remains in effect, Tenant shall have no obligation, responsibility or liability with respect to any utility service furnished to the Leased Premises (including, but not limited to, bills for water, electricity, gas, telephone, internet and sewer service) and Landlord shall look only to Subtenant for payment of same.

## **ARTICLE 5**

### **INTENTIONALLY DELETED**

## **ARTICLE 6**

### **IMPROVEMENTS**

Section 6.1 Improvement Rights; Reversion to Landlord. Tenant shall have the right to construct, or cause to be constructed, the Stadium in accordance with the provisions of the Lease and Development Agreement. Tenant, subject to the terms of the Lease and Development Agreement, shall have exclusive control over the planning, design and construction of all Improvements and shall own the Improvements throughout the Term; provided, however, any fixtures, materials or equipment installed in, affixed to or placed or used in the operation of the Stadium and/or the Leased Premises by or on behalf of Subtenant shall, subject to the provisions of Section 15.1 of the Lease and Development Agreement, be owned, and may at any time be removed, by Subtenant. Upon the expiration of the Term, the Stadium and, subject to the proviso set forth in the immediately preceding sentence, all Improvements then located on the Leased Premises shall revert to Landlord, who shall automatically become vested with absolute ownership thereof.

Section 6.2 Right to Alter. Tenant and/or Subtenant shall have the right, pursuant to the terms of the Lease and Development Agreement, to alter, add to, reconstruct, reconfigure, remodel or rebuild as often as and whenever Tenant and/or Subtenant deems proper or desirable, any of the Improvements.

Section 6.3 Zoning and Permits. In the event that Tenant and/or Subtenant deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from Landlord or any other Governmental Authority having jurisdiction over the Leased Premises or any part thereof, Landlord shall, from time to time upon request of Tenant and/or Subtenant and to the extent necessary as fee owner of the Leased Premises, cooperate with Tenant and/or Subtenant or join in such petitions, applications and authorizations as may be appropriate.

## ARTICLE 7

### INSURANCE

#### Section 7.1 Insurance.

(a) Liability Insurance. Tenant agrees to cause Subtenant to obtain and maintain at all times during the Term of this Agreement the Tenant's GL Policy (as required by the Lease and Development Agreement), which shall name Tenant, City and County, individually, as additional insureds.

(b) Insurance Requirements for Tenant Contractors. Tenant agrees that, with respect to contracts entered into by Tenant with respect to the Leased Premises from and after the date the Lease and Development Agreement is no longer in effect, it will require each contractor, independent contractor, and subcontractor that performs work on the Leased Premises (collectively, "Contractor") to carry insurance meeting at a minimum all of the following requirements:

(1) The Contractor shall provide and maintain in full force and effect during the term of its agreement or contract with Tenant (or Subtenant), and all extensions and amendments thereto, at least the following insurance:

- (A) Worker's Compensation at statutory limits;
- (B) Employer's Liability, including bodily injury by accident and by disease, for Five Hundred Thousand Dollars (\$500,000.00) combined single limit per occurrence and a twelve (12) month aggregate policy limit of One Million Dollars (\$1,000,000.00), with a deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms;
- (C) Commercial General Liability Coverage, including blanket contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage, operations hazard, pollution, explosion, collapse and underground hazards for Six Hundred Thousand

Dollars (\$600,000.00) per occurrence and a twelve (12) month aggregate policy limit of Four Million Dollars (\$4,000,000.00) per occurrence; and

- (D) Automobile Liability Insurance (for automobiles used in the course of its performance under the applicable contract or agreement, including employer's non-ownership and hired auto coverage) for Six Hundred Thousand Dollars (\$600,000.00) combined single limit per occurrence.

(2) The insurance coverages required hereunder may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve the Contractor from its duties to provide the required coverage hereunder.

(3) The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least "A-" and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Each issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

(4) Each policy, except those for Worker's Compensation and Employer's Liability, must name City and County, individually, and their respective agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties on the original policy and all renewals or replacement during term of such Contractor's agreement or contract with Tenant. If any of such policies are written as "claims made" coverage and Landlord is required to be carried as an additional insured, then the Contractor must purchase policy period extensions so as to provide coverage to Landlord for a period of at least two (2) years after the completion of the work contemplated by such Contractor's agreement or contract with Tenant.

(5) A policy may contain deductible amounts as approved by the Contractor. The Contractor shall assume and bear any claims or losses to the extent of such deductible amounts and waives any claim it may ever have for the same against Landlord, its officers, agents or employees with respect to such deductible amounts.

(6) All such policies and certificates shall contain an agreement that the insurer shall notify Landlord in writing not less than thirty (30) days before any material change, reduction in coverage or cancellation of any policy. The Contractor shall give written notice to Landlord within five (5) days of the date upon which total claims by any party against the Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement.

(7) Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against Landlord, its officers, agents or employees.

(8) Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to Landlord as an additional insured with

respect to claims arising hereunder and that the insurance applies separately to each insured.

(9) If any insurance policy required hereunder does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the Contractor for any further premium payment and has no right to recover any premiums from Landlord.

(10) The Contractor shall be entitled to purchase and maintain the insurance required under this Section 7.1(b) under so called "blanket" policies, provided the coverage thereunder is at least the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

(11) At Landlord's request, copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the Contractor with the Director of the City's Convention and Entertainment Department (the "Director"). If the Director fails to request copies of such policies, the Contractor shall provide certificates of insurance, in lieu of policies, reflecting that the terms of this Section 7.1(b) have been met, such certificates to be provided before the Contractor begins any work in, on or about the Leased Premises. Along with such policies or certificates, the Contractor shall provide the Director with a list of any claims paid out against the aggregate total of any such policy.

Section 7.2 WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION OR SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE LEASED PREMISES AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK (AS SUCH TERM IS DEFINED IN THE LEASE AND DEVELOPMENT AGREEMENT) REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF LANDLORD, TENANT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

## ARTICLE 8

### CONDEMNATION

Section 8.1 Definitions. Whenever used in this Article 8, the following words shall have the definitions and meanings hereinafter set forth:

(a) "Condemnation Proceedings". Any action brought for the purpose of any taking of the Leased Premises, any Improvements thereon, or any part thereof or any property

interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), by a competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) “Taking” or “Taken”. The event and date of such competent authority’s depositing of money into the registry of the court for purposes of obtaining title to the Leased Premises, any Improvements thereon, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), pursuant to a Condemnation Proceeding, or the event and date of execution and delivery of a deed-in-lieu of condemnation.

Section 8.2 Entire Taking. If all or substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, Tenant shall have the right to terminate this Agreement in accordance with Section 8.5 below effective as of the date of such Taking, and from and after such date Tenant and Landlord shall not have any further obligations under this Agreement with respect to the Leased Premises.

### Section 8.3 Partial Taking.

(a) If less than substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, from and after the effective date of such Taking, Tenant and Landlord shall not have any further obligations under this Agreement with respect to the portion of the Leased Premises so taken.

(b) If, following any such partial Taking, Subtenant, in connection with any such partial Taking, exercises any right of termination under the Lease and Development Agreement, then Tenant, at its election may vacate the Leased Premises, and from and after such vacation Tenant and Landlord shall not have any other obligations under this Agreement with respect to the Leased Premises. Such election to vacate must be exercised no later than one hundred eighty (180) days after the date of such partial Taking.

(c) If Tenant does not elect to vacate the Leased Premises upon any partial Taking, then (i) the Leased Premises shall be reduced by the portion thereof Taken in the Condemnation Proceeding, and (ii) Tenant shall have the right to repair or reconstruct the Stadium and any other remaining Improvements on the Leased Premises in accordance with the provisions of the Lease and Development Agreement with no abatement of Rent hereunder.

Section 8.4 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Leased Premises shall be Taken, the obligations of Tenant hereunder as to the affected portion of the Leased Premises shall be abated during the duration of such Taking. A Taking shall be considered “temporary” only if the period of time during which Tenant is deprived of usage of all or part of the Leased Premises as the result of such Taking does not materially interfere with the ability of Subtenant to use the Leased Premises for any of the Permitted Uses. Any other Taking that is not “temporary” as described above shall be treated as an entire Taking under Section 8.2 above or as a partial Taking under Section 8.3 above, as determined by Tenant.

Section 8.5 Condemnation Award. At any time within one hundred eighty (180) days after an entire Taking or a partial Taking following which Tenant vacates the remaining Leased Premises as provided in Section 8.3(b) above, Tenant may terminate this Agreement by delivering a written termination notice to Landlord specifying the effective date of such termination, in which event the Term shall terminate as of the date specified by Tenant in such notice and the entire condemnation award shall be paid to Landlord in equal shares.

(a) In the event this Agreement is not terminated in connection with a Taking as provided above, the entire condemnation award shall be paid to Tenant (or Subtenant) for use in the rebuilding, restoration and repair of the Stadium and any other remaining Improvements on the Leased Premises in accordance with the provisions of the Lease and Development Agreement, and in such event Landlord hereby assigns to Tenant all right, title and interest in any such award.

Section 8.6 Settlement of Proceedings. Neither Landlord, Tenant nor Subtenant shall make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of the others.

Section 8.7 Survival. The provisions contained in this Article 8 shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any Condemnation Proceedings or condemnation awards that arose prior to the expiration or earlier termination of this Agreement.

## ARTICLE 9

### ASSIGNMENT; SUBLETTING

Section 9.1 Assignment. Except in connection with a Landlord Transfer expressly permitted by, and made in strict compliance with the requirements of, Section 21.7 of the Lease and Development Agreement (including, without limitation, the obtaining of Subtenant's consent to the extent required by such section), Tenant shall not, voluntarily, involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, pledge, mortgage or otherwise encumber its interest in this Agreement, the leasehold estate created hereby or the other rights and benefits granted to Tenant hereunder.

Section 9.2 Subletting. Except for the lease, sublease, license and other rights and benefits granted and assigned to Subtenant pursuant to the Lease and Development Agreement (the granting and assignment of which Landlord hereby confirms, acknowledges and agrees is expressly permitted hereunder), Tenant shall not otherwise lease, sublease, license, sublicense and/or grant any other rights of use with respect to all or any portion of the Leased Premises and/or the Stadium or otherwise assign the rights to use the Stadium or any related facilities. Notwithstanding the foregoing, Landlord hereby confirms, acknowledges and agrees that, so long as the Lease and Development Agreement remains in force and effect, (a) Subtenant, without any review, consent or approval by Landlord whatsoever, shall have the right, from time to time and at any time, subject to the provisions of the Lease and Development Agreement, to lease, sublease, license, sublicense and/or grant other rights of use (including, without limitation,

pursuant to Use Agreements [as such term is defined in the Lease and Development Agreement]) with respect to the Stadium and any and all related facilities as and on such terms and conditions Subtenant shall desire, and (b) Landlord shall have no right or claim to any of the rents (including, without limitation, sublease, license, and sublicense rents), revenues, profits, reimbursements or other amounts received by or paid to Subtenant under any such leases, subleases, licenses, sublicenses or other agreements granting rights to use the Stadium, the Leased Premises or any portion of either of them.

## ARTICLE 10

### DEFAULT OF TENANT

Section 10.1 Defaults by Tenant. The occurrence of any of the following shall be an “Event of Default” by Tenant or a “Tenant Default”:

(a) If Tenant, without Landlord’s prior written consent, terminates the Lease and Development Agreement for any reason other than an Event of Default by Subtenant under the Lease and Development Agreement;

(b) The failure of Tenant to keep, observe or perform any of the material terms, covenants or agreements contained in this Agreement to be kept, performed or observed by Tenant (other than those referred to in clause (a) above) if (i) such failure is not remedied by Tenant within thirty (30) days after written notice from Landlord of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Tenant fails to commence to cure such default within thirty (30) days after written notice from Landlord of such default or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; and

(c) The (i) filing by Tenant of a voluntary petition in bankruptcy; (ii) adjudication of Tenant as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Tenant under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors’ rights generally, unless within sixty (60) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Tenant or its Property.

Section 10.2 Rights of Subtenant. Notwithstanding any other provision of this Article 10 all rights and remedies of Landlord under Section 10.1 above are subject to the provisions of Article 12 of this Agreement.

Section 10.3 Landlord’s Remedies. Subject to the provisions of Section 10.2 above, in the event of any Tenant Default (which remains uncured after the expiration of all applicable



notice and cure periods), Landlord shall have all remedies available at law or in equity (other than termination), including, without limitation, injunction, specific performance and actions for damages. All remedies of Landlord under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver (as provided in Section 15.17 of this Agreement) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default. Notwithstanding anything to the contrary in this Agreement, in no event shall Landlord have the right to terminate this Agreement prior to the Lease Expiration Date based on a default by Tenant hereunder; provided, however, in the event a "Landlord Default" shall occur under the Lease and Development Agreement and as a result thereof Subtenant terminates the Lease and Development Agreement in connection therewith, Landlord shall have the right (but not the obligation), at any time after such termination by Subtenant, to terminate this Agreement and Tenant's rights hereunder.

## ARTICLE 11

### DEFAULT OF LANDLORD

Section 11.1 Defaults and Remedies. In the event of any breach by Landlord of any covenant of Landlord under this Agreement, Tenant shall have the right to deliver to Landlord, in accordance with the provisions of Section 15.6 of this Agreement, a written notice specifying such breach, and unless within thirty (30) days from and after the date of delivery of such notice Landlord shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within one hundred twenty (120) days after such notice), then Tenant shall have all remedies available at law or in equity, including, without limitation, termination, injunction and specific performance, subject, however, to the provisions of Section 11.2 below. All remedies of Tenant under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver (as provided in Section 15.17 of this Agreement) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

Section 11.2 Certain Remedy Limitations. Notwithstanding the provisions of Section 11.1 above, Tenant shall have the remedy of termination of this Agreement in connection with a default by Landlord only if such default is under Section 2.3 of this Agreement (such termination right being expressly subject, however, to the notice and cure rights set forth in Section 11.1 above and in Section 12.1(c) below).

## ARTICLE 12

### RECOGNITION, NON-DISTURBANCE AND ATTORNMENT

Section 12.1 Notice of Default; Termination; Certain Cure Rights.

(a) Event of Default. Landlord and Tenant hereby agree that they will deliver copies of any written notices described in Sections 10.1 or 11.1 above to Subtenant simultaneously with delivery of such notices to the other Party. Additionally, Tenant agrees to deliver to Landlord copies of any written notices delivered by Tenant to Subtenant or received by

Tenant from Subtenant in connection with any "Event of Default", "Tenant Default", or "Landlord Default" under the Lease and Development Agreement or other Project Documents.

(b) Termination. Landlord and Tenant hereby further agree to provide Subtenant at least sixty (60) days written notice prior to any termination of this Agreement prior to the Lease Expiration Date.

(c) Right to Cure Defaults. In the event of any default by Landlord or Tenant hereunder, Subtenant shall have the right (but not the obligation) to cure such default, and any default cured by Subtenant hereunder shall be deemed to have been cured by the applicable defaulting Party. In the event Subtenant provides written notice to Landlord or Tenant, as applicable, of Subtenant's intent to cure any such default within the cure periods set forth in this Lease, such cure periods shall be automatically extended for a reasonable period of time (but in no event less than thirty (30) days) sufficient for Subtenant to commence and complete such cure. Without in any manner limiting any rights Subtenant may have under the Lease and Development Agreement, if Subtenant exercises its right to cure a default by one of the Parties hereunder, the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by Subtenant in curing such default (with interest thereon at the rate of ten percent (10%) per annum) shall be payable by the defaulting Party to Subtenant on demand.

Section 12.2 Recognition. Upon any termination or surrender of this Agreement prior to the Lease Expiration Date, or upon any exercise by Landlord of any right of re-entry or other remedy under this Agreement (each of the foregoing, a "Recognition Event"), provided no Tenant Default under the Lease and Development Agreement has occurred and remains uncured after the lapse of all applicable notice and cure periods, if any, thereunder: (i) Landlord will recognize (x) Subtenant as the "Tenant" under the Lease and Development Agreement and (y) all of the rights, titles and interests of Subtenant under the Project Documents, (ii) except as provided otherwise in this Agreement, Landlord shall be bound to Subtenant as "Landlord" under the Lease and Development Agreement (to the extent Landlord succeeds to the interest of the Sports Authority thereunder, as if Landlord were the "Landlord" thereunder from and after the date of the Recognition Event, (iii) Landlord will assume and perform all of the duties and obligations of the "Sports Authority" arising under all of the Project Documents on and after the date of the Recognition Event, and (iv) Landlord's obligations under this Agreement shall survive such Recognition Event and Subtenant shall continue to be a third party beneficiary of this Agreement, fully entitled to enforce the terms, provisions, covenants and agreements of either party set forth herein.

Section 12.3 Nondisturbance. So long as no Tenant Default has occurred and is continuing under the Lease and Development Agreement (beyond the term of any cure period provided in the Lease and Development Agreement) at the time of any early termination or surrender of this Agreement, or exercise by Landlord of any right of re-entry or other remedy under this Agreement, Landlord covenants and agrees that upon any such event, Subtenant's possession and use of the Leased Premises and the Stadium and Subtenant's rights and privileges under the Lease and Development Agreement and the other Project Documents shall not be diminished or interfered with by Landlord, and Subtenant's use and occupancy of the Leased Premises and the Stadium, shall not be disturbed during the term of the Lease and Development Agreement.

Section 12.4 Attornment. Upon any termination of this Agreement, Subtenant (by virtue of the joinder attached to this Agreement) agrees to recognize and attorn to Landlord as “Landlord” under the Lease and Development Agreement, and Subtenant, Landlord and Tenant hereby agree that the Project Documents shall continue in full force and effect as direct agreements, in accordance with the terms contained therein, between Landlord and Subtenant.

Section 12.5 Further Documentation. The provisions of this Article 12 shall be effective and self-operative without any need for Landlord, Tenant or Subtenant to execute any further documentation. However, upon the receipt of written request, Landlord, Tenant or Subtenant shall confirm the provisions of this Article 12 in writing to the requesting party within fifteen (15) days of receipt of such written request. Additionally, without in any manner limiting the self-operative provisions of this Article 12, upon the written request of Subtenant or Tenant, Landlord will enter into a nondisturbance agreement with Subtenant (or any mortgagee of Subtenant’s interest under the Lease and Development Agreement). Such nondisturbance agreement shall include such reasonable provisions as requested by Subtenant (or its mortgagee), subject to the reasonable approval of Landlord, but in any event shall (a) reaffirm Landlord’s ownership of the Leased Premises, (b) confirm (if true) that this Agreement is in full force and effect without default by Tenant (or, if a default exists, specifying the default and the remedy required by Landlord), and (c) in the case of Subtenant (or its mortgagee), provide, in substance, that, so long as Subtenant (or its mortgagee should such mortgagee succeed to Subtenant’s rights under the Lease and Development Agreement) complies with all of the terms of the Lease and Development Agreement, Landlord, in the exercise of any of its rights or remedies under this Agreement, shall not deprive Subtenant (or its mortgagee, if applicable) of possession, or the right of possession, of the Stadium during the term of the Lease and Development Agreement, deprive Subtenant (or its mortgagee, if applicable) of any other rights under the Lease and Development Agreement, or join Subtenant (or its mortgagee) as a party in any action or proceeding to enforce or terminate this Agreement or obtain possession of the property leased in the Lease and Development Agreement, for any reason other than a breach by Subtenant (or its mortgagee) of the terms of the Lease and Development Agreement, which would entitle Tenant to dispossess Subtenant thereunder or otherwise terminate Subtenant’s rights thereunder.

Section 12.6 No Modification or Amendment. For so long as the Lease and Development Agreement shall remain in full force and effect, this Agreement shall not be modified or amended in any manner without the prior written consent of Subtenant, which consent shall not be unreasonably withheld.

Section 12.7 Survival. The provisions of this Article 12 shall survive the termination of this Agreement and shall continue in full force and effect thereafter.

## ARTICLE 13

### REPRESENTATIONS AND WARRANTIES

Section 13.1 Landlord’s Representations and Warranties. Landlord hereby represents, warrants and covenants as follows; provided, that City is representing, warranting and covenanting as to itself only and County is representing, warranting and covenanting as to itself only:

(a) Existence. City is a home-rule city duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas. County is a political subdivision of the State of Texas duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas.

(b) Authority. Landlord has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Agreement, and, subject to the provisions of Section 15.25 and Section 15.26 hereof, the performance of its obligations under this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Agreement is a valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms.

(d) No Defaults. The execution by Landlord of this Agreement and the consummation by Landlord of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under any resolution, indenture, agreement, instrument or obligation to which Landlord is a party or by which the Leased Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Landlord or any portion of the Leased Premises, or of any Governmental Authority having jurisdiction over Landlord or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Landlord to enter into this Agreement, make the agreements herein contained or perform the obligations of Landlord hereunder, other than those consents which have been obtained.

(f) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Landlord, threatened or asserted against Landlord which could reasonably be expected to affect or impair Landlord's ability to enter into this Agreement or to perform its obligations hereunder, or which affect in any manner any portion of the Leased Premises, at law or in equity or before or by any Governmental Authority.

(g) No Condemnation Proceedings; Impositions. Landlord has not received any notice of any Condemnation Proceedings from any Governmental Authority, nor any notice of any special assessments or increases in the assessed valuation of property taxes or any Impositions of any nature, which, in either case, are pending or being contemplated with respect to the Leased Premises or any portion thereof.

(h) Compliance with Laws. Landlord has not received any notice of any violation of any Governmental Rule pertaining to the Leased Premises or any portion thereof.

(i) Liens and Encumbrances. Landlord has possession of the Stadium Site free and clear of all Liens (other than the Permitted Encumbrances) and Landlord has not placed or granted any Liens or Encumbrances against the Leased Premises (other than the Permitted Encumbrances), and there are no actions pending or, to the knowledge of Landlord, threatened

remedial actions required by applicable Governmental Rules to be performed with respect to (a) any Environmental Event with regard to the Stadium Site occurring prior to the Commencement Date (and not caused by or under Subtenant or Tenant) and (b) any Pre-Existing Environmental Conditions (collectively, "City's Remedial Work"). City shall perform, or cause to be performed, City's Remedial Work with due diligence and at City's cost and expense. In the event Tenant or Subtenant discovers a Pre-Existing Environmental Condition or an Environmental Event during the Term that was the responsibility of City as part of City's Remedial Work, Tenant and/or Subtenant shall have the right, but not the obligation, at the option of either, to (i) require the City, at the City's sole cost and expense, to address and remedy such Pre-Existing Environmental Condition or Environmental Event, in which event Tenant or Subtenant shall have the right to approve (which approval shall not be unreasonably withheld) any actions taken by the City to address and remedy the Pre-Existing Environmental Condition or Environmental Event, or (ii) commence action to address and remedy the Pre-Existing Environmental Condition or Environmental Event and City shall reimburse Tenant or Subtenant, as applicable, for the reasonable costs and expenses associated with such actions within thirty (30) days of City's receipt of documented expenses related thereto; provided that Tenant or Subtenant, prior to undertaking any such corrective or remedial action, shall advise City as to the steps it proposes to be taken with respect thereto and Tenant or Subtenant shall select, subject to approval of City, an independent environmental consultant or engineer to oversee such corrective or remedial action and Tenant or Subtenant shall perform, or cause to be performed, such corrective or remedial action with due diligence.

Section 14.2 Landlord's Remedial Work. Landlord shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Rules to be performed with respect to any Environmental Event occurring on or after the Commencement Date that was caused by Landlord ("Landlord's Remedial Work"). Tenant shall promptly inform Landlord and all applicable Governmental Authorities of any Environmental Event or Hazardous Materials discovered by Tenant in, on or under the Leased Premises and promptly shall furnish to Landlord any and all reports and other information available to Tenant concerning the matter. Landlord shall promptly consult with Tenant as to the steps to be taken to investigate and, if necessary, remedy such matter, and Landlord shall at its expense select an independent environmental consultant to evaluate the condition of the Leased Premises and materials thereon and therein. If it is determined pursuant to such evaluation that remediation of the same is required under this Section 14.2, then Landlord shall perform, or cause to be performed, Landlord's Remedial Work with due diligence and, at Landlord's cost and expense. In the event Tenant or Subtenant discovers an Environmental Event during the Term that is the responsibility of Landlord as part of Landlord's Remedial Work, Tenant and/or Subtenant shall have the right to clean-up and remedy such matter and Landlord shall reimburse Tenant or Subtenant, as applicable, for the reasonable costs and expenses associated with the clean-up and remedying of such Environmental Event within thirty (30) days of Landlord's receipt of documented expenses related thereto.

Section 14.3 Stadium Site Improvement Work. City covenants and agrees that, on or prior to the Commencement Date, City shall perform the work at the Stadium Site necessary for the Stadium Site to be "Ready for Construction" (as defined in Schedule 2.2 attached hereto) on the Commencement Date. In the event Tenant or Subtenant discovers after the Commencement

Date that the Stadium Site was not, in fact, Ready for Construction on the Commencement Date, Tenant and/or Subtenant shall have the right, but not the obligation, at the option of either (i) to perform the work necessary to make the Stadium Site, in fact, Ready for Construction and City shall reimburse Tenant or Subtenant, as applicable, for the reasonable costs and expenses associated with the performance of such work within thirty (30) days of City's receipt of documented expenses related thereto, or (ii) to require City, at its sole cost and expense, to make the Stadium Site, in fact, Ready for Construction, and City shall perform, or cause to be performed, such corrective or remedial action with due diligence.

## ARTICLE 15

### MISCELLANEOUS

Section 15.1 Inspection. Subject to the provisions and limitations set forth in Section 16.1 of the Lease and Development Agreement (which are expressly incorporated herein by reference), Tenant shall permit Landlord and its agents, upon no less than twenty-four (24) hours prior written notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by Landlord does not interfere with the quiet enjoyment of the Leased Premises by Tenant, Subtenant or any other Person with a right of possession under a Use Agreement.

Section 15.2 Estoppel Certificates. Tenant and Landlord shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other Party, execute, acknowledge and deliver to Landlord or Tenant, as the case may be, a statement in writing certifying (a) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges (including, without limitation, any Impositions) required hereunder have been paid, and (d) that, to the best knowledge of Landlord or Tenant, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default). Upon request by Tenant, Landlord's estoppel certificate also shall be addressed to one or more of its subtenants (and/or, with respect to Subtenant, its mortgagee).

Section 15.3 Release. Tenant shall upon termination of this Agreement, execute and deliver to Landlord an appropriate release, in form proper for recording, of all Tenant's interest in the Leased Premises, and upon request of Tenant, Landlord will execute and deliver a written cancellation and termination of this Agreement and release of all claims (if none are then outstanding or threatened) in proper form for recording to the extent such release is appropriate under the provisions hereof.

Section 15.4 Landlord's Right to Perform Tenant's Covenants. If Tenant shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Tenant curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Landlord, after ten (10) days' additional written notice to Tenant specifying such failure (or shorter notice if any emergency [meaning that there is imminent danger to the safety of Persons or of substantial damage to property])

exists), may (but without any obligation so to do) perform the same for the account and at the expense of Tenant, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by Landlord in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Tenant to Landlord on demand. This provision is not in lieu of, but is in addition to, any other rights or remedies Landlord may have with respect to any such failure of performance by Tenant.

Section 15.5 Tenant's Right to Perform Landlord's Covenants. If Landlord shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Landlord curing or commencing to cure such failure within all and applicable grace and/or notice and cure periods, Tenant, after ten (10) days' additional written notice to Landlord specifying such failure (or shorter notice if any emergency [as defined in Section 15.4 above] exists), may (but without any obligation so to do) perform the same for the account and at the expense of Landlord, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by Tenant in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Landlord to Tenant on demand. This provision is not in lieu of, but is in addition to, any other rights or remedies Tenant may have with respect to any such failure of performance by Landlord.

Section 15.6 Notices. All notices, consents, directions, approvals, instructions, requests and other communications and all payments, as applicable, given to a Party under this Agreement shall be given in writing to such Party at the address set forth below or at any other address as such Party designates by written notice to the other Party in accordance with this Section 15.6 and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by telecopy (with electronic confirmation of such notice) to the Party entitled thereto. Any notice shall be deemed to be duly given or made (x) three (3) business days after posting if mailed as provided, (y) when delivered by hand unless such day is not a business day, in which case such delivery shall be deemed to be made as of the next succeeding business day, or (z) in the case of telecopy (with electronic confirmation of such notice), when received, so long as it was received during normal business hours of the receiving Party on a business day or otherwise such delivery shall be deemed to be made as of the next succeeding business day. Each Party hereto shall have the right at any time and from time to time to specify additional parties (the "Additional Addressees") to whom notices hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party hereto shall have the right to designate, in addition to Subtenant, more than two (2) such Additional Addressees. The notice addresses for the Parties shall be as follows:

Notice to Landlord shall be sent to:

City of Houston  
Mayor's Office  
901 Bagby, 3rd Floor  
Houston, Texas 77002  
Attention: Mayor  
Facsimile Number: (713) 247-2355

and to:

Harris County, Texas  
8410 Lantern Point Drive  
Houston, Texas 77054  
Attention: David Turkel,  
Director, Community Services Department  
Facsimile Number: (713) 578-2090

with copies of all notices to Landlord being sent to:

City of Houston  
City Attorney's Office  
900 Bagby, 4th Floor  
Houston, Texas 77002  
Attention: City Attorney  
Facsimile Number: (713) 247-1017

and to:

City of Houston  
Convention and Entertainment Facilities Dept.  
1001 Avenida de las Americas  
Houston, Texas 77010  
Attention: Director  
Facsimile Number: (713) 853-8091

and to:

City of Houston  
Office of the Mayor  
901 Bagby, 4<sup>th</sup> Floor  
Houston, Texas 77002  
Attention: Chief Development Officer  
Facsimile Number: (832) 393-0844



and to:

Harris County, Texas  
County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002  
Attention: County Attorney  
Facsimile Number: (832) 393-6259

Notice to Tenant shall be sent to:

Harris County-Houston Sports Authority  
Two Houston Center  
909 Fannin, Suite 3175  
Houston, Texas 77010  
Attention: Chairman  
Facsimile Number: (713) 308-5955

with copies of all notices to Tenant being sent to:

Andrews Kurth LLP  
600 Travis Street, Suite 4200  
Houston, Texas 77002  
Attention: Mark B. Arnold  
Facsimile Number: (713) 220-7295

The Subtenant is hereby designated as an Additional Addressee of each Party and entitled to any and all notices sent by either Party to the other Party hereunder, with the notice address for Subtenant being:

Dynamo Stadium, LLC  
c/o AEG  
800 W. Olympic Boulevard, Suite 305  
Los Angeles, California 90015  
Attention: Ted Fikre,  
Chief Legal and Development Officer  
Facsimile Number: (213) 742-7294

and with copies of all notices to Subtenant being sent to:

Greenberg Traurig, LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D. R. Jones, Jr.  
Facsimile Number: (713) 754-7530

Section 15.7 Successor and Assigns. The word "Tenant" as used in this instrument shall extend to and include the entity executing this Agreement, as well as any and all Persons who at any time or from time to time during the Term of this Agreement shall succeed to the interest and estate of Tenant hereunder immediate or remote; and subject to the provisions of Sections 9.1 and 9.2 hereof, all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of or are binding upon Tenant shall also inure to the benefit of and shall be jointly and severally binding upon the successors, permitted assigns and grantees of Tenant, and each of them, and any and all Persons who at any time or from time to time during the Term shall succeed to the interest and estate of Tenant created hereby in accordance with the terms and provisions hereof. The word "Landlord" as used in this instrument shall extend to and include the entity executing this instrument, as well as any and all Persons who at any time or from time to time during the term of this Agreement shall succeed to the interest and estate of Landlord in the Leased Premises, and all of the covenants, agreements, conditions and stipulations herein contained which inure to the benefit of or are binding upon Landlord shall also inure to the benefit of and shall be binding upon the successors, assigns or other representatives of Landlord, and of any and all Persons who shall at any time or from time to time during the Term of this Agreement succeed to the interest and estate of Landlord in the Leased Premises. The word "Subtenant" as used in this instrument shall extend to and include the entity originally executing the Lease and Development Agreement as the tenant thereunder, as well as any and all Persons who at any time or from time to time during the term of Lease and Development Agreement shall succeed to the interest and estate of Subtenant under the Lease and Development Agreement in accordance with the terms and provisions thereof. All of the covenants, agreements, conditions and stipulations contained in this Agreement which inure to the benefit of Subtenant shall also inure to the benefit of such Persons who shall at any time or from time to time succeed to the interest and estate of Subtenant under the Lease and Development Agreement in accordance with the terms and provisions thereof. All of the obligations contained in this Agreement which are binding on Subtenant shall also bind such Persons who shall at any time or from time to time succeed to the interest and estate of Subtenant under the Lease and Development Agreement in accordance with the terms and provisions thereof. Notwithstanding the above, the provisions of this Section 15.7 do not impose any liability on any Person that may at any time be Tenant hereunder and whose liability is limited or eliminated by other provisions of this Agreement.

Section 15.8 Modifications. Subject to Section 12.6 hereof, this Agreement may be amended or modified at any time, but only by written agreement signed by Landlord and Tenant

Section 15.9 Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 15.10 Unavoidable Default and Delays. The time within which either Party hereto shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Condemnation Proceedings, casualty damage, strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any Governmental Authority, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the

delay. The provisions of this Section shall not operate to excuse either Party from prompt payment of monetary obligations required by the terms of this Agreement.

Section 15.11 Partial Invalidity. If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 15.12 Applicable Law and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE TERMS, PROVISIONS, OBLIGATIONS AND COVENANTS HEREOF ARE PERFORMABLE IN HARRIS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION INSTITUTED TO ENFORCE THE RIGHT OF EITHER PARTY HEREUNDER SHALL BE IN A COURT OF COMPETENT JURISDICTION IN HARRIS COUNTY, TEXAS.

Section 15.13 Intentionally deleted.

Section 15.14 Interpretation. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Landlord and Tenant.

Section 15.15 Brokerage Commission. Landlord and Tenant represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under Landlord or Tenant, as applicable.

Section 15.16 Landlord's Lien Waiver. Landlord hereby waives all landlord's liens that Landlord might hold, statutory or otherwise, to any of Tenant's (or Subtenant's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on or within the Leased Premises or any portion thereof.

Section 15.17 Non-Waiver. No Party shall have or be deemed to have waived any default under this Agreement by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes specifically the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such Party that describes specifically any such remedy that is being waived.

Section 15.18 Survival. Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.

Section 15.19 Entire Agreement. This Agreement, the Interlocal Agreement and the documents referenced in this Agreement constitute the entire agreement between Landlord and

Tenant regarding the subject matter thereof. There are no representations, promises or agreements of either Landlord or Tenant, one to the other, regarding the subject matter of this Agreement not contained in this Agreement, the Interlocal Agreement or the documents referenced in this Agreement. In the event of any conflict between this Agreement, the Interlocal Agreement and any document referenced in this Agreement, the provisions of this Agreement shall control.

Section 15.20 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns. Except as otherwise provided in Section 16.4 below, nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and Subtenant and their respective permitted successors and assigns, but not including any invitee, patron or guest of a Party or Subtenant) any legal or equitable remedy, claim, liability, reimbursement, cause of action or other right under or in respect of this Agreement or any of the covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Agreement.

Section 15.21 Covenants Running with the Land. The Parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Term be construed as covenants running with title to the Leased Premises, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind Landlord, Tenant and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Term bind the owner and holder of any fee or leasehold interest in or to the Leased Premises, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

Section 15.22 Non-Merger of Estates. The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same Person who shall own the fee title to the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

Section 15.23 Intentionally deleted.

Section 15.24 Recording of Memorandum of Ground Lease. The Parties shall execute a Memorandum of Ground Lease in the form attached hereto as Exhibit D, and Tenant shall file the same in the Real Property Records of Harris County, Texas. Upon the Lease Expiration Date or earlier expiration or termination of this Agreement, Tenant shall execute such instruments as may be reasonably requested by Landlord in recordable form that are sufficient to release of record any rights or interests of Tenant in and to the Leased Premises.

Section 15.25 City Council Approvals and Appropriations. This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the Controller of the City. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Commencement Date in connection with this Agreement and the other Project Documents (and the transactions contemplated herein or therein), or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

Section 15.26 Commissioner's Court Approvals and Appropriations. This Agreement is subject to all applicable terms and provisions of the Orders of the County, and is subject to approval by the Commissioner's Court, and shall not be effective until approved by the Commissioner's Court and signed by a representative of the County. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the County, or (ii) the approval or issuance of future agreements, permits or licenses by the County. Any provision of this Agreement which contemplates (x) the payment of money by the County, which payment would require the appropriation of funds over and above any sums appropriated prior to the Commencement Date in connection with this Agreement and the other Project Documents (and the transactions contemplated herein or therein), or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the Commissioner's Court, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent Commissioner's Court to which such matter is presented and to the appropriation by such Commissioner's Court of the required funds, in the exercise of its legislative discretion.

## ARTICLE 16

### **SUBTENANT'S RIGHT OF FIRST NEGOTIATION AND RENEWAL; LIMITATION ON SALE BY LANDLORD; THIRD PARTY BENEFICIARY STATUS**

Section 16.1 Subtenant Right of First Negotiation. Landlord hereby confirms, acknowledges and agrees that Subtenant shall have, and Landlord hereby grants unto Subtenant, the right (the "Right of First Negotiation"), prior to the expiration of the Lease and Development Agreement, to enter into exclusive negotiations with Landlord for a new direct lease between Landlord and Subtenant, covering the Leased Premises with the term of such direct lease commencing upon the expiration or termination of this Agreement (the "Direct Lease"). Subtenant may exercise the Right of First Negotiation by delivering written notice of such

exercise (the "ROFN Exercise Notice") to Landlord at least one (1) year prior to the expiration of the Lease and Development Agreement. Any such Direct Lease shall be on the same terms and conditions as the Lease and Development Agreement, except that (i) the term of any such Direct Lease shall, at Subtenant's option, be for up to three (3) consecutive five (5) year periods, which may be in any combination of initial and renewal term(s) as agreed upon by Landlord and Subtenant, and (ii) the rental paid by Subtenant under such Direct Lease (the "Direct Lease Rental Rate") shall be at a rate to be negotiated between Subtenant and Landlord prior to the commencement of such Direct Lease (with neither party being under any compulsion to agree to any particular Direct Lease Rental Rate).

(a) In the event Subtenant timely exercises its Right of First Negotiation hereunder, Landlord, from the date of its receipt of the ROFN Exercise Notice through and until the earlier to occur of (i) the execution and delivery of a Direct Lease by Landlord and Subtenant, and (ii) the expiration date of the Lease and Development Agreement, shall not negotiate with, make offers to, entertain offers from, nor have any discussions or communications whatsoever with, any other party for the lease of the Stadium or other facilities related thereto.

(b) In the event Subtenant fails to timely exercise its Right of First Negotiation hereunder, or in the event Subtenant and Landlord, following Subtenant's exercise of such right, fail to agree upon the Direct Lease Rental Rate, neither Landlord nor Tenant shall enter into any lease, sublease, license or similar occupancy agreement with any party on terms more favorable than those offered to Subtenant without first offering Subtenant the right to accept such more favorable terms.

(c) Subtenant shall not be permitted to exercise its Right of First Negotiation if at the time of such exercise a Tenant Default has occurred and is continuing under the Lease and Development Agreement (beyond the term of any cure period provided in the Lease and Development Agreement).

(d) The rights granted to Subtenant hereunder are assignable by Subtenant to any permitted successor or assignee of Subtenant's leasehold estate and rights under the Lease and Development Agreement.

Section 16.2 Sale or Assignment of Stadium Site; Interest in Lease. Landlord shall not, at any time during the term of the Lease Development Agreement and, if applicable, the Direct Lease, sell, assign, convey or transfer, or offer to sell, assign, convey or transfer, any interest of Landlord in all or any portion of the Stadium Site, the Leased Premises, the Stadium, or Landlord's interest under this Agreement (including its reversionary interest hereunder), unless Landlord complies with all then applicable statutory sale requirements and procedures. Additionally, should Landlord so desire to sell, assign, convey or transfer any such interest(s), Landlord shall provide the Subtenant with at least twenty (20) business days advance written notice prior to commencing any competitive sale process, and the Subtenant shall have the right (but not any obligation whatsoever) to participate in, and be a bidder at, any such sale.

Section 16.3 Subtenant Renewal Rights Following Certain Sales by Landlord. Notwithstanding the provisions of Section 16.1 above, in the event the Landlord sells, assigns,

conveys or transfers its interest in the Stadium Site, the Leased Premises, the Stadium, or its interest under this Agreement (including its reversionary interest hereunder), to Tenant, a private Person, or any other Person not affiliated with Landlord, then, Landlord and Tenant hereby confirm, acknowledge, covenant and agree that Subtenant shall have, and Subtenant is hereby granted, in lieu of Subtenant's Right of First Negotiation under Section 16.1 above, three (3) options (individually, a "Renewal Option," and collectively, the "Renewal Options") to renew the terms of the Lease and Development Agreement for successive periods of five (5) years each (individually, a "Renewal Term," and collectively, the "Renewal Terms"). The first Renewal Term shall commence at the expiration of the initial term of the Lease and Development Agreement and each subsequent Renewal Term shall commence at the end of the prior Renewal Term.

(a) Subtenant shall exercise each option to renew by delivering written notice (the "Renewal Notice") of such election to the Person which is then the "Landlord" under the Lease and Development Agreement (such person is hereinafter referred to in this Section 16.3, for the purposes of this Section 16.3 only, as the "Stadium Landlord") not later than one (1) year prior to the expiration of the then applicable term (including, any Renewal Term, if applicable) of the Lease and Development Agreement (provided, however, if any such sale, assignment, conveyance or transfer by the Landlord occurs within the last year of the term of the Lease and Development Agreement, Subtenant shall be required to deliver the Renewal Notice within thirty (30) days after it receives notice of such sale, assignment, conveyance or transfer).

(b) Within ten (10) days after the Stadium Landlord's receipt of the Renewal Notice, the Stadium Landlord shall deliver to Subtenant a proposal which shall contain the Stadium Landlord's good faith determination of the Fair Market Rental Rate (defined in Subsection (d) below) as of the commencement of the applicable Renewal Term. Thereafter, the Stadium Landlord and Subtenant shall negotiate in good faith (neither party acting arbitrarily or capriciously) in an effort to reach agreement as to the Fair Market Rental Rate. The renewal of the Lease and Development Agreement pursuant to this Section 16.3 shall be upon the same terms and conditions as applied during the initial terms of such leases, except that the Rent during the applicable Renewal Term shall be equal the Fair Market Rental Rate as of the commencement of such Renewal Term, and which Rent shall be in full consideration of the renewal and extension of the Lease and Development Agreement.

(c) Whenever used in this Section 16.3, the term "Fair Market Rental Rate" shall mean the annual rental payments (including any contributions to maintenance, capital work, and reserve funds) that a willing and comparable tenant would pay, and a willing landlord would accept at arm's length, for Comparable Facilities taking into account the following factors (collectively, the "Market Factors") as they exist with respect to the subject facilities and the Comparable Facilities: location, quality, amenities, age and reputation of the facilities and the Comparable Facilities; adjustments for differences between the cost of living indexes and other measures of costs of goods and services applicable to the relevant Metropolitan Statistical Areas in which the subject facilities and the Comparable Facilities are located; extent and condition of leasehold improvements in the facilities and in any Comparable Facilities; rental abatements pertaining to the facilities and to any Comparable Facilities (including with respect to rental and contributions to maintenance, capital work and reserve funds); tax abatements and other incentives available; lease takeovers/assumptions by the landlord of the Comparable Facilities, if

applicable; the timing of the commencement of rental payments; relocation allowances and other inducements granted, if any; improvements, refurbishment and repainting allowances granted, if any; any other concessions or inducements and the timing of payment of such concessions or inducements; term or length of lease of the subject facilities and of any Comparable Facilities; the time the particular rental rate under consideration was agreed upon and became or is to become effective; and expansion options, rights of first offer and similar options granted.

(d) If the Stadium Landlord and Subtenant are unable to reach a definitive agreement as to the Fair Market Rental Rate within forty-five (45) days following Subtenant's receipt of the Stadium Landlord's Renewal Term proposal, Subtenant shall have the option by furnishing written notice to the Stadium Landlord to either (i) revoke the exercise of the Renewal Option and thereby permit the Lease and Development Agreement to expire upon the expiration of the then existing terms thereof, or (ii) have the determination of the Fair Market Rental Rate submitted to arbitration for resolution in accordance with Subsection (g) below. If Subtenant fails to furnish notice to the Stadium Landlord of the exercise of any of the foregoing options prior to the expiration of such forty-five (45)-day period, Subtenant shall be deemed to have elected option (i).

(e) Notwithstanding the foregoing, if the decision of the arbitrators with respect to Fair Market Rental Rate cannot be or is not rendered on or prior to that date which is six (6) months prior to the expiration of the then current term of the Lease and Development Agreement, then on such date Subtenant shall have the option by furnishing written notice to the Stadium Landlord to (i) revoke the exercise of the Renewal Option and thereby permit the Lease and Development Agreement to expire upon the expiration of the then existing terms thereof, or (ii) have its election to renew become irrevocable and be bound by the decision of the arbitrators (as will the Stadium Landlord), or (iii) reserve the right to revoke the exercise of Renewal Option within five (5) days after the final determination of the Fair Market Rental Rate. If Subtenant fails to timely give such notice, Subtenant shall be deemed to have chosen option (iii). If Subtenant exercises or is deemed to have exercised option (iii), Subtenant must furnish notice to the Stadium Landlord within five (5) days after such final determination whether Subtenant elects either (x) for the Renewal Option to be irrevocably exercised and for such determination of the Fair Market Rental Rate to be binding on Subtenant, or (y) to revoke the exercise of the Renewal Option in which event the terms of the Lease and Development Agreement shall expire on the stated expiration date thereof. If Subtenant fails to timely furnish notice to the Stadium Landlord of the exercise of option (x) or (y) above, Subtenant shall be deemed to have exercised option (y).

(f) In the event the Fair Market Rental Rate applicable to any Renewal Term(s) is to be determined pursuant to arbitration, then the following provisions shall apply:

(1) Not later than ten (10) days after the date Subtenant elects to have the Fair Market Rental Rate be determined pursuant to arbitration, the Stadium Landlord and Subtenant each shall appoint one arbitrator. Each such arbitrator shall be a reputable real estate appraiser who is a member of the American Institute of Real Estate Appraisers or a successor body hereinafter exercising similar functions with not less than ten (10) years experience in appraising Comparable Facilities and other multipurpose sports, entertainment and community venue projects similar to the Stadium in the metropolitan



areas in the United States and Canada with a population of at least 1,500,000. In no event may either party appoint an arbitrator who has been employed by, affiliated with, or engaged to represent Subtenant, Tenant, the City, or the County, within the seven (7) year period immediately preceding such appointment. In the event either party shall fail to appoint an arbitrator within such ten (10) day period, then the other party shall request the director (the "Director") of the Houston, Texas office of the American Arbitration Association to do so.

(2) Within ten (10) days of the appointment of the two (2) arbitrators, such arbitrators shall select a third (3rd) arbitrator (who must have the same qualifications as identified above which is required for the arbitrators selected by the Stadium Landlord and Subtenant). In the event the two (2) arbitrators fail to appoint or agree upon such third (3rd) arbitrator within such ten (10) day period, a third arbitrator shall be selected by the Stadium Landlord and Subtenant if they so agree upon such third arbitrator within a further period of ten (10) days. If the Stadium Landlord and Subtenant cannot agree upon the third arbitrator, the Stadium Landlord or Subtenant shall request the Director to do so. In the event of the inability or failure of any arbitrator to act, another arbitrator shall be selected in the same manner as set forth above for the same arbitrator.

(3) Fifteen (15) days after the third (3rd) arbitrator is appointed pursuant to clause (i) above, the parties and the arbitrators shall meet in Subtenant's offices in Houston, Texas, at which meeting (the "Meeting") the Stadium Landlord and Subtenant shall exchange, and each party shall deliver to the arbitrators, sealed envelopes in which each sets forth its determination of the Fair Market Rental Rate, and neither party shall be bound by any previous offers or discussions.

(4) Fifteen (15) days after the Meeting, the parties shall meet with the arbitrators in Subtenant's office in Houston, Texas (the "Second Meeting") at which time the Stadium Landlord and Subtenant may each submit evidence, be heard and cross-examine witnesses, and each of the parties will furnish the arbitrators with such information as the arbitrators may reasonably request. The Second Meeting shall be conducted such that the Stadium Landlord and Subtenant shall have reasonably adequate time to present oral evidence and argument (not to exceed five (5) hours each for the Stadium Landlord and Subtenant), but either party may present whatever written evidence it deems appropriate prior to the Second Meeting (with copies of such written evidence being sent to the other party).

(5) The sole task of the arbitrators shall be the selection of the Fair Market Rental Rate determined by either the Stadium Landlord or Subtenant (pursuant to the exchange of envelopes as provided above) as more accurately reflecting the true Fair Market Rental Rate as defined in Subsection (d) above. No other Fair Market Rental Rate may be determined by the arbitrators.

(6) The decision of the arbitrators shall be given within a period of thirty (30) days after the Second Meeting and, except as expressly provided above, the decision of any two (2) arbitrators so appointed and acting hereunder shall be in all cases binding and

conclusive upon the parties and shall be the basis for a judgment entered in any court of competent jurisdiction.

(7) The fees and expenses of the determination of the Fair Market Rental Rate under this Subsection(a) shall be borne by the party whose determination of the Fair Market Rental Rate was not selected by the arbitrators.

(g) Subtenant shall not be permitted to exercise a Renewal Option if at the time of such exercise a Tenant Default has occurred and is continuing under the Lease and Development Agreement (beyond the term of any cure period provided in the Lease and Development Agreement).

(h) The rights granted to Subtenant hereunder are assignable by Subtenant to any permitted successor or assignee of the Subtenant's leasehold estate and rights under the Lease and Development Agreement.

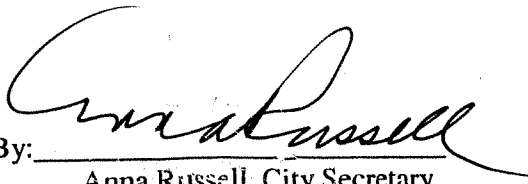
Section 16.4 Subtenant's Third Party Beneficiary Status to this Agreement. Landlord and Tenant hereby confirm, acknowledge and agree that Subtenant is, and shall at all times, be a third party beneficiary of this Agreement, fully entitled to enforce the terms, provisions, covenants and agreements of either Party set forth herein.

Section 16.5 Survival. The provisions of this Article 16 shall survive the expiration or termination of this Agreement, and shall continue in full force and effect thereafter to the same extent as if this Article 16 were a separate and independent contract and agreement among Landlord, Tenant and Subtenant.

**[Signature Pages Follow]**

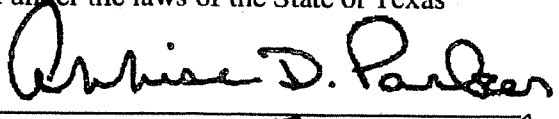
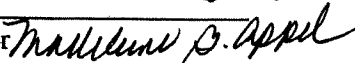
IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

**ATTEST:**

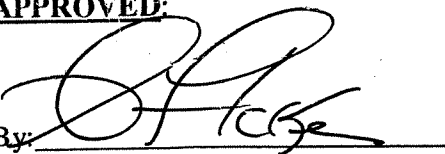
By:   
Anna Russell, City Secretary

**LANDLORD:**

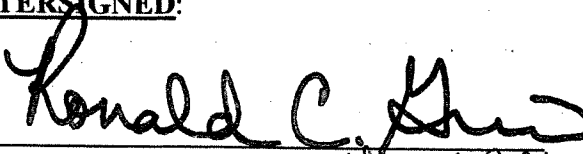

CITY OF HOUSTON, TEXAS, a home-rule city  
organized under the laws of the State of Texas

By:   
Annise D. Parker, Mayor 

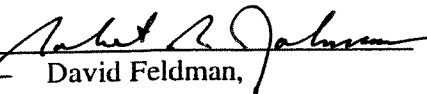
**APPROVED:**

By:   
Andrew F. Icken,  
Chief Development Officer

**COUNTERSIGNED:**

By:   
Ronald C. Green, Controller 

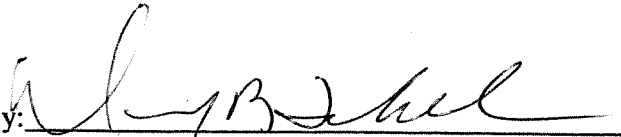
**APPROVED AS TO FORM:**

By:   
David Feldman,  
City Attorney

**DATE OF COUNTERSIGNATURE:**

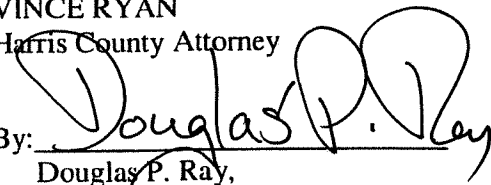
12-31-10

**HARRIS COUNTY, TEXAS**

By:   
David B. Turkel, Director, Community Services  
Department

**APPROVED AS TO FORM:**

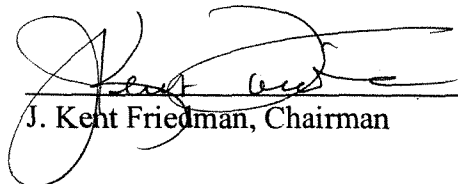
VINCE RYAN  
Harris County Attorney

By:   
Douglas P. Ray,  
Assistant County Attorney

**TENANT:**

**HARRIS COUNTY-HOUSTON SPORTS  
AUTHORITY**, a sports and community venue  
district created under Chapter 335 of the Texas  
Local Government Code


By:

  
\_\_\_\_\_  
J. Kent Friedman, Chairman

**JOINDER BY SUBTENANT**

The Subtenant has joined in the execution of this Agreement for the sole purposes of consenting to the terms and conditions set forth in Sections 3.2, 8.6, 12.4 and 12.5 hereof and agreeing to be bound thereby.

**DYNAMO STADIUM, LLC,**  
a Delaware limited liability company

By:   
Name: Dan Beckerman  
Title: Chief Operating Officer & CFO

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF STADIUM SITE**

Unrestricted Reserve "A" , East End Economic Development Site, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.

**EXHIBIT A-2**  
**OUTLINE OF STADIUM SITE**





**EXHIBIT B**

**LEASE AND DEVELOPMENT AGREEMENT**

# **LEASE AND DEVELOPMENT AGREEMENT**

**by and between**

**HARRIS COUNTY-HOUSTON SPORTS AUTHORITY,  
as Landlord**

**and**

**DYNAMO STADIUM, LLC,  
as Tenant**

**Dated as of February 18, 2011**

**DYNAMO SOCCER STADIUM  
HOUSTON, HARRIS COUNTY, TEXAS**

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Exhibit G	Tenant's Site Preparation Work

## LEASE AND DEVELOPMENT AGREEMENT

THIS LEASE AND DEVELOPMENT AGREEMENT (this "**Lease**") is made and entered into effective as of February 18, 2011 (the "**Execution Date**") by and between the **HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**, a sports and community venue district created under Chapter 335 of the Texas Local Government Code ("**Landlord**"), and **DYNAMO STADIUM, LLC**, a Delaware limited liability company ("**Tenant**"). Landlord and Tenant are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

### RECITALS

A. Landlord leases certain real property situated in the City of Houston, Harris County, Texas from Prime Lessor pursuant to the Prime Lease.

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Leased Premises in accordance with the terms hereof.

C. In connection with its lease of the Leased Premises, Tenant desires to undertake the development, construction, operation and maintenance of a multi-purpose sports and entertainment facility with related parking and infrastructure in accordance with the terms hereof.

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### GENERAL TERMS

**1.1 Definitions and Usage.** Unless the context shall otherwise require, capitalized terms used in this Lease shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A, which also contains rules as to usage that shall be applicable herein.

**1.2 Governing Provisions.** The governing provisions set forth in Appendix B attached hereto shall apply to and govern this Lease for all purposes.

## ARTICLE II

### REPRESENTATIVES

**2.1 Landlord Representative.** Landlord hereby designates the Chairman of the Board of Directors of Landlord to be the representative of Landlord (the "**Landlord Representative**"), and shall have the right, from time to time, to change the individual or individuals who are the Landlord Representative by giving at least ten (10) days prior written Notice to Tenant thereof. The only functions under this Lease of the Landlord Representative shall be as expressly specified in this Lease. Any written Approval, decision, confirmation or determination of any one of the individuals from time to time serving as the Landlord Representative acting alone and without the joinder of the other individuals then serving as the Landlord Representative shall be binding on Landlord but only in those instances in which this Lease specifically provides for the Approval, decision, confirmation or determination of the Landlord Representative and in no other instances; *provided, however*, that notwithstanding anything in this Lease to the contrary, the Landlord Representative shall not have any right to modify, amend or terminate this Lease.

**2.2 Tenant Representative.** Tenant hereby designates each of Ted Fikre and Charlie Thornton to be the representative of Tenant (the "**Tenant Representative**"), each of whom shall be authorized to act on behalf of Tenant under this Lease; *provided, however*, that Mr. Thornton shall only be authorized to act with respect to design and construction matters and only prior to Final Completion of the Project Improvements Work. Tenant shall have the right, from time to time, to change the individual who is the Tenant Representative by giving at least ten (10) days prior written Notice to Landlord thereof. With respect to any such action, decision or determination to be taken or made by Tenant under this Lease, the Tenant Representative shall take such action or make such decision or determination or shall notify Landlord in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination hereunder by the Tenant Representative shall be binding on Tenant; *provided, however*, that notwithstanding anything in this Lease to the contrary, the Tenant Representative shall not have any right to modify, amend or terminate this Lease.

## ARTICLE III

### LEASED PREMISES

#### 3.1 Grant.

**3.1.1 Grant of Leased Premises; Habendum.** In consideration of and pursuant to the covenants, agreements and conditions set forth herein, Landlord does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby rent and lease from Landlord, on and subject to the terms, conditions and provisions of this Lease, the Leased Premises, for the Term set forth in Article V hereof.

TO HAVE AND TO HOLD the Leased Premises unto Tenant for the Term pursuant to the terms and conditions of this Lease.

### **3.2 Delivery of Possession; Covenant of Quiet Enjoyment; Leasehold Priority.**

**3.2.1 Delivery of Possession.** On the Lease Commencement Date, Landlord will deliver to Tenant exclusive possession, use and occupancy of the Leased Premises free of all tenancies and parties in possession subject only to (i) the Permitted Exceptions and (ii) the rights and reservations of Landlord under this Lease. Subject to Tenant's rights to access the Leased Premises pursuant to Section 9.2, Tenant shall not have the right to use or occupy any part of the Leased Premises prior to the Lease Commencement Date.

**3.2.2 Covenant of Quiet Enjoyment.** Landlord covenants for the Term that Tenant, upon paying the Rent and upon keeping, timely observing and performing the terms, covenants and conditions of this Lease to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use and enjoy the Leased Premises during the Term without ejection or interference by or from Landlord or any other Person claiming by, through or under Landlord (other than Persons claiming by, through or under Tenant), subject only to (i) rights of permitted Subtenants arising by, through or under Tenant, (ii) the Permitted Exceptions, (iii) Applicable Law and (iv) the rights and reservations of Landlord under this Lease.

**3.2.3 Leasehold Priority.** Landlord covenants and agrees that (a) Tenant's leasehold estate in the Leased Premises shall be senior and prior to any Lien or other Encumbrance other than the Permitted Exceptions, the Leased Premises Reservations and any other Encumbrance arising by, through or under Tenant or any Affiliate or Related Party of Tenant or permitted pursuant to the terms of this Lease, and (b) except for the rights contained in the Permitted Exceptions and the Leased Premises Reservations, no third party shall have any right, title or interest in the Leased Premises adverse to Tenant's right, title and interest to the Leased Premises under this Lease. Further, Landlord agrees that Landlord will not grant any third Person the right to use, occupy or operate the Leased Premises during the Term, except pursuant to the Permitted Exceptions and the Leased Premises Reservations. The foregoing does not extend to any Liens arising by, through or under Tenant or its agents acting in such capacity.

**3.2.4 Operational Rights; Revenue.** Subject to the terms and provisions of this Lease, Tenant shall have full and exclusive control of the management and operation of the Leased Premises. Without limiting the generality of the foregoing, but subject to the terms of this Lease, Tenant shall own all revenues of any source generated by or from the Leased Premises or the operation or management thereof, including all sublease and other rental or license fees, admission ticket revenue, all parking fees, all revenues derived from the sale of programs, novelties and concessions, all sponsorship revenues and facility naming revenues, all radio, television, cablecast, pay television and any other broadcasting revenues of any type whatsoever, irrespective of method of transmission or whether derived from the sale of broadcasting rights, broadcast advertising or other sources of revenue relating to broadcasting, and all advertising and signage revenues of any type whatsoever, including all revenues from the sale of advertising and signage on scoreboards and in all other places on or about the Leased Premises.

**3.3 Leased Premises Reservations.** Notwithstanding anything in this Lease to the contrary, Landlord hereby reserves (and the Leasehold Estate shall not include) the following (the "**Leased Premises Reservations**"):

**3.3.1 Ingress and Egress.** For the benefit of the public and Landlord, the non-exclusive right of ingress and egress to, from and across the outside public areas located on the Leased Premises.

**3.3.2 Utilities.** The right of Landlord, at Landlord's sole cost and expense, to install on, under, over or below the Leased Premises any and all utilities and appurtenances related thereto that it reasonably deems necessary; *provided, however*, that Tenant shall be given at least sixty (60) days to review and approve the location, nature, and scope of any such utilities, which Approval shall not be unreasonably withheld, but Tenant may disapprove if such utilities or appurtenances do not comply with the following conditions: (a) all such utilities and appurtenances shall be located in the building or parking setback areas affecting the Land and shall not interfere in any material respect with Tenant's use of such setback area; (b) all pipes, lines, and other improvements shall be buried to a depth of at least three feet (3'); and (c) Tenant shall have the right to cross such utilities and appurtenances and to construct roads, sidewalks and driveways over such utilities and appurtenances. All construction of such utility lines and appurtenances shall be promptly completed and shall not interfere with Tenant's construction activities, conduct of business or obligations under Applicable Laws. In addition, Landlord shall promptly repair or replace all landscaping, trees, irrigation lines, surface materials, paving, asphalt, concrete, fences, sidewalks and other facilities located on the Leased Premises to the condition that existed prior to such utility construction or maintenance at no cost or expense to Tenant.

## **ARTICLE IV**

### **PRIME LEASE**

**4.1 Prime Lease.** Landlord shall perform and comply with all of the terms, conditions and obligations of Landlord, as tenant, under the Prime Lease as and when required to be performed or complied with thereunder; *provided, however*, Landlord shall not be responsible for performing any actions that are the responsibility of Tenant under the Prime Lease and Tenant covenants to perform such actions and to otherwise comply with the terms of the Prime Lease with regard to Tenant's use and occupancy of the Leased Premises. Landlord shall not amend, modify or terminate the Prime Lease without the prior written consent of Tenant, which consent shall not be unreasonably withheld. At Tenant's cost and expense, Landlord shall enforce its rights and remedies against the Prime Lessor under the Prime Lease as fully as if Landlord were the tenant under this Lease to protect the interests of Tenant under this Lease. Further, Tenant shall be a third-party beneficiary of the rights of Landlord as tenant under the Prime Lease, with the right to enforce such rights directly against Prime Lessor, subject to the terms of the Prime Lease.

## ARTICLE V

### TERM

**5.1 Term.** The term of this Lease (the "**Term**") shall commence at 12:00 a.m. on the day immediately following the date that is the later of (i) the date on which all of the Conditions to Commencement described in Section 8.1 have been fully satisfied or waived and (ii) the date Landlord receives written certification from Tenant, executed by a Responsible Officer of Tenant, stating that all of the Conditions to Commencement specified in Section 8.1 have been satisfied (the "**Lease Commencement Date**"), and expire on the Lease Expiration Date. The Term shall consist of the Construction Term and, provided that all of the prerequisites to commencement of the Operating Term specified in Section 5.3 are fully satisfied or waived on or before the Mandatory Substantial Completion Deadline, an Operating Term, which shall run consecutively.

**5.2 Construction Term.** The construction term under this Lease (the "**Construction Term**") shall commence on the Lease Commencement Date and shall end on 11:59 p.m. on the date that is the earlier of (i) the Mandatory Substantial Completion Deadline and (ii) the date all of the prerequisites to commencement of the Operating Term specified in Section 5.3 are satisfied. If all of the prerequisites to commencement of the Operating Term specified in Section 5.3 are not fully satisfied or waived on or before the Mandatory Substantial Completion Deadline, this Lease shall terminate on the Mandatory Substantial Completion Deadline and there shall be no Operating Term under this Lease.

**5.3 Operating Term.** Provided that all of the following prerequisites are satisfied on or before the Mandatory Substantial Completion Deadline (collectively, the "**Conditions to Commencement of the Operating Term**"), the Term of this Lease shall continue for a period that commences at 12:00 a.m. on the day immediately following the expiration of the Construction Term (the "**Operating Term Commencement Date**") and ends on the Lease Expiration Date (the "**Operating Term**");

- (a) Substantial Completion and Commencement of Operations have occurred;
- (b) Tenant has delivered to Landlord a Substantial Completion Certificate that is in compliance with the requirements of Section 8.4.6; and
- (c) Tenant has paid to Landlord all Delayed Opening Payments payable pursuant to Section 8.5.1, if any.

## ARTICLE VI

### RENT; FUNDING OBLIGATIONS

**6.1 Payment of Rent.** Tenant shall pay to Landlord, without abatement, demand, set-off or counterclaim (except as expressly provided for herein), all Rent in accordance with Section 22 of Appendix B. Tenant hereby acknowledges and agrees that (i) Landlord and Tenant have expressly negotiated that except as otherwise expressly provided in this Lease, Tenant's covenants to pay Rent (and all other sums payable by Tenant under this Lease) are separate and

independent from Landlord's obligations hereunder, including any covenant to provide services and other amenities, if any, hereunder and (ii) had the Parties not mutually agreed upon the independent nature of Tenant's covenants to pay all Rent hereunder, Landlord would have required a greater amount of Rent in order to enter into this Lease, if at all.

**6.2 Rent.** Commencing on the dates set forth in Sections 6.3 below, and during each Lease Year thereafter, Tenant covenants and agrees to pay to Landlord rent as follows (collectively, "**Rent**"):

(a) Base Rent for each Lease Year of the Term as provided in Section 6.3.1, which Base Rent shall be due and payable in accordance with Section 6.3.2; and

(b) The Additional Rent as provided in Section 6.4, which Additional Rent shall be due and payable in accordance with Section 6.4.

**6.3 Calculation and Payment of Base Rent.**

**6.3.1 Base Rent.** Commencing with the first Lease Year of the Operating Term and continuing thereafter for the remainder of the Term, Tenant shall pay landlord a minimum annual rental equal to Sixty Five Thousand and No/100 Dollars (\$65,000.00), such amount to increase by a percent equal to the CPI Increase on a cumulative, compounding basis on each one year anniversary of the commencement of the Operating Term (the "**Base Rent**").

**6.3.2 Payment of Base Rent.** Base Rent shall be due and payable quarterly in arrears, without notice or demand, beginning on the first (1<sup>st</sup>) day of the second calendar quarter of the Operating Term and continuing on the first (1<sup>st</sup>) day of each calendar quarter thereafter for the remainder of the Term; *provided, however*, that if the Operating Term commences on a day other than the first (1<sup>st</sup>) day of a calendar quarter, the Base Rent for such partial quarter shall be pro-rated in accordance with the following sentence. Base Rent as to any fractional quarter during the Operating Term, whether at the beginning or end of the Operating Term, shall be pro-rated based on the actual number of days in the quarter in question.

**6.4 Additional Rent.** Tenant covenants and agrees to pay, as additional rental, all of the following (collectively, the "**Additional Rent**"):

(a) All Impositions as and when required to be paid under the terms of this Lease; and

(b) All costs, expenses, liabilities, obligations and other payments of whatever nature which Tenant has agreed to pay to Landlord under the provisions of this Lease as and when required to be paid pursuant to the terms of this Lease.

**ARTICLE VII**

**CONDITION OF LEASED PREMISES**

**7.1 Condition of Leased Premises; Disclaimer of Representations and Warranties.** TENANT ACKNOWLEDGES AND AGREES THAT AS BETWEEN TENANT AND

LANDLORD AND NOT IN DEROGATION OF ANY RIGHTS TENANT HAS AS A THIRD-PARTY BENEFICIARY OF THE PRIME LEASE:

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER LANDLORD NOR ANY RELATED PARTY OF LANDLORD MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND LANDLORD HEREBY DISCLAIMS AND TENANT WAIVES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LEASED PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER UNDERLYING THE LEASED PREMISES AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE LEASED PREMISES), (ii) THE SUITABILITY OF THE LEASED PREMISES OR THEIR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH TENANT MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE LEASED PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE PROJECT IMPROVEMENTS WORK, (v) THE EXISTENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF THE PROJECT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS ON THE LEASED PREMISES OR (vii) ANY OTHER MATTER RELATING TO THE PROJECT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;

(b) NO REVIEW, APPROVAL OR OTHER ACTION BY LANDLORD UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;

(c) AS OF THE LEASE COMMENCEMENT DATE, TENANT SHALL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND TENANT SHALL HAVE INSPECTED AND HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE LEASED PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) EXCEPT FOR LANDLORD'S REMEDIAL WORK, TENANT'S ACCEPTANCE OF THE LEASED PREMISES ON THE LEASE COMMENCEMENT DATE WILL BE STRICTLY ON AN "AS IS, WHERE IS" BASIS INCLUDING THE ENVIRONMENTAL CONDITION OF THE LEASED PREMISES.

**7.2 Tenant's Risks.** TENANT AGREES THAT, AS BETWEEN LANDLORD AND TENANT AND NOT IN DEROGATION OF ANY RIGHTS TENANT HAS AS A THIRD-PARTY BENEFICIARY UNDER THE PRIME LEASE, LANDLORD SHALL HAVE NO RESPONSIBILITY FOR ANY OF THE FOLLOWING (COLLECTIVELY, THE "**TENANT'S RISKS**"):



(a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON, INCLUDING THE ENVIRONMENTAL REPORTS;

(b) THE CONDITION, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION OR VALUE OF THE LEASED PREMISES;

(c) THE COMPLIANCE OF THE LEASED PREMISES OR ANY OTHER PROPERTY OF LANDLORD WITH ANY APPLICABLE LAND USE REGULATIONS OR ANY APPLICABLE LAW;

(d) THE FEASIBILITY OF THE PROJECT, PROJECT IMPROVEMENTS WORK OR ANY ADDITIONAL WORK;

(e) THE EXISTENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS OTHER THAN THOSE ARISING FROM AN ENVIRONMENTAL EVENT REQUIRED TO BE COVERED BY LANDLORD'S REMEDIAL WORK PURSUANT TO THE TERMS OF THIS LEASE;

(f) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LEASED PREMISES OR ANY ADJACENT PROPERTY; AND

(g) ANY OTHER MATTER RELATING TO ANY PROJECT IMPROVEMENTS OR ADDITIONAL IMPROVEMENTS.

LANDLORD SHALL NOT BE LIABLE AS A RESULT OF THE FAILURE BY ANY PERSON (OTHER THAN LANDLORD OR ITS AFFILIATES) TO ACT OR PERFORM THEIR OBLIGATIONS. IT IS UNDERSTOOD AND AGREED BY TENANT (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT, INCLUDING ITS RELATED PARTIES) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE CONDITION, STATUS AND NATURE OF ANY PERSON, THE LEASED PREMISES OR ANY OTHER PROPERTY.

## ARTICLE VIII

### CONDITIONS TO COMMENCEMENT OF TERM; TENANT DEADLINES AND DELIVERABLES

**8.1 Conditions to Commencement of Term.** Subject to extension as a result of (a) an Excusable Tenant Delay Period and/or Excusable Landlord Delay Period, as appropriate, (b) Landlord Delay, or (c) Prime Lessor Delay, in accordance with the terms of this Lease, in the event the conditions set forth below in Section 8.1.1 through Section 8.1.13 (the "**Conditions to Commencement**") are not satisfied or waived on or before the date that is two hundred seventy (270) days after the Execution Date, Landlord and Tenant shall each have the option in accordance with and subject to Section 8.3 below to terminate this Lease and all future obligations hereunder. Notwithstanding the foregoing, in no event shall Landlord have the right

to terminate this Lease for the failure of Tenant to satisfy the conditions listed in Section 8.1.5, 8.1.6, 8.1.7, 8.1.8 or 8.1.9 below.

**8.1.1 Project Schematics.** Landlord Representative shall have Approved the Project Schematics for Project Improvements; *provided, however*, that notwithstanding the foregoing, the Approval of Landlord (as opposed to Landlord Representative) must be obtained in connection with any change to the Project Schematics for Project Improvements that would constitute a Material Change, which Approval will not be unreasonably withheld.

**8.1.2 Governmental Authorizations.** Tenant shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the Project Improvements Work, including building permits and engineering and land use approvals necessary for the commencement of development and construction of the Project Improvements, recognizing that it is the intent of the Parties that, to the extent permitted by Applicable Law, the construction permits and authorizations may be procured in stages.

**8.1.3 Financing.** The Financing shall have closed and the proceeds thereof shall be available to Tenant to pay a portion of the Total Project Costs as set forth on the approved Project Budget as they become due and payable.

**8.1.4 Equity Commitment.** Tenant shall have received cash (or liquid assets or other cash equivalents or a financing based on historic or other tax credits) in an amount equal to the Equity Commitment and shall have provided Landlord with evidence reasonably acceptable to Landlord of such receipt and that such amounts are available to Tenant to pay the Total Project Costs as set forth on the approved Project Budget.

**8.1.5 Site Tests.** Tenant shall have, at its cost and expense as a portion of Total Project Costs, (a) conducted and completed such tests and studies of the Leased Premises as Tenant shall determine are reasonably necessary (the "Site Tests"), which Site Tests shall be conducted in accordance with generally accepted industry standards by independent third parties that are generally recognized as qualified in the relevant areas of testing and (b) provided Landlord with a copy of all written reports and studies produced in connection with the Site Tests.

**8.1.6 Title.** Tenant shall have, at its cost and expense as a portion of Total Project Costs, conducted such title review of the Leased Premises as Tenant determines is reasonably necessary and provided to Landlord a copy of any title commitments or reports received by Tenant in connection therewith.

**8.1.7 Survey.** Tenant shall have, at its cost and expense as a portion of Total Project Costs, obtained and delivered to Landlord Representative a survey of the Leased Premises, prepared by a surveyor licensed in the State of Texas and otherwise reasonably acceptable to Landlord Representative.

**8.1.8 Recognition Agreement.** The Prime Lessor shall have entered into an agreement (the "Recognition Agreement") in favor of Tenant whereby the Prime Lessor consents to the execution of this Lease by Landlord and the performance by Landlord of its obligations hereunder and provides that so long as a Tenant Default has not occurred and be

continuing the Prime Lessor agrees that the rights and remedies of Tenant hereunder shall not be diminished or interfered with by the Prime Lessor in the event the Prime Lessor terminates the Prime Lease or otherwise exercises any right of reentry or remedy under the Prime Lease.

**8.1.9 No Material Environmental Event.** No Environmental Event shall have occurred at the Leased Premises since the Execution Date that would reasonably require the expenditure by one of the Parties of an amount in excess of Five Hundred Thousand Dollars (\$500,000.00).

**8.1.10 Guaranty.** Tenant shall have delivered to Landlord the Guaranty executed by Guarantor, which Guaranty shall be effective as of the Lease Commencement Date.

**8.1.11 Team Lease.** Tenant shall have delivered to Landlord a fully-executed copy of the Team Lease.

**8.1.12 TSU Sublease.** Tenant shall have delivered to Landlord a fully-executed copy of the TSU Sublease.

**8.1.13 Parking.** Tenant shall have delivered to Landlord evidence reasonably satisfactory to Landlord that Tenant has secured contractual rights to no fewer than one thousand 1,000 parking spaces for use by Tenant and its agents, employees, invitees, licensees, and patrons for the parking of motor vehicles during events at the Leased Premises (the "**Parking Agreement**"). Such Parking Agreement must survive for its stated term and automatically be assigned upon the expiration or earlier termination of this Lease to (i) Landlord in the event the Prime Lease is still in full force and effect or (ii) Prime Lessor should the Prime Lease have terminated, all for the benefit of Landlord or Prime Lessor, as applicable, and their respective agents, employees, invitees, licensees, subtenants and patrons.

**8.2 Agreement to Consult and Status Reports.** At any reasonable time, prior to the Lease Commencement Date, as Tenant may from time to time reasonably request, Landlord Representative shall meet and consult with and reasonably assist Tenant with respect to satisfaction of the Conditions to Commencement. Commencing on the date which is thirty (30) days after the Execution Date and continuing monthly thereafter, Tenant shall give to the Landlord Representative (i) a written progress report each month concerning the status of Tenant's efforts to satisfy the Conditions to Commencement and (ii) a written report setting forth any new matters occurring since the date of the last monthly report that Tenant expects will change or significantly affect any such deadlines or milestones promptly after Tenant becomes aware of any such matters.

### **8.3 Termination for Failure of Conditions to be Satisfied.**

**8.3.1 Conditions to Commencement Not Satisfied.** If for any reason any Condition to Commencement has not been fully and timely satisfied (or waived in writing by Landlord Representative and Tenant, as applicable) by the applicable deadline provided herein (as the same may be extended by Landlord Representative), as the same may be extended by (a) an Excusable Landlord Delay Period or an Excusable Tenant Delay Period, (b) Landlord Delay, and/or (c) Prime Lessor Delay, as applicable and in accordance with this Lease, then such failure shall not be construed to be an Event of Default under this Lease, but in such event, either Party

may (subject to the limitations set forth in Section 8.1 hereof), by Notice to the other Party, as its sole and exclusive remedy, elect to terminate this Lease.

**8.3.2 Effect of Termination.** Upon any termination of this Lease pursuant to Section 8.3.1 above, the Parties hereto shall have no further rights, obligations or liabilities under this Lease (except pursuant to the provisions of this Lease which expressly survive such termination in accordance with the terms of this Section 8.3). In such event, the Parties, within thirty (30) days after such termination, shall execute and deliver full and final mutual releases and mutual agreements not to sue concerning this Lease (except to the extent of any obligations which expressly are to survive such termination pursuant to this Section 8.3). Notwithstanding anything contained herein to the contrary, in the event of a termination of this Lease under this Section 8.3, the following provisions shall survive any such termination: the provisions of Section 17.4, Section 19.8, Section 23.1, Section 23.3, Section 26.1, Section 26.4, Appendix A and Appendix B (to the extent such Appendices are necessary to interpret the foregoing Sections of the Lease) shall survive until the date which is two (2) years following the date of such termination.

**8.3.3 Quit Claim.** If this Lease is terminated pursuant to this Section 8.3, Tenant shall furnish to Landlord, at Tenant's expense, a quitclaim and termination of this Lease, in recordable form, and quitclaim to Landlord all right, title and interest of Tenant in and to all reports and documentation relating to the condition of the Leased Premises. The Parties hereby agree that upon any such termination of this Lease pursuant to this Section 8.3, the Parties automatically shall be released from any future obligations under this Lease which arise after the date of termination but shall not be released from any obligations described in Section 8.3.2 as surviving the date of termination or the foregoing sentence.

**8.4 Tenant Deadlines Subsequent to Commencement of Construction Term.** Subject to extension as a result of an Excusable Tenant Delay Period, Landlord Delay, and/or Prime Lessor Delay, in accordance with the terms of this Lease and after the Lease Commencement Date, Tenant shall meet the following deadlines in connection with the following matters:

**8.4.1 Scheduled Project Start Date Milestone.** Tenant shall cause the construction of the Project Improvements Work to commence on or before the day that is one hundred twenty (120) days after the Lease Commencement Date.

**8.4.2 Project Budget.** Tenant will provide Landlord Representative with an updated version of the Project Budget in the Tenant reports as required by Section 8.4.4.

**8.4.3 Project Construction Schedule.** Tenant will provide to Landlord Representative an updated version of the Project Construction Schedule in the Tenant reports as required by Section 8.4.4.

**8.4.4 Project Construction Status Reports.** Tenant shall provide written reports to Landlord Representative regarding the status of the Project Improvements Work not less frequently than once every month, which reports shall include (i) any new or additional facts discovered by Tenant or any circumstances known to Tenant that occur during the course of the Project Improvements Work which in Tenant's reasonable opinion materially change the Total

Project Costs or materially affect Tenant's ability to achieve Substantial Completion and Commencement of Operations on or before the Substantial Completion Deadline, including any Excusable Tenant Delay, Landlord Delay or Prime Lessor Delay and reasonable detail of such facts or circumstances and (ii) any material change to the Project Construction Schedule or the Project Budget.

**8.4.5      Substantial Completion.** Tenant shall use commercially reasonable efforts to cause Substantial Completion and Commencement of Operations to occur on or before the Substantial Completion Deadline.

**8.4.6      Substantial Completion Certificate.** On or before the Substantial Completion Deadline, Tenant shall use commercially reasonable efforts to deliver to Landlord Representative a written certification, which has been executed by a Responsible Officer of Tenant (the "**Substantial Completion Certificate**"), certifying the date upon which Substantial Completion and the Commencement of Operations actually occurred, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same.

**8.4.7      Final Completion.** On or before the date which is one hundred eighty (180) days after the commencement of the Operating Term, Tenant shall use commercially reasonable efforts to cause Final Completion of the Project Improvements Work to occur and deliver to Landlord Representative a written certification (together, with such documents as Landlord shall reasonably request to substantiate same), which has been executed by a Responsible Officer of Tenant, certifying that (i) all aspects of Final Completion of the Project Improvements Work have been achieved, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same and the date of Final Completion and (ii) Tenant has fulfilled its obligations under Section 9.7.

## **8.5 Extension of Project Completion Deadline; Termination.**

**8.5.1      Extension of Project Completion Deadline.** If on or before the Substantial Completion Deadline, all of the Conditions to Commencement of the Operating Term have not been fully satisfied, then for each day after the Substantial Completion Deadline which elapses before the Mandatory Substantial Completion Deadline until all of the Conditions to Commencement of the Operating Term have been fully satisfied, Tenant shall pay Landlord the Delayed Opening Payment to extend the Substantial Completion Deadline and the Substantial Completion Deadline shall be extended by one (1) calendar day for each day that Tenant pays Landlord such Delayed Opening Payment, but in no event beyond the Mandatory Substantial Completion Deadline; *provided, however*, Tenant must also be diligently and continuously prosecuting the satisfaction of all Conditions to Commencement of the Operating Term and have provided Landlord with a reasonably detailed plan designed to achieve satisfaction of all Conditions to Commencement of the Operating Term on or before the Mandatory Substantial Completion Deadline. Landlord and Tenant agree that Tenant's obligation to pay Delayed Opening Payments under this Section 8.5.1 shall not limit any rights or remedies that Landlord may have in the event Tenant fails to satisfy the Conditions to Commencement of the Operating Term by the Mandatory Substantial Completion Deadline. The Delayed Opening Payments, if any, shall be payable in arrears on the earlier of (i) Substantial Completion of the Project Improvements Work or (ii) the last Business Day of each month until

the Mandatory Substantial Completion Deadline (and a pro-rata payment on the Mandatory Substantial Completion Deadline should that date not fall on the last Business Day of the month).

**8.5.2 Termination.** If for any reason Tenant fails to satisfy all of the Conditions to Commencement of the Operating Term on or before the Mandatory Substantial Completion Deadline, then (i) such event shall be considered a Tenant Default under this Lease, (ii) this Lease and the Project Documents shall automatically terminate as of the Mandatory Substantial Completion Deadline and there shall be no Operating Term, and (iii) notwithstanding such automatic termination, Landlord shall be entitled to pursue all rights and remedies available to Landlord pursuant to Section 24.2.1(e).

**8.6 Site Preparation Prior to Lease Commencement Date.** Notwithstanding the foregoing and notwithstanding that the Conditions to Commencement have not been satisfied, on or after the date when the Leased Premises is "Ready for Construction" (as such term is defined in the Prime Lease), Tenant shall have the right to enter the Leased Premises during the Pre-Construction Period to perform the site preparation work described in Exhibit G (subject to the terms and conditions of Appendix E).

## ARTICLE IX

### CONSTRUCTION OF THE PROJECT IMPROVEMENTS; GENERAL WORK REQUIREMENTS

#### **9.1 General Provisions.**

**9.1.1 Project Improvements.** Tenant shall design, develop and construct, or have designed, developed and constructed, the Project Improvements within the Leased Premises in accordance with the terms and conditions of this Lease and all Applicable Laws, and shall use commercially reasonable efforts to adhere to the Project Construction Schedule (subject to any Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay permitted in accordance with the terms of this Lease), in each case, at Tenant's sole cost, risk and expense.

**9.1.2 Project Specifications.** Tenant covenants and agrees that the construction of the Project Improvements at and within the Leased Premises will include the following general program elements and design specifications (the "**Project Specifications**"):

- (a) A multi-purpose soccer stadium for sporting events, concerts, family shows, trade shows and similar events containing approximately 300,000 square feet of gross building area, with approximately 21,000 seats;
- (b) Concession stands;
- (c) Locker rooms for the home and visiting teams;
- (d) Those terms and amenities described in the TSU Sublease; and

(e) All other related facilities and improvements generally described in the Project Program submitted to Landlord on October 17, 2010 by Franklin D.R. Jones, Jr. on behalf of the Project Architect, a copy of which is attached hereto as Schedule 9.1.2.

**9.2 Tenant Due Diligence.** In connection with Tenant's efforts to satisfy the Conditions to Commencement (and during the Pre-Construction Period), Tenant shall be permitted to access the Leased Premises on the terms and conditions set forth in Appendix E.

### **9.3 Remedial Work.**

**9.3.1 Tenant's Remedial Work.** Tenant hereby acknowledges that it has received and reviewed the Environmental Reports. Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigations, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event or any Hazardous Materials present at, in, on, or under the Leased Premises to the extent arising from and after the Lease Commencement Date ("**Tenant's Remedial Work**"); provided, however, under no circumstances shall Tenant's Remedial Work include Landlord's Remedial Work and/or City's Remedial Work. Prior to undertaking any Tenant's Remedial Work, Tenant shall obtain the Approval (not to be unreasonably withheld) of Landlord Representative of the steps Tenant proposes to take with respect to any Tenant's Remedial Work and Tenant shall select, subject to the Approval of Landlord Representative, an independent environmental consultant or engineer to oversee Tenant's Remedial Work. To the extent Landlord has a claim against any third Person with respect to any Environmental Event that is included in Tenant's Remedial Work, Landlord hereby assigns to Tenant, as of the date Tenant is required to perform the related Tenant's Remedial Work, such claim insofar as it relates to the cost of Tenant's Remedial Work or any damages suffered by Tenant in connection with such Environmental Event, and Landlord shall reasonably cooperate with Tenant and provide Tenant with such information as Tenant shall reasonably request in pursuing such claim against any such Person. Notwithstanding the foregoing, in no event shall Tenant's responsibility for Tenant's Remedial Work in this Lease prevent Tenant from exercising, or affect the ability of Tenant to exercise, any of its rights and remedies against City as a third-party beneficiary of the rights of Landlord as tenant under the Prime Lease with respect to any Environmental Event or any Hazardous Materials present, at, in or under the Leased Premises.

**9.3.2 Landlord's Remedial Work.** Landlord shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigations, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event or any Hazardous Materials present at, in, on or under the Leased Premises to the extent caused by Landlord (or any Related Party) from and after the Lease Commencement Date ("**Landlord's Remedial Work**"). Tenant shall promptly inform Landlord of any such Environmental Event or any Hazardous Material discovered by Tenant (or any agent, contractor, subcontractor, other tenant or licensee of Tenant) in, on or under the Leased Premises and promptly shall furnish to Landlord any and all reports and other information available to Tenant concerning the matter. Landlord and Tenant shall promptly thereafter meet to discuss the steps to be taken to investigate and, if necessary, remedy such matter, including mutual selection of an independent

environmental consultant to evaluate the condition of the Leased Premises and any materials thereon and therein. If it is determined pursuant to an evaluation conducted by the mutually selected independent environmental consultant that remediation of the same is required by this Section 9.3.2, then Landlord shall pay the costs of such evaluation and Tenant shall perform Landlord's Remedial Work at Landlord's cost and expense and with due diligence and in compliance with all Applicable Laws.

**9.3.3 City's Remedial Work and Pre-Existing Environmental Conditions; Ready for Construction.** Landlord and Tenant understand that the Prime Lease requires the City to be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigations, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event with regard to the Leased Premises occurring prior to the Lease Commencement Date (and not caused by or under Tenant or Landlord) or any Pre-Existing Environmental Conditions (collectively, "City's Remedial Work"). Further, Landlord and Tenant understand that the Prime Lease requires the City to be responsible for performing or causing to be performed, and for paying the cost of performing, work required for the Leased Premises to be "Ready for Construction" (as such term is defined in the Prime Lease). If, after the Lease Commencement Date, a Pre-Existing Environmental Condition or an Environmental Event shall be discovered which is part of City's Remedial Work, or it is discovered that the Leased Premises are not Ready for Construction, Tenant shall have the right, but not the obligation, to perform or cause to be performed any and all corrective or remedial actions pursuant to the terms of the Prime Lease and pursuant to the terms of this Lease including the requirements of Section 9.3.1 as if such work constituted Tenant's Remedial Work. Notwithstanding the foregoing, in no event shall the terms of this Section 9.3.3 preclude Tenant from pursuing, or affect Tenant's ability to pursue, a claim against City as a third-party beneficiary of Landlord's rights under the Prime Lease with regard to any Pre-Existing Environmental Conditions.

**9.3.4 Waste Disposal.** All construction wastes resulting from any Construction Work shall be disposed of appropriately by Tenant based on its waste classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

**9.3.5 No Cost to Landlord.** For the avoidance of doubt it is understood and agreed that, subject to Section 9.3.2, Landlord shall not be responsible for the cost of any of Tenant's Remedial Work.

#### **9.4 Work Performed on Project Improvements and Additional Work.**

**9.4.1 General Requirements.** Tenant shall not do or permit others to do any Construction Work, (i) prior to the Lease Commencement Date, except as otherwise permitted by and pursuant to the requirements of Section 8.6, (ii) unless and until Tenant shall have first procured and paid for all Governmental Authorizations then required for the Construction Work being then performed, (iii) with respect to any Project Improvements Work and Material Additional Work only, unless and until Tenant shall have submitted the Project Plans or the Material Additional Work Plans, as applicable, for Approval pursuant to the terms of this Lease, as and if required, (iv) unless and until Tenant shall have delivered to Landlord



Representative evidence of its compliance with Section 9.4.4 and (v) unless and until Tenant is in compliance with all Insurance Covenants. It is understood and agreed that, to the extent permitted by Applicable Law, such permits and authorizations may be procured in stages. All Construction Work shall be (a) prosecuted with due diligence and completed with all reasonable dispatch (provided that with respect to the Project Improvements, by the Substantial Completion Deadline, and with respect to Material Additional Work, in accordance with the Material Additional Work Construction Schedule, as each may be extended by Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay, in accordance with the terms of this Lease), (b) designed, constructed and performed in a good and workmanlike manner in accordance with standard design or construction practice, as applicable, for the design or construction of improvements similar to the Improvements in question or the performance of the work in question, pursuant to a Project Design Contract and a Project Construction Contract, (c) constructed and performed using qualified workers and subcontractors, (d) constructed and performed in accordance with all Applicable Law, the requirements of this Lease and, to the knowledge of Tenant, the requirements, rules and regulations of all insurers of the Leased Premises and (e) subject to Section 9.5 below, free of any Liens other than any Leasehold Mortgage permitted pursuant to this Lease. Without limiting the foregoing and with respect to the Project Improvements Work only, Tenant shall use commercially reasonable efforts to adhere to the Project Construction Schedule. Tenant shall take commercially reasonable measures and precautions to minimize the risk of damage, disruption or inconvenience caused by such work on properties in the immediate vicinity of the Leased Premises in accordance with the Operating Standard and make adequate provisions for the safety of all Persons affected thereby in connection with any Construction Work. Except and to the extent as otherwise expressly set forth herein, Tenant shall be responsible for all costs incurred in connection with any Construction Work. Dust, noise and other effects of such work shall be controlled using commercially accepted methods so as to comply with all Applicable Laws.

**9.4.2 Record Drawings and Other Documents.** Upon completion of any Project Improvements Work or any Material Additional Work, Tenant shall furnish to Landlord (i) three (3) complete, legible, full-size sets of record drawings (prepared in accordance with the Project Design Contract in the case of the Project Improvements Work, and in accordance with accepted industry standards, to the extent appropriate considering the work performed in the case of any Material Additional Work in question) and (ii) copies (certified by Tenant as being true, correct and complete) of all Governmental Authorizations required for the use, occupancy and operation of all aspects and areas of the Leased Premises in accordance with the terms of this Lease, including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease.

**9.4.3 Retention of Drawings and Other Documents.** Tenant shall retain and at all times maintain at a business office within the Leased Premises, at least one (1) complete, legible, full-size set of all working drawings in accordance with accepted industry standards regarding the Project Improvements, to the extent appropriate considering all work performed to date and the Improvements as they then exist, and certified true copies of all Governmental Authorizations, including (if applicable) all certificates of occupancy or their equivalent for the Leased Premises as they then exist, as shall then be required by any Governmental Authority. After termination or expiration of this Lease following the commencement of the Construction Term, Tenant shall permit Landlord to use (but not own) for

purposes related to the Project Improvements all such working drawings retained by Tenant under this Section 9.4.3, and at all times during the Term, the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than two (2) days' notice to Tenant, to examine, inspect, review, copy and otherwise use the same, all in accordance with the Project Design Contract.

**9.4.4 Contract Requirements.** Tenant shall cause (i) all contracts with any contractor regarding the construction of any Construction Work to be entered into with a Qualified Contractor and to require such contractor to perform such Construction Work in a good and workmanlike manner, (ii) all contracts with any architect or design professional regarding any Construction Work to be entered into with a Qualified Design Professional, (iii) the Project Design Contract and any Material Additional Work Design Contract to permit Landlord to use (but not own) following the commencement of the Construction Term any plans and specifications to which Tenant is then entitled pursuant to any such Project Design Contract or Material Additional Work Design Contract; *provided* that Landlord assumes the future obligations of Tenant under such contract including the obligation to pay any future sums due under such contract, (iv) the Project Construction Contract and any Material Additional Work Construction Contract to provide for statutory retainage in accordance with the then current requirements of the Texas Property Code and to contain a representation and warranty that the Construction Work covered by such agreements will be warranted from defects in workmanship and materials for a period of at least one (1) year from the date of Final Completion of such Construction Work (unless a longer period of time is provided for by the manufacturer or supplier of any materials or equipment which is a part of such Construction Work) and an assignment to Landlord of the right to enforce such warranty as to any Project Improvements, to the same extent as if Landlord were a party to the contract, (v) the Project Construction Contract and the Project Design Contract to require the Project Contractor and the Project Architect to comply with the terms of Section 9.12 hereof and (vi) the Project Construction Contract to (a) cover all of the Project Improvements Work through Final Completion, (b) provide for a fixed price or a guaranteed maximum price for all such work, (c) require Substantial Completion to be achieved in accordance with the terms of this Lease (except as otherwise Approved by Landlord Representative pursuant to Section 11.1.5), (d) be bonded by a Qualified Surety pursuant to statutory payment and performance bonds which have been Approved by Landlord Representative, such Approval not to be unreasonably withheld, naming Landlord as a co-obligee (except as otherwise Approved by Landlord Representative pursuant to Section 11.1.5) (collectively, the "**Project Construction Contract Bond**") and which covers the payment and performance obligations of the Project Contractor under the Project Construction Contract and (e) require that upon Substantial Completion, Tenant will continue to retain an amount at least equal to the greater of \$150,000 or two times the cost to complete the Project Improvements Work in order to achieve Final Completion unless a lesser amount is Approved by Landlord's Representative (collectively, the "**Project Construction Contract Requirements**").

**9.4.5 Landlord's Joinder in Permit Applications.** Landlord agrees, with reasonable promptness after receipt of a Notice therefor from Tenant, to execute, acknowledge and deliver (or to join with Tenant in the execution, acknowledgment and delivery of), at Tenant's cost and expense as a portion of Total Project Costs if incurred with regard to the Project Improvements Work, in its capacity as the ground lessee of the fee interest in the Leased

Premises, as necessary and on terms (and with respect to any easement, along such route) as Approved by the Landlord Representative: (i) any and all applications for replatting, rezoning, licenses, permits, vault space, alley closings or other Governmental Authorizations of any kind or character (including the resubdivision of the Leased Premises into a single lot or parcel or separate lots or parcels for purposes of assessment and taxation) required of Tenant by any Governmental Authority in connection with the operation, construction, alteration, repair or demolition, in accordance with this Lease, of Improvements located on the Leased Premises, and (ii) easements or rights-of-way for public utilities or similar public facilities over and across any portion of the Leased Premises for a term not exceeding the then remaining term of this Lease which may be useful or necessary in the proper economic and orderly development of the Project Improvements to be erected thereon in accordance with this Lease; *provided, however*, that (1) notwithstanding anything herein to the contrary, (y) Landlord shall not be obligated to execute any agreement or to do any other act that requires, or that could require, Landlord to pay any sum or that would subject Landlord or any interest of Landlord in the Leased Premises or in any other Property of Landlord to any Lien and (z) nothing in this Section 9.4.5 shall constitute a waiver or delegation of any Governmental Functions of the Prime Lessor or Landlord or constitute the Approval by Landlord or the Prime Lessor in their representative capacities as a Governmental Authority to any such applications, (2) any such requests by Tenant shall be subject and subordinate to the Permitted Exceptions.

**9.5 Mechanics' Liens and Claims.** If any Lien shall be filed against Landlord or Prime Lessor's interest in the Leased Premises, Landlord, Prime Lessor or any Property of Landlord or Prime Lessor by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises (collectively, any "**Mechanic's Lien**") by or on behalf of Tenant, any Affiliate of Tenant or anyone claiming by, through or under Tenant or any Affiliate of Tenant, Tenant shall, at its cost and expense but as a portion of Total Project Costs if incurred in connection with the Project Improvements Work, after notice of the filing thereof but in no event less than thirty (30) days prior to the foreclosure of any such Mechanic's Lien, cause the same to be satisfied or discharged of record, or effectively prevent, to the reasonable satisfaction of Landlord Representative, the enforcement or foreclosure thereof against Landlord or Prime Lessor's interest in the Leased Premises, Landlord, Prime Lessor or any Property of Landlord or Prime Lessor by injunction, payment, deposit, bond, order of court or otherwise. If Tenant fails to satisfy or discharge of record any such Mechanic's Lien, or effectively prevent the enforcement thereof, by the date which is thirty (30) days prior to the foreclosure thereof, then Landlord shall have the right, but not the obligation, to satisfy or discharge such Mechanic's Lien by payment to the claimant on whose behalf it was filed, and Tenant shall reimburse Landlord within fifteen (15) days after demand for all amounts paid by Landlord (including reasonable attorneys' fees, costs and expenses), together with interest on such amounts at the Default Rate from the date of demand for such amounts by Landlord until reimbursed by Tenant, without regard to any defense or offset that Tenant has or may have had against such Mechanic's Lien claim. Tenant shall indemnify, defend and hold Landlord and Prime Lessor harmless from and against any and all such Mechanic's Liens (including, all costs, expenses and liabilities, including reasonable attorneys' fees and court costs, so incurred in connection with such Mechanic's Liens). **IT IS THE INTENT OF LANDLORD AND TENANT THAT NOTHING CONTAINED IN THIS LEASE SHALL (1) BE CONSTRUED AS A WAIVER OF PRIME LESSOR'S OR LANDLORD'S LEGAL IMMUNITY AGAINST MECHANIC'S LIENS ON ITS PROPERTY AND/OR ITS CONSTITUTIONAL AND**

STATUTORY RIGHTS AGAINST MECHANIC'S LIENS ON ITS PROPERTY, INCLUDING THE LEASED PREMISES, OR (2) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF LANDLORD OR PRIME LESSOR FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, TENANT THAT WOULD GIVE RISE TO ANY SUCH MECHANIC'S LIEN AGAINST PRIME LESSOR'S OR LANDLORD'S INTEREST IN THE LEASED PREMISES, THE PROJECT, OR ANY PROPERTY OF LANDLORD OR PRIME LESSOR, OR IMPOSING ANY LIABILITY ON LANDLORD OR PRIME LESSOR FOR ANY LABOR OR MATERIALS FURNISHED TO OR TO BE FURNISHED TO TENANT UPON CREDIT. LANDLORD OR PRIME LESSOR SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY IN THE LEASED PREMISES TO POST AND KEEP POSTED ON THE LEASED PREMISES SUCH NOTICES OF NON-RESPONSIBILITY AS LANDLORD OR PRIME LESSOR MAY DEEM NECESSARY FOR THE PROTECTION OF PRIME LESSOR AND/OR LANDLORD, AND THE FEE OF THE LEASED PREMISES, FROM MECHANIC'S LIENS.

**9.6 Construction Safety Plan.** Without in anyway limiting, waiving or releasing any of the obligations of Tenant under this Lease or any Applicable Law, Tenant agrees to cause all Construction Work to be performed, and require that all Construction Work is performed, in accordance with a Construction Safety Plan.

**9.7 Total Project Costs.** Tenant covenants and agrees that (i) it will expend such funds and incur such costs and expenses for the design, development and construction of the Project Improvements such that by the Project Completion Date, Total Project Costs shall be no less than \$76,000,000.00; *provided, however*, that if by the Project Completion Date, Total Project Costs are less than \$76,000,000.00, Tenant shall deposit into the Capital Fund, the difference between Total Project Costs and \$76,000,000.00. Notwithstanding the foregoing or anything herein to the contrary, in the event that the Total Project Costs exceeds \$76,000,000.00, Tenant shall be obligated to pay for same.

**9.8 Zoning and Permits.** In order to develop the Leased Premises for the purposes described herein, it may be necessary or desirable that (i) street, water, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights be granted or dedicated over or within portions of the Leased Premises by plat, replat, grant, deed or other appropriate instrument or acquired on other properties or (ii) that existing street, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights on, in the vicinity of or affecting the Leased Premises or portions thereof be vacated or abandoned. With respect to the Leased Premises, Landlord shall, on written request of Tenant, join with, and request the Prime Lessor to join with, Tenant in executing and delivering such documents and otherwise cooperate with or assist Tenant (at Tenant's expense as a portion of the Total Project Costs if incurred in connection with the Project Improvements Work) from time to time throughout the Term, as may be appropriate or necessary for the development of the Leased Premises or to reasonably facilitate future Improvements on the Leased Premises.

**9.9 Intentionally Deleted.**

**9.10 Cessation of Work for an Extended Period of Time.** In the event of a suspension of the construction of the Project Improvements by Tenant for (A) longer than thirty (30) consecutive days or (B) ninety (90) days in any three hundred sixty-five (365) day period for any reason other than Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay (either such occurrence being a "**Cessation of Work**"), then, within thirty (30) days after Tenant's receipt of Notice from Landlord informing Tenant that a Cessation of Work has occurred, Tenant shall submit to Landlord a written completion plan detailing the measures that Tenant will implement to resume the construction of the Project Improvements and achieve Substantial Completion as required under this Lease and which plan shall (i) be adequate to provide Landlord with commercially reasonable assurance that, upon completion of such plan, Tenant will resume the construction of the Project Improvements and achieve Substantial Completion as required under this Lease and (ii) designate such reasonable major milestones as are reasonably appropriate in the circumstances as benchmarks for Tenant's progress in prosecuting such plan. If Landlord, in good faith, determines that any plan proposed by Tenant pursuant to this Section 9.10, fails to satisfy the foregoing requirements, Landlord shall deliver Notice to Tenant, specifying the reasons for Landlord's dissatisfaction with such plan, and Tenant shall, in good faith, propose such revisions to such plan as soon as practical as necessary to conform same to the requirements of this Section 9.10. If Landlord so requests, Tenant agrees to confer with Landlord regarding any plan required by Tenant pursuant to this Section 9.10 prior to submission to Landlord. After submittal to Landlord of a plan proposed by Tenant pursuant to this Section 9.10, Tenant shall promptly commence the implementation of such plan and thereafter diligently prosecute the Project Improvements Work in accordance with same.

**9.11 Project Construction Contract Bond.** Notwithstanding anything herein to the contrary, Landlord covenants and agrees that so long as no Tenant Default then exists and provided that Tenant has promptly commenced and is diligently pursuing all claims under the Project Construction Contract Bond to cause the performance of the Project Improvements Work and the payment of all obligations in connection with same, Landlord will not exercise its rights as co-obligee under the Project Construction Contract Bond. Tenant covenants and agrees that (a) all proceeds received by or on behalf of Tenant under the Project Construction Contract Bond will be applied in satisfaction of Tenant's obligation hereunder to (i) complete the Project Improvements Work, (ii) pay the Total Project Costs and (iii) pay all Delayed Opening Payments and (b) upon the occurrence and during the continuance of a Tenant Default, Landlord shall have the sole and exclusive right to enforce, and make claims under, the Project Construction Contract Bond.

**9.12 Small and Minority Business Compliance.** Tenant is hereby advised that it is the policy of Landlord, the City and the County that small, minority and women-owned business enterprises have the maximum practical opportunity in the performance of contracts. Accordingly, Tenant hereby agrees that, in connection with the Project Improvements Work, Tenant shall use good faith efforts to achieve the goal of awarding contracts, subcontracts and supply agreements to Persons who are certified by the City as Small/Minority/Women-owned/Disadvantaged Enterprises or Persons with Disabilities Enterprises in an amount at least equal to thirty percent (30%) of the Project Costs. Tenant shall make monthly reports to Landlord and provide periodically to Landlord documentation, each in a form reasonably satisfactory to Landlord, regarding Tenant's and its contractors', consultants', subcontractors' and subconsultants' efforts to meet the goal described in this Section 9.12. Tenant shall

designate a Person experienced in outreach matters who will administer the efforts described in this Section 9.12 and will be responsible for the maintenance of all records with regard thereto and all monitoring and reporting with regard thereto.

## ARTICLE X DELAYS AND EFFECT OF DELAYS

**10.1 Excusable Tenant Delay.** Regardless of the existence or absence of references to Excusable Tenant Delay elsewhere in this Lease, the deadlines of Tenant set forth in Section 8.1 and Section 8.4 above and all other deadlines and time periods within which Tenant must fulfill the obligations of Tenant elsewhere in this Lease shall each be adjusted as appropriate to include Excusable Tenant Delay Periods unless otherwise expressly provided in this Agreement; *provided* that (i) the obligation to pay Rent as and when due pursuant to the terms of this Lease is not subject to adjustment or extension due to Excusable Tenant Delay except in determining the commencement of the Operating Term and (ii) Tenant complies with the requirements of this Article X.

With respect to each occurrence of Excusable Tenant Delay, Tenant shall, within fifteen (15) days after Tenant's knowledge of the occurrence of an event that Tenant reasonably believes to be an Excusable Tenant Delay, which may be a claim from the Project Contractor, give Notice to Landlord Representative of the event constituting Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period resulting therefrom and the basis therefor, Tenant's good faith estimate of any adjustment resulting therefrom that is to be made to the Project Construction Schedule or other time for performance, as the case may be, together with reasonable documentation supporting the adjustments proposed. If Landlord Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, Landlord Representative shall give Notice to Tenant of the claimed deficiency and Tenant shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from Tenant shall be required with respect to a continuing Excusable Tenant Delay, except that Tenant shall promptly (and in no event less often than every month) give Notice to Landlord Representative of any further changes in the Project Construction Schedule or the additional time for performance claimed by reason of the continuing delay. Landlord Representative shall have the right to challenge Tenant's assertion of the occurrence of an Excusable Tenant Delay, or Tenant's good faith estimate of the Excusable Tenant Delay Period, changes in the Project Construction Schedule or the additional time for performance claimed by reason of the Excusable Tenant Delay if Landlord Representative gives Notice to Tenant within thirty (30) days after receipt by Landlord Representative of such claim of Excusable Tenant Delay or Notice from Tenant of further changes to such dates as a result of such Excusable Tenant Delay, as the case may be (which challenge shall be deemed to have been made if Landlord Representative gives Notice to Tenant of any claimed deficiency in documentation as provided for above in this Section 10.1).

**10.2 Excusable Landlord Delay.** Regardless of the existence or absence of references to Excusable Landlord Delay elsewhere in this Lease, any deadline or time period within which Landlord must fulfill the obligations of Landlord in this Lease shall each be adjusted as appropriate to include Excusable Landlord Delay Periods; *provided* that Landlord complies with the requirements of this Article X.

which would result in the creation of any Lien or Encumbrance on any portion of the Leased Premises, including, but not limited to, water, sewage, street paving, electrical or power improvements which give rise to any Lien or Encumbrance, completed or in progress.

(j) City's Remedial Work. To the best knowledge of the City, there are no Pre-Existing Environmental Conditions at the Stadium Site and there are no conditions at the Stadium Site that could reasonably be anticipated to interfere with or prohibit the completion of the work necessary for the Stadium Site to be Ready for Construction.

Section 13.2 Tenant's Representations and Warranties. Tenant hereby represents and warrants as follows:

(a) Existence. Tenant is a sports and community venue district duly formed and validly existing under the Act.

(b) Authority. Tenant has all requisite power and authority to own its property, operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid and binding obligation of Tenant and is enforceable against Tenant in accordance with its terms.

(d) No Default. The execution by Tenant of this Agreement and the consummation by Tenant of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Tenant's charter or any resolution, indenture, agreement, instrument or obligation to which Tenant is a party or by which the Leased Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Tenant or of any Governmental Authority having jurisdiction over Tenant.

(e) Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Tenant to enter into this Agreement, make the agreements herein contained or perform the obligations of Tenant hereunder, other than those consents which have been obtained.

(f) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Tenant, threatened or asserted against Tenant which could reasonably be expected to affect or impair Tenant's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any Governmental Authority.

## ARTICLE 14

### ENVIRONMENTAL REMEDIAL WORK AND STADIUM SITE IMPROVEMENT WORK

Section 14.1 City's Remedial Work. City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or

With respect to each occurrence of Excusable Landlord Delay, Landlord Representative shall, within fifteen (15) days after Landlord's knowledge of the occurrence of an event that Landlord reasonably believes to be an Excusable Landlord Delay, give Notice to Tenant of the event constituting Excusable Landlord Delay, Landlord Representative's good faith estimate of the Excusable Landlord Delay Period resulting therefrom and the basis therefor, Landlord Representative's good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Tenant believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Tenant shall give Notice to Landlord Representative of the claimed deficiency and Landlord Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from Landlord Representative shall be required with respect to a continuing Excusable Landlord Delay, except that Landlord Representative shall promptly (and in no event less often than every thirty (30) days) give Notice to Tenant of any further changes in the additional time for performance claimed by reason of the continuing delay. Tenant shall have the right to challenge Landlord Representative's assertion of the occurrence of an Excusable Landlord Delay, or Landlord Representative's good faith estimate of the Excusable Landlord Delay Period, or changes in the additional time for performance claimed by reason of Excusable Landlord Delay if Tenant gives Notice to Landlord Representative within thirty (30) days after receipt by Tenant of such claim of Excusable Landlord Delay or Notice from Landlord Representative of further changes to such dates as a result of such Excusable Landlord Delay, as the case may be (which challenge shall be deemed to have been made if Tenant gives Notice to Landlord Representative of any claimed deficiency in documentation as provided for above in this Section 10.2).

**10.3 Continued Performance; Exceptions.** Upon the occurrence of any Tenant Delay or Landlord Delay, the Parties shall endeavor to continue to perform their obligations under this Lease so far as reasonably practical. Toward that end, Tenant and Landlord each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Tenant Delay or Landlord Delay occasioned by an Excusable Tenant Delay or Excusable Landlord Delay, as applicable, and shall use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Lease after the occurrence of any Excusable Tenant Delay or Excusable Landlord Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any Landlord Delay or Tenant Delay.

**10.4 Intentionally Deleted.**

**ARTICLE XI**

**APPROVALS, CONFIRMATIONS AND NOTICES; DISPUTE RESOLUTION**

**11.1 Approvals, Confirmations and Notices.**

**11.1.1 Project Specifications.** Tenant shall obtain the Approval of Landlord of any Material Change to the Project Specifications prior to the commencement of any Project Improvements Work that involves such Material Change, such Approval not to be unreasonably withheld.



**11.1.2 Project Schematics.** Tenant shall obtain the Approval of Landlord of any Material Change to the Project Schematics prior to the commencement of any Project Improvements Work that involves such Material Change, such Approval not to be unreasonably withheld.

**11.1.3 Project Drawings.** Tenant shall submit to Landlord the Project Drawings for Landlord's (1) confirmation that the Project Drawings conform in all material respects to the Project Specifications and the Project Schematics previously Approved by Landlord and (2) Approval of any modification to the Project Drawings that would result in a Material Change to the Project Improvements, prior to the commencement of such Project Improvements Work, such Approval not to be unreasonably withheld.

**11.1.4 Project Plans.** Tenant shall submit to Landlord the Project Plans for Landlord's (1) confirmation that the same conform in all material respects to the Project Specifications and the Project Schematics previously Approved by Landlord and (2) Approval of any modification to the Project Plans that would result in a Material Change to the Project Improvements, prior to the commencement of such Project Improvements Work, such Approval not to be unreasonably withheld.

**11.1.5 Project Construction Contract and Project Contractor.** Tenant (i) shall, prior to entering into the Project Construction Contract, submit to Landlord Representative the name and qualifications of the proposed Project Contractor and the proposed form of the Project Construction Contract solely for the purpose of allowing Landlord Representative to confirm the compliance of the Project Construction Contract and the Project Contractor with the terms of this Lease and (ii) shall not amend, modify or alter the Project Construction Contract submitted to Landlord Representative without obtaining the prior Approval of Landlord Representative as to any such amendment, modification or alteration that would cause the Project Construction Contract not to meet the requirements of Section 9.4.4 hereof, such Approval not to be unreasonably withheld.

**11.1.6 Project Architect and Design Contract.** Tenant (i) shall, prior to entering into the Project Design Contract, submit to Landlord Representative the name and qualifications of the proposed Project Architect and the proposed form of Project Design Contract, solely for the purpose of allowing Landlord Representative to confirm compliance of the Project Architect and the Project Design Contract with the terms of this Lease and (ii) shall not amend, modify or alter any Project Design Contract submitted to Landlord Representative without obtaining the prior Approval of the Landlord Representative as to any such amendment, modification or alteration that would cause the Project Design Contract not to meet the requirements of Section 9.4.4 hereof, such Approval not to be unreasonably withheld. Notwithstanding the foregoing, the Architectural Services Agreement between Tenant and Populous, Inc., a Missouri corporation, a copy of which is attached hereto as Schedule 11.1.6, is hereby approved as being in compliance with the requirements of Section 9.4.4.

**11.1.7 Termination of Project Construction Documents.** Prior to terminating, in whole or in part, any Project Construction Documents or any work thereunder that would result in a Material Change, Tenant shall first obtain the prior Approval of Landlord Representative, such Approval not to be unreasonably withheld.

**11.2 Informational Purposes Only; No Approval Required.** Information that is submitted to Landlord for informational purposes only shall require no Approval by Landlord; *provided, however*, such information may be used by Landlord for the purpose of confirming that Tenant has complied with its obligations under this Lease including its obligations to meet the timetables and deadlines set forth in Section 8.1 or Section 8.4.

**11.3 Governmental Rule.** No Approvals or confirmations by Landlord or Landlord Representative under this Lease shall relieve or release Tenant from any Applicable Laws relating to the design, construction, development, operation or occupancy of the Project Improvements (including Applicable Laws that are procedural, as well as or rather than, substantive in nature). The Approval by Landlord or Landlord Representative of any matter submitted to Landlord or Landlord Representative pursuant to this Lease, which matter is specifically provided herein to be Approved by Landlord or Landlord Representative shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Tenant from, any requirement hereunder for the Approval of Landlord or Landlord Representative.

**11.4 Standards for Approvals.**

**11.4.1 Review and Approval Rights.** The provisions of this Section 11.4 shall be applicable with respect to all instances in which it is provided under this Lease that Landlord, Landlord Representative, Tenant or the Tenant Representative exercises Review and Approval Rights (as defined below); *provided, however*, that if the provisions of this Section 11.4 specifying time periods for exercise of Review and Approval Rights shall conflict with other express provisions of this Lease providing for time periods for exercise of designated Review and Approval Rights, then the provisions of such other provisions of this Lease shall control. As used herein, the term "**Review and Approval Rights**" shall include, without limiting the generality of that term, all instances in which one Party (the "**Submitting Party**") is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the "**Reviewing Party**") has a right or duty hereunder to review, comment, confirm, consent, Approve, disapprove, dispute or challenge the submission or determination of the Submitting Party.

**11.4.2 Standard for Review.** Unless this Lease specifically provides that a Party's Review and Approval Rights may be exercised in the sole discretion of the Reviewing Party, then in connection with exercising its Review and Approval Rights under any provision of this Lease, and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a fair and commercially reasonable manner in its capacity as Reviewing Party with regard to each and all of its Review and Approval Rights and to not unreasonably withhold, condition or delay its Approval of, consent to or confirmation of any submission or determination. The Reviewing Party shall review the matter submitted in writing and shall promptly (but in any event within fifteen (15) days after such receipt) give Notice to the Submitting Party of the Reviewing Party's comments resulting from such review and, if the matter is one that requires Approval or confirmation pursuant to the terms of this Lease, such Approval, confirmation, disapproval or failure to

confirm, setting forth in detail the Reviewing Party's reasons for any disapproval or failure to confirm. Any failure to respond within the foregoing fifteen (15) day period shall be deemed to be an approval or confirmation of the matter submitted. Unless otherwise provided herein, the Reviewing Party's right to disapprove or not confirm any matter submitted to it for Approval or confirmation and to which this Section 11.4.2 applies shall be limited to the elements thereof: (i) which do not conform in all material respects to Approvals or confirmations previously given with respect to the same matter; or (ii) which propose or depict matters that are or the result of which would be a violation of or inconsistent with the provisions of this Lease or Applicable Law.

**11.4.3 Resubmissions.** If the Reviewing Party disapproves of or fails to confirm a matter to which this Section 11.4.3 applies within the applicable time period, the Submitting Party shall have the right, within thirty (30) days after the Submitting Party receives Notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party's basis for disapproval or failure to confirm (all subsequent re-submissions with respect to such matter must be made within thirty (30) days of the date the Submitting Party receives Notice of disapproval or failure to confirm of the prior re-submission). The applicable Submitting Party shall use reasonable efforts to cause any such re-submission to expressly state that it is a resubmission, to identify the disapproved or not confirmed portion of the original submission and any prior resubmissions, and to not be included with an original submission unless the matter previously disapproved is expressly identified thereon. Any resubmission made pursuant to this Section 11.4.3 shall be subject to Review and Approval Rights of the Reviewing Party in accordance with the procedures described in Section 11.4.2 for an original submission (except that the Review and Approval Rights shall be limited to the portion previously disapproved or not confirmed), until such matter shall be Approved by the Reviewing Party.

**11.4.4 Duties, Obligations and Responsibilities Not Affected.** Approval or confirmation by the Reviewing Party of or to a matter submitted to it by the Submitting Party shall neither, unless specifically otherwise provided (1) relieve the Submitting Party of its duties, obligations or responsibilities under this Lease with respect to the matter so submitted, nor (2) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

## **11.5 Dispute Resolution.**

**11.5.1 Settlement By Mutual Agreement.** In the event any dispute, controversy or claim between or among the Parties arises under this Lease or is related in any way to this Lease or the relationship of the Parties hereunder (a "**Dispute or Controversy**"), including a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Lease, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 11.5.1. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other Party that it has elected to implement the procedures set forth in this Section 11.5.1. Within fifteen (15) days after delivery of any such Notice by one Party to the other Party regarding a Dispute or Controversy, Landlord Representative and the Tenant Representative shall meet at a mutually agreed time and place to

attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of Landlord Representative and the Tenant Representative, they shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) days after the Notice of the Dispute or Controversy was delivered, or if no resolution is obtained through such alternative technique, or if no such meeting takes place within the fifteen (15)-day period, then either Party may by notice to the other Party submit the Dispute or Controversy to arbitration in accordance with the provisions of Section 11.5.2 and Appendix D. Upon the receipt of notice of referral to arbitration hereunder, the receiving Party shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of Section 11.5.2 and Appendix D without regard to the justiciable character or executory nature of such Dispute or Controversy.

**11.5.2 Arbitration.** Each Party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of Section 11.5.1 shall be submitted to binding arbitration hereunder and, if submitted, shall be resolved exclusively and finally through such binding arbitration. This Section 11.5 and Appendix D constitute a written agreement by the Parties to submit to arbitration any Dispute or Controversy arising after the Execution Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code.

**11.5.3 Emergency Relief.** Notwithstanding any provision of this Lease to the contrary, either Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in Harris County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that the Arbitration Procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

## ARTICLE XII

### USE AND OCCUPANCY; PERMITTED AND PROHIBITED USES; OPERATING REQUIREMENTS

**12.1 Permitted Uses.** During the Term, Tenant covenants and agrees that it shall use and occupy the Leased Premises solely for any of the following and not for any Prohibited Uses (collectively, the "**Permitted Uses**"):

- (a) The operation of the Franchise including the playing, exhibition, presentation and broadcasting (or other transmission) of Home Games and activities related thereto, including training, practices and exhibitions, All-Star Games, promotional activities and events, community and public relations, the exhibition, broadcasting, advertising, and other marketing of games and other events, ticket sales, fantasy camps

and any and all other activities which, from time to time, are customarily conducted by or are related to the operation of the business of the Franchise;

(b) The exhibition, presentation and broadcasting (or other transmission) of, other amateur or professional sporting events, exhibitions and tournaments, musical performances, theater performances and other forms of live entertainment, public ceremonies, fairs, markets, shows or other public or private exhibitions and activities related thereto;

(c) Constructing, operating and displaying any signs on the interior, exterior or any other portion of the Project Improvements or the Land as Tenant deems necessary or desirable;

(d) Restaurants, clubs and bars (including brew pubs and sports bars);

(e) Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in sports and entertainment facilities;

(f) Operation of a museum or hall of fame open to the public;

(g) Conducting public tours of the Project Improvements and the Leased Premises;

(h) Parking in any parking facilities located on the Leased Premises;

(i) Retail uses, including such uses located in the Project Improvements, along the street level of the Project Improvements and in kiosks, carts and similar movable or temporary retail facilities;

(j) Entertainment (including theaters, movie theaters and arcades), museum and educational uses;

(k) Conducting day-to-day business operations in Tenant's office space within the Project Improvements by Tenant, Affiliates of Tenant and any of their Subtenants and licensees;

(l) Studio and related facilities for radio, television and other broadcast and entertainment media within the Project Improvements, including support and production facilities, transmission equipment, antennas and other transceivers and related facilities and equipment primarily for the broadcast or other transmission of games and other events taking place at the Project Improvements or elsewhere;

(m) Storage of maintenance equipment and supplies used in connection with the operation of the Leased Premises or all other Permitted Uses;

(n) Construction Work permitted or required pursuant to the terms of this Lease;

(o) The use and enjoyment of the rights and licenses granted to Tenant under this Lease regarding any intangible property rights;

(p) Presentation and broadcasting (or other transmission) of sporting events and activities related thereto, including training, practices and exhibitions, promotional activities and events, community and public relations, advertising, and other marketing of games and events, ticket sales, and any and all other activities which, from time to time, are customarily conducted by or are related to the presentation and broadcasting of sporting events;

(q) Other uses reasonably related or incidental to any of the foregoing or not inconsistent with any of the foregoing that are not Prohibited Uses; and

in all cases consistent with the Operating Standard, Applicable Laws and the Project Plans, as approved by Landlord or Landlord Representative, as and if required, pursuant to the terms of this Lease. Any of the Permitted Uses may be conducted directly by Tenant, an Affiliate of Tenant, or indirectly through other Persons pursuant to Use Agreements.

**12.2 Prohibited Uses.** Tenant shall not use, or permit the use of, the Leased Premises for any other, different or additional purpose that is not a Permitted Use without first obtaining the Approval of the Landlord Representative. Tenant agrees that the Permitted Uses are subject to Tenant's compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Leased Premises. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the "**Prohibited Uses**");

(a) Create, cause, maintain or permit any public or private nuisance in, on or about the Leased Premises; *provided, however*, in no event will Landlord be entitled to assert that a Permitted Use held in compliance with Applicable Laws constitutes a public or private nuisance;

(b) Use or allow the Leased Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Leased Premises any store or other facility, a principal or significant portion of the business of which is an "Enterprise," as such term is defined in Section 28-121 of the City of Houston Municipal Code, as same may be amended from time to time during the Term, or any similar business;

(c) Use or allow the Leased Premises to be used for the sale or display of any lewd, offensive or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive or immoral activities, including sexually immoral activities;

(d) Use or allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;

(e) Use or allow the Project Improvements or the Leased Premises to be used as a place of permanent residence by any Person;

(f) Use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold or used in connection with Tenants' operations permitted hereunder shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or permit the Leased Premises to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial operation or use;

(g) Use or permit the use of the Leased Premises as a casino (or other establishment in which gambling is permitted or games of chance are operated), a gentlemen's club (or other establishment that allows full or partial nudity), a massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor; or

(h) Prior to January 1, 2019, directly or indirectly, solicit, present, book, house or let/license any Indoor Show at, on or around the Leased Premises.

The provisions of this Section 12.2 shall inure to the benefit of, and be enforceable by Landlord and its successors and assigns. No other Person, including any guest or patron of the Leased Premises, shall have any right to enforce the prohibitions as to the Prohibited Uses.

### **12.3 Operation During the Operating Term.**

**12.3.1 Covenant to Operate.** Commencing on the first day of the Operating Term and continuing thereafter during the remainder of the Term, Tenant covenants, at Tenant's sole cost and expense (i) to operate the Project Improvements, and cause the same to be operated in accordance with the Permitted Uses and the Operating Standard and (ii) to conduct or cause to be conducted all elements of any Additional Work diligently and continuously, subject only to interruptions and delays caused by Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay, and in a manner consistent with the requirements of this Lease.

### **12.3.2 Team Commitment.**

(a) Tenant shall (i) cause the Team to play all of the Team's Home Games at the Leased Premises (other than Home Games played elsewhere when the Leased Premises are not available due to reasons beyond the control of Tenant, such as following a Casualty) and (ii) prohibit the relocation of the Franchise during the Term; *provided, however,* subsection (i) above shall not apply during a Force Majeure event. Notwithstanding the foregoing, the Team shall be entitled to play five (5) Home Games outside of the Leased Premises during each Lease Year provided that (A) each such Home Game is reasonably expected to sell in excess of 30,000 tickets and (B) such Home Game is played in Harris County, Texas. Notwithstanding the foregoing, two (2) of the five (5) Home Games allowed to be played outside of the Leased Premises during a Lease Year may be played outside of Harris County, Texas, so long as the Team's opponent is not another MLS franchise. In addition to the five (5) Home Games allowed to be played outside of the Leased Premises during a Lease Year, the Team shall be

entitled to play two (2) non-MLS Home Games during each Lease Year at a neutral site located domestically or internationally. The right to play certain Home Games and neutral site games outside of the Leased Premises as provided above shall be non-cumulative and any unused portion shall expire at the end of each Lease Year. In the event the Team fails to play all Home Games at the Leased Premises in any Lease Year, subject to the exceptions expressly set out above, then such failure shall constitute a Tenant Default *provided, however*, that for the first such Home Game not played at the Leased Premises in any Lease Year, Tenant shall pay to Landlord, as Landlord's sole and exclusive remedy, the sum of \$250,000 (such sum to increase by a percent equal to the CPI Increase on a cumulative, compounding basis for each Lease Year after the initial Lease Year of the Term), but for any failure of the Team to play a subsequent Home Game at the Leased Premises in any Lease Year, Landlord shall be entitled to enforce specific performance or terminate this Lease effective thirty (30) days following written notice to Tenant of such termination *provided, further*, if Landlord fails to exercise its remedies based on such Tenant Default within three hundred sixty five (365) days after such Home Game was not played at the Leased Premises, then Landlord shall be deemed to have waived such Tenant Default related to the Home Game not played. If the Team desires to play a game outside of the Leased Premises, then Tenant may submit to the Landlord Representative Notice of such desire together with the following information: site of the proposed game, number of tickets reasonably expected to be sold for such game and the Team's opponent. Upon the Landlord's Representative's receipt of such Notice, Landlord's Representative shall, by giving Notice to Tenant within sixty (60) days after receipt of such Notice, inform Tenant whether Landlord Representative believes such game to be a Home Game, and if Landlord Representative believes such game to be a Home Game, either consent to such proposed Home Game being played at a location other than the Leased Premises or refuse to consent to the proposed Home Game being played at a location other than the Leased Premises. If Landlord's Representative fails to respond to any request for consent within such sixty (60) day period, then Landlord shall be deemed to have approved the proposed game being played at a location other than the Leased Premises, regardless of whether such game is a Home Game.

(b) In the event the Franchise is relocated, then as Landlord's sole and exclusive remedies, (i) Tenant shall pay to Landlord, as liquidated damages, and not as a penalty, an amount equal to \$1,000,000 multiplied by the number of complete Lease Years remaining in the Term (had this Lease not been terminated), *plus* a pro-rated amount for any partial Lease Year remaining in the Term (had this Lease not been terminated) and this Lease shall terminate effective as of the date of such relocation or (ii) Landlord shall be entitled to enforce specific performance of the covenant to have the Team play such Home Games at the Leased Premises.

(c) The terms and provisions of this Section 12.3.2 shall survive the expiration or earlier termination of this Lease.

**12.3.3 Bankruptcy of Team or MLS.** Notwithstanding the provisions of Section 12.3.2, if the Team is unable to play Home Games at the Leased Premises due to the Bankruptcy of the Team and/or the Bankruptcy of MLS, then Tenant will use commercially reasonable efforts to enter into a Use Agreement with a new team for the remainder of the Term



of this Lease for the playing of men's Professional Soccer games or cause the Team to join a new men's Professional Soccer league that competes on a national level, as applicable. The team under such Use Agreement must play at least fifteen (15) Home Games at the Leased Premises during a given Lease Year. If Tenant is unable to procure a new team or cause the Team to join a new league (each as required above) within two (2) years after such Bankruptcy, then Tenant shall host at least ten (10) men's Professional Soccer games at the Leased Premises per Lease Year (which number of games shall be prorated for any partial Lease Year). If Tenant does not host at least ten (10) men's Professional Soccer games at the Leased Premises per Lease Year (which number of games shall be prorated for any partial Lease Year) (except to the extent the Leased Premises are not available due to reasons beyond the control of Tenant, such as following a Casualty, in which case Tenant shall only be obligated to play a proportionate share of such games) then Tenant shall pay to Landlord within fifteen (15) days after the end of a Lease Year, as liquidated damages and Rent, and not as a penalty, an amount equal to the difference between ten (10) and the number of men's Professional Soccer games played at the Leased Premises in such Lease Year multiplied by \$67,000.00.

**12.3.4 Team Lease.** Tenant shall include a covenant in the Team Lease for the Team to comply with the provisions of Section 12.3.2 above (including the payment of liquidated damages thereunder) and provide for the terms set forth in Section 12.3.5 hereof in favor of Landlord, the City and the County. Each of Landlord, the City and the County shall be third party beneficiaries of such covenants and obligations in the Team Lease. Further, each of the City and the County shall be third party beneficiaries of the covenants and obligations of Tenant under Sections 12.3.2 and 12.3.3.

**12.3.5 Injunction.** Notwithstanding anything to the contrary contained in this Lease, Landlord may, in addition to all other remedies available to it at law or in equity, obtain an injunction prohibiting any violation by Tenant or the Team of the terms of Sections 12.3.2 and 12.3.4; provided, however, under no circumstances shall Landlord have the right to receive both liquidated damages for a default under Section 12.3.2 or 12.3.3 and an injunction relating to the same default. In connection with the rights granted to Landlord in this Section 12.3.5, Tenant recognizes that Landlord has contributed significant capital costs to the acquisition of the Land and the construction of the Project Improvements in material part in reliance on the agreements of the Parties contained in this Lease, including the provisions of Sections 12.3.2 and 12.3.4. Accordingly, Tenant agrees that (i) Landlord may restrain or enjoin any violation as provided in Sections 12.3.2 and 12.3.4 or threatened violation of any covenant, duty or obligation contained in Sections 12.3.2 and 12.3.4 without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in Sections 12.3.2 and 12.3.4 the balance of hardships would weigh in favor of entry of injunctive relief, (iii) Landlord may enforce any such covenant, duty or obligation contained in Sections 12.3.2 and 12.3.4 through specific performance, and (iv) Landlord may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of Sections 12.3.2 and 12.3.4 on an interim basis pending the outcome of the applicable Dispute or Controversy in connection with Sections 12.3.2 and 12.3.4. Tenant further agrees and irrevocably stipulates that the rights of Landlord to injunctive relief pursuant to this

Section 12.3.5 shall not constitute a “claim” pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Tenant or the Team.

**12.4 Compliance with Applicable Laws and Permitted Exceptions.** Tenant shall, (a) throughout the Term and within the time periods permitted by Applicable Law, comply or cause compliance with all Applicable Laws applicable to the Leased Premises, including any applicable to the manner of use or the maintenance, repair or condition of the Improvements or any activities or operations conducted in or about the Leased Premises and (b) throughout the Term, comply or cause compliance with the Permitted Exceptions, but with respect to each of the foregoing, Tenant shall not be responsible for any failure to comply with Applicable Law or the Permitted Exceptions to the extent caused by Landlord. Tenant shall, however, have the right to contest the validity or application of any Applicable Law, and if Tenant promptly contests and if compliance therewith may legally be held in abeyance during such contest, Tenant may postpone compliance until the final determination of such contest, *provided* that such contest is prosecuted with due diligence and that Tenant shall not so postpone compliance therewith in such a manner as to, or if doing so would (i) impair the structural integrity of the Project Improvements, (ii) during such contest, subject Landlord to any fine or penalty or to prosecution for a criminal act, or expose Landlord to any civil liability or (iii) cause the Project Improvements to be condemned or vacated. Even though a Lien against the Project Improvements may be imposed by reason of such noncompliance, Tenant may nevertheless delay compliance therewith during a contest thereof provided that such contest is otherwise in compliance with the requirements of this Lease and Tenant effectively prevents foreclosure of any such Lien. Tenant shall give Landlord reasonable Notice (which in no event shall be less than five (5) days) of its intent to carry on such contest, specifying the Applicable Law that Tenant proposes to contest, the name of counsel representing Tenant in such contest and the Excusable Tenant Delay, if any, that such contest will cause in any repair, alteration or improvement of the Project Improvements.

**12.5 Light and Air.** No diminution or shutting off of light, air or view by any structure that may be erected by any Person on lands in the vicinity of the Leased Premises shall in any manner affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.

**12.6 Intentionally Deleted.**

**12.7 Intentionally Deleted.**

**12.8 Non-Compete with the Arena.** Prior to January 1, 2019, neither Tenant nor any Affiliate of Tenant nor any operator of the Leased Premises shall directly or indirectly, solicit, present, book, house or let/license any Indoor Show at, on or around the Leased Premises.

**12.9 Governmental Dates.**

**12.9.1 Landlord’s Use of the Leased Premises.** So long as no Landlord Default has occurred and is then continuing, Landlord, at no cost other than those expenses to be reimbursed to Tenant as described in this Section 12.9.1, shall be permitted, pursuant to Use Agreements to be entered into between Tenant and Landlord or its designee on the terms set





forth in this Section 12.9.1, but subject to the same other terms and conditions as are applicable to other Persons using the Leased Premises, to use (and lease out for use by others) the Leased Premises for charitable or educational purposes, public or civic ceremonies and forums and other events and purposes (including sporting events and opening ceremonies) which are not typically held for-profit and do not compete with revenue-generating events typically held at Comparable Facilities and sponsored or promoted by for-profit entities ("Landlord Uses") on not more than nine (9) days during each Lease Year ("Landlord Dates"). Such Landlord Dates shall not be cumulative and shall expire at the end of each Lease Year if not actually utilized by Landlord during such Lease Year. Landlord shall have the right to designate the City, a City Controlled Entity, the County, a County Controlled Entity and/or another third Person as the organizer/user of the Leased Premises on any Landlord Date.

**12.9.2 Scheduling and Revenues.** Landlord (i) shall have priority for all Landlord Dates scheduled at least twenty-four (24) months in advance and (ii) may schedule a Landlord Date less than twenty-four (24) months in advance so long as Tenant has not scheduled another event at the Leased Premises for such requested date, all of such dates being scheduled in accordance with Tenant's general reservation policies; *provided, however*, in no event shall Tenant require Landlord to provide a deposit in excess of \$10,000 (such amount to increase by a percent equal to the CPI Increase on a cumulative, compounding basis for each Lease Year after the initial Lease Year of the Term) in order to schedule a Landlord Date and *provided, further*, that such deposit shall only be required if a Person is requesting that date and will be required to provide a similar or greater deposit to Tenant in order to book that date for an event; *provided, finally*, that if a deposit is paid by Landlord under this Section 12.9.2 and the Landlord Event for which such deposit was paid occurs, such deposit shall be credited to the deposit required under, and be governed by, the last paragraph of Section 12.9.3 hereof. Landlord may utilize any or all of the Landlord Dates only for Landlord Uses and may only charge any users for expenses incurred by Landlord with regard to such Landlord Event. Landlord shall be entitled to the net ticket revenues from Landlord Uses and any revenues generated from the Landlord Event itself, such as charity auction proceeds and table and event sponsorships, but Tenant shall be entitled to any other revenues generated at the Leased Premises in connection with Landlord Dates, including concessions and parking revenues. All agreements with vendors, suppliers, sponsors, ticketing agents, concessionaires and advertisers applicable to the Leased Premises shall remain in effect with respect to all of the Landlord Dates, as will all policies established by Tenant for the Leased Premises including those regarding crowd control, maintenance, ticketing, access, operations and broadcasting; *provided, however*, Landlord shall have customary event advertising privileges for Landlord Events (and be entitled to retain all revenue derived therefrom) including the use of the electric signage, display and scoreboards at the Leased Premises so long as such advertising is temporary in nature, is displayed only during the Landlord Event and does not conflict with existing advertising located at the Leased Premises; *provided, further*, that Landlord on three (3) of its nine (9) Landlord Dates during a Lease Year shall also have the right to turn off or cover Tenant's signage and advertising during such Landlord Events so long as such Landlord Events are private events not open to the general public and are not nationally televised on a major broadcast, cable or satellite network. In addition to the Landlord Dates described above, Landlord and Tenant may, by mutual agreement, agree upon other dates for Landlord's use of the Leased Premises. All Landlord Dates reserved in accordance with this Section 12.9.2 shall take priority over any other event scheduled at the Leased Premises, including Home Games or other events scheduled by Tenant; *provided*,

however, no more than two (2) Landlord Dates during any Lease Year may be held between the hours of 12:00 p.m. on Friday through 11:59 p.m. on Sunday during that Lease Year. This Section 12.9 shall convey no right to use any of the Team's or the Tenant's offices, training facilities, practice areas or locker rooms at the Stadium. If Landlord sells or distributes tickets to the public for a Landlord Event, Tenant's suiteholders shall have the right to use their respective suites during such Landlord Event and Tenant's club level users shall have a preferential right (using Tenant's standard procedure) to purchase tickets for such Landlord Event.

**12.9.3     Reimbursement of Tenant Costs for Landlord Dates.** In lieu of a fee for use of the Leased Premises on a Landlord Date, Landlord shall reimburse Tenant for the following expenses (all on a "cost" basis) attributable to the use of the Leased Premises on each Landlord Date (each a "Landlord Event") pursuant to each Use Agreement:

(a) Direct costs of Tenant for set up and break down of such Landlord Event, other costs directly related to or associated with a Landlord Event (including ushers, security personnel, facility and systems operators, janitorial personnel and other personnel), utility expenses and clean-up of the Leased Premises following such Landlord Event; and

(b) Costs incurred by Tenant for any ticket services provided in connection with such Landlord Event, including ticket sales, box office and ticket takers, ticket agents or ticket brokers.

The reimbursement obligation of Landlord in this Section 12.9.3 shall not include any charges for overhead by Tenant or Capital Expenses. Landlord shall reimburse Tenant for the foregoing expenses for Landlord Events by payment of a deposit directly to Tenant at least five (5) days prior to such Landlord Event in the amount estimated to be ninety percent (90%) of the reimbursable amount hereunder, with a final settlement within thirty (30) days after such Landlord Event based on a detailed invoice to be provided by Tenant to Landlord within five (5) Business Days after such Landlord Event. At the final settlement, Landlord will pay to the Tenant or Tenant will refund to Landlord, as the case may be, the excess or deficiency of the invoiced expenses for such Landlord Event compared to the foregoing deposit. Any Dispute or Controversy over the amount of such invoiced expenses shall be resolved pursuant to the terms of Section 11.5 hereof, and the final settlement shall be deferred until resolution of such Dispute or Controversy. For purposes of this Section 12.9.3, if Landlord requests that a designee (other than the City, a City Controlled Entity, the County or a County Controlled Entity) enter into a Use Agreement directly with Tenant, then the Tenant shall have the right to Approve the creditworthiness and to require appropriate insurance coverage of the designee, such Approval not to be unreasonably withheld.

**12.9.4     Landlord Dates at Team Practice Facility.** So long as Tenant, the Team or any of their respective Affiliates controls the use and scheduling of the fields at the Practice Facility, Landlord shall be entitled to use any or all of its Landlord Dates at one or more of the soccer fields from time to time located at the Practice Facility (other than the main Team practice field at the Practice Facility) for Landlord Uses in lieu of (and not in addition to) a Landlord Date at the Lease Premises, all pursuant to the terms and conditions of Section 12.9.1, 12.9.2 and 12.9.3 hereof; *provided, however*, that (i) the deposit amount in Section 12.9.2 as to

the use of the fields at the Practice Facility shall be \$500.00 (such amount to increase by a percent equal to the CPI Increase on a cumulative, compounding basis for each Lease Year after the initial Lease Year of the Term), (ii) the term "Comparable Facilities" for the purposes of the fields at the Practice Facility (and the permitted Landlord Uses thereof) shall mean and refer to recreational soccer field facilities of comparable size and quality as the fields at the Practice Facility and (iii) notwithstanding the definition of Landlord Uses, Landlord may use the fields (other than the main Team practice field) at the Practice Facility for up to one national sporting event per Lease Year over multiple days (each of which shall count towards a use of a Landlord Date) so long as such event is suitable for being presented at the fields at the Practice Facility and Landlord's ability to be competitive with other venues as the host of such event requires that Landlord have access to the fields at the Practice Facility at no charge.

**12.10 Intentionally Deleted.**

**12.11 Team Event Ticket Prices.** With respect to each regular season Team MLS soccer game at the Stadium, ten percent (10%) of the seats in the Project Improvements shall be offered for sale to the general public at a price not to exceed fifty percent (50%) of the average ticket price during the Team's final season of play in Robertson Stadium (the "Cap"); *provided, however,* that the Cap shall increase annually on a cumulative, compounding basis by a percent equal to the CPI Increase. Such discounted tickets may be sold through "family packs" or other promotional offers so long as such discounted tickets are sold in bundles of no more than five (5) tickets.

**ARTICLE XIII**

**IMPOSITIONS; NET LEASE**

**13.1 Taxes and Assessments.**

**13.1.1 Impositions on Leased Premises.** Tenant shall be subject to, and responsible for, the payment of all Impositions levied on the Leased Premises and Improvements payable from and after the Lease Commencement Date and for the remainder of the Term.

**13.1.2 Payment of Impositions.**

(a) Throughout the Term, Tenant shall pay, or cause to be paid, all Impositions directly to the taxing authority or other payee therefor. Such payment shall be completed prior to the date on which such Imposition would become delinquent, subject to Sections 13.1.3 or 13.2 below. If any Imposition legally may be paid in installments prior to delinquency, whether or not interest shall accrue on the unpaid balance thereof, Tenant shall have the option to pay such installments or portions thereof as shall be properly allocated to periods within the Term. Tenant shall furnish to Landlord, promptly upon receipt thereof, copies of all notices of Property Taxes. Within sixty (60) days after payment by Tenant of a Property Tax, Tenant shall deliver to Landlord reasonable evidence of the payment thereof. Other than with respect to Property Taxes, Tenant shall be obligated to provide evidence of the payment of Impositions only when specifically requested to do so by Landlord, at any time and from

time to time, and then only as to Impositions that have been paid, are payable or for which notice for the payment thereof has been received within the twenty-four (24) months prior to the date of Landlord's request.

(b) Notwithstanding anything to the contrary herein, (a) all Impositions with respect to the fiscal year or tax year in which the Lease Commencement Date occurs shall be apportioned so that Tenant shall pay only the portion of the Impositions that is applicable to the period after the Lease Commencement Date and (b) all Impositions for the fiscal year or tax year in which the Lease Expiration Date occurs or this Lease is earlier terminated shall be apportioned so that Tenant shall pay only the portion of such Impositions that are attributable to the period prior to the Lease Expiration Date.

### **13.1.3 Tax Exemptions.**

(a) Notwithstanding the foregoing allocation of responsibility for Property Taxes, it is the desire and intention of the Parties that the Leased Premises, the Improvements, the Landlord's leasehold interest and the Leasehold Estate shall be exempt from Property Taxes under the Texas Constitution, the Texas Tax Code and other Applicable Law. The parties shall take all reasonable steps to establish and maintain such Property Tax exemption. Tenant is authorized to assert, insist upon, continue, and restate this joint intent in any agency, forum, or court having jurisdiction and at which the question may arise or be presented, and Landlord, at the request and expense of Tenant, shall jointly take and pursue such lawful actions with Tenant, including, if necessary, judicial actions, as may be available and appropriate, to protect and defend the Leased Premises, the Improvements, the Landlord's leasehold interest and the Leasehold Estate against the levy, assessment or collection of Property Taxes by any Governmental Authority asserting the power to levy, assess and collect such taxes under Applicable Law. In the event of any proposed or actual change in the Texas Constitution, the Texas Tax Code, and other Applicable Law, which threatens to alter the Property Tax status of such property, Landlord shall, at Tenant's sole cost and expense, reasonably cooperate with Tenant (which cooperation may include joining in any legal proceedings deemed appropriate by Tenant) to maintain all possible Property Tax exemptions available to the such property.

(b) So long as and to the extent that the Leased Premises is used for a Permitted Use, Landlord, at the request of Tenant and at Tenant's sole expense and in accordance with Section 13.1.3(e), shall jointly take and pursue such lawful actions with Tenant, including if necessary, judicial actions, as may be available and appropriate, to protect and defend the title of Landlord and the leasehold interest of Tenant in and to the Leased Premises, against the levy, assessment or collection of Property Taxes by any Governmental Authority having the power to levy such taxes. Landlord further agrees not to take any action that may cause the levy, assessment or collection of any such Property Taxes. If, for any reason, it should be finally determined that the interests of Landlord or Tenant in and to the Leased Premises are no longer exempt from taxation by reason of a change in Applicable Law or otherwise, then Tenant shall pay such taxes before they become delinquent, subject to Tenant's right of contest as provided in this Lease.



(c) **Intentionally Deleted.**

(d) The Parties agree to take all reasonable steps, at Tenant's sole cost and expense, to establish and maintain any applicable exemptions from Texas sales and use tax for items of tangible personal property and taxable services used to construct the Improvements, including (as appropriate and necessary) (i) the submission of a letter ruling request to the Texas Comptroller of Public Accounts requesting confirmation that qualifying property and services may be purchased free of Texas sales and use tax, (ii) execution of an agreement providing for the donation of construction materials to Landlord upon delivery of such materials to the construction site, if such agreement is needed to supplement the terms of Section 15.1.1, and (iii) inclusion in Project Construction Contracts of any provisions necessary to qualify for applicable Texas sales and use tax exemptions.

(e) Notwithstanding anything to the contrary, if Landlord undertakes any action (i) requested by Tenant under this Section 13.1 or (ii) that is to be performed at Tenant's cost or expense as provided for in this Lease, then Tenant shall pay all third-party costs, including outside attorneys' fees and expenses, reasonably incurred by Landlord, or, within thirty (30) days after written demand therefor, reimburse such costs to Landlord. Notwithstanding the foregoing, Landlord shall be responsible for its own internal administrative expenses associated therewith.

**13.2 Tenant's Right to Contest Impositions.**

**13.2.1 Notice.** Tenant shall have the right in its own name, and at its sole cost and expense, to contest the validity or amount, in whole or in part, of any Impositions, by appropriate proceedings timely instituted in accordance with any protest procedures permitted by applicable Governmental Authority (a "**Tax Proceeding**"); *provided* Tenant at all times effectively stays or prevents any non-judicial or judicial sale of any part of the Leased Premises or the Leasehold Estate created by this Lease or any interest of Landlord in any of the foregoing, by reason of non-payment of any Impositions. Tenant shall diligently pursue all such Tax Proceedings in good faith. Further, Tenant shall, incident to any such Tax Proceeding, provide such bond or other security as may be required by the applicable Governmental Authority, if any. **TENANT SHALL INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM ANY AND ALL SUCH IMPOSITIONS AND ALL CLAIMS, COSTS, FEES, AND EXPENSE RELATED TO ANY SUCH IMPOSITIONS OR TAX PROCEEDING, INCLUDING ANY AND ALL PENALTIES AND INTEREST, AND TENANT SHALL PROMPTLY PAY ANY VALID FINAL ADJUDICATION ENFORCING ANY IMPOSITIONS AND SHALL CAUSE ANY SUCH FINAL ADJUDICATION TO BE TIMELY SATISFIED PRIOR TO ANY TIME PERIOD WITHIN WHICH ANY NON-JUDICIAL OR JUDICIAL SALE COULD OCCUR TO COLLECT ANY SUCH IMPOSITIONS.**

**13.2.2 Payment.** Upon the entry of any determination, ruling or judgment in any Tax Proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as is finally determined in such Tax Proceedings, the payment of which may have been deferred during the prosecution thereof, together with any Claims, costs, fees, interest,

penalties, charges or other liabilities in connection therewith. Nothing herein contained, however, shall be construed so as to allow such Imposition to remain unpaid for such length of time as shall permit the Leased Premises or the Leasehold Estate, or any part thereof, to be sold or taken by any Governmental Authority for the non-payment of any Imposition. Upon request, Tenant shall promptly furnish Landlord with copies of all notices, filings and pleadings in all such Tax Proceedings. If Landlord chooses to participate in any such Tax Proceedings, the Landlord shall have the right, at its expense, to participate therein; provided Landlord takes no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay Impositions.

**13.2.3 Reduction of Assessed Valuation.** Tenant at its expense may, if it shall so desire, endeavor at any time or times to obtain a reduction in assessed valuation of the Leased Premises for the purpose of reducing Impositions thereon. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for any such reduction in assessed value and any such tax refund shall be the property of Tenant (unless the same was paid by Landlord and not reimbursed by Tenant).

**13.2.4 Rendition.** Landlord hereby grants and gives permission to Tenant to render the Leased Premises from time to time during the Term. Landlord agrees to cooperate with Tenant in seeking the delivery of all notices of Impositions to Tenant directly from the applicable authorities.

**13.2.5 Joinder of Landlord.** To the extent such cooperation is required by applicable Governmental Authority for such Tax Proceeding, Landlord shall cooperate in any such Tax Proceeding as reasonably requested by Tenant, at Tenant's sole cost and expense, whether or not Landlord is joined pursuant thereto, and Landlord agrees to take no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay Impositions.

**13.2.6 Prima Facie Evidence.** The certificate, advice, bill or statement issued or given by any Governmental Authority authorized by law to issue the same or to receive payment of an Imposition shall be prima facie evidence of the existence, non-payment or amount of such Imposition.

**13.3 Failure to Pay Impositions.** Notwithstanding anything to the contrary contained in this Lease and except as provided in Section 13.2 above, in the event Tenant fails to pay any Imposition pursuant to the provisions of this Lease before the date the same becomes delinquent, Landlord may, after giving Tenant ten (10) days notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Tenant shall, within thirty (30) days following Landlord's demand and notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment in full by Tenant.

**13.4 Net Lease.** Except for costs that Landlord has specifically agreed to pay pursuant to the express terms of this Lease, (i) Landlord shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease, the Leased Premises or any Impositions and (ii) it is expressly understood and agreed that this is

a completely net lease intended to assure Landlord the Rent herein reserved on an absolutely net basis.

## ARTICLE XIV

### REPAIRS AND MAINTENANCE; UTILITIES

#### 14.1 Repairs and Maintenance.

**14.1.1 Tenant's Obligation.** Tenant shall, commencing on the Operating Term Commencement Date and throughout the remainder of the Term, at its own expense, at no cost or expense to Landlord and in compliance with Applicable Laws, do the following, ordinary wear and tear excepted (collectively, the "Maintenance and Repair Work"):

(a) Perform all Maintenance and otherwise keep and maintain, or cause to be kept and maintained, the Leased Premises and all Personal Property located within the Leased Premises in good working repair in accordance with the Operating Standard and in compliance with all Applicable Laws;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Leased Premises, including those which constitute Capital Repairs, to keep them clean, in good working repair, order and condition in accordance with the Operating Standard and in compliance with all Applicable Laws;

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Project Improvements, including Capital Repairs, necessary to keep them in a condition consistent with the standards of Comparable Facilities;

(d) Provide, maintain and repair any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities necessary for Tenant's operations from the Leased Premises as provided in Section 14.2; and

(e) Maintain the contractual rights to no fewer than 1,000 parking spaces under a Parking Agreement for use by Tenant and its agents, employees, invitees, licensees, and patrons for the parking of motor vehicles during events at the Leased Premises. Such Parking Agreement must survive for its stated term and automatically be assigned upon the expiration or earlier termination of this Lease to (i) Landlord in the event the Prime Lease is still in full force and effect or (ii) Prime Lessor should the Prime Lease have terminated, all for the benefit of Landlord or Prime Lessor, as applicable, and their respective agents, employees, invitees, licensees, subtenants and patrons.

This Section 14.1 shall not apply to any damage or destruction by fire or other Casualty within the scope of Section 18.4 in the event Tenant is entitled to, and timely makes the election permitted under Section 18.4 to, terminate this Lease. Further, this Section 14.1 shall not apply to any damage caused by any Condemnation Action within the scope of Section 20.1.1 in the event Tenant is entitled to, and timely makes the election permitted under Section 20.1.1, to

terminate this Lease. Notwithstanding anything to the contrary contained in this Section 14.1.1 or elsewhere in this Lease, Landlord agrees to reimburse Tenant for all reasonable costs and expenses incurred by Tenant for any Maintenance and Repair Work to the extent resulting from the negligence or willful misconduct of Landlord or any Related Party of Landlord; *provided, however*, that Landlord shall not have any such obligation to reimburse Tenant with respect to any Maintenance and Repair Work necessitated by ordinary wear and tear.

**14.1.2 Standards Required for Maintenance and Repair Work.** The necessity for and adequacy of Maintenance and Repair Work pursuant to Section 14.1.1 shall be measured by the Operating Standard, provided that Tenant shall perform, or cause to be performed, all Maintenance and Repair Work also in accordance with Section 9.4, Section 9.5, Section 9.6, Article XV and Article XIX.

**14.1.3 No Services Provided by Landlord.** Following the Lease Commencement Date, Landlord shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Leased Premises other than as and if expressly required under the terms of this Lease. Other than as and if expressly required under the terms of this Lease, Tenant hereby assumes the full and sole responsibility for the condition, operation, security, repair, replacement, maintenance and management of the Leased Premises during the Term.

**14.1.4 Landlord's Right to Repair and Maintain in an Emergency.** Subject to Section 16.1.3, in the event of an Emergency only, Landlord may, at its option, and in addition to any other remedies which may be available to it under this Lease, enter, or cause its authorized representatives to enter, the Leased Premises and perform any Maintenance and Repair Work that Tenant has failed to perform in accordance with the terms of this Lease, such Maintenance and Repair Work and such entry to be as reasonably necessary to address such Emergency. Tenant shall, within thirty (30) days following Landlord's demand and notice, pay and reimburse Landlord for the reasonable costs of such Maintenance and Repair Work, together with interest at the Default Rate, from the date such costs were paid by Landlord until repayment in full by Tenant. This Section 14.1.4 shall in no way affect or alter Tenant's obligations for Maintenance and Repair Work under Section 14.1.1 and Section 14.1.2, and shall not impose or be construed to impose upon Landlord any obligation for such Maintenance and Repair Work inconsistent with the provisions of this Lease. Any Maintenance and Repair Work performed by or on behalf of Landlord pursuant to this Section 14.1.4 shall be prosecuted with due diligence and completed with all reasonable dispatch and constructed in a good and workmanlike manner in accordance with standard construction practice of improvements similar to Improvements in question. Landlord may access the Capital Fund to the extent necessary should Landlord undertake any Capital Repairs that are otherwise Tenant's responsibility under this Lease.

**14.1.5 Capital Fund.** Beginning on the date described below and continuing thereafter during the Term as described below, Tenant shall make, or cause to be made, regardless of whether or not deposits are made into the Capital Fund pursuant to Section 9.7, deposits into the Capital Fund in an amount equal to \$100,000 for Lease Years 1-10, \$200,000 for Lease Years 11-20 and \$425,000 for Lease Years 21-30, *provided, however*, that should Landlord and Tenant agree to extend the Term beyond the original Lease Expiration Date, such Capital Fund deposit will increase to \$500,000 per Lease Year commencing on the later to occur

of (a) Lease Year 25 and (b) the date Landlord and Tenant agree to extend the Term, without offset or deduction. Such deposits into the Capital Fund shall be due and payable by Tenant during the Term beginning on the first anniversary of the commencement of the Operating Term and continuing annually on such date thereafter. The Capital Fund shall be applied exclusively to fund Capital Expenses. The distribution of funds out of the Capital Fund for Capital Expenses incurred by Tenant shall not constitute or be deemed to constitute (i) an Approval or acceptance by Landlord of the relevant Capital Repairs or (ii) a representation or indemnity by Landlord to Tenant or any other Person regarding any such Capital Repairs. Further, notwithstanding anything in this Lease to the contrary, Tenant's financial responsibility with respect to Capital Repairs and Capital Expenses shall not be limited to the amount of funds in the Capital Fund. Any balance in the Capital Fund on the Lease Expiration Date shall belong to Landlord and may be withdrawn by Landlord upon the request of a Responsible Officer of Landlord.

**14.1.6     Capital Fund Custodian.** The Capital Fund Custodian shall maintain the Capital Fund on behalf of the Tenant and Landlord. The amounts available in the Capital Fund from time to time shall be invested in Permitted Investments designated by the Tenant. The Capital Fund shall not be pledged for any purpose and may be used only for the purposes provided in this Lease. The Capital Fund shall be applied exclusively to fund Capital Expenses and any refund due Tenant under the terms of Section 14.1.5.

**14.1.7     Tenant's Access to the Capital Fund.** Subject to all of the provisions and limitations set forth in this Section 14.1.7, from time to time during the Term, Tenant may withdraw funds available in the Capital Fund but only for the purpose of paying or reimbursing itself for Capital Expenses. Tenant may seek Landlord's Approval for Capital Repairs that require Landlord's Approval prior to incurring any such Capital Expenses. To withdraw funds from the Capital Fund, a Responsible Officer of Tenant must execute and deliver to Landlord and the Capital Fund Custodian a certificate ("**Certificate**") requesting withdrawal of an amount from the Capital Fund to either (i) reimburse Tenant for Capital Expenses incurred by Tenant as described in the Certificate or (ii) disburse all or a portion of such amount to the third Persons specified in the Certificate to pay those third Persons for Capital Expenses for which Tenant has liability. Each Certificate shall include (w) a statement certified by a Responsible Officer of Tenant that the particular Capital Expenses covered by the Certificate (1) have been or will be completed in compliance with the terms of this Lease, (2) have been Approved by Landlord or are Capital Expenses that are not subject to Landlord's prior Approval rights as described in Section 14.1.8 below, (3) have not been previously reimbursed or paid out of the Capital Fund as of the date of the Certificate and (4) have been incurred for Capital Expenses and (x) such invoices, purchase orders, bills of sale or other documents that reasonably evidence Tenant's incurrence of such expenses and completion or undertaking to complete such Capital Repairs. Absent manifest error, upon receipt of a Certificate, the Capital Fund Custodian shall promptly (and in no event more than ten (10) Business Days after receipt of such Certificate) withdraw from the Capital Fund the amount specified in such Certificate and disburse such amount to (y) Tenant to reimburse Tenant for the amount of Capital Expenses incurred by Tenant as specified in such Certificate or (z) the third Persons specified in such Certificate to pay such third Persons the amounts specified in such Certificate. Notwithstanding anything to the contrary contained in this Section 14.1.7 in the event Tenant submits a Certificate under this Section 14.1.7 and an uncured Tenant Default shall then exist, Landlord and/or the Capital Fund Custodian shall not be obligated to draw against the Capital Fund for the funds requested or

otherwise reimburse Tenant unless and until such uncured Tenant Default is cured or otherwise resolved. Landlord and Tenant intend for the procedure described in this Section 14.1.7 to be ministerial in nature so that Tenant may receive prompt reimbursement and payment of expenses described in this Section 14.1.7 incurred by Tenant or for which the Tenant has liability. In the event any Certificate submitted by Tenant under this Section 14.1.7 does not include documents that reasonably evidence Tenant's completion of the Capital Repairs covered by such Certificate, Tenant shall provide Landlord and the Capital Fund Custodian with such documents within thirty (30) days after the completion of such Capital Repairs.

**14.1.8     Approval of Withdrawal From Capital Fund.** Landlord's prior Approval (which Approval shall not be unreasonably withheld) shall be required prior to Tenant's withdrawal of funds from the Capital Fund, except for the following:

- (a) Capital Expenses required by Applicable Law, which requirement is evidenced by a notice of violation or other evidence from any Governmental Authority;
- (b) Capital Expenses, or a series of Capital Expenses that reasonably constitutes a single project, if the estimated costs of effecting the same is in the aggregate less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for Lease Years 1-10, Thirty-Five Thousand and No/100 Dollars (\$35,000.00) for Lease Years 11-20 and Forty-Five Thousand and No/100 Dollars for Lease Years 21-30;
- (c) Capital Expenses required to be performed in accordance with a schedule of required repairs for any Component, system or equipment of the Leased Premises, such schedule being recommended in writing by the manufacturer, supplier or installer of such Component, system or equipment; or
- (d) Capital Expenses undertaken to address an Emergency.

**14.1.9     Verification of Capital Expenses.** Within ninety (90) days after the end of each Lease Year, Tenant shall furnish to Landlord a certificate of a Responsible Officer of Tenant, setting forth, to such Responsible Officer's best knowledge and belief, all withdrawals or transfers from the Capital Fund by Tenant, the manner in which the proceeds so withdrawn were applied, and all Capital Expenses incurred by Tenant during such Lease Year in excess of the aggregate of all such withdrawals. Landlord may, at any time within ninety (90) days after receipt of such certificate, notify Tenant in writing of Landlord's desire, at Landlord's expense (except as provided below), to engage a nationally or regionally recognized firm of independent certified public accountants or other accounting firm acceptable to Landlord to verify the accuracy of such certificate. Such accountant's compensation shall not be contingency based. Such accountants' review shall be limited to the portion of Tenant's books and records that are necessary to verify such terms. Landlord shall direct such accountants to (i) deliver their report (which shall be addressed to Landlord and Tenant) to Landlord and Tenant within a reasonable time period and in no event later than sixty (60) days after Tenant has granted such accountants access to its relevant books and records, (ii) advise Landlord and Tenant in such report whether any withdrawal or transfer from the Capital Fund during such Lease Year was in error, and if so, describe any such error in reasonable detail and (iii) determine the amount required to be deposited by Tenant in the Capital Fund (or, if so applicable, the amount by which the excess of

Capital Expenses over the aggregate withdrawals made by Tenant, as described above, shall be reduced), if any, to correct such error. Within ten (10) days after delivery of such accountants' report, Tenant shall deposit such amount (or, if applicable, deliver to Landlord notice that the excess of Capital Expenses over the aggregate withdrawals made by Tenant, as described above, has been reduced by such amount). If the amount finally determined to be owed by Tenant exceeds Twenty-five Thousand and No/100 Dollars (\$25,000.00) (such amount to increase by a percent equal to the CPI Increase on a cumulative, compounding basis for each Lease Year after the initial Lease Year), Tenant shall reimburse Landlord for the reasonable costs of such accountants' review. The accountants engaged by Landlord for the above purposes (i) shall not be considered to be agents, representatives or independent contractors of Tenant and (ii) shall agree for the benefit of Tenant, to maintain the confidentiality of all of Tenant's books and records and the results of its audit, except as required by any Applicable Law.

#### **14.2 Utilities.**

**14.2.1 Utility Costs.** Landlord shall not be obligated to furnish or pay for any utilities for the Leased Premises. Tenant shall cause the necessary mains, conduits and other facilities to be provided and maintained (from and within the property lines of the Leased Premises and beyond to the connection with the supplying utility in the streets immediately adjacent to the Leased Premises) to supply water, gas, telephone, electricity and other utility services commonly supplied to and within Comparable Facilities similar to the Project Improvements, and Tenant shall, at Tenant's sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair all water pipes, conduits, electric lines, gas pipes and other transmission facilities in, on or servicing the Project Improvements during the Term, *provided* that to the extent the same are not located in or on the Leased Premises, the obligation of Tenant shall be only to maintain such pipes, conduits, lines or other facilities to the connection points located in the streets immediately adjacent to the Leased Premises. During the Term, Tenant shall pay, or cause to be paid, for all water used in the Project Improvements and all rents or charges imposed for water used, and for any sewage charge or assessment, whether imposed by meter or otherwise. Tenant shall comply with all water conservation measures required by Applicable Laws. During the Term, Tenant shall also pay, or cause to be paid, for all gas, electricity, fuel and other utilities used or consumed to heat, cool, light, illuminate or otherwise power the Project Improvements and outside lighting and signs, if any, for the Project Improvements on or surrounding the Project Improvements (excluding costs of municipal street lighting) or otherwise delivered thereto. Except to the extent caused by the gross negligence or willful misconduct of Landlord or any Related Party of Landlord, no interruption or malfunction of any utility services shall constitute an eviction or disturbance of Tenant's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in Rent.

**14.2.2 Utility Upgrade and Extension Costs.** Tenant shall cause the necessary mains, conduits and other facilities to be provided and maintained (from and within the property lines of the Leased Premises and beyond to the connection with the supplying utility in the streets immediately adjacent to the Leased Premises) to supply any additional volume or type of utility services required in connection with Construction Work, Tenant's operations at the Leased Premises or otherwise, and Tenant shall, at its sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair such additional or other utility

service facilities in, on or servicing only the Project Improvements during the Term, *provided* that to the extent the same are not located in or on the Leased Premises, the obligation of Tenant shall be only to maintain such pipes, conduits, lines or other facilities to the connection points located in the streets immediately adjacent to the Project Improvements. Tenant shall pay, or cause to be paid, rents, charges and fees imposed for use of such additional volume or type of utility services. "**Utility Upgrade and Extension Costs**" shall mean the total of all costs, expenses, rents, charges and fees arising under this Section 14.2.2. Except to the extent caused by the gross negligence or willful misconduct of Landlord or any Related Party of Landlord, no interruption or malfunction of any additional volume or type of utility services shall constitute an eviction or disturbance of Tenant's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in Rent.

## ARTICLE XV

### OWNERSHIP OF IMPROVEMENTS AND TENANT'S PERSONAL PROPERTY; ADDITIONAL WORK

#### 15.1 Title to the Project Improvements.

**15.1.1 The Project Improvements During the Term; Upon Termination of the Term.** All construction materials and consumables that will be incorporated into and constitute the Project Improvements to be constructed on the Leased Premises will be deemed donated to Landlord prior to the installation thereof (collectively, the "**Donated Construction Materials**"), and title to all of such Project Improvements shall be and remain in Landlord for and during the Term. Landlord's acceptance of such donation is made solely as the landlord hereunder and not as a developer or operator of the Project Improvements, and such acceptance shall in no way be deemed, interpreted or construed to modify, reduce or compromise in any manner whatsoever Tenant's obligations set forth in this Lease or relieve Tenant from any such obligations, including the insurance requirements set forth in this Lease. Further, Landlord makes no representation or warranty whatsoever as to the tax consequences of donations contemplated by the terms of this Section 15.1.1. As long as such Donated Construction Materials are consistent with the Project Plans, incorporated into the Project Improvements, installed in a good and workmanlike manner, and used in the operation of the Leased Premises, Landlord shall not have the right to reject title to any of such Donated Construction Materials, and Landlord's rights and powers with respect to the Donated Construction Materials are subject to the terms and limitations of this Lease. Notwithstanding anything herein to the contrary, Tenant shall retain title to the Personal Property located in the Project Improvements and, to the extent provided in Section 22.2, shall upon the Lease Expiration Date remove and retain title to any or all Personal Property located in the Project Improvements.

**15.1.2 Sales Tax During Construction.** If requested by Tenant during construction of the Leased Premises, the Landlord, Prime Lessor, and Tenant shall, at Tenant's expense, cooperate in seeking a determination from the Comptroller of Public Accounts of the State of Texas confirming that the Donated Construction Materials shall be exempt from sales and use taxes. The Landlord, Prime Lessor, and Tenant shall, at Tenant's expense, take appropriate or necessary steps to establish and maintain the foregoing exemption, including,



without limitation the Landlord confirming in writing to the Tenant the Landlord's acceptance of delivery of each donation of such Donated Construction Materials.

**15.1.3 Waste; Sale or Disposal of Personal Property.**

(a) Tenant shall neither do nor permit nor suffer any waste to or upon the Leased Premises.

(b) Provided that no Tenant Default then exists, Tenant shall have the right, at any time and from time to time, to sell, dispose of or replace any Personal Property or fixtures located in the Project Improvements; *provided, however*, that if such Personal Property or fixtures are necessary for operation of the Project Improvements at the Operating Standard, Tenant shall then, or prior thereto or as reasonably necessary thereafter, replace or substitute (i) such Personal Property with property not necessarily of the same character but capable of performing the same function as that performed by the Personal Property and (ii) such fixtures with Property with the same or better quality and just as suitable for its intended purpose.

**15.2 Additional Work by Tenant.**

**15.2.1 Changes, Alterations, and Additional Improvements.** After the Project Completion Date and subject to the limitations and requirements contained elsewhere in this Lease, Tenant shall have the right at any time and from time to time to construct additional or replacement Improvements on the Leased Premises ("**Additional Improvements**"), at its sole cost and expense, and to make, at its sole cost and expense, changes and alterations in, to or of the Project Improvements, subject, however, in all cases to the terms, conditions and requirements of this Section 15.2. For purposes of this Lease, "**Additional Work**" collectively shall refer to (i) construction or installation of any such Additional Improvements and changes and alterations in, to or of the Project Improvements under this Section 15.2.1, (ii) any Casualty Repair Work, (iii) any Condemnation Repair Work, (iv) Tenant's Remedial Work, or (v) any other construction, installation, repair or removal work in, to or of the Project Improvements required or permitted to be pursuant to the terms of this Lease. The performance of Additional Work shall, in all cases, comply with the requirements of this Section 15.2.1.

(a) Tenant shall not commence any Material Additional Work unless and until Tenant complies with the following procedures and requirements and obtains the Approvals specified below:

(i) Tenant shall obtain the Approval of Landlord with respect to the Material Additional Work Specifications, which Approval will not be unreasonably withheld provided that such Additional Improvements do not materially interfere with the operation of Project Improvements for its intended purpose as the home field professional sports venue for the Team pursuant to the Franchise and this Lease, and the Approval of Landlord Representative as to all other Material Additional Work Submission Matters;

(ii) Tenant shall deliver all Material Additional Work Submission Matters to Landlord Representative at least thirty (30) days prior to the

commencement of any Material Additional Work. Upon receipt from Tenant of any Material Additional Work Submission Matters, Landlord Representative shall review the same (which review shall be in accordance with Section 11.4) and shall promptly (but in any event within fifteen (15) days after receipt) give Notice to Tenant of the Approval or disapproval of (x) Landlord with respect to the Material Additional Work Specifications and (y) Landlord Representative with respect to all other Material Additional Work Submission Matters, and, if disapproval, setting forth in reasonable detail the reasons for any such disapproval;

(iii) To the extent that, and from time to time as, Landlord Representative gives Notice to Tenant of the Approval of Landlord or Landlord Representative, as applicable, of any of the Material Additional Work Submissions Matters, Tenant shall have the right to proceed (upon issuance of all necessary Governmental Authorizations to so proceed) with the portion of Material Additional Work which has been Approved by Landlord or Landlord Representative, as applicable. If Landlord Representative gives Notice to Tenant of disapproval of any of the Material Additional Work Submission Matters by Landlord or Landlord Representative, as applicable, Tenant shall have the right within sixty (60) days after the date of such Notice to resubmit any such Material Additional Work Submission Matters to Landlord Representative, altered as necessary in response to Landlord's or Landlord Representative's, as applicable, reasons for disapproval, until the Material Additional Work Submission Matters shall be Approved by Landlord or Landlord Representative, as applicable. All subsequent resubmissions of any Material Additional Work Submission Matter by Tenant must be made within thirty (30) days after the date of Notice of disapproval from Landlord or Landlord Representative, as applicable, as to the prior resubmission. Any resubmission shall be subject to review by Landlord or Landlord Representative, as applicable, in accordance with Section 11.4 for the original Material Additional Work Submission Matter, except that the time period for review and response by Landlord shall be fifteen (15) days and the submission procedures in Section 11.4.3 shall apply; and

(iv) All Material Additional Work shall, once commenced, be completed in accordance with all Material Additional Work Submission Matters which have been Approved by Landlord or Landlord Representative, as applicable, and the Material Additional Work Plans and, subject to Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay, Tenant shall use commercially reasonable efforts to cause Final Completion of the Material Additional Work to occur on or before the date for the same specified in the Material Additional Work Construction Schedule which has been Approved by Landlord Representative.

(b) Any Additional Work shall, when completed, be of such a character as not to reduce the value and utility of any Improvements below the value and utility immediately before such Additional Work and shall not weaken or impair the structural integrity of any Improvements.

(c) The cost of any Additional Work shall be paid in cash or its equivalent pursuant to customary construction disbursement procedures for the performance of such work, including taking commercially reasonable measures to cause the Leased Premises to be free from all Liens and Encumbrances or security interests, subject to Tenant's right to dispute any Lien pursuant to Section 9.5.

**15.3 No Substitute for Permitting Processes.** The review for compliance by Landlord of any matter submitted to Landlord pursuant to Section 15.2 shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, all permitting processes of Governmental Authorities applicable to the Additional Work.

## ARTICLE XVI

### LANDLORD'S RIGHT OF ENTRY

#### **16.1 Access to Leased Premises by Landlord.**

**16.1.1 During Construction Work.** Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and all portions thereof, without charges or fees, during the Construction Term or during the period of the performance of any Construction Work for the purposes of assuring compliance with this Lease or for performing or undertaking any rights or obligations of Landlord pursuant to the terms of this Lease; *provided* that with respect to access other than in connection with a Tenant Default, Landlord shall (i) provide Notice to Tenant at least twenty-four (24) hours in advance of such proposed entry and such proposed entry shall be during normal Business Hours, (ii) not materially hinder or interfere with the Construction Work or the activities of Tenant's contractors, (iii) take such reasonable protective caution or measures as Tenant may reasonably request, given the stage of the Construction Work at the time of such entry and (iv) use commercially reasonable efforts to minimize interference with Tenant's use and operation of the Leased Premises then being undertaken by Tenant pursuant to the terms of this Lease. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct any inspections.

**16.1.2 No Construction Work Ongoing.** Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3 and upon Substantial Completion of the Project Improvements Work and as to areas where no Construction Work is then ongoing, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and any portion thereof, without charges or fees, at all reasonable times during the Term and upon not less than twenty-four (24) hours advance Notice for the purposes of (i) inspection (during Business Hours only), (ii) exercising its rights under Section 17.3, or (iii) exhibition of the Project Improvements to others during the last thirty-six (36) months of the Term (during Business Hours only); *provided, however*, that (x) such entry and Landlord's activities pursuant thereto shall be conducted in such a manner as to minimize interference with Tenant's use and operation of the Leased Premises then being conducted in the Leased Premises pursuant to the terms of this Lease and (y) nothing herein shall be intended to require Landlord to deliver Notice to Tenant or to only enter during any specific

period of time, in connection with a Tenant Default or in order for Landlord to perform any of its obligations under this Lease.

**16.1.3 Access During an Emergency.** Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3 and notwithstanding Section 16.1.1 and Section 16.1.2, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and any portion thereof, without charges or fees, in connection with an Emergency, so long as Landlord uses reasonable efforts to (i) notify Tenant by telephone of any such Emergency prior to entering the Leased Premises and as soon as reasonably possible, but in no event later than three (3) days after Landlord enters the Leased Premises and (ii) minimize interference with Tenant's use and operation of the Leased Premises then being conducted in the Leased Premises pursuant to the terms of this Lease.

## ARTICLE XVII

### ADDITIONAL ENVIRONMENTAL PROVISIONS

**17.1 No Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Leased Premises by Tenant or its Subtenants and shall use commercially reasonable efforts to prevent Tenant's and its Subtenants' invitees and guests from generating, using, releasing, storing or disposing of any Hazardous Materials in or about the Leased Premises; *provided, however* that Tenant and its Subtenants may use, store and dispose of reasonable quantities of Hazardous Materials as may be reasonably necessary for Tenant to operate and perform the construction obligations permitted under this Lease from the Leased Premises pursuant to the terms of this Lease so long as such Hazardous Materials are commonly used, or permitted to be used, by Reasonable and Prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws. For the avoidance of doubt, in no event shall the terms of this Section 17.1 limit Tenant's obligations set forth in Section 9.3.

**17.2 Notice of Environmental Event.** During the Term, Tenant shall give Landlord immediate oral and follow-up written notice within seventy-two (72) hours of any actual or threatened Environmental Event. Tenant shall perform Tenant's Remedial Work in accordance with all Environmental Laws to the reasonable satisfaction of the applicable Governmental Authority. Upon any Environmental Event (except to the extent constituting Landlord's Remedial Work or City's Remedial Work), in addition to all other rights available to Landlord under this Lease, at law or in equity, Landlord shall have the right, but not the obligation, at its option (i) to require Tenant, at its sole cost and expense, to address and remedy such Environmental Event, in which event Landlord shall have the right to Approve (which Approval shall not be unreasonably withheld) any actions taken by Tenant to address and remedy the Environmental Event, or (ii) if Tenant has failed to commence action to address and remedy the Environmental Event within a reasonable time after notice is given to Landlord, and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant, to perform, at Tenant's sole cost and expense, any lawful action necessary to address and remedy the same, in which event Tenant shall pay the costs thereof to Landlord, within ten (10) days after written demand therefor.

**17.3 Environmental Audit.** Landlord, at its sole cost and expense, shall have the right, but not the obligation, to conduct, at its expense, periodic environmental audits of the Leased Premises (including the air, soil, surface water and groundwater at or near the Leased Premises) and Tenant's compliance with Environmental Laws with respect thereto. If (a) any Governmental Authority requires testing or other action with respect to the Leased Premises, (b) such testing or other action is not required in connection with Landlord's Remedial Work or City's Remedial Work, (c) Tenant fails to perform such testing or other action and (d) Landlord incurs expenses in complying with such requirement, then Tenant shall pay to Landlord the reasonable costs therefor within ten (10) days after written demand therefor.

**17.4 Tenant Release.** **WITHOUT LIMITING TENANT'S INDEMNITY OBLIGATIONS UNDER THIS LEASE, TENANT HEREBY RELEASES LANDLORD FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT TENANT MAY HAVE WITH RESPECT TO THE LEASED PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF TENANT'S REMEDIAL WORK AND/OR CITY'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.**

## **ARTICLE XVIII**

### **CASUALTY DAMAGE**

#### **18.1 Damage or Destruction.**

**18.1.1 During the Term.** If, at any time during the Term, the Leased Premises described in clause (a) of the definition thereof or any part thereof shall be damaged or destroyed by Casualty, then Tenant shall use reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to Persons or Property and, within a reasonable period of time thereafter, remediate any hazard and restore such Leased Premises to a safe condition, whether by repair or by demolition, removal of debris or screening from public view. Subject to Section 18.4, Tenant shall, to the extent allowed by Applicable Law, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and subject to Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay) to repair, restore, replace or rebuild such Leased Premises as nearly as practical to a condition substantially equivalent to that existing immediately prior to such Casualty and in accordance with the terms of this Lease. Such repair, restoration, replacement or rebuilding, including temporary repairs for the protection of other Property pending the completion of any such work, remediation of hazards and restoration of such Leased Premises to a safe and presentable condition or any demolition and debris removal required are sometimes referred to in this Lease as the "Casualty Repair Work."

## **18.2 Casualty Proceeds.**

### **18.2.1 Requirements for Disbursement when Lease is Not Terminated.**

Provided that (i) no Tenant Default then exists and (ii) Tenant shall not have terminated this Lease pursuant to Section 18.4.1, insurance proceeds paid pursuant to the policies of insurance required to be carried by Tenant under Article XIX for loss of or damage to such Leased Premises (other than Tenant's Business Interruption Policy) (the "**Casualty Proceeds**") shall be paid and delivered to Tenant to be applied to the payment of the direct and out-of-pocket costs of the Casualty Repair Work. Tenant shall be entitled to receive such Casualty Proceeds directly from the insurer; *provided, however*, that Tenant shall be required to deliver Notice to Landlord, executed by a Responsible Officer of Tenant, within fifteen (15) days after Tenant's receipt of such Casualty Proceeds from the insurer stating that such Casualty Proceeds were advanced to Tenant by the insurer for payment of costs of Casualty Repair Work yet to be performed or that (x) such Casualty Proceeds represent amounts paid by Tenant for direct, out-of-pocket cost of Casualty Repair Work or which are then due and payable to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Casualty Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or then due and (y) except for the amount stated in such Notice to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Casualty Repair Work known to the Persons signing such Notice which is then due to Persons being paid, after due inquiry.

### **18.2.2 Disbursements of Excess Proceeds after Casualty Repair Work.**

If the Casualty Proceeds received by Tenant shall exceed the entire direct, out-of-pocket costs of the Casualty Repair Work, Tenant shall be entitled to retain any such excess Casualty Proceeds after Tenant has furnished to Landlord evidence reasonably satisfactory to Landlord that all Casualty Repair Work has been completed and that no Mechanic's Liens exist or may arise in connection with the Casualty Repair Work and after all Rent then due hereunder has been paid and after any Tenant Defaults hereunder have been cured.

### **18.2.3 Uninsured Losses/Policy Deductibles.**

As Casualty Repair Work progresses during the Term, Tenant shall be obligated to pay for all costs and expenses of any such Casualty Repair Work that are not covered by Casualty Proceeds or for which Casualty Proceeds are inadequate.

**18.3 Abatement.** In the event a Casualty occurs that materially interferes with Tenant's ability to operate at the Land and the Leased Premises described in clause (a) of the definition thereof, as a whole, in accordance with the terms of this Lease, Rent will be abated during the period in which Tenant's Business Interruption Policy ceases to provide coverage to Tenant (whether with respect to the deductible period or the period following the exhaustion of the proceeds related thereto) and ending on the earlier of (i) the date the relevant Casualty Repair Work is substantially complete, and (ii) the date the Casualty or the related Casualty Repair Work no longer materially interferes with Tenant's ability to operate at the Leased Premises, as a whole, in accordance with the terms of this Lease. In the event that Tenant shall fail to maintain in full force and effect Tenant's Business Interruption Policy at the time of a Casualty (and which provides coverage for the period after the occurrence of such Casualty) as required pursuant to the terms of this Lease, Tenant shall not be entitled to the foregoing adjustment in

Base Rent until the date upon which Tenant's Business Interruption Policy, as required pursuant to the terms of this Lease, would have ceased to provide coverage to Tenant had Tenant in fact maintained same.

#### **18.4 Option to Terminate.**

**18.4.1 Tenant's Right to Terminate.** In the event (a) a Casualty occurs and it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative that it will take longer than two (2) years from the commencement of the Casualty Repair Work to complete the Casualty Repair Work with respect to the Project Improvements or (b) a Casualty occurs during the last five (5) years of the Term and (i) it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative that it will take longer than one (1) year from the commencement of the Casualty Repair Work to complete the Casualty Repair Work with respect to the Project Improvements or (ii) it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative that it will cost more than Ten Million Dollars (\$10,000,000.00) (such amount to increase by a percent equal to the CPI Increase on a cumulative, compounding basis for each Lease Year after the initial Lease Year) to complete the Casualty Repair Work with respect to the Project Improvements, then Tenant may, at its option (exercised within ninety (90) days after such Casualty), terminate this Lease by satisfying each of the following which shall be conditions precedent to the effectiveness of any such termination (x) serving Notice upon Landlord within such period setting forth Tenant's election to terminate this Lease as a result of such Casualty as of the end of the calendar month in which such Notice is received by Landlord and (y) paying to Landlord, concurrently with the service of such Notice, the Rent and other payments, including Impositions, which would otherwise have been payable up to the effective date of such termination. Upon the service of such Notice and the making of such payments within the period aforesaid, this Lease shall cease and terminate on the date specified in such Notice with the same force and effect as if such date were the date originally fixed as the Lease Expiration Date. In addition to Tenant's obligations under Article XXII, Tenant shall thereafter be obligated to demolish and remove all debris with respect to the Leased Premises described in clause (a) of the definition thereof which have been damaged by such Casualty in a manner consistent with Section 9.4 and 9.5, if Landlord so requires. Failure by Tenant to terminate this Lease within the foregoing time period shall constitute an election by Tenant to keep this Lease in full force and effect, in which event Tenant shall commence to perform the Casualty Repair Work in accordance with the terms of this Lease.

**18.4.2 Payment of Rent Upon Termination.** With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of any termination of this Lease as provided in Section 18.4.1, but which are not then capable of ascertainment, estimated amounts of such items shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimate as and when the same become determined.

**18.4.3 Excess Proceeds Upon Termination.** In the event this Lease shall be terminated pursuant to the provisions of Section 18.4.1, Casualty Proceeds shall be paid to Landlord and held in trust by Landlord, and such Casualty Proceeds shall be payable to, and shall be applied as follows and in this order: (a) to Tenant, to pay for the costs of razing the Project

Improvements and clearing the Land of debris in accordance with this Lease and all Applicable Law, if requested to do so by Landlord and not previously paid to Tenant, (b) to Landlord, to pay any outstanding Rent (and establishing a reserve to pay any that cannot then be determined), (c) to Landlord, to pay to release from the Leased Premises and from any interest of Landlord hereunder any Mechanic's Liens and any other Encumbrances caused by Tenant or arising out of work performed with respect to the Leased Premises by, or in satisfaction of any obligation of, Tenant hereunder, (d) to a Permitted Project Financing Holder, any outstanding amounts due under any Permitted Project Financing, (e) to Tenant, one hundred percent (100%) of the insurable replacement cost value of the Personal Property, and (f) one half to Landlord and one half to Tenant. Tenant hereby grants to Landlord a security interest in and Lien on the Casualty Proceeds for the purpose of securing the obligations of Tenant under this Article XVIII and agrees to take such action as Landlord may from time to time reasonably request to perfect such security interest and Lien, which security interest and Lien shall be released by Landlord upon fulfillment of all of the obligations of Tenant under this Article XVIII.

## ARTICLE XIX

### INSURANCE AND INDEMNIFICATION

#### 19.1 Policies Required.

##### 19.1.1 Policies Required During Construction of Projects Improvements Work.

(a) *Builder's Risk Policies for Project Improvements Work.* Following the Lease Commencement Date and prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that (i) the Project Contractor or any of Tenant's other contractors or subcontractors has not been paid in full with respect to the Project Improvements Work or (ii) any Person has any repair obligations with respect to the Project Improvements Work, Tenant shall, at its cost and expense as a portion of Total Project Costs, obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "Builder's Risk Policies for Project Improvements Work") affording coverage of such Project Improvements Work, whether permanent or temporary, and, to the extent not covered by a separate policy, all Insured Materials and Equipment and Contractors' Equipment related thereto, against loss or damage due to Insured Casualty Risks by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time in the City of Houston, Harris County, Texas. The Builder's Risk Policies for Project Improvements Work shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of the Project Improvements and the cost of the Project Improvements Work, using a completed value form (with permission to occupy upon completion of work or occupancy), naming Tenant as the insured and Landlord Insured as additional insureds, and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss for Insured Casualty Risks, unless such deductible



is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms; *provided, however*, that, in the case of demolition and debris removal coverage, Tenant shall carry coverage in not less than the full amount necessary to demolish the Project Improvements and to remove all debris that may exist after the occurrence of any Insured Casualty Risks.

(b) *Policies for Project Improvements Work.* In the event any vehicles are to be used in connection with any Project Improvements Work by the Project Contractor and Tenant's other contractors and subcontractors, prior to the commencement of the use of such vehicles in connection with such Project Improvements Work, and at all times during such use through completion of such use, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain business automobile liability insurance policies (the "**Auto Policies for Project Improvements Work**") covering all vehicles, whether owned or non-owned and hired or borrowed vehicles, used in connection with the Project Improvements Work, naming Landlord Insured as additional insured, affording protection against liability for bodily injury and death and/or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. In addition to the Auto Policies for Project Improvements Work described above, in the event any Hazardous Materials will be transported, loaded or unloaded by the Project Contractor or Tenant's other contractors or subcontractors, prior to such transport, loading or unloading, and at all times during such transport, loading or unloading through completion thereof, Tenant shall cause the relevant contractor or subcontractor to obtain, keep and maintain in its Auto Policy for Project Improvements Work a motor trucker or carrier pollution endorsement related to claims arising out of the transporting and loading or unloading of such Hazardous Materials.

(c) *Workers' Compensation Policies for Project Improvements Work.* Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's Workers' Compensation Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain workers' compensation insurance policies and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by the Project Contractor and Tenant's other contractors and subcontractors in connection with the Project Improvements Work and employers liability insurance policies with respect to same which afford protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each

employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *General Liability Policy for Project Improvements Work.* Prior to commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's GL Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain keep and maintain a commercial general liability insurance policy ("**GL Policy for Project Improvements Work**"), written on an occurrence basis and limited to the Project Improvements Work and the Leased Premises naming such contractor or subcontractor as the insured and Tenant and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death and/or property damage occurring, in, upon or about the Leased Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Leased Premises and containing provisions for severability of interests. The Project Contractor's GL Policy for Project Improvements Work shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain the Excess/Umbrella Policy for Project Improvements Work without gaps in coverage between the GL Policy for Project Improvements Work and the Excess/Umbrella Policy for Project Improvements Work (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy for Project Improvements Work shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) broad form property damage coverage, (v) completed operations and products liability coverage for a period of two (2) years after Commencement of Operations, (vi) cross liability endorsement, (vii) hoists and elevators or escalators and (viii) an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability and providing for related clean-up of the Leased Premises and any affected adjacent property. The GL Policy for Project Improvements Work of Tenant's other contractors and subcontractors shall be in such amount and such policy limits as meets the Insurance Standard for such contractors and subcontractors.

(e) *Excess/Umbrella Policy for Project Improvements Work.* Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's Excess/Umbrella Policies, Tenant shall cause the Project Contractor to obtain, keep and maintain an excess or umbrella liability insurance policy ("**Excess/Umbrella Policy for Project Improvements Work**"), written on an occurrence basis, in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Tenant as insured and Landlord Insured as additional insured. Tenant shall cause Tenant's other contractors and subcontractors to obtain, keep and maintain an excess or umbrella liability insurance policy in such amount as meets the Insurance Standard for such contractors and subcontractors. Pollution Liability Excess/Umbrella coverage limit will be provided at Five Million and No/100 Dollars (\$5,000,000.00).

(f) *Additional Insurance.* Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, Tenant shall, or shall cause the Project Contractor and Tenant's other contractors and subcontractors to, obtain, keep, and maintain (i) such other and additional insurance as is, from time to time, required by all Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall, at the election of Landlord, name Landlord as loss payee or Landlord Insured as additional insured in a manner consistent with their being named loss payees or additional insureds in the policies required above in this Section 19.1.1 and shall comply with all applicable requirements set forth in Section 19.5.

#### **19.1.2 Intentionally Deleted.**

#### **19.1.3 Policies Required During Construction of Additional Improvements Work.**

(a) *Builder's Risk Policy for Additional Work.* Prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that (i) the Material Additional Work Construction Contractor or any of Tenant's other contractors and subcontractors has not been paid in full in respect to the Additional Work and (ii) any Person has any repair obligations with respect to such Additional Work, Tenant shall, at its cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "**Builder's Risk Policies for Additional Work**") affording coverage of all Additional Work, whether permanent or temporary, and, to the extent not covered by a separate policy, all Insured Materials and Equipment and Contractors' Equipment related

thereto against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time with respect to similar work in the City of Houston, Harris County, Texas. The Builder's Risk Policies for Additional Work shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the cost of the Additional Work using a completed value form (with permission to occupy upon completion of work or occupancy), naming Tenant as the insured and Landlord Insured as additional insured, with replacement cost coverage in an amount designated by Tenant, subject to the Approval of Landlord Representative, and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms; *provided, however*, that, in the case of demolition and debris removal coverage, Tenant shall carry coverage in not less than the full amount necessary to demolish the Additional Work and to remove all debris that may exist after any Insured Casualty Risks.

(b) *Auto Policies for Additional Work.* In the event any vehicles are to be used in connection with any Additional Work by the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors, prior to the commencement of the use of such vehicles in connection with such Additional Work, and at all times during such use through completion of such use, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain business automobile liability insurance policies (the "**Auto Policies for Additional Work**") covering all vehicles, whether owned, non-owned and hired or borrowed vehicles, used in connection with the Additional Work, naming Landlord Insured as additional insured, affording protection against liability for bodily injury and death and/or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. In the event any Hazardous Materials will be transported, loaded or unloaded by the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, prior to such transport, loading or unloading, and at all times during such transport, loading or unloading through completion thereof, Tenant shall cause the relevant contractor or subcontractor to obtain, keep and maintain in its Auto Policies for Additional Work a motor trucker or carrier pollution endorsement related to claims arising out of the transporting and loading or unloading of such Hazardous Materials.

(c) *Workers' Compensation Policies for Additional Work.* Prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to

such Additional Work, in addition to Tenant's Workers Compensation Policy, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain workers' compensation insurance policies and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors in connection with the Additional Work and employers liability insurance policies with respect to same which afford protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Commercial General Liability Policy for Additional Work.* Prior to commencement of any Additional Work and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, in addition to Tenant's GL Policy, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain keep and maintain a commercial general liability insurance policy ("GL Policy for Additional Work"), written on an occurrence basis and limited to the Additional Work and the Leased Premises, naming such contractor or subcontractor as the insured and Tenant and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death or property damage occurring, in, upon or about the Additional Work or the Leased Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Additional Work or the Leased Premises, and containing provisions for severability of interests. The Material Additional Work Contractor's GL Policy for Additional Work shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain the Excess/Umbrella Policy for Additional Work without gaps in coverage between the GL Policy for Additional Work and the Excess/Umbrella Policy for Additional Work (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy for Additional Work shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners'

and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) broad form property damage coverage, (v) completed operations and products liability coverage for a period of two (2) years after Commencement of Operations, (vi) cross liability endorsement, (vii) hoists and elevators or escalators and (viii) an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability and providing for related clean-up of the Leased Premises and any affected adjacent property. The GL Policy for Project Improvements Work of Tenant's other contractors and subcontractors shall be in such amount and such policy limits as meets the Insurance Standard for such contractors and subcontractors.

(e) *Excess/Umbrella Policy for Additional Work.* Prior to the commencement of any Additional Work and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's Excess/Umbrella Policies, Tenant shall cause the Material Additional Work Construction Contractor to obtain, keep and maintain an excess or umbrella liability insurance policy ("**Excess/Umbrella Policy for Additional Work**"), written on an occurrence basis, in an amount not less than Ten Million and No/100 Dollars (\$10,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Tenant as insured and Landlord Insured as additional insured. Tenant shall cause Tenant's other contractors and subcontractors to obtain, keep and maintain an excess or umbrella liability insurance policy in such amount as meets the Insurance Standard for such contractors and subcontractors.

(f) *Additional Insurance.* Prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain (i) such other and additional insurance as is, from time to time, required by all Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall name Landlord as loss payee or Landlord Insured as additional insured in a manner consistent with their being named loss payees or additional insureds in the policies required above in this Section 19.1.3 and shall comply with all other requirements set forth in Section 19.5.

**19.1.4 Property Insurance Policy.** No later than the Substantial Completion of the Project Improvements Work or Material Additional Work, as applicable, and at all times during the remainder of the Term, Tenant shall, at its sole cost and expense, obtain, keep, and maintain a special form (formerly "all risk") property insurance policy (the "**Property Insurance Policy**") providing for coverage of the Project Improvements, any Additional Improvements and the Personal Property against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on

commercially reasonable terms from time to time available in the City of Houston, Harris County, Texas, and affording coverage for, among other things, demolition and debris removal, losses from malicious acts of any employee or agent of an insured and, to the extent available on commercially reasonable terms, terrorism, naming Tenant as the first named insured and Landlord as loss payee for a sum at least equal to one hundred percent (100%) of the insurable replacement cost of the Project Improvements, any Additional Improvements and the Personal Property (without reduction for physical depreciation or obsolescence), and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms. The Property Insurance Policy shall also include an agreed amount clause or waiver of coinsurance and shall not contain any exclusion for freezing, mechanical breakdown, loss or resultant damage caused by faulty workmanship, design or materials (but not for the faulty work or materials themselves).

#### **19.1.5 Policies Required by Tenant During the Operating Term.**

Commencing on the commencement of the Operating Term (unless otherwise provided below), and at all times during the remainder of the Term and continuing thereafter until Tenant has fulfilled all of its obligations under Article XXII (unless otherwise provided below), Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, the following insurance policies:

(a) *Commercial General Liability Policy.* A commercial general liability insurance policy ("**Tenant's GL Policy**"), written on an occurrence basis and limited to the Leased Premises, naming Tenant as the named insured (with the effect that Tenant and its employees are covered) and Landlord Insured as additional insured, affording protection against liability arising out of personal injury, bodily injury and death or property damage occurring, in, upon or about the Leased Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Leased Premises and containing provisions for severability of interests. Tenant's GL Policy must specifically include host legal liquor liability and dram shop liability coverage; premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable; owners' and contractors' protective coverage; blanket contractual coverage; personal injury and advertising injury; broad form property damage coverage (including fire legal); incidental medical malpractice liability; broad form contractual liability; products/completed operations; independent contractors; cross liability endorsement and hoists and elevators or escalators, if exposure exists. Tenant's GL Policy shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain Tenant's Excess/Umbrella Policies without gaps in coverage between Tenant's GL Policy and Tenant's Excess/Umbrella Policies (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on

commercially reasonable terms. Tenant's GL Policy shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) completed operations and products liability coverage for a period of three (3) years after Commencement of Operations, (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability and providing for related clean-up of the Leased Premises and any affected adjacent property.

(b) *Auto Policy.* A business automobile liability insurance policy covering all vehicles, whether owned, non-owned and hired or borrowed vehicles, used in connection with the construction, maintenance or operation of the Leased Premises, naming Tenant as the insured and Landlord Insured as additional insured, affording protection against liability for bodily injury and death or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms.

(c) *Workers' Compensation Policy.* A workers' compensation insurance policy and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by Tenant in connection with the Leased Premises and employers liability insurance policy (collectively, the "**Tenant's Workers' Compensation Policy**") affording protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Excess/Umbrella Policies.* An excess or umbrella liability insurance policies ("**Tenant's Excess/Umbrella Policies**"), written on an occurrence basis, in an amount not less than (i) Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death or property damage liability combined, and (ii) Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for hazard and casualty coverage, such policies to be written on an excess basis above the coverages required hereinabove (specifically listing



such underlying policies) and following the form of such underlying policies. Pollution Liability Excess/Umbrella coverage limit will be provided at Five Million and No/100 Dollars (\$5,000,000.00).

(e) *Business Interruption Policy.* Commencing on the first date that Tenant is required to obtain a Property Insurance Policy, a business interruption insurance policy or, alternatively, sub-limit coverage under the Property Insurance Policy (the "**Tenant's Business Interruption Policy**") that is in an amount sufficient to cover one hundred percent (100%) of continuing normal operating expenses for a period of twelve (12) months (including all Rent payable under this Lease, all debt service and payroll) naming Tenant as the insured and containing a deductible that meets the Insurance Standard. To the extent available on commercially reasonable terms in compliance with the Insurance Standard, the maximum deductible under such policy shall be no more than thirty (30) days. There shall be an agreed amount clause or a waiver of co-insurance.

(f) *Commercial Crime Policy.* A commercial crime insurance policy insuring against employee dishonesty, forgery or alteration, robbery (inside and outside) and computer fraud, naming Tenant as the insured and Landlord as loss payee.

(g) *Special Policies for Contractor Engaged in Pollution or Hazardous Materials Related Activities.* At any time during the Term, in the event any Project Contractor, any Material Additional Work Construction Contractor or any other of Tenant's other contractors and subcontractors is to remove and/or dispose of any Hazardous Materials from in, upon or about the Leased Premises, then prior to the commencement of such removal and disposal, and at all times during such removal and disposal through completion thereof, Tenant shall cause to be obtained, kept and maintained, as a minimum, a pollution or environmental impairment liability insurance policy written on a claims made basis, that names Tenant as the insured and Landlord Insured as additional insured, insuring against liability for bodily injury and death or for property damage occurring in, upon or about the Leased Premises as a result of the removal and disposal of any Hazardous Materials in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit per occurrence.

(h) *Employment Practices Liability Policy.* An employment practices liability insurance policy in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and in the aggregate, naming Tenant as the insured and Landlord Insured as additional insured, with a self-insured retention not to exceed One Million and No/100 Dollars (\$1,000,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms, and affording protection against liability arising out of, and indemnification for, claims or losses incurred from wrongful employment-related acts or practices by Tenant or any other operator of the Leased Premises, including violation of any Applicable Law regarding employment practices, resulting from, or in connection with, the employment of Persons for the construction, use, operation or occupancy of the Leased Premises and containing provisions for severability of interests.

(i) *Additional Insurance.* In addition to all insurance policies and coverage required above in this Section 19.1, Tenant covenants, at its sole cost and expense, commencing on the Lease Commencement Date and at all times necessary during the Term and through the date Tenant has fulfilled its obligations under Article XXII, to obtain, keep and maintain or cause to be obtained, kept and maintained, all other additional insurance policies on the Leased Premises, as they exist at all times from time to time (i) as required by Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall name Landlord as loss payee or Landlord Insured as additional insured in a manner consistent with their being named loss payees or additional insured in the policies required above in this Section 19.1.5 and shall comply with all other requirements set forth in Section 19.5.

**19.1.6 Adjustments in Policies.** Without limiting the other provisions of this Lease with respect to policy limits and coverage, Tenant covenants and agrees that upon request, and in no event more often than once every five (5) years during the Term, Tenant will review the policies that it is required to carry pursuant to the terms of this Lease to insure that same meet the Insurance Standard. Upon completion of such analysis and review, Tenant shall deliver a Notice to Landlord which has been certified by a Responsible Officer of Tenant stating the results of such analysis and review and any adjustments to the policy limits, deductibles and coverages so as to meet the Insurance Standard.

**19.2 Blanket or Master Policy.** Any one or more of the types of insurance coverages required in Section 19.1 (except that the GL Policy for Project Improvements Work, GL Policy for Additional Work and Tenant's GL Policy shall have a general aggregate limit that shall be site specific to the Leased Premises) may be obtained, kept and maintained through a blanket or master policy or excess/umbrella policies insuring other entities (such as Affiliates of Tenant), provided that (a) such blanket or master policy or excess/umbrella policies and the coverage effected thereby comply with all applicable requirements of this Lease and (b) the protection afforded under such blanket or master policy or excess/umbrella policies shall be no less than that which would have been afforded under a separate policy or policies relating only to the Leased Premises. If any excess or umbrella liability insurance coverage required pursuant hereto is subject to an aggregate annual limit and is maintained through such blanket or master policy, and if such aggregate annual limit is impaired as a result of claims actually paid by more than fifty percent (50%), Tenant shall immediately give Notice thereof to Landlord and, within ninety (90) days after discovery of such impairment, to the fullest extent reasonably possible, cause such limit to be restored by purchasing additional coverage if higher excess limits have not been purchased.

**19.3 Failure to Maintain.**

**19.3.1 Landlord May Procure Insurance.** If at any time and for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver to Landlord proof of, any of the insurance required under Section 19.1 and such failure continues for twenty (20) days after Notice thereof from Landlord to Tenant, Landlord may, but shall have no obligation to, procure single interest insurance for such risks covering Landlord Insured (or, if no more expensive, the insurance required by this Lease), and Tenant shall, within twenty (20) days following

Landlord's demand and Notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment of Landlord in full by Tenant.

**19.3.2 Work Stoppage.** If any time prior to the commencement of, or during, any Construction Work for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver Landlord proof of, any of the insurance required hereunder, Landlord shall have the right to deliver Notice to Tenant of such failure and in the event that Tenant shall have failed to cure such failure within five (5) days of delivery of such Notice, order Tenant, the Project Contractor, the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, as applicable, to stop such Construction Work until such time that the insurance policies required hereunder shall have been obtained, and proof furnished to Landlord that such policies are in full force and effect. Such a work stoppage shall not constitute an Excusable Tenant Delay.

**19.4 Intentionally Deleted.**

**19.5 Additional Policy Requirements.**

**19.5.1 Approval of Insurers; Certificate and Other Requirements.**

(a) All insurance policies required to be carried by Tenant pursuant to the terms of this Lease shall be effected under valid policies issued by insurers authorized to do business in the State of Texas and which have an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VI". In the event that Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. Landlord and Tenant may utilize insurers with lower ratings with the prior written Approval of the other Party.

(b) Each and every insurance policy required to be carried by Tenant pursuant to this Lease in which Landlord is named as loss payee or Landlord Insured as additional insured in accordance with the terms of this Lease shall (i) contain an endorsement to the effect that the "other insurance" clause which may appear therein is not applicable to Landlord Insured, (ii) join Landlord as loss payee and Landlord Insured as additional insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of Landlord or Landlord Insured, as applicable;

(c) Each and every insurance policy required to be carried by Landlord pursuant to this Lease, if any, in which Tenant is named as loss payee or additional insured in accordance with the terms of this Lease shall (i) contain an endorsement to the effect that the "other insurance" clause which may appear therein is not applicable to

Tenant, (ii) join Tenant as loss payee and addition insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of Tenant;

(d) Each and every insurance policy required to be carried by or on behalf of either Party pursuant to this Lease shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless the other Party shall have received Notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for Notice of cancellation due to non-payment of premiums) such Notice to be sent to the other Party not less than thirty (30) days (or the maximum period of days permitted under Applicable Law, if less than thirty (30) days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. In the event any insurance policy required to be carried by or on behalf of either Party pursuant to this Lease is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the Notice shall be sent to the other Party on the earliest possible date but in no event less than ten (10) days prior to the effective date of such cancellation.

(e) Except as otherwise provided for herein, each and every insurance policy required to be carried by either Party pursuant to this Lease shall provide that the policy is primary and that any other insurance of any insured or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing. Each of said insurance policies shall also provide that any loss shall be payable in accordance with the terms of such policy notwithstanding any action, inaction or negligence of the insured or of any other Person (including Tenant or Landlord Insured) which might otherwise result in a diminution or loss of coverage, including "breach of warranty", and the respective interests of Tenant and Landlord Insured shall be insured regardless of any breach or violation by Tenant, Landlord Insured or any other Person of any warranty, declaration or condition contained in or with regard to such insurance policies.

(f) Tenant shall require all subcontractors performing any of the Construction Work to carry insurance naming Landlord Insured as an additional insured and otherwise complying with the requirements of Section 19.1 of this Lease; *provided, however*, the amount and type of such subcontractor's insurance must be commensurate with the amount and type of the subcontract, but in no case less than what would be required by a Reasonable and Prudent Developer or a Reasonable and Prudent Operator, as applicable. Tenant shall provide certificates of insurance regarding all such subcontractor policies to Landlord in accordance with Section 19.5.2.

(g) Tenant shall comply in all material respects with all rules, orders, regulations and requirements of the Board of Fire Underwriters or any other similar body having jurisdiction, in the case of fire insurance policies.

**19.5.2     Delivery of Evidence of Insurance.** With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Lease, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, the Party required to obtain, keep or maintain such policy shall deliver evidence reasonably acceptable to the other Party showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 28 form) issued by a Responsible Officer of the issuer of such policies, or in the alternative, a Responsible Officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, endorsements, term and termination provisions thereon and confirmation that the required premiums have been paid, and, in the case of Tenant only, along with a similar certificate executed by a Responsible Officer of Tenant. Further, each Party agrees to promptly deliver Notice to the other Party of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

**19.5.3     Waiver of Right of Recovery.** **TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND WITHOUT AFFECTING THE INSURANCE COVERAGES REQUIRED TO BE MAINTAINED HEREUNDER, LANDLORD AND TENANT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION AGAINST THE OTHER FOR ANY DAMAGE TO PROPERTY, AND RELEASE EACH OTHER FOR SAME, TO THE EXTENT THAT SUCH DAMAGE (I) IS COVERED (AND ONLY TO THE EXTENT OF SUCH COVERAGE WITHOUT REGARD TO DEDUCTIBLES) BY INSURANCE ACTUALLY CARRIED BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM OR (II) WOULD BE INSURED AGAINST UNDER THE TERMS OF ANY INSURANCE REQUIRED TO BE CARRIED UNDER THIS LEASE BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM. THIS PROVISION IS INTENDED TO RESTRICT EACH PARTY (IF AND TO THE EXTENT PERMITTED BY APPLICABLE LAW) TO RECOVERY AGAINST INSURANCE CARRIERS TO THE EXTENT OF SUCH COVERAGE AND TO WAIVE (TO THE EXTENT OF SUCH COVERAGE), FOR THE BENEFIT OF EACH PARTY, RIGHTS OR CLAIMS WHICH MIGHT GIVE RISE TO A RIGHT OF SUBROGATION IN ANY INSURANCE CARRIER. NEITHER THE ISSUANCE OF ANY INSURANCE POLICY REQUIRED UNDER, OR THE MINIMUM LIMITS SPECIFIED HEREIN SHALL BE DEEMED TO LIMIT OR RESTRICT IN ANY WAY LANDLORD'S OR TENANT'S LIABILITY ARISING UNDER OR OUT OF THIS LEASE PURSUANT TO THE TERMS HEREOF. TENANT SHALL BE LIABLE FOR ANY LOSSES, DAMAGES OR LIABILITIES SUFFERED OR INCURRED BY LANDLORD INSURED AS A RESULT OF TENANT'S FAILURE TO OBTAIN, KEEP AND MAINTAIN OR CAUSE TO BE OBTAINED, KEPT AND MAINTAINED, THE TYPES OR AMOUNTS OF INSURANCE REQUIRED UNDER THE TERMS OF THIS LEASE.**

**19.5.4     Landlord as Additional Insured under Liability Insurance of Subtenants.** Tenant shall require that any Subtenants name Landlord Insured as an additional insured under their respective policies of liability insurance required to be carried under any Use Agreement.

**19.6 General Obligations with Respect to Policies.** The Parties hereby agree as follows:

- (a) To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained pursuant to this Lease;
- (b) To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;
- (c) To ensure that all Casualty Proceeds are paid to the Party entitled to receive same pursuant to the terms of this Lease, including Section 18.4.3;
- (d) Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Lease to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and
- (e) Promptly deliver Notice to the other Party of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

**19.7 Proceeds of Insurance.** Casualty Proceeds shall be payable in accordance with the provisions of Article XVIII.

**19.8 Indemnity by Tenant.**

**19.8.1 Agreement to Indemnify.** **SUBJECT TO SECTION 19.5.3 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT TO THE EXTENT SPECIFICALLY EXCLUDED HEREFROM PURSUANT TO SECTION 19.8.2, TENANT HEREBY AGREES AND COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD AND LANDLORD INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS, DIRECTLY OR INDIRECTLY ARISING OR ALLEGED TO ARISE OUT OF OR ANY WAY INCIDENTAL TO (a) ANY USE, OCCUPANCY OR OPERATION OF THE LEASED PREMISES BY OR ON BEHALF OF TENANT OR ANY AFFILIATE, SUBTENANT, INVITEE OR GUEST OF TENANT DURING THE TERM, OR DURING ANY PERIOD OF TIME, IF ANY, BEFORE OR AFTER THE TERM THAT TENANT MAY HAVE HAD POSSESSION OF THE LEASED PREMISES, INCLUDING ANY ACCESS PRIOR TO THE LEASE COMMENCEMENT DATE PURSUANT TO SECTION 9.2, (b) ANY BREACH OF THE TERMS AND CONDITIONS OF THIS LEASE BY TENANT, (c) ANY ENVIRONMENTAL EVENT WHICH IS REQUIRED TO BE COVERED BY TENANT'S REMEDIAL WORK, OR (d) THE NEGLIGENCE OR WILLFUL ACT OF TENANT OR TENANT'S RELATED PARTIES, OR GUARANTOR OR GUARANTOR'S RELATED PARTIES (COLLECTIVELY, THE "TENANT LIABILITIES"). THE FOREGOING INDEMNITY INCLUDES TENANT'S**

AGREEMENT TO PAY ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY LANDLORD AND ANY LANDLORD INDEMNITEE. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. ALTHOUGH TENANT HAS CAUSED LANDLORD INSURED TO BE NAMED AS LOSS PAYEE OR ADDITIONAL INSURED UNDER TENANT'S INSURANCE POLICIES, TENANT'S LIABILITY UNDER THIS INDEMNIFICATION PROVISION SHALL NOT BE LIMITED TO THE LIABILITY LIMITS SET FORTH IN SUCH POLICIES.

**19.8.2 Tenant's Exclusions.** TO THE EXTENT ANY OF THE CLAIMS FOR WHICH TENANT IS OBLIGATED TO INDEMNIFY LANDLORD AND LANDLORD INDEMNITEES PURSUANT TO SECTION 19.8.1 ARE CAUSED BY ANY OF THE FOLLOWING, SUCH CLAIMS SHALL NOT BE COVERED BY SUCH INDEMNITY:

(a) ANY INJURY TO OR DEATH OF ANY PERSON OR ANY PHYSICAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT, AND ONLY TO THE EXTENT, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY LANDLORD INDEMNITEE;

(b) LANDLORD'S OR ANY LANDLORD INDEMNITEE'S BREACH OF LANDLORD'S EXPRESS OBLIGATIONS UNDER THIS LEASE OR ANY APPLICABLE LAW; OR

(c) ANY ENVIRONMENTAL EVENT OR ANY HAZARDOUS MATERIALS PRESENT AT, IN, ON OR UNDER THE LEASED PREMISES CAUSED BY OR ARISING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR A LANDLORD INDEMNITEE FROM AND AFTER THE LEASE COMMENCEMENT DATE.

**19.9 Conduct of Claims.** Landlord shall, reasonably promptly after the receipt of written notice of any Action or Proceeding or claim against Landlord or Landlord Indemnitees in respect of which indemnification may be sought pursuant to Section 19.8, notify Tenant of such Action or Proceeding or claim. In case any such Action or Proceeding or claim shall be made or brought against Landlord or Landlord Indemnitees, Tenant may, or if so requested by Landlord shall, assume the defense thereof with counsel of its selection reasonably acceptable to Landlord and which shall be reasonably competent and experienced to defend Landlord and/or Landlord Indemnitees. In such circumstances, the Landlord and Landlord Indemnitees shall (i) at no cost or expense to Landlord and/or Landlord Indemnitees, cooperate with Tenant and provide Tenant with such information and assistance as Tenant shall reasonably request in connection with such Action or Proceeding or claim, and (ii) at its own expense, have the right to participate and be

represented by counsel of its own choice in any such action or with respect to any such claim. If Tenant assumes the defense of the relevant claim or action, (i) Tenant shall not be liable for any settlement thereof which is made without its Approval and (ii) Tenant shall control the settlement of such claim or action; *provided, however*, that Tenant shall not conclude any settlement which requires any action or forbearance from action or payment or admission by Landlord or any Landlord Indemnitee without the prior Approval of such Party, as applicable. The obligations of Tenant under Section 19.8 shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the acts of Landlord or Landlord Indemnitee (unless required by Applicable Law or applicable legal process) after the assertion of any claim which gave rise to the obligation to indemnify which prejudices the successful defense of the Action or Proceeding or claim without, in any such case, the prior written Approval of Tenant (such Approval not to be required in a case where Tenant has not assumed the defense of the Action or Proceeding or claim). If Tenant has assumed the defense of the relevant Action or Proceeding or claim, Landlord agrees to afford Tenant and its counsel the opportunity to be present at, and to participate in, conferences between Landlord and any Persons, including Governmental Authorities, or conferences between Landlord and representatives of or counsel for such Person, asserting any claim or action against Landlord or Landlord Indemnitees covered by the indemnity contained in Section 19.8 to the extent such conference relates to the subject matter of the claim or action covered by the indemnity contained in Section 19.8.

**19.10 Failure to Defend.** It is understood and agreed by Tenant that in the event that Landlord or any Landlord Indemnitee is made a defendant in any Action or Proceeding or Claim for which it is indemnified pursuant to this Lease, and Tenant fails or refuses to assume the defense thereof, after having received Notice by Landlord or any Landlord Indemnitee of its obligation hereunder to do so, Landlord or said Landlord Indemnitee may compromise or settle or defend any such Action or Proceeding or Claim, and Tenant shall be bound and obligated to reimburse Landlord and/or said Landlord Indemnitee for the amount expended by Landlord and/or Landlord Indemnitee in settling and compromising any such Action or Proceeding or Claim, or for the amount expended by Landlord and/or any Landlord Indemnitee in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by Landlord and/or any Landlord Indemnitee for defense or settlement of such Action or Proceeding or Claim. Any judgment rendered against Landlord and/or any Landlord Indemnitee or amount expended by Landlord and/or any Landlord Indemnitee in compromising or settling such Action or Proceeding or Claim shall be conclusive as determining the amount for which Tenant is liable to reimburse Landlord and/or any Landlord Indemnitee hereunder. To the extent that Landlord and/or any Landlord Indemnitee has the right to, and in fact does, assume the defense of such Action or Proceeding or Claim, Landlord and/or each Landlord Indemnitee shall have the right, at its expense, to employ independent legal counsel in connection with any Action or Proceeding or Claim, and Tenant shall cooperate with such counsel in all reasonable respects at no cost to Landlord or any Landlord Indemnitee.

**19.11 No Third Party Beneficiary.** The provisions of Sections 19.8, 19.9 and 19.10 are solely for the benefit of the Landlord, Landlord Indemnitees, Tenant, and Tenant's Related Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person.



**19.12 Surety Bonds for Additional Work.** Prior to the commencement of any Additional Work that will cost in excess of the Additional Work Surety Bond Threshold, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any of Tenant's other contractors and subcontractors (other than the Additional Work Construction Contractor) have not been paid in full in respect to the Additional Work, Tenant shall cause the Additional Work Construction Contractor to obtain, keep and maintain performance and payment bonds from a Qualified Surety in a total amount equal to one hundred percent (100%) of the costs of the Additional Work.

## **ARTICLE XX**

### **CONDEMNATION**

#### **20.1 Condemnation of Substantially All of the Leased Premises.**

**20.1.1 Termination Rights.** If, at any time during the Term, title to the whole or Substantially All of the Leased Premises is taken in any Condemnation Action (or conveyed in lieu of any such Condemnation Action), other than for a temporary use or occupancy that is for one (1) year or less in the aggregate, this Lease shall terminate (except as to Section 20.1.2 hereof) and expire on the date of such taking (or conveyance) and all the Rent and other payments, including Impositions, shall be paid to the date of such taking (or conveyance). With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of such termination but which are not then capable of ascertainment, reasonable estimates of such items shall be made and such estimates shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimates as and when the same become determined.

**20.1.2 Condemnation Awards.** All Condemnation Awards payable as a result of or in connection with any taking of the whole or Substantially All of the Leased Premises shall be paid and distributed in accordance with the provisions of this Section 20.1.2, notwithstanding the division of the Condemnation Award by a court or condemning authority in a Condemnation Action. Tenant shall be entitled to the entire proceeds of the Condemnation Award, less the amount of Landlord's Interest, which shall be payable to Landlord. The term "**Landlord's Interest**" shall mean the sum of (i) the then current fair market value of the portion of the Leased Premises taken (or conveyed) considered as unimproved, raw land, valued as a separate tract not part of a larger assemblage of land and valued on the basis of such parcel's then highest and best use, but encumbered by this Lease (i.e., the value of the remainder interest of Landlord), and (ii) the then current fair market value of the portion of the Improvements paid for by Landlord and situated on the portion of the Land taken in its condition existing at the time of such taking (or conveyance), but encumbered by this Lease (i.e., the value of the remainder interest of Landlord). The Condemnation Award payable to Landlord pursuant to this Section 20.1.2 shall be referred to as "**Landlord's Condemnation Award**".

**20.1.3 Definitions of Substantially All of the Leased Premises.** For purposes of this Article XX, "**Substantially All of the Leased Premises**" shall be deemed to have been taken if, by reason of the taking of title to or possession of the Leased Premises or any

portion thereof by Condemnation Actions, an Untenantable Condition exists or is reasonably expected to exist for longer than one (1) year.

**20.2 Condemnation of Part.** In the event of a Condemnation Action affecting less than the whole or less than Substantially All of the Leased Premises, the Term shall not be reduced or affected in any way, and the following provisions shall apply:

**20.2.1 Condemnation Awards.** All Condemnation Awards payable as a result of or in connection with any taking of less than the whole or less than Substantially All of the Leased Premises shall be paid and distributed in accordance with the provisions of this Section 20.2.1, notwithstanding the division of the Condemnation Award by a court or condemning authority in a Condemnation Action. Tenant shall be entitled to the entire proceeds of the Condemnation Award, less the amount of Landlord's Condemnation Award, which shall be payable to Landlord. The Condemnation Award payable to Tenant pursuant to this Section 20.2.1 shall be paid to Tenant and applied by Tenant in the following order of priority: (i) payment of all Condemnation Expenses in excess of Landlord's Condemnation Award and (ii) paying any remainder to Tenant.

**20.2.2 Restoration of the Leased Premises.** Following a condemnation of less than the whole or Substantially All of the Leased Premises during the Term, Tenant shall, subject to the requirements of Section 15.2 and Article XIX, with reasonable diligence (subject to Excusable Tenant Delay, Landlord Delay, and/or Prime Lessor Delay), commence and thereafter proceed to repair, alter and restore the remaining part of the Leased Premises described in clause (a) of the definition thereof to substantially their former condition to the extent that the same may be feasible and in accordance with the Project Plans which have been Approved pursuant to the terms of this Lease, as and if required, to the extent practical and permitted by Applicable Laws. Such repairs, alterations or restoration, including temporary repairs for the protection of Persons or Property pending the completion of any part thereof are sometimes referred to in this Article XX as the "Condemnation Repair Work". Landlord shall be obligated to make payment, disbursement, reimbursement or contribution toward the costs of Condemnation Repair Work ("Condemnation Expenses") in an amount up to Landlord's Condemnation Award. Landlord shall make such payments or disbursements for Condemnation Expenses upon request from Tenant when accompanied by a certificate dated not more than fifteen (15) days prior to such request, signed by a Responsible Officer of Tenant and any architect, engineer or construction manager in charge of the Condemnation Repair Work selected by Tenant, setting forth the following:

(a) That the sum then requested either has been paid by Tenant or is due to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Condemnation Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or due; and

(b) That except for the amount stated in such certificate to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Condemnation Repair Work known to the Persons signing such certificate which is then due to Persons being paid, after due inquiry. Upon Tenant's

compliance with the requirements of this Section 20.2.2, Landlord shall pay or cause to be paid to Tenant, or the Persons named in Tenant's request, the respective amounts stated therein to have been paid by Tenant or to be due to such Persons, as the case may be, but in no event shall the aggregate amount paid or payable by Landlord under this Article XX exceed the amount of Landlord's Condemnation Award. Amounts paid to Tenant by Landlord under this Section 20.2 shall be held by Tenant in trust for the purpose of paying Condemnation Expenses and shall be applied by Tenant to any such Condemnation Expenses or otherwise in accordance with the terms of this Section 20.2.2. All Condemnation Expenses in excess of Landlord's Condemnation Award shall be paid by Tenant.

**20.3 Temporary Taking.** If the whole or any part of the Leased Premises shall be taken in Condemnation Actions for a temporary use or occupancy of one (1) year or less, the Term shall not be reduced, extended or affected in any way, and Tenant shall continue to pay in full the Rent, without reduction or abatement, in the manner and the time herein specified. Except to the extent that Tenant is prevented from doing so pursuant to the terms of the order of the condemning authority or because it is not possible as a result of such taking, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such temporary taking had not occurred. In the event of any such temporary taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such taking, whether such award is paid by way of damages, rent or otherwise, less any Condemnation Expenses paid by Landlord, provided that if the period of temporary use or occupancy shall extend beyond the Lease Expiration Date, Tenant shall be entitled to receive only that portion of any Condemnation Award (whether paid by way of damages, rent or otherwise) allocable to the period of time from the date of such condemnation to the Lease Expiration Date, and Landlord shall be entitled to receive the balance of such Condemnation Award.

**20.4 Condemnation Proceedings.** Notwithstanding any termination of this Lease, (i) Tenant and Landlord each shall have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials and appeals therein and (ii) subject to the other provisions of this Article XX, Tenant shall have the right in any Condemnation Action to assert a separate claim for, and receive all condemnation awards for Tenant's Personal Property taken or damaged as a result of such Condemnation Action, and any damage to, or relocation costs of, Tenant's business as a result of such Condemnation Action. In the event of the commencement of any Condemnation Action, (i) Landlord shall undertake all commercially reasonable efforts to defend against, and maximize the Condemnation Award from, any such Condemnation Action, (ii) Landlord shall not accept or agree to any conveyance in lieu of any condemnation or taking without the prior consent of Tenant, which consent shall not be unreasonably withheld, delayed or conditioned, and (iii) Landlord and Tenant shall cooperate with each other in any such Condemnation Action and provide each other with such information and assistance as each shall reasonably request in connection with such Condemnation Action.

**20.5 Notice of Condemnation.** In the event Landlord or Tenant shall receive notice of any proposed or pending Condemnation Action affecting the Leased Premises, the Party receiving such notice shall promptly notify the other Party hereto.

**20.6 Condemnation by Landlord.** The provisions of this Article XX for the allocation of any Condemnation Awards are not intended to be, and shall not be construed or interpreted as, any limitation on or liquidation of any claims or damages (as to either amount or type of damages) of Tenant against Landlord in the event of a condemnation by Landlord, the City or the County of any portion or all of the Leased Premises or any other right, title or interest of Tenant under this Lease.

## ARTICLE XXI

### ASSIGNMENT, TRANSFER AND SUBLEASING

**21.1 Assignment and Subletting.** The occurrence of any one of the following events (each a "**Transfer**") without the prior written Approval of Landlord (which Approval may be granted or withheld in Landlord's sole discretion) shall not be permitted hereunder and shall constitute an Event of Default, unless such event is a Permitted Transfer:

(a) Any direct or indirect sale, assignment, transfer, sublease, license or other disposition of the Leasehold Estate, the Project Improvements or any right, title, interest or obligation of Tenant in and to the Leased Premises, under this Lease, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation);

(b) Except in connection with a Permitted Project Financing, any mortgage, pledge, encumbrance or other hypothecation of the Leasehold Estate, the Project Improvements, or any right, title or interest of the Tenant in and to the Leased Premises; or

(c) Any direct or indirect issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of any Person or any transfer of an equity or beneficial interest in any Person that directly or indirectly results in either (i) a change of the Controlling Person of Tenant or (ii) the creation of a Controlling Person of Tenant, where none existed before (either (i) or (ii) being a "**Change in Control**").

Notwithstanding the foregoing to the contrary, the following shall not constitute a Transfer (each, a "**Permitted Transfer**") and Landlord's consent to such Permitted Transfer shall not be required under this Lease:

(w) Any Use Agreement provided such Use Agreement is subject and subordinate to this Lease and conforms to the Operating Standard;

(x) Any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of any Person that either (i) results in there being no Controlling Person of Tenant, where none existed before, (ii) does not result in a change of the Controlling Person of Tenant or the creation of a Controlling Person of Tenant where none existed before, or (iii) results in Phillip Anschutz, Oscar De La Hoya or Gabriel Brener being the Controlling Person of Tenant;

(y) If the Team is sold, any assignment of this Lease to the buyer of the Team so long as (i) the buyer of the Team is approved by MLS, (ii) Anschutz Entertainment Group, Inc. or any

of its Affiliates enters into an agreement to manage the Leased Premises for the remainder of the Term and (iii) the buyer of the Team is a Qualified Investor and meets the Financial Test, and Tenant shall have provided reasonable written evidence to Landlord at least thirty (30) calendar days prior to such sale which evidence is sufficiently detailed so that Landlord will be able to determine that all of the foregoing requirements have been or will be satisfied by the date of the sale;

(z) Any Leasehold Mortgage executed in connection with a Permitted Project Financing; and

(aa) Any Foreclosure Event.

## **21.2 Standards for Landlord Approval of Transfers; Costs.**

**21.2.1 Standards for Landlord Approval of Transfers.** Provided the following requirements are satisfied, Landlord will not unreasonably withhold its Approval to a Transfer or Change in Control:

(a) Landlord must first receive a written request for its Approval to such Transfer, together with reasonably detailed information concerning the type of Transfer, the interests affected by the Transfer, the identity, reputation and financial condition of the proposed transferee (the "**Tenant Transferee**"), the qualification or lack of qualification of the proposed transferee in the construction (if such Transfer is effectuated prior to Substantial Completion) and operation of Comparable Facilities, and such other information related to the Transfer and the Tenant Transferee as Landlord may reasonably request;

(b) No uncured Tenant Default shall exist; and

(c) No breach by Tenant of the terms of this Lease for which Landlord has given Tenant Notice shall exist.

In the event Landlord disapproves a request for its Approval to a Transfer, Tenant shall have the right and option for thirty (30) days after the date of any such disapproval by Landlord within which to challenge such disapproval by instituting Fast-Track Arbitration.

**21.2.2 Costs.** In connection with any request for Landlord's Approval under this Article XXI, and as a condition to Landlord's obligation to deliver its Approval, Tenant shall pay to Landlord all reasonable third-party costs and expenses incurred by Landlord in reviewing Tenant's request for Approval, whether or not Landlord grants such Approval.

**21.3 No Waiver of Rights by Landlord.** The Approval of Landlord of any proposed Transfer shall not be a waiver of any right to object to further or future proposed Transfers, and the Approval of Landlord's of each such successive proposed Transfer must be first obtained in writing from Landlord.

**21.4 Conditions to Effectiveness of Any Transfer.** Any proposed Transfer to which Landlord's Approval is required by this Article XXI shall be void and shall confer no right upon

the proposed transferee unless and until (a) such Approval of Landlord is obtained, (b) the transferee shall have assumed in writing each and every one of the terms, covenants and provisions of Tenant contained in this Lease with respect to the period from and after the Transfer, by an instrument delivered to Landlord, and (c) any then existing default under this Lease is fully cured (it being expressly acknowledged that Landlord may condition its Approval of any Transfer on the cure of any and all such defaults existing at the time of such proposed Transfer). Any such Transfer in which Landlord has given its Approval shall not constitute a release of any liability, existing or future, under this Lease unless such Approval specifically includes an express written release by Landlord, which release Landlord has no obligation to provide.

**21.5 Acceptance of Rent.** If Tenant makes a Transfer in violation of the provisions of this Lease, Landlord may collect rent from any such transferee. Landlord may apply the net rent collected to payment of the Rent due hereunder, but no such Transfer or collection shall be deemed a waiver of any of the provisions of this Article XXI, an acceptance of the Tenant Transferee or a release of Tenant from its obligations under this Lease.

**21.6 Use Agreements.** Nothing contained in this Lease shall prevent or restrict Tenant from subletting portions of the Project Improvements to Subtenants under Use Agreements, in accordance with the terms of this Lease and without Landlord's Approval, *provided* that each such Use Agreement (i) shall be subject and subordinate to this Lease and any Leasehold Mortgage and to the rights of Landlord hereunder and the rights of any Leasehold Mortgagee thereunder, and shall expressly so state, (ii) shall be negotiated on an arms' length basis and (iii) otherwise is consistent with standards of Comparable Facilities operated at the Operating Standard. Notwithstanding any such subletting, Tenant shall at all times remain liable for the performance of all of the covenants and agreements under this Lease on Tenant's part to be so performed. Tenant shall provide Landlord with copies of all Use Agreements by it, and of any amendments of and renewals thereof, which also shall comply with the requirements of this Section 21.6.

**21.7 Transfers by Landlord.** Except with respect to a Landlord Transfer to the Prime Lessor, the County, a County Controlled Entity, the City or a City Controlled Entity, Landlord shall not effect a Landlord Transfer of its interest in the Leased Premises, or any part thereof or interest therein, or this Lease at any time or from time to time to any Person (a "**Landlord Transferee**"), without the prior Approval of Tenant, such Approval not to be unreasonably withheld. For purposes of this Section 21.7, a "**Landlord Transfer**" shall mean any sale, conveyance, assignment or other transfer by Landlord of the Leased Premises or this Lease or any part thereof or interest therein by Landlord. Landlord shall promptly give Notice to Tenant advising Tenant of the name of any Landlord Transferee. Any security given by Tenant to secure performance of Tenant's obligations under this Lease will be transferred by Landlord to the successor in interest of Landlord, and Landlord shall thereby be discharged of any further obligation relating thereto.

**21.8 No Release.**

**21.8.1 Tenant.** Notwithstanding any Transfer, Tenant shall remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other

obligations under this Lease from and after such Transfer (even if future Transfers occur after the Transfer by Tenant, and regardless of whether or not Landlord's Approval has been obtained for those future Transfers), and Guarantor shall remain fully liable under the Guaranty.

**21.8.2 Landlord.** No Landlord Transfer shall relieve Landlord from any of its obligations under this Lease for periods prior to such Landlord Transfer, except that Landlord shall be relieved from any obligations under this Lease relating to periods on and after the date of the Landlord Transfer in question if, and only if (a) Tenant Approves such Landlord Transfer or (b) Tenant's Approval to such Landlord Transfer is not required pursuant to the terms of Section 21.7.

**21.9 General Provisions.** Tenant shall, in connection with any assignment or sublease, provide notice to Landlord of the name, legal composition and address of any assignee or Subtenant. In addition, Tenant shall provide Landlord with a description of the nature of the assignee's or Subtenant's business to be carried on in the Leased Premises. In no event, however, shall Tenant be required to provide Landlord with a copy of any assignment agreement or sublease.

## ARTICLE XXII

### SURRENDER OF POSSESSION; HOLDING OVER

**22.1 Surrender of Possession.** Tenant shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of subtenancies (including any Subtenants), and in a clean condition and free of debris or as otherwise provided for in this Lease, subject to the terms of Article XVIII and Article XX hereof, and reasonable wear and tear. Upon the Lease Expiration Date, Tenant shall surrender the Leased Premises to Landlord in the condition required by Tenant's Remedial Work and in compliance with Applicable Laws. Upon such expiration or termination of this Lease, Tenant shall execute and deliver to Landlord a recordable termination of the Leasehold Estate.

#### **22.2 Removal of Tenant's Personal Property.**

**22.2.1 Tenant's Obligation to Remove.** All the Personal Property installed, placed or used in the operation of the Leased Premises throughout the Term shall be deemed to be the Property of Tenant or Subtenant, as the case may be. Tenant shall cause all such Personal Property to be removed prior to the Lease Expiration Date, provided that Tenant shall promptly repair any damage to the Leased Premises caused by such removal.

**22.2.2 Landlord's Right to Remove.** Any Personal Property which shall remain in the Leased Premises after the Lease Expiration Date may, at the option of Landlord, be deemed to have been abandoned by Tenant and either may be retained by Landlord as its Property or be disposed of, without accountability, in such manner as Landlord Representative may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Tenant, together with reasonable attorneys' fees, charges and costs.

**22.3 Holding Over.** In the case of any holding over or possession by Tenant after the Lease Expiration Date without the Approval of Landlord, Tenant shall be a tenant from month to month and shall pay Landlord Eighty-two thousand and No/100 Dollars (\$82,000.00) per month as Base Rent. Further, in the event Tenant shall hold over beyond the Lease Expiration Date and any date for surrender of the Leased Premises set forth in Landlord's written Notice demanding possession thereof given following the Lease Expiration Date, Tenant shall reimburse Landlord for all actual reasonable expenses and losses incurred by Landlord by reason of Landlord's inability to deliver possession of the Leased Premises to a successor tenant free and clear of the possession of Tenant, together with interest on such expenses at the Default Rate from the date such expenses are incurred until reimbursed by Tenant, together with Landlord's reasonable attorneys' fees, charges and costs. The acceptance of Rent under this Section 22.3 by Landlord shall not constitute an extension of the Term of this Lease or afford Tenant any right to possession of the Leased Premises beyond any date through which such Rent shall have been paid by Tenant and accepted by Landlord. Such Rent shall be due to Landlord for the period of such holding over, whether or not Landlord is seeking to evict Tenant; and, unless Landlord otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of Landlord, whether or not Landlord has accepted any sum due pursuant to this Section 22.3. Notwithstanding anything to the contrary contained in this Lease, in the event Tenant shall hold over beyond the Lease Expiration Date or any date for surrender of the Leased Premises set forth in Landlord's written Notice demanding possession thereof following the Lease Expiration Date, such holding over by Tenant shall be an Event of Default and Landlord shall be entitled to the remedies set forth in Section 24.2.1.

## ARTICLE XXIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**23.1 Tenant's Representations and Warranties.** As an inducement to Landlord to enter into this Lease, Tenant represents and warrants to Landlord that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The business which Tenant carries on and which it proposes to carry on may be conducted by Tenant. Tenant is duly authorized to conduct business as a limited liability company in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization and Guarantor is duly authorized to conduct business as a limited liability company in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) *Authority.* The execution, delivery and performance of this Lease by Tenant and the Guaranty by Guarantor are within Tenant's and Guarantor's powers, respectively, and have been duly authorized by all necessary action of Tenant and Guarantor, respectively.



(c) *No Conflicts.* Neither the execution and delivery of this Lease nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Tenant or Guarantor nor any Applicable Laws to which Tenant or Guarantor is subject or any judgment, decree, license, order or permit applicable to Tenant or Guarantor, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Tenant or Guarantor pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Tenant is a party or by which Tenant or Guarantor is bound, or to which Tenant or Guarantor is subject.

(d) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Tenant of this Lease and Guarantor of the Guaranty.

(e) *Valid and Binding Obligation.* This Lease is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms and the Guaranty is the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, each, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Tenant, threatened against or affecting Tenant or Guarantor, which the management of Tenant in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Tenant under, this Lease to perform its obligations under this Lease, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Tenant or Guarantor or on the ability of Tenant to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Improvements).

(g) *Team.* An Affiliate of Tenant owns and holds the Franchise for the Team.

## **23.2 Intentionally Deleted.**

**23.3 Landlord's Representations and Warranties.** As an inducement to Tenant to enter into this Lease, Landlord represents and warrants to Tenant that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* Landlord is a sports and community venue district duly formed and validly existing under the laws of the State of Texas, with all necessary

power and authority to enter into this Lease and to consummate the transactions herein contemplated.

(b) *Authority.* The execution, delivery and performance of this Lease by Landlord is within Landlord's powers, respectively, and have been duly authorized by all necessary action of Landlord.

(c) *No Conflicts.* Neither the execution and delivery of this Lease nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which Landlord is subject or any judgment, decree, license, order or permit applicable to Landlord.

(d) *No Consent.* Except as otherwise set forth herein, upon the execution of this Lease by Landlord, Landlord will have caused all governmental proceedings required to be taken by or on behalf of Landlord to authorize Landlord to make and deliver this Lease and to perform the covenants, obligations and agreements of Landlord hereunder.

(e) *Valid and Binding Obligation.* This Lease is the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Landlord, threatened against or affecting Landlord, which Landlord in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Landlord under, this Lease to perform its obligations under this Lease, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Landlord or on the ability of Landlord to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(g) *Environmental Event.* Except as provided in the Environmental Reports, Landlord has no knowledge of any Environmental Event affecting the Leased Premises.

(h) *Proceedings.* To the knowledge of Landlord, there are no actions, suits or proceedings pending or threatened or asserted against Landlord affecting any portion of the Leased Premises, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(i) *Compliance with Laws.* Landlord has not received any notice of any violation of any ordinance, regulation, law or statute of any Governmental Authority pertaining to the Leased Premises or any portion thereof.

## ARTICLE XXIV

### DEFAULTS AND REMEDIES

#### 24.1 Events of Default.

24.1.1 Tenant Default. The occurrence of any of the following shall be an "Event of Default" by Tenant or a "Tenant Default":

(a) The failure of Tenant to pay any Rent or any other payment required to be made by Tenant hereunder when due and payable under this Lease if such failure continues for more than fifteen (15) Business Days after Notice from Landlord to Tenant that such amount was not paid when due;

(b) The failure of Tenant to perform any Insurance Covenant in any material respect if such failure continues for more than five (5) Business Days after Notice from Landlord to Tenant of such default;

(c) Any breach by Tenant of the terms or provisions of Article XXI or any occurrence for which this Lease specifically provides that such is an Event of Default or a Tenant Default;

(d) The failure of Tenant to satisfy all of the Conditions to Commencement of the Operating Term on or prior to the Mandatory Substantial Completion Deadline;

(e) The failure of Tenant to keep, observe or perform any of the terms, covenants or agreements contained in this Lease on Tenant's part to be kept, performed or observed (other than those referred to in clauses (a)-(d) above and (f)-(h) below) if: (1) such failure is not remedied by Tenant within thirty (30) days after Notice from Landlord to Tenant of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Tenant fails to commence to cure such default within thirty (30) days after Notice from Landlord to Tenant of such default, or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days but is otherwise reasonably susceptible of cure, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within one hundred eighty (180) days after notice from Landlord of such default, (notwithstanding Tenant's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Lease;

(f) If any default by any Guarantor under any Guaranty shall have occurred and remain uncured after the elapse of the applicable notice and cure periods provided for under the terms of the Guaranty;

(g) The (1) filing by Tenant or Guarantor of a voluntary petition in bankruptcy; (2) adjudication of Tenant or Guarantor as a bankrupt; (3) approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of Tenant or Guarantor under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (4) Tenant's or Guarantor's assets are levied upon by virtue of a writ of court of competent jurisdiction; (5) insolvency of Tenant or Guarantor; (6) assignment by Tenant or Guarantor of all or substantially of their assets for the benefit of creditors; (7) initiation of procedures for involuntary dissolution of Tenant or Guarantor, unless within ninety (90) days after such filing, Tenant or Guarantor causes such filing to be stayed or discharged; (8) Tenant or Guarantor ceases to do business in any manner; and (9) appointment of a receiver, trustee or other similar official for Tenant or Guarantor, or Tenant's or Guarantor's property, unless within ninety (90) days after such appointment, Tenant or Guarantor causes such appointment to be stayed or discharged; or

(h) The failure of Tenant to keep, observe or perform any of the terms, covenants or agreements contained in a TSU Default Award on Tenant's part to be kept, performed or observed. If Tenant fails to keep, observe or perform any of the terms, covenants or agreements contained in the TSU Sublease, and TSU obtains a judgment or award (that has not been timely appealed) from a court of competent jurisdiction or an arbitration panel (to the extent permitted under the TSU Sublease), then such judgment or award will be referred to herein as a "**TSU Default Award**."

**24.1.2 Landlord Default.** The occurrence of the following shall be an "**Event of Default**" by Landlord or a "**Landlord Default**": (a) the failure of Landlord to pay any of its monetary obligations to Tenant under this Lease when due and payable if such failure continues for fifteen (15) Business Days after Tenant gives notice to Landlord that such amount was not paid when due; or (b) the failure of Landlord to perform or observe any of the other obligations, covenants or agreements to be performed or observed by Landlord under this Lease within thirty (30) days after notice from Tenant of such failure; *provided, however*, that if such performance or observance cannot reasonably be accomplished within such thirty (30) calendar day period, then no Event of Default shall occur unless Landlord fails to commence such performance or observance within such thirty (30) calendar day period and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided further, however*, that if such performance or observance has not been accomplished within one hundred eighty (180) days after notice from Tenant to Landlord of such failure (notwithstanding Landlord's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default hereunder.

**24.2 Remedies.** Subject to the provisions of this **Article XXIV**:

**24.2.1 Landlord's Remedies.** Subject to this **Article XXIV**, upon the occurrence of any Tenant Default, Landlord may, in its sole discretion, pursue any one or more of the following remedies after delivery of Notice to Tenant:

(a) Landlord may (but under no circumstance shall be obligated to) terminate this Lease pursuant to Section 24.2.3 and upon such termination Landlord may forthwith reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind (except as otherwise set forth herein) and be entitled to recover, as damages under this Lease, a sum of money equal to the total of (i) the reasonable cost of recovering the Leased Premises, (ii) the reasonable cost of removing and storing Tenant's Personal Property or any other occupant's Property, (iii) the unpaid Rent and any other sums accrued hereunder at the date of termination and (iv) a sum equal to the amount, if any, by which the present value of the total Rent which would have accrued to Landlord under this Lease for the remainder of the Term, if the terms of this Lease had been fully complied with by Tenant, exceeds the present value of the total fair market rental value of the Leased Premises for the balance of the Term. In the event Landlord shall elect to terminate this Lease, Landlord shall at once have all the rights of reentry upon the Leased Premises, without becoming liable for damages or guilty of trespass.

(b) Landlord may (but under no circumstance shall be obligated to) terminate Tenant's right of occupancy of all or any part of the Leased Premises and reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, without acceptance of surrender of possession of the Leased Premises, and without becoming liable for damages or guilty of trespass, in which event Landlord shall make commercially reasonable efforts to relet the Leased Premises or any part thereof for the account of Tenant for a period equal to or lesser or greater than the remainder of the Term on whatever terms and conditions Landlord, in Landlord's sole discretion, subject to commercially reasonable standards, deems advisable. Tenant shall be liable for and shall pay to Landlord all Rent payable by Tenant under this Lease plus an amount equal to (i) the reasonable cost of recovering possession of the Leased Premises, (ii) the reasonable cost of removing and storing any of Tenant's or any other occupant's Property left on the Leased Premises after reentry, (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Leased Premises, (iv) the reasonable cost of any repairs, changes, alterations or additions necessary for reletting and (v) the reasonable cost of any repairs, changes, alterations or additions necessary for reletting, all reduced by any sums received by Landlord through any reletting of the Leased Premises; *provided, however*, that while Tenant shall not be entitled to any excess of any sums obtained by reletting over and above Rent provided in this Lease to be paid by Tenant to Landlord, such excess shall be credited against amounts owed under Section 24.2.1(b)(i)-(v) above. For the purpose of such reletting, Landlord is authorized to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary. No reletting shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such Tenant Default and exercise its rights under Section 24.2.1(a) of this Lease.

(c) Landlord may (but under no circumstance shall be obligated to) enter upon the Leased Premises and do whatever Tenant is obligated to do under the terms of this

Lease, including taking all reasonable steps necessary to maintain and preserve the Project Improvements; and Tenant agrees to reimburse Landlord on demand for any reasonable expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. No action taken by Landlord under this Section 24.2.1(c) shall relieve Tenant from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

(d) Landlord may exercise any and all other remedies available to Landlord at law or in equity (to the extent not otherwise specified or listed in this Section 24.2), including enforcing specific performance of Tenant's obligation to construct the Project Improvements in accordance with the terms of this Lease and to continuously operate the Leased Premises in accordance with the Operating Standard and pursuant to Sections 12.1, 12.2 and 12.3.

(e) In the event of a termination of this Lease pursuant to Section 8.5.2 and notwithstanding that the Operating Term did not commence, Landlord shall be entitled, as its exclusive remedies, (i) at its option, cause Tenant to demolish (with all debris removed) the Improvements then existing on the Leased Premises and return the Land to the condition existing as of the Lease Commencement Date or to cause Tenant to pay to Landlord (regardless of whether the Improvements are to be demolished) the reasonable cost to cause the Improvements then existing on the Leased Premises to be demolished (with all debris removed) and cause the Land to be returned to the condition thereof existing as the Lease Commencement Date, (ii) to pursue a claim for the reasonable cost of recovering possession of the Leased Premises and (iii) to pursue a claim for the cost of removing and storing any of Tenant's Personal Property or any other occupant's property left on the Leased Premises after reentry.

**24.2.2 Tenant's Remedies.** Subject to this Article XXIV, upon the occurrence of any Landlord Default, Tenant may, at its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Lease:

(a) Tenant may terminate this Lease pursuant to Section 24.2.3; and

(b) Tenant may exercise any and all other remedies available to Tenant at law or in equity;

*provided* that notwithstanding the foregoing or anything else herein to the contrary, Tenant's rights under this Section 24.2 shall be subject to the waiver and release contained in Section 17.4 and the terms and provisions of Section 26.3.

**24.2.3 Right to Terminate.** Subject to Section 8.3 and Section 8.5, upon the occurrence of a Tenant Default or a Landlord Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a

**“Final Notice”**) of the non-defaulting Party’s intention to terminate this Lease after the expiration of a period of thirty (30) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) calendar day period, if the Event of Default is not cured, this Lease may terminate without liability to the non-defaulting Party. The Final Notice shall include the following statement in bold and all caps: **“FAILURE TO CURE THE DESCRIBED DEFAULT WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT OF THIS NOTICE MAY RESULT IN TERMINATION OF THE LEASE.”** If, however, within such thirty (30) calendar day period the defaulting Party cures such Event of Default, then this Lease shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) calendar day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding. Notwithstanding anything herein to the contrary, Landlord shall not be required to deliver Tenant a Final Notice if Landlord has a right and desires to terminate this Lease pursuant to Section 8.5.2 or Section 12.3.2.

**24.2.4 Cumulative Remedies.** Subject to the provisions of this Article XXIV, each right or remedy of Landlord and Tenant provided for in this Lease shall be cumulative of and shall be in addition to every other right or remedy of Landlord or Tenant provided for in this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease or hereafter existing at law or in equity, by statute or otherwise.

**24.3 Intentionally Deleted.**

**24.4 Limited Recourse Against Landlord.** Tenant covenants and agrees that any claim, judgment or decree of any court against Landlord and in favor of Tenant as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Lease on Landlord’s part to be kept, observed and performed, shall be limited to the interest of Landlord in and to the Leased Premises (including any proceeds of sale or assignment) and the interest of Landlord in and to Casualty Proceeds, Condemnation Awards and title insurance proceeds, in each case paid with respect to Landlord’s interest in the Leased Premises.

**24.5 Right to Injunction.** In addition to the remedies set forth in this Article XXIV, the Parties shall be entitled to seek injunctive relief prohibiting (rather than mandating) action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Lease for which such remedy is available hereunder, at law or in equity.

**24.6 No Waivers.**

**24.6.1 General.** No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Lease or (ii) in insisting upon the strict performance by the other Party of such other Party’s covenants, obligations or agreements under this Lease, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict

performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

**24.6.2 No Accord and Satisfaction.** Without limiting the generality of Section 24.6.1 above, the receipt by Landlord of the Rent with knowledge of a breach by Tenant of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to the Rent received). The payment by Tenant of the Rent with knowledge of a breach by Landlord of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach. No acceptance by Landlord or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. Landlord and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

**24.6.3 No Waiver of Termination Notice.** Without limiting the effect of Section 24.6.1 above, the receipt by Landlord of any Rent paid by Tenant after the termination in any manner of the Term, or after the giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such Rent or other consideration, unless so agreed to in writing and executed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Leased Premises, excepting only an agreement in writing executed by Landlord accepting or agreeing to accept such a surrender.

**24.7 Effect of Termination.** If Landlord or Tenant elects to terminate this Lease, as provided herein (whether such termination occurs pursuant to this Article XXIV or any other provision hereof), this Lease shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Lease shall not alter the then existing Claims, if any, of either Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.



ARTICLE XXV  
LEASEHOLD MORTGAGES

**25.1 Tenant's Limited Right to Grant Liens and Special Provisions Applicable to Permitted Project Financing Holders.**

**25.1.1 Tenant's Right to Mortgage or Pledge.** Tenant shall have the unrestricted right, at any time and from time to time and without the Approval of Landlord during the Term, to grant Leasehold Mortgages as security for Permitted Project Financing (and no other Debt) made by a Permitted Project Financing Holder, *provided*, and on the condition that, any such Leasehold Mortgage shall cover and encumber the entirety of Tenant's interest in the Leased Premises. In no event shall Landlord's or Prime Lessor's interest in the Leased Premises or any other Property of Landlord or Prime Lessor (except, in each case, to the extent of Landlord's interest in the Project Improvements during the Term) be used as security or collateral for any obligation or Debt of Tenant or for the benefit of any Permitted Project Financing Holder, and (except to the extent of Landlord's interest in the Project Improvements during the Term) Landlord shall have no obligation to subordinate all or any of its interests or rights in this Lease or the Leased Premises to any Lien, including any Leasehold Mortgage.

**25.1.2 Special Provisions Applicable to Leasehold Mortgagees.** Whenever in this Lease, the term Leasehold Mortgagee is used, such term (i) shall be limited to the Permitted Project Financing Holder designated by Tenant as a Leasehold Mortgagee in a Tenant's Notice of Project Financing delivered to Landlord pursuant to this Section 25.1.2 and (ii) shall not include such designated Permitted Project Financing Holder after there is not any outstanding commitment or unpaid indebtedness with respect to the Permitted Project Financing. The Parties agree that regardless of the actual number of Permitted Project Financing Holders with respect to the Permitted Project Financing, only one Person (acting either on its own behalf or as agent or nominee for all Permitted Project Financing Holders) with respect to the Permitted Project Financing may be designated by Tenant as a Leasehold Mortgagee in any individual Tenant's Notice of Project Financing and, as such, be treated as, and receive the benefits of, a Leasehold Mortgagee under this Lease. Regardless of the existence of the Permitted Project Financing or Leasehold Mortgage, no Person shall be deemed to be a Leasehold Mortgagee under this Lease, unless and until Tenant shall have delivered Notice (a "**Tenant's Notice of Project Financing**") to Landlord of the existence of the particular Permitted Project Financing and designating such Person as a Leasehold Mortgagee. To be effective for purposes of this Lease, such Tenant's Notice of Project Financing must include the following:

- (a) The name and address of the Person who will be acting as Leasehold Mortgagee under this Lease with respect to the Permitted Project Financing;
- (b) A conformed original or certified or photostatic copy of the Leasehold Mortgage securing such Permitted Project Financing, along with evidence of recording of any Leasehold Mortgage;
- (c) The stated maturity date of the Permitted Project Financing provided that nothing herein shall prohibit the Leasehold Mortgagee or Permitted Project Financing

Holder from extending the maturity date of the Permitted Project Financing or require any consent of or further notice to the Landlord of such extension;

(d) A certification by Tenant to Landlord that (i) the Person designated by Tenant as the Leasehold Mortgagee is a Qualified Lender and (ii) the Leasehold Mortgagee included in Tenant's Notice of Project Financing secures the Permitted Project Financing and no other Debt; and

(e) Updates of all of the information and documentation described above with respect to any other Permitted Project Financing then in effect and for which a Tenant's Notice of Project Financing has previously been delivered to Landlord.

Landlord shall be entitled to rely on all information contained in a Tenant's Notice of Project Financing for all purposes under this Lease. In the event any Leasehold Mortgage covered by a Tenant's Notice of Project Financing is transferred and assigned to a different Permitted Project Financing Holder, Tenant shall provide Landlord with a new Tenant's Notice of Project Financing with respect to the same containing all of the foregoing information. For the absence of doubt, it is understood and agreed that Landlord shall have no obligation under this Lease to any Permitted Project Financing Holder for whom Landlord has not received a Tenant's Notice of Project Financing.

**25.2 Leasehold Mortgagee Not Bound.** No cancellation or surrender of this Lease prior to the expiration of the Term shall be effective as to any Leasehold Mortgagee unless resulting from a failure or refusal by a Leasehold Mortgagee to comply timely with the provisions of this Article XXV respecting the cure of Tenant Defaults under this Lease. No Leasehold Mortgagee shall be bound by any material modification of this Lease unless such modification is Approved by such Leasehold Mortgagee, which Approval shall not be unreasonably withheld unless the modification adversely affects the value of the Leasehold Mortgagee's collateral.

**25.3 Default Notice.** Landlord, upon delivering any Notice to Tenant of: (a) a Tenant Default or (b) a termination of this Lease, shall at the same time deliver a copy of such Notice to every Leasehold Mortgagee with respect to which Landlord received notice under Section 25.1.2. No such Notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been delivered to every Leasehold Mortgagee with respect to which Landlord received notice under Section 25.1.2. From and after such Notice has been delivered to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the delivery of such Notice to it in which to remedy any default or acts or omissions which are the subject matter of such Notice or cause the same to be remedied, as Tenant is entitled to plus an additional thirty (30) days or such additional reasonable period of time as may be required as long as Leasehold Mortgagee commences the cure within such thirty (30) day period and diligently continues to pursue the cure thereafter, but in no event more than an additional sixty (60) days after the delivery of such notice to Tenant. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant and Tenant hereby constitutes and appoints each Leasehold Mortgagee as Tenant's attorney-in-fact with full power, in Tenant's name, place and stead, at Tenant's cost and expense, to enter upon the Leased Premises to perform any of Tenant's obligations under this Lease.

**25.4 Notice to Leasehold Mortgagee.** Notwithstanding anything herein to the contrary, if any Tenant Default shall occur, Landlord shall have no right to terminate this Lease or terminate Tenant's right to possession of the Leased Premises without terminating this Lease unless Landlord shall deliver Notice to every Leasehold Mortgagee of Landlord's intent to so terminate at least ninety (90) days in advance of the proposed effective date of such termination. Landlord may satisfy the foregoing Notice requirement by delivery to such Leasehold Mortgagees of a copy of any Final Notice delivered to Tenant pursuant to Section 24.2.2. The provisions of Section 25.5 below shall apply if, within such ninety (90) calendar day termination notice period, any such Leasehold Mortgagee (a) pays or causes to be paid all amounts then due and in arrears as specified in the termination Notice to such Leasehold Mortgagee and which will become due during such ninety (90) calendar day period, and (b) cures or, in good faith and with reasonable diligence and continuity, (i) commences to cure all non-monetary requirements of this Lease then in default and reasonably susceptible of being cured by such Leasehold Mortgagee or (ii) if all such non-monetary defaults reasonably susceptible of being cured by such Leasehold Mortgagee are not cured within such ninety (90) day period, then within an additional fifteen (15) days after the end of such ninety (90) day period, commences to exercise its rights to take possession of the Leased Premises as mortgagee (through seeking the appointment of a receiver or otherwise) or acquire or sell Tenant's interest in this Lease by foreclosure or assignment in lieu thereof or otherwise with respect to a Leasehold Mortgage (which may include a petition to lift any stay imposed in bankruptcy proceedings and any application to remove any injunction limiting its right to take such actions, so long as, in each case, the same is diligently and continuously pursued). The Leasehold Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Leased Premises or to continue to prosecute foreclosure proceedings pursuant to clause (ii) above, if and when such Event of Default shall be cured.

## **25.5 Procedure on Default.**

**25.5.1 Leasehold Mortgagee's Rights Prior to Termination.** If Landlord shall elect to terminate this Lease or terminate Tenant's right to possession of the Leased Premises without terminating this Lease by reason of any Tenant Default, and a Leasehold Mortgagee shall have proceeded in the manner provided for in Section 25.4, the specified date for the termination of this Lease as fixed by Landlord in its termination notice shall be extended for such period of time as may be reasonably required to effectuate (a) the cure of all non-monetary obligations of Tenant then in default and reasonably susceptible of being cured by such Leasehold Mortgagee or (b) the taking of possession of the Leased Premises or the acquisition or sale of the Leasehold Estate by foreclosure of the Leasehold Mortgage by such Leasehold Mortgagee or assignment in lieu thereof to the extent, and only to the extent, that possession of the Leased Premises is necessary to cure such default; *provided, however* that such Leasehold Mortgagee shall pay all Rent and all other amounts accrued and unpaid by Tenant and shall continue to pay all Rent and other amounts under this Lease as the same become due and continue its good faith diligent efforts to effect such acquisition or sale and to cure all non-monetary requirements of this Lease then in default and reasonably susceptible of being cured by such Leasehold Mortgagee. No Leasehold Mortgagee shall become liable to Landlord as an assignee of this Lease until such time as said Leasehold Mortgagee, by foreclosure or otherwise, either acquires the interests of Tenant under this Lease or actually takes possession of the Leased Premises, and upon such Leasehold Mortgagee's assigning such rights and interests to another

party in accordance with Section 25.5.5 or relinquishing such possession, as the case may be, such Leasehold Mortgagee shall have no further such liability.

**25.5.2 Cure of Tenant Default.** If the Tenant Default shall be cured pursuant to this Section 25.5 within the time periods specified in Section 25.4 and Section 25.5, as applicable or the Tenant Default is not reasonably susceptible of being cured by such Leasehold Mortgagee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

**25.5.3 Cure of Default Upon Acquisition of Leasehold Estate.** If a Leasehold Mortgagee is complying with Section 25.4 and Section 25.5.1, upon the acquisition of the Leasehold Estate by such Leasehold Mortgagee or any other permitted purchaser at a Foreclosure Event, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided that all Tenant Defaults to be cured pursuant to Section 25.5.1, which have not yet been cured and are reasonably susceptible of cure by such Leasehold Mortgagee or other permitted purchaser, shall thereafter be cured within such period of time as may be reasonably required to effectuate such cure, but in no event longer than the time period permitted under Section 25.5.1.

**25.5.4 Leasehold Mortgage Not a Transfer.** The making of a Leasehold Mortgage shall not be deemed to constitute a Transfer of this Lease nor shall any Leasehold Mortgagee prior to a Foreclosure Event or the acquisition of the Leasehold Estate or other security by foreclosure or assignment in lieu of foreclosure, as such, be deemed to be a transferee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such acquisition of the Leasehold Estate.

**25.5.5 Transfers After Acquisition Upon Default.** Notwithstanding any other provision of this Lease to the contrary, any Leasehold Mortgagee or other permitted acquirer of the Leasehold Estate pursuant to a Foreclosure Event may, upon acquiring the Leasehold Estate under the Lease, subject to the Approval of Landlord to the extent required in Article XXI with respect to any such proposed Transfer of the Leasehold Estate, sell and assign the Leasehold Estate on such terms and to such Persons as are acceptable to such acquirer and thereafter shall be relieved of all obligations of "Tenant" under this Lease arising after the date of such Transfer, *provided* (i) such transferee assumes in writing for the benefit of Landlord all of the obligations of "Tenant" under this Lease and (ii) Landlord is notified of such Transfer and provided a copy of such assumption contemporaneously with such Transfer.

**25.5.6 Post-Foreclosure Operation.** Notwithstanding any other provisions of this Lease in the event of the acquisition of the Leasehold Estate by any Leasehold Mortgagee or any other permitted purchaser at a Foreclosure Event, the operation of the Leased Premises by or on behalf of any such acquirer of the Leasehold Estate under this Lease shall be subject to the provisions and requirements of this Lease and such acquirer of the Leased Premises shall operate the Leased Premises in accordance with the requirements of this Lease.

**25.5.7 Affiliate or Subsidiary of Leasehold Mortgagee.** Landlord agrees that in lieu of the acquisition of the Leasehold Estate by Leasehold Mortgagee that the Leasehold

Estate may be acquired by any Affiliate or Subsidiary of Leasehold Mortgagee and all rights and obligations of Leasehold Mortgagee hereunder shall be applicable to such Affiliate or Subsidiary.

**25.6 New Lease.** In case of the termination of this Lease for any reason whatsoever prior to the expiration of the Term (other than (i) a termination consented in writing by the applicable Leasehold Mortgagee or (ii) a termination permitted under this Lease as a result of the failure or refusal of such Leasehold Mortgagee to comply with the provisions of Section 25.4 and Section 25.5 hereof), including in the event of rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Applicable Law affecting creditors rights, Landlord shall give prompt Notice thereof to any Leasehold Mortgagee. Landlord shall, on written request of any such Leasehold Mortgagee, made at any time within sixty (60) days after Notice from Landlord to such Leasehold Mortgagee of the termination of this Lease, enter into a new Lease with such Leasehold Mortgagee or an Affiliate or Subsidiary thereof within thirty (30) days after receipt of such request, which new Lease shall be effective as of the date of such termination of this Lease for the remainder of the Term, on all terms and conditions of this Lease that would have been in effect on such date but for such termination, other than such terms as are not reasonably susceptible to being performed by Leasehold Mortgagee or an Affiliate or Subsidiary thereof (the "**New Lease**"); *provided, however*, that such Leasehold Mortgagee shall: (a) contemporaneously with the delivery of such request pay to Landlord all Rent and other amounts payable by Tenant hereunder which are then due; (b) pay to Landlord at the time of the execution and delivery of the New Lease any and all reasonable, out-of-pocket costs and expenses of any kind which Landlord incurs with respect to the operation and maintenance of the Leased Premises after the rejection or disaffirmance of this Lease and any and all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with the New Lease, including the reasonable fees and expenses of Landlord's outside legal counsel; (c) comply with the provisions of Section 25.5.6 regarding Approval of the Person proposed by such Leasehold Mortgagee to operate the Project Improvements and (d) on or prior to the execution and delivery of the New Lease, agree in writing that promptly following the delivery of the New Lease such Leasehold Mortgagee or an Affiliate or Subsidiary thereof will perform or cause to be performed all of the other covenants, obligations and agreements contained in this Lease on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of the New Lease (except such covenants and agreements which are not reasonably susceptible of performance by such Leasehold Mortgagee). Landlord's execution of such a New Lease shall not in and of itself create any express or implied warranty by Landlord as to the condition of the Leased Premises. Landlord agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while a Leasehold Mortgage shall remain a Lien on Tenant's Leasehold Estate without the prior written Approval of the Leasehold Mortgagee.

**25.7 New Lease Priority.** Any New Lease made pursuant to Section 25.6 shall have the same priority with respect to any Encumbrance on the fee of the Leased Premises as did this Lease as of the time of its termination, and the Tenant under such New Lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease; *provided, however* that (i) Landlord shall have no duty to defend any claim adverse to such right, title or interest being claimed by, through or under Tenant or Leasehold Mortgagee or an Affiliate or Subsidiary thereof and (ii) no Landlord Default shall be based upon any intervening right, title or interest in or to the Leased Premises being claimed by, through or under Tenant or Leasehold

Mortgagee or an Affiliate or Subsidiary thereof. The provisions of Section 25.6 and this Section 25.7 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Section 25.6 and this Section 25.7 were a separate and independent contract made by Landlord, Tenant and such Leasehold Mortgagee.

**25.8 Liability of New Tenant.** The new Tenant under any New Lease entered into pursuant to Section 25.6, shall be liable to perform the obligations imposed on Tenant by such New Lease only during the period such Person has title to the Leasehold Estate (subject to the obligation to cure prior defaults to the extent required under Section 25.6).

**25.9 Further Assurances; Estoppel Certificate.**

**25.9.1 Estoppel Certificate.** At Tenant's cost and expense, Landlord agrees to execute and deliver to any Leasehold Mortgagee (a) any further commercially reasonable documents reasonably required by Tenant, any Leasehold Mortgagee and any new Tenant under a New Lease or any designee thereof at any time and from time to time to effectuate the intent and purposes of this Article XXV and (b) from time to time upon receipt of Notice of a request therefor, within thirty (30) days after receipt of such Notice, an estoppel certificate intended to be relied upon by such Leasehold Mortgagee stating:

(a) Whether this Lease is unmodified and is in full force and effect (or, if there have been modifications and attaching copies of such modifications thereto, that this Lease is in full force and effect as modified and stating the modifications) (and, if so requested, whether the annexed copy of this Lease is a true, correct and complete copy of this Lease);

(b) To the actual knowledge of the individual executing such certificate on behalf of Landlord, whether there are any Tenant Defaults or any Landlord Defaults (and specifying each such default as to which such individual is aware);

(c) Landlord's current address for the purpose of giving Notice to Landlord;

(d) The date to which Rent payable by the Tenant have been paid;

(e) The date of the Lease Expiration Date; and

(f) The date upon which the Lease Commencement Date, the Project Completion Date and the commencement of the Operating Term occurred, respectively, if such events have occurred as of the date of such estoppel certificate.

**25.9.2 Landlord's Costs.** Any Person requesting an estoppel certificate or other document under Section 25.9 shall reimburse Landlord at the time of execution and delivery of such estoppel certificate or other document all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with such estoppel certificate or other document, including fees and expenses of Landlord's outside consultants and legal counsel.

**25.9.3 No Subordination by Landlord.** Neither this Article XXV nor any other provision of this Lease requires, or shall be construed to require, Landlord to subordinate Landlord's interest in the Rent, this Lease or the Leased Premises (other than Landlord's interest in the Project Improvements during the Term) to a Leasehold Mortgage.

**25.10 Use Agreements and Rents.** After termination of this Lease and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a New Lease, Landlord will not terminate any Use Agreement or the rights of any Subtenant thereunder unless such Subtenant shall be in default under such Use Agreement and has failed to cure same within the time provided under such Use Agreement, nor shall Landlord modify or amend any of the terms of any Use Agreement to which Landlord has agreed in writing to recognize and not disturb. During such periods Landlord shall receive all revenues payable under the Use Agreements, as agent of such Leasehold Mortgagee and shall deposit such revenues in a separate and segregated account in trust for the Leasehold Mortgagee, but may withdraw such sums as are required to be paid to Landlord under this Lease at the time and in the amounts due hereunder and as other sums are required to pay the cost of operations for the Leased Premises, as reasonably necessary, and, upon the execution and delivery of the New Lease, Landlord shall account to Tenant thereunder for the balance, if any (after application as aforesaid) of the revenues payable under the Use Agreements received by Landlord from the operation of the Leased Premises, and Landlord shall thereupon assign the revenues payable under the Use Agreements to such Tenant and assign any Use Agreement to the Leasehold Mortgagee. The collection of revenues payable under the Use Agreements by Landlord acting as an agent pursuant to this section shall not be deemed an acceptance by Landlord for its own account of the attornment of any party under a Use Agreement unless Landlord shall have agreed in writing with such party that its tenancy or contract shall be continued following the expiration of any period during which a Leasehold Mortgagee may be granted a New Lease as Tenant, in which case such attornment shall take place upon the expiration of such period but not before. Except as expressly set forth in any nondisturbance and attornment agreements executed with respect to such Use Agreements, under no circumstances shall Landlord be obligated to perform any obligations of any Person under any Use Agreements.

**25.11 Legal Proceedings.** Landlord shall give Notice to each Leasehold Mortgagee of any Actions or Proceedings between Landlord and Tenant under this Lease, at the same time Notice is provided to Tenant.

**25.12 Notices.** Notices from Landlord to any Leasehold Mortgagee shall be mailed to the address of the Leasehold Mortgagee set forth in a Tenant's Notice of Project Financing or to such other address as may have been furnished to Landlord by the applicable Leasehold Mortgagee in a Notice delivered to Landlord at the address for Landlord designated pursuant to the provisions of Section 23 of Appendix B and all Notices to a Leasehold Mortgagee shall in all respects be governed by the provisions of such Section 23 of Appendix B.

**25.13 Amendments.** Landlord and Tenant shall reasonably cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by a Leasehold Mortgagee for the sole purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a default under the

terms of this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement reasonably necessary to effect any such amendment, provided the same does not detrimentally affect Landlord's interest in the Leased Premises or rights under this Lease.

**25.14 Fee Mortgages.** Landlord shall have the right during the Term to execute a Mortgage encumbering the right, title, interest and estate of Landlord in and to the Leased Premises (subject to the Leasehold Estate and any New Lease required by a Leasehold Mortgagee), and Landlord's interest in this Lease and may at any time or from time to time make assignments of the Rent payable hereunder or otherwise grant security interests or liens upon such Rent; *provided, however*, (i) any and all such Mortgages shall be expressly subject and subordinate in any and all respects to this Lease, all of the obligations of Landlord hereunder, and all of the rights, titles, interests and estates of Tenant and Leasehold Mortgagee created or arising under this Lease and (ii) any judicial or non-judicial foreclosure sales under any such Mortgage and conveyances in lieu of foreclosure under any such Mortgage shall constitute a Landlord Transfer that is subject to the terms and conditions of Section 21.7 hereof. Notwithstanding the foregoing, Landlord covenants and agrees that contemporaneously with granting any Mortgage against or with respect to its interest in the Leased Premises, Landlord will cause any such lender to enter into a recordable non-disturbance agreement in form and substance reasonably acceptable to Tenant and such lender containing non-disturbance provisions reasonably acceptable to Tenant and such lender protecting Tenant's rights under this Lease (a "**Landlord Mortgage Non-Disturbance Agreement**"). Any such Landlord Mortgage Non-Disturbance Agreement shall include an agreement by the lender that (i) the rights of Tenant and Leasehold Mortgagee under this Lease, and all terms and conditions of this Lease, shall not be affected or disturbed by the lender in the exercise of any of its rights under the Mortgage and (ii) if any judicial or non-judicial foreclosure sale occurs under the Mortgage or any conveyance in lieu of foreclosure occurs under the Mortgage, this Lease shall continue in effect and shall not be terminated and the purchaser of the Leased Premises shall become bound to Tenant and Leasehold Mortgagee to perform all of Landlord's obligations under this Lease and (iii) any judicial or non-judicial foreclosure sales under any such Mortgage and any conveyances in lieu of foreclosure under any such Mortgage shall constitute a Landlord Transfer that is subject to the terms and conditions of Section 21.7.

## ARTICLE XXVI

### GENERAL PROVISIONS

**26.1 No Broker's Fees or Commissions.** Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Lease.

**26.2 Board Approval.** Notwithstanding anything to the contrary set forth in this Lease, Tenant recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by Landlord under the terms of this Lease which are entered into after the date of this Lease will be subject to the prior Approval of the Landlord, but not Approvals and confirmations expressly permitted in this Lease to be given by Landlord Representative.



**26.3 Non-Appropriation.** Notwithstanding any other provision in this Lease, the Parties agree that (a) the provisions of this Section 26.3 shall prevail over any other provisions of this Lease and (b) the obligation of Landlord to pay any money under any provision of this Lease is contingent upon an appropriation by Landlord in the amount of such payment or other monetary obligation. Neither Landlord nor its elected officials, attorneys or other individuals acting on behalf of Landlord, make any representation or warranty as to whether any appropriation will, from time to time during the Term of this Lease, be approved by the Controlling Body of Landlord. Notwithstanding anything in this Lease to the contrary, the failure of Landlord to make an appropriation shall not cause Landlord to be in default under the terms of this Lease, there being no obligation imposed by law requiring the same; *provided, however*, in the event of a Non-Appropriation by Landlord related to an undisputed monetary obligation of Landlord under this Lease, Tenant, as its sole and exclusive remedy as a result thereof, may either (i) receive a credit (until paid) against the next occurring installments of Base Rent in the amount of the unpaid, undisputed monetary obligation of Landlord plus interest at the Default Rate on such outstanding amounts or (b) terminate this Lease pursuant to Section 24.2.3.

**26.4 Recording of Memorandum of Lease.** Tenant may file of record a Memorandum of Lease in the form attached hereto as Exhibit B in the Real Property Records of Harris County, Texas upon the Lease Commencement Date. Upon the Lease Expiration Date, Tenant shall execute such instruments reasonably requested by Landlord in recordable form which are sufficient to release of record any rights or interests of Tenant in and to the Leased Premises or the Leasehold Estate. In this connection, Tenant irrevocably and unconditionally appoints Landlord as its attorney-in-fact, coupled with an interest, which appointment shall survive the bankruptcy, insolvency or other legal disability of Tenant, solely to take all actions necessary to perform Tenant's obligations under this Section 26.4.

**26.5 Interest on Overdue Obligations.** All past due Rent shall bear interest at the Default Rate from the date(s) due (whether or not Landlord has given Notice to Tenant that such Rent is past due) until paid. No breach of Tenant's obligation to pay Rent shall have been cured unless and until the interest accrued thereon under this Section 26.5 shall have been paid to Landlord. In the event that Landlord fails to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease on or before the date due (or if no date is otherwise specified, the date which is thirty (30) days after Tenant delivers Notice to Landlord of such failure), then such amount shall bear interest at the Default Rate from the date due until paid. No breach of Landlord's obligation to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease shall have been cured unless and until the interest accrued thereon under this Section 26.5 shall have been paid to Tenant. All payments shall first be applied to the payment of accrued but unpaid interest.

**26.6 Employment of Consultants.** Landlord shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Landlord may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Landlord by Tenant under this Lease and, subject to Article XVI, to perform any inspection rights on behalf of Landlord. Tenant covenants and agrees to reasonably cooperate with such consultants in the same manner as Tenant is required to cooperate with Landlord pursuant to the terms of this Lease.

**26.7 Estoppel Certificate.** Tenant and Landlord shall, at any time and from time to time upon not less than ten (10) days' prior written request by the other Party, execute, acknowledge and deliver to Landlord or Tenant, as the case may be, a statement in writing certifying (a) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Rent has been paid, and (d) that, to the best knowledge of Landlord or Tenant, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default). Upon request by Tenant, Landlord's estoppel certificate also shall be addressed to the Leasehold Mortgagees.

**26.8 Open Records.** If any Person requests Landlord to disclose any information of a confidential, proprietary or trade secret nature with respect to the Private Contract Rights under the Texas Public Information Act (Tex. Gov't Code Ann. Sec. 552.001 et seq.) or any equivalent or successor statute (the "**Open Records Act**") and such information is subject to, or potentially subject to, an exception under the Open Records Act, then prior to making any such disclosure and to the extent permitted under Applicable Law, Landlord shall send Notice to Tenant of such request within five (5) Business Days of Landlord's receipt of such request. Within five (5) Business Days of Tenant's receipt of such Notice from Landlord, Tenant shall notify Landlord in writing whether Tenant desires Landlord to request a determination from the Texas Attorney General (an "**Opinion Request**") as to whether the requested information must be disclosed pursuant to the Open Records Act; *provided* that Landlord shall only be required to comply with the foregoing to the extent that Landlord, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception under the Open Records Act and the Open Records Act permits Landlord to make an Opinion Request in the circumstance in question. Upon receipt of a request from Tenant for Landlord to make an Opinion Request and provided Landlord is required to act on same pursuant to the terms hereof, Landlord, at Tenant's sole cost and expense, shall provide all commercially reasonable assistance to Tenant necessary to draft the Opinion Request so that it may be completed and filed within the time period prescribed by the Open Records Act. After the Opinion Request is so filed, each Party shall cooperate with each other Party in preparing appropriate responses or filings to the Texas Attorney General and to any other Person with respect to the information request and the Opinion Request, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third Person whose privacy or property interests may be compromised by any such information request in order to enable Landlord to timely furnish to any such third Person any statutory notice required by the Open Records Act and to seek any applicable exceptions from disclosure under the Open Records Act.

**26.9 Maintenance of Rights of Way, Easements and Licenses.** Tenant will maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Project Improvements from time to time. Tenant will not, without the prior Approval of Landlord, initiate, join in or consent to any variance, private restrictive covenant or other public or private restriction as to the use of the Project Improvements or any portion thereof, or any declaration, plat or other document having the effect of subjecting the Project Improvements to the condominium or cooperative form of ownership. Tenant shall, however, comply with all restrictive covenants which may at any time

affect the Project Improvements, ordinances and other public or private restrictions relating to the use of the Project Improvements.

**26.10 Compliance with Anti-Forfeiture Laws.** Tenant will not commit, permit or suffer to exist any act or omission affording any Governmental Authority the right of forfeiture against the Project Improvements or any part thereof. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of any Action or Proceedings against Tenant or all or any part of the Leased Premises or the Project Improvements, under any Governmental Rule for which forfeiture of the Leased Premises or the Project Improvements or any part thereof is a potential result, shall, at the election of Landlord, constitute an event that Landlord may remedy pursuant to Section 13.3.

**26.11 Intentionally Deleted.**

**26.12 Assignment of License Agreements; Name of Project Improvements; Trademarks.** Tenant hereby grants, conveys and assigns to Landlord, effective as of the Lease Expiration Date, all license agreements, trademarks, logos and other images and intellectual property owned by Tenant or its Affiliates that are used solely to advertise or identify the Project Improvements and all similar intangible rights relating solely to the Project Improvements.

**26.13 Intentionally Deleted.**

**26.14 Marketing Rights**

**26.14.1 Naming Rights.** Landlord hereby grants to Tenant the right to (a) name the Project Improvements, any portions thereof and any operations therefrom and (b) give designations and associations to any portion of the Project Improvements or the operations therefrom (collectively, "**Naming Rights**"); *provided, however*, that the exercise by Tenant of the Naming Rights shall be subject to the prior written approval of Landlord if the proposed exercise of the Naming Rights (u) violates any Applicable Law, (v) promotes or relates to firearms, (w) promotes establishments whose primary business is gambling, (x) uses the name of a Governmental Authority that is a county located in Texas or a city (regardless of whether located in Texas) (other than the City or the County) located within a 700-mile radius of the Harris County Courthouse in downtown Houston, Texas, in each case, with a population in excess of 200,000, (y) uses the name Louisiana, New Mexico, Oklahoma, Arkansas, Colorado, Arizona or Mississippi or (z) would reasonably cause embarrassment or disparagement to Landlord, the County or the City (including names containing slang, barbarisms, racial epithets, obscenities, profanity, or names relating to any sexually-oriented business or enterprise or containing any overt political reference). Notwithstanding anything to the contrary contained in this Lease, Landlord hereby reserves the following: (A) the non-exclusive right to use (but not sublicense), and allow the City and the County to use, the names, designations and associations granted by Tenant pursuant to its exercise of the Naming Rights for the purpose of promoting the general business activities of Landlord, the City or the County, as applicable, and for no other purpose, and (B) the non-exclusive right to use (but not sublicense), and allow the City and the County to use, any symbolic representation of the Leased Premises for the above-listed purposes. From and after the date Tenant notifies Landlord of (1) Tenant's exercise of any one or more of the Naming Rights or (2) the existence of a naming rights agreement related thereto, Landlord

shall (i) adopt the nomenclature designated in such naming rights agreement for the Leased Premises or the portion thereof covered by such naming rights agreement and (ii) refrain from using any other nomenclature for the Leased Premises or such portion thereof in any documents, press releases or other materials produced or disseminated by Landlord.

**26.14.2 Sponsor Signs.** Except as otherwise expressly set forth in Section 12.9.2, Tenant shall have the exclusive right to sell, grant or license the placement of signage in, on, about and throughout the Leased Premises. Tenant, at its sole discretion, may charge a fee for the placement of any such signage. Tenant shall have sole discretion as to the content of any such signage subject to the terms of Section 26.14.1.

**26.15 Exclusive Right to Exhibit Professional Soccer.**

**26.15.1** As part of the consideration for this Lease it is agreed that Tenant shall have the sole and exclusive right and privilege of exhibiting Professional Soccer in not only the Leased Premises but any other stadium not existing as of the Execution Date and owned or controlled by Landlord or any Affiliate of Landlord within the limits of the County. For purposes of this Lease, "**Professional Soccer**" shall mean the type and general quality of soccer regularly played between member teams within a soccer association such as MLS and any other similar league or leagues now or hereafter organized playing a comparable type and general quality of professional soccer, and including any teams without league affiliation playing a comparable type and general quality of professional soccer. "**Professional Soccer**" shall not include indoor soccer of any type including professional "indoor soccer" such as the kind played by the Major Indoor Soccer League or any similar league or type of indoor soccer. The hereinabove stated provisions of this Section 26.15.1 shall constitute restrictive covenants which run with and bind the Leased Premises and any other stadium owned or controlled by Landlord or any Affiliate of Landlord within the limits of the County. Tenant shall be deemed the beneficiary of the aforesaid restrictive covenants.

**26.15.2** Notwithstanding anything to the contrary contained in this Lease, Tenant's sole and exclusive remedies for any violation of this Section 26.15 shall be as follows: (i) Tenant shall have the right to obtain an injunction prohibiting any such violation, or (ii) Tenant shall have the right to notify Landlord of the alleged Landlord Default pursuant to Section 24.1.2 and obtain the remedies provided for in Section 24.2.2.

**26.15.3** In connection with the rights granted to Tenant in this Section 26.15, Landlord recognizes that Tenant has contributed and/or shall contribute significant capital costs to the construction of the Project Improvements; and Landlord acknowledges and agrees that monetary damages could not be calculated to compensate Tenant for any violation of the covenants, duties and obligations contained in this Section 26.15. Accordingly, Landlord agrees that (i) Tenant may restrain or enjoin any violation as provided above in this Section 26.15 or threatened violation of any covenant, duty or obligation contained in this Section 26.15 without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Section 26.15, the balance of hardships would weigh in favor of

entry of injunctive relief, (iii) Tenant may enforce any such covenant, duty or obligation contained in this Section 26.15 through specific performance, and (iv) Tenant may seek injunctive or other form of equitable relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Section 26.15 on an interim basis pending the outcome of the controversy. Landlord further agrees and irrevocably stipulates that the rights of Tenant to injunctive relief pursuant to this Section 26.15 shall not constitute a “claim” pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Landlord.

**26.16 Landlord’s Lien Waiver.** LANDLORD HEREBY WAIVES ALL LANDLORD’S LIENS THAT LANDLORD MIGHT HOLD, STATUTORY OR OTHERWISE, TO ANY OF TENANT’S (OR ANY SUBTENANT’S) PROPERTY WHETHER INVENTORY, FURNITURE, TRADE FIXTURES OR EQUIPMENT OR OTHER PERSONAL PROPERTY, NOW OR HEREAFTER PLACED IN THE LEASED PREMISES.

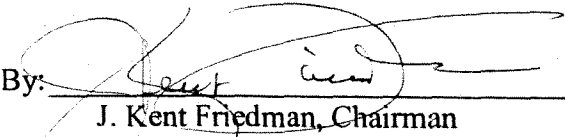
**26.17 Waiver of Immunity.** Landlord is an agency of the State of Texas. To the extent permitted by Applicable Law, Landlord hereby voluntarily and irrevocably waives, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) liability, (iii) jurisdiction of any court, (iv) relief by way of injunction or order for specific performance or recovery of property, (v) attachment of its assets (whether before or after judgment) and (vi) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

**[Signature Page Follows]**

This Lease is executed to be effective for all purposes as of the Execution Date.

**LANDLORD:**

HARRIS COUNTY-HOUSTON SPORTS AUTHORITY

By:   
J. Kent Friedman, Chairman

**TENANT:**

DYNAMO STADIUM, LLC,  
a Delaware limited liability company

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

This Lease is executed to be effective for all purposes as of the Execution Date.

**LANDLORD:**

HARRIS COUNTY-HOUSTON SPORTS AUTHORITY

By: \_\_\_\_\_  
J. Kent Friedman, Chairman

**TENANT:**

DYNAMO STADIUM, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Ted Fike  
Title: Vice President

Signature Page to Lease and  
Development Agreement

**APPENDIX A  
TO  
LEASE AND DEVELOPMENT AGREEMENT**

*Rules as to Usage*

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) "Include", "includes" and "including" shall be deemed to be followed by "but not limited to," whether or not they are in fact followed by such words or words of like import.

(2) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Lease and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(10) "Shall" and "will" have equal force and effect.



(11) Unless otherwise specified, all references to a specific time of day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Houston, Texas.

(12) References to "\$" or to "dollars" shall mean the lawful currency of the United States of America.

(13) "Not to be unreasonably withheld" when used herein with respect to any Approval shall be deemed to be followed by "conditioned or delayed" whether or not it is in fact followed by such words or words of like import.

## **GLOSSARY OF DEFINED TERMS**

**"Action"** or **"Proceedings"** means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

**"Additional Addressees"** has the meaning set forth in Section 23 of Appendix B.

**"Additional Improvements"** has the meaning set forth in Section 15.2.1.

**"Additional Rent"** has the meaning set forth in Section 6.4.

**"Additional Work"** has the meaning set forth in Section 15.2.1.

**"Additional Work Surety Bond Threshold"** means One Million and No/100 Dollars (\$1,000,000.00), as increased on January 1 of each Lease Year during the Term by the annual change in the CPI from the CPI on the prior January 1, as soon as such information becomes available.

**"Affiliate"** of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender. For purposes of this Agreement, ICON Venue Group, LLC shall not be considered an Affiliate of Tenant. For the avoidance of doubt, in no event shall Landlord be deemed or considered an "Affiliate" of City and/or County and vice versa.

**"All-Star Games"** means any Professional Soccer game under the auspices of MLS between teams comprised of active players from multiple MLS teams who are selected or designated for participation on the basis of their skills and achievements.

**"Antiquities Code"** means the Antiquities Code of Texas as codified in Title 9, Chapter 191 of the Texas Natural Resource Code, as may be amended from time to time.

**“Applicable Laws”** means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include the Antiquities Code, all City Codes, Environmental Laws and any applicable Federal wage requirements. Tenant acknowledges that there may be certain “Applicable Laws” that apply to the Leased Premises or its operation thereon as a result of same being owned by Prime Lessor or a local government corporation organized under the laws of the State of Texas.

**“Appropriation”** means with respect to any payment obligation or other monetary obligation of Landlord that may from time to time exist or arise under this Lease during a Lease Year, the approval and setting aside by Landlord of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of Landlord.

**“Approval,” “Approve” or “Approved”** means (a) with respect to any item or matter for which the approval of Landlord or Landlord Representative, as the case may be, is required under the terms of this Lease, the specific approval of such item or matter by Landlord pursuant to a written instrument executed by Landlord or Landlord Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed approval, and no approval by Landlord or Landlord Representative pursuant to this Lease shall be deemed to constitute or include any approval required in connection with any Governmental Functions of Landlord, the City or the County, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Tenant is required under the terms of the Lease, the specific approval of such item or matter by Tenant or the Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or the Tenant Representative, as permitted pursuant to the terms of this Lease, and delivered to Landlord, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Lease, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to Landlord or Tenant, as applicable, and shall not include any implied or imputed approval.

**“Arbitration Procedures”** means the arbitration procedures set forth in Appendix D.

**“Arena”** means the “Arena” as described in that certain Arena Lease, Sublease, License and Management Agreement dated effective December 31, 2001, between Landlord and Rocket Ball, Ltd. and commonly known as the “Toyota Center.”

**“Auto Policies for Additional Work”** has the meaning set forth in Section 19.1.3(b).

**“Auto Policies for Project Improvements Work”** has the meaning set forth in Section 19.1.3(b).

**“Bankruptcy”** means any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, receivership, winding-up, liquidation, dissolution or composition or adjustment of debt, including any voluntary or involuntary proceeding pursuant to Sections 301,

302, 303 and/or 304 of the Bankruptcy Code or the voluntary election to wind-up, liquidate, dissolve or otherwise cease to operate.

**“Base Rent”** has the meaning set forth in Section 6.3.1.

**“Builder’s Risk Policies for Additional Work”** has the meaning set forth in Section 19.1.3(a).

**“Builder’s Risk Policies for Project Improvements Work”** has the meaning set forth in Section 19.1.1(a).

**“Business Day”** means a day of the year that is not a Saturday, Sunday or Legal Holiday.

**“Business Hours”** means 9:00 a.m. through 5:00 p.m. on Business Days.

**“Capital Expenses”** means all expenses incurred with respect to Capital Repairs.

**“Capital Fund”** means a segregated and dedicated account into which funds are deposited to be used solely to pay Capital Expenses.

**“Capital Fund Custodian”** means any Qualified Lender reasonably acceptable to Landlord and Tenant.

**“Capital Leases”** as applied to any Person, means any lease of any Property by such Person as tenant which would, in accordance with GAAP, be required to be classified and accounted for as a capital lease on the balance sheet of such Person.

**“Capital Repairs”** shall mean any work (including all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) reasonably necessary to repair, restore, refurbish or replace (in each case, in a manner that extends the useful life thereof) any equipment, facility, structure or other Component, if such work is necessitated by:

- (a) Any material defects in design, construction or installation of the Project Improvements;
- (b) Physical Obsolescence;
- (c) Functional Obsolescence;
- (d) Requirements imposed by MLS or the NCAA as applicable to the Leased Premises;
- (e) Requirements imposed by Applicable Laws;
- (f) Requirements or recommendations of any insurance carrier insuring any portion of the Premises; or

(g) Requirements of any manufacturer, supplier or installer of any Component, system or equipment at the Leased Premises stipulated in the operating manuals therefor.

Capital Repairs shall not include (i) any Maintenance, (ii) any Casualty Repair Work (except for Casualty Repair Work otherwise constituting Capital Repairs to the extent insurance proceeds are insufficient to complete such Casualty Repair Work for any reason other than as a result of a Tenant Default under this Lease) or (iii) any Condemnation Repair Work.

**“Casualty”** means physical damage, physical destruction or other property casualty resulting from any fire or any other sudden, unexpected or unusual cause.

**“Casualty Proceeds”** has the meaning set forth in Section 18.2.1.

**“Casualty Repair Work”** has the meaning set forth in Section 18.1.

**“Certificate”** has the meaning set forth in Section 14.1.7.

**“Cessation of Work”** has the meaning set forth in Section 9.10.

**“Change in Control”** has the meaning set forth in Section 21.1.

**“City”** means the City of Houston, Texas, a Texas municipal corporation and Home Rule City.

**“City’s Remedial Work”** has the meaning set forth in Section 9.3.3.

**“City Codes”** means all ordinances, codes and policies from time to time adopted by the City of Houston, Texas, including, any building codes, fire or life safety codes, development codes and zoning ordinances, as same may be amended from time to time.

**“City Controlled Entity”** means any entity created by the City in which the City has the power to appoint any of the members of the board of directors or the legal authority to control the actions of such entity.

**“Claims”** means and includes any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate

governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

**“Commencement of Operations”** or **“Commence Operations”** means opening for business to the public and the actual commencement of operation of all elements of the Project Improvements in accordance with the Operating Standard and the terms of this Lease and all other Project Documents and all Applicable Laws, except such minor elements that do not prevent Tenant from operating the Leased Premises and the Project Improvements as a whole in accordance with the Operating Standard.

**“Comparable Facilities”** means one or more multi-purpose MLS soccer stadiums that (i) have been constructed no earlier than five (5) years before the Execution Date, (ii) are comparable in size and quality of construction to the Project Improvements and (iii) are located in the United States. For the purposes of this Agreement, the term Comparable Facilities shall include: (1) Home Depot Center (LA Galaxy) in Carson, California, (2) Dick’s Sporting Goods Park (Colorado Rapids) in Commerce City, Colorado, (3) Pizza Hut Park (FC Dallas) in Frisco, Texas, (4) Rio Tinto Stadium (Real Salt Lake) in Sandy, Utah, and (5) PPL Park (Philadelphia Union) in Chester, Pennsylvania.

**“Component”** means any item of real or tangible personal property that is incorporated in the Leased Premises or integral to the operation or maintenance of the Leased Premises and located in, on or under the Land in accordance with the terms of this Lease, including all structural members, all mechanical, electrical, plumbing, heating, ventilating, air conditioning, telecommunication, broadcast, video, sound and other equipment (including principal components of each such item of equipment), seats, food and beverage preparation, dispensing or serving equipment, electronic parts, Signage, video replay and display equipment, sound systems and speakers and all computers and computer control equipment.

**“Condemnation Actions”** means a taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain or by appropriation and an acquisition by any Governmental Authority (or other Person with power of eminent domain) through a private purchase in lieu thereof, but shall not include the dedication of any portion of the Leased Premises necessary to obtain Governmental Authorizations or to comply with any other Applicable Law respecting the construction of any Improvements on the Leased Premises.

**“Condemnation Award”** means all sums, amounts or other compensation for the Leased Premises payable to Landlord or Tenant as a result of or in connection with any Condemnation Action.

**“Condemnation Expenses”** has the meaning set forth in Section 20.2.2.

**“Condemnation Repair Work”** has the meaning set forth in Section 20.2.2.

**“Conditions to Commencement”** has the meaning set forth in Section 8.1.

**“Conditions to Commencement of the Operating Term”** has the meaning set forth in Section 5.3.

**“Construction Safety Plan”** means the minimum security and safety standards and procedures to be followed in connection with any Construction Work and the performance thereof which reflects the security and safety standards and procedures that would be followed by a Reasonable and Prudent Developer as a Reasonable and Prudent Operator, as applicable.

**“Construction Term”** has the meaning set forth in Section 5.2.

**“Construction Work”** means, collectively, the Project Improvements Work and any Additional Work, including Maintenance and Repair Work, Tenant’s Remedial Work, any Casualty Repair Work and any Condemnation Repair Work.

**“Contractors’ Equipment”** means and refers to all equipment used by any contractor in connection with the Project Improvements Work and the Additional Work, as applicable, whether owned, hired or leased.

**“Controlling Body of Landlord”** means the Board of Directors of Landlord.

**“Controlling Person of Tenant”** means any Person that directly or indirectly controls Tenant. As used in the definition of Controlling Person of Tenant, the term “control” shall mean the possession, directly or indirectly, of the power to either (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Tenant or (ii) direct or cause the direction of management, policies or Major Decisions of Tenant, whether through the ownership of voting securities or interests, by contract or otherwise (other than by the exercise of an approval right that prevents an action that constitutes a Major Decision). For the purposes hereof, the general partner of any partnership (either general or limited) and the manager, managing member or managing director of any limited liability company shall always be deemed to be a “Controlling Person” of such partnership or limited liability company.

**“County”** means Harris County, Texas.

**“County Controlled Entity”** means any entity created by the County in which the County has the power to appoint any of the members of the board of directors or the legal authority to control the actions of such entity.

**“CPI”** means the United States Consumer Price Index for all Urban Consumers (also known as the CPI-U) for the Houston Metropolitan Statistical Area (1982-1984=100), as published monthly (or if the same shall no longer be published monthly, on the most frequent basis available) by the Bureau of Labor Statistics, U.S. Department of Labor (but if such is subject to adjustment later, then the later adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, shall be used), or if such publication is discontinued, the CPI shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published (on the most frequent basis available) by an agency of the

United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected jointly by Landlord and Tenant.

**"CPI Increase"** means the percentage increase in CPI over the preceding Lease Year as calculated by the fraction whose numerator is (i) the most current CPI available on the date of calculation minus (ii) the most current CPI available on the first day of the immediately preceding Lease Year in question (the **"Base CPI"**), and whose denominator is the Base CPI, but in no event shall the "CPI Increase" be less than zero.

**"Debt"** means for any Person without duplication:

- (a) indebtedness of such Person for borrowed money;
- (b) obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) obligations of such Person to pay the deferred purchase price of Property or services;
- (d) obligations of such Person as tenant under Capital Leases;
- (e) obligations of such Person under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) of such Person to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligation of another Person of the kinds referred to in clauses (a) through (d) above; and
- (f) indebtedness or obligations of others of the kinds referred to in clauses (a) through (e) secured by any Lien on or in respect of any Property of such Person.

**"Debt to Equity Ratio"** means, for any Person on any date of its determination, the ratio of (a) such Person's consolidated total liabilities on such date determined in accordance with GAAP after giving effect to the Transfer or Permitted Transfer to such Person to (b) such Person's Tangible Net Worth on such date.

**"Default Rate"** means the lesser of (i) the Prime Rate plus four percent (4%) per annum or (ii) the Maximum Lawful Rate.

**"Delayed Opening Payment"** means an amount equal to Fifty Thousand and No/100 Dollars (\$50,000.00) per month, such amount to be prorated for any partial month.

**"Dispute or Controversy"** has the meaning set forth in Section 11.5.1.

**"Donated Construction Materials"** has the meaning set forth in Section 15.1.1.

**"Due Diligence Reports"** has the meaning set forth in Section 8 of Appendix E.

**"Due Diligence Work"** has the meaning set forth in Section 3 of Appendix E.

**“Emergency”** means any circumstance in which (i) Tenant, Landlord or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard a life or lives, Property or the environment against the likelihood of injury, damage or destruction due to an identified threat or (ii) Applicable Laws require that immediate action is taken in order to safeguard a life or lives, Property or the environment.

**“Encumbrances”** means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Leased Premises, whether evidenced by written instrument or otherwise evidenced.

**“Environmental Claim”** means any Action or Proceeding regarding the Leased Premises (i) arising under an Environmental Law or (ii) related to or arising out of an Environmental Event.

**“Environmental Event”** means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Leased Premises caused by a third party; (iii) any event on, at or from the Leased Premises or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; or (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Leased Premises which may cause a threat or actual injury to human health, the environment, plant or animal life.

**“Environmental Law(s)”** means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.



§§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

**“Environmental Reports”** means (i) the Phase I Environmental Site Assessment for 810 Dowling Street and City Blocks 203, 204, 205, 218, 219, and 220, Houston, Texas 77003 dated April 2008, by Weston Solutions, Inc., (ii) the Limited Phase II Environmental Investigation Activities - Six City Block Project (including City Blocks 203, 204, 205, 218, 219, and 220), Houston, Texas 77003 dated June 15, 2009, by Weston Solutions, Inc., (iii) the Laboratory Analysis Report dated August 6, 2010, by A&B Labs for Eagle Construction and Environmental Services, LaPorte, Texas 77571, and (iv) the Supplemental Phase II ESA & Soil Excavation - Six City Blocks bounded by Texas Avenue, Dowling, Walker and Hutchins, Houston, Texas, dated November 29, 2010, by Terracon Consultants, Inc.

**“Equity Commitment”** means the difference between (a) the Total Project Costs set forth in the Project Budget and (b) amount of the net proceeds from the Financing available to Tenant to pay the Total Project Costs set forth on the Project Budget.

**“Event of Default”** has the meaning set forth in Section 24.1.1 and Section 24.1.2.

**“Excess/Umbrella Policy for Project Improvements Work”** has the meaning set forth in Section 19.1.1(e).

**“Excusable Landlord Delay”** means any Landlord Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Landlord Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Landlord Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Landlord Delay.

**“Excusable Landlord Delay Period”** means with respect to any particular occurrence of Excusable Landlord Delay, that number of days of delay in the performance by Landlord of its obligations under the Lease actually resulting from such occurrence of Excusable Landlord Delay.

**“Excusable Tenant Delay”** means any Tenant Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Tenant Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Tenant Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Tenant Delay.

**“Excusable Tenant Delay Period”** means with respect to any particular occurrence of an Excusable Tenant Delay, that number of days of delay in the performance by Tenant of its obligations hereunder actually resulting from such occurrence of Excusable Tenant Delay, but not to exceed three hundred sixty five (365) days with respect to any deadline or time period with respect to any Construction Work other than the Project Improvements Work. For the avoidance of doubt, the three hundred sixty-five (365) day cap on the number of days of Excusable Tenant Delay shall not apply to the Substantial Completion Deadline or the Mandatory Substantial Completion Deadline.

**“Execution Date”** has the meaning set forth in the preamble to the Lease.

**“Expiration Date”** has the meaning set forth in Section 2 of Appendix B.

**“Fast-Track Arbitration”** has the meaning set forth in Section 1.2 of Appendix D.

**“Federal Reserve Discount Rate”** means the interest rate charged to individual banks for loans they obtain from central banks of the Federal Reserve System, as such rate is published from time to time by the Wall Street Journal or similar financial publication.

**“Final Completion”** means (i) with respect to the Project Improvements Work or any component of the Project Improvements Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements in accordance in all material respects with the Project Plans (all of which have been Approved pursuant to the terms of this Lease, as and if required), all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term “Substantial Completion,” (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Leased Premises in accordance with the terms of this Lease including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease and (C) Commencement of Operations in accordance with the terms of this Lease and all Applicable Laws and (ii) with respect to the Material Additional Work, means (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements in accordance in all material respects with the Material Additional Work Specifications, the Material Additional Work Plans, all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term “Substantial Completion,” (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Leased Premises in accordance with the terms of this Lease including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease (if any) and (C) Commencement of Operations as to all elements of the Leased Premises in accordance with the terms of this Lease and all Applicable Laws. Substantial Completion of such work and Improvements is a prerequisite to Final Completion of the same.

**“Final Notice”** has the meaning set forth in Section 24.2.3.

**“Financial Test”** means with respect to any Person (i) having a Tangible Net Worth equal to or greater than One Hundred Million and No/100 Dollars (\$100,000,000.00) and (ii) having a Debt-to-Equity Ratio no greater than 3.25 to 2.

**“Financing”** means one or more loans from a Qualified Lender obtained by Tenant to fund a portion of the Total Project Costs.

**“Financing Documents”** means the documents, instruments and agreements executed or delivered by Tenant or any of its Affiliates in connection with the Permitted Project Financing, as the same may be amended, supplemented, modified, renewed or extended from time to time in accordance with the terms thereof.

**“Force Majeure”** means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Lease or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party’s fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of Landlord in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Lease or any Applicable Law; and (vii) failure of either Party to perform any of its obligations under this Lease within the time or by the date required pursuant to the terms of this Lease for the performance thereof; *provided, however*, that under no circumstances shall Force Majeure include (A) economic hardship, (B) any strike or labor dispute involving employees of Tenant, employees of Team or employees of MLS (to the extent the players of the Team are considered employees of MLS) other than industry wide or nationwide strikes or labor disputes, (C) rainfall and temperature conditions that are consistent with historical norms or (D) the inability to pay debts or other monetary obligations in a timely manner.

**“Foreclosure Event”** means any foreclosure of any Lien or security interest or conveyance in lieu of foreclosure under any Permitted Project Financing.

**“Franchise”** means the right to operate the Team conferred by MLS.

**“Functional Obsolescence”** or **“Functionally Obsolete”** shall mean any equipment, fixture, furnishing, facility, structure or any other Component of the Leased Premises that is not dysfunctional (and thus not Physically Obsolete), but is no longer reasonably optimal for its intended purposes or otherwise does not comply with the standards of Comparable Facilities, by reason of (i) material innovations, inventions or improvements in the design, manufacture, operation or production of comparable equipment, systems or facilities that render more efficient, more satisfactory or more technologically advanced service or (ii) business patterns or practices (such as methods for selling tickets or admitting patrons to the Project Improvements) that require the modification or addition of equipment or facilities.

**“GAAP”** means generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors, which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

**“GL Policy for Additional Work”** has the meaning set forth in Section 19.1.3(d).

**“GL Policy for Project Improvements Work”** has the meaning set forth in Section 19.1.1(d).

**“Governmental Authority”** means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation. Landlord shall not, in exercising its rights as landlord under this Lease, be considered a Governmental Authority.

**“Governmental Authorizations”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

**“Governmental Function”** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which Landlord is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Lease and the performance by Landlord of its obligations under this Lease shall not be considered a “Governmental Function.”

**“Groundskeeping Services”** means all services necessary to maintain the Playing Field in the condition of Playing Fields at Comparable Facilities for the playing of MLS soccer games or NCAA football games, as applicable, including (i) readying the Playing Field each year for the upcoming MLS and/or NCAA football season and regular maintenance of the Playing Field during the MLS and/or NCAA football season, including watering, mowing, seeding, fertilizing and resodding; (ii) preparing the surface of and marking lines on the Playing Field and installing in proper position and removing the necessary equipment for MLS soccer and/or NCAA football games played at the Project Improvements; (iii) leasing or otherwise obtaining special equipment and supplies including field covers and a removable tarpaulin with related equipment and systems, for use in connection with preparing or maintaining the surface of the Playing Field; (iv) preparation, conversion and/or restoration of the surface of the Playing Field for an event at the Leased Premises; (v) repairing any damage to or destruction of the surface of the Playing Field; (vi) providing, repairing, maintaining, and replacing all lawn-mowing equipment, material handling equipment and other similar equipment necessary or advisable for the proper operation and/or maintenance of the Playing Field.

**“Guarantor”** means Dynamo Soccer, L.L.C., a Delaware limited liability company, and Anschutz Entertainment Group, Inc., a Colorado corporation, jointly and severally.

**“Guaranty”** means the Guaranty in the form attached hereto as **Exhibit C**.

**“Hazardous Materials”** means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of “hazardous substances”, “hazardous

wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment including soil and construction debris that may contain any of the materials described in this definition.

**“Home Games”** means all pre-season, regular season and post-season Professional Soccer games where the Team acts as the host to its opponent (both domestic and international opponents), including games during the MLS Season, “friendly” matches, SuperLiga and other domestic or international competitions.

**“Houston AAA”** has the meaning set forth in Appendix D.

**“Impositions”** means all Property Taxes, all personal property taxes and all possessory interest taxes imposed or assessed upon the Leased Property (including any interest of Tenant or Landlord hereunder), on any items of real property or Tenant’s Personal Property located on the Leased Premises, all use and occupancy taxes, all excises, levies, license and permit fees, general and special, ordinary and extraordinary, foreseen and unforeseen, that are, with respect to this Lease, assessed, levied, charged, confirmed or imposed upon or with respect to or become payable out of or become a lien on the Leased Premises, or the appurtenances thereto, or for any use or occupation of the Leased Premises, or such franchises, licenses and permits as may be appurtenant or related to the use of the Leased Premises, this transaction or any documents to which Tenant is a party, creating or transferring an interest or estate in the Leased Premises, or any real estate taxes, assessments, excises, levies or fees, general or special, ordinary or extraordinary, foreseen or unforeseen (including assessments for public improvements and betterment, and any mass transit, park, child care and art contributions, assessments or fees) that are levied, imposed or assessed upon the fee simple estate of the Land (except any tax, assessment, excise, levy or fee payable with respect to the receipt of Rent or other sums due under this Lease). The term “Impositions” shall not mean or include, and Landlord shall pay, prior to delinquency, any municipal, state, county or Federal income, excess profits or sales taxes assessed against Landlord or any municipal, state, county or Federal capital, levy, estate, succession, inheritance or transfer taxes of Landlord (on a sale or other transfer of the fee estate in the Land by Landlord or Prime Lessor other than a transfer to Tenant) or any franchise taxes imposed upon any corporate owner of the fee estate in the Land or any part thereof, including the Texas margin tax and/or any other business tax imposed under Texas Tax Code Chapter 171 and/or any successor statutory provision; *provided, however*, that if, at any time during the Term, the methods or scope of taxation or assessment of real estate prevailing on the Execution Date shall be so changed that there shall be substituted for the whole or any part of the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or imposed on real estate and the Improvements thereon or upon the possessory interest of Tenant in the Leased Premises, or any of Tenant’s Personal Property described above in this definition, a capital levy or other tax levied, assessed or imposed on any of the Rent payable by Tenant to Landlord under this Lease, then all such capital levies or other taxes shall, to the extent that they are so substituted, be deemed to be included within the term “Impositions.”

**“Improvements”** means all improvements, structures, buildings and fixtures of any kind whatsoever, other than trade fixtures which constitute Personal Property, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

**“Indoor Show”** means any concert, family show or other publicly ticketed touring event (excluding rodeos, monster truck/truck pull events and up to one UFC fight per year if and to the extent that the UFC has previously indicated a preference to present that event in an outdoor venue) which (i) is presented as part of a tour that includes (A) a minimum of five (5) performances (including Houston) in at least three (3) U.S. cities (in addition to Houston) during the period commencing three (3) months prior to the Houston performance and ending three (3) months after the Houston performance or (B) a minimum of three (3) performances (including Houston) in at least two U.S. cities (in addition to Houston) during the period commencing two (2) weeks prior to the Houston performance and ending two (2) weeks after the Houston performance and (ii) plays at least sixty percent (60%) of its U.S. dates in indoor venues.

**“Insolvency Event”** means, with respect to any Person, (a) such Person’s (i) failure to not generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its Property and, in the case of any such proceeding instituted against such Person, any such proceeding shall remain undismissed for a period of sixty (60) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s taking any corporate action to authorize any of the actions set forth above in this definition.

**“Insurance Covenant”** means all of the covenants and agreements of Tenant with respect to insurance policies and coverages to be maintained by Tenant and its contractors and subcontractors (of any tier) pursuant to and in accordance with this Lease.

**“Insurance Standard”** means such insurance policies, coverage amounts, types of coverage, endorsements or deductibles, as applicable, that (i) in connection with any Construction Work, that a Reasonable and Prudent Developer or Reasonable and Prudent Operator, as applicable, would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained with respect to the Leased Premises and such Construction Work and (ii) with respect to the operation and use of the Leased Premises, that a Reasonable and Prudent Operator would reasonably be expected to obtain, keep and maintain, or require to

be obtained, kept and maintained with respect to the Leased Premises and the ownership, operation and use thereof.

**“Insured Casualty Risks”** means physical loss or damage from fire, casualty, lightning, windstorm, hail, flooding, earth movement (including earthquake, landslide, subsidence and volcanic eruption), collapse, water damage, leakage from fire protection equipment or sprinkler systems, explosion (except steam boiler explosion), smoke, aircraft (including objects falling therefrom), motor vehicles, riot, riot attending a strike, civil commotion, sabotage, terrorism, vandalism, malicious mischief, theft, civil or military authority and all other peril (including resultant loss or damage arising from faulty materials, workmanship or design).

**“Insured Materials and Equipment”** means all materials intended for incorporation into the Leased Premises, whether stored on-site or off-site, and all machinery, equipment and tools, whether owned, leased or borrowed and brought on-site and/or otherwise utilized but not incorporated into the Project Improvements, by Tenant or Tenant’s other contractors and subcontractors, including temporary buildings, site huts, trailers and offices and their contents and all other property of the insured or in their care, custody or control while at the construction site or in storage facilities on- or off-site.

**“Land”** means the tract of land described in **Exhibit A**.

**“Landlord”** has the meaning set forth in the preamble to this Lease.

**“Landlord Dates”** has the meaning set forth in **Section 12.9.1**.

**“Landlord Default”** has the meaning set forth in **Section 24.1.2**.

**“Landlord Delay”** means any delay by Landlord in achieving performance of its obligations under this Lease to the extent that such delay has an effect on Tenant’s ability to perform its obligations hereunder.

**“Landlord Event”** has the meaning set forth in **Section 12.9.3**.

**“Landlord Indemnitees”** means Landlord, the City or the County or any Related Party of Landlord, the City or the County.

**“Landlord Insured”** means Landlord, the City and the County.

**“Landlord Mortgage Non-Disturbance Agreement”** has the meaning set forth in **Section 25.14**.

**“Landlord Representative”** has the meaning set forth in **Section 2.1**.

**“Landlord Transfer”** has the meaning set forth in **Section 21.7**.

**“Landlord Transferee”** has the meaning set forth in **Section 21.7**.

**“Landlord Uses”** has the meaning set forth in **Section 12.9.1**.

**“Landlord’s Condemnation Award”** has the meaning set forth in Section 20.1.2.

**“Landlord’s Interest”** has the meaning set forth in Section 20.1.2.

**“Landlord’s Remedial Work”** has the meaning set forth in Section 9.3.2.

**“Lease”** has the meaning set forth in the preamble to this Lease.

**“Lease Commencement Date”** has the meaning set forth in Section 5.1.

**“Lease Expiration Date”** means the date which is thirty (30) years after the Operating Term Commencement Date unless this Lease is sooner terminated pursuant to any applicable provision hereof whereupon such date of termination shall be the **“Lease Expiration Date.”**

**“Lease Year”** means each twelve (12) full calendar month period during the Term, commencing on the Lease Commencement Date; *provided, however*, that (i) if the Lease Commencement Date is not the first day of any calendar month, the first Lease Year of the Construction Term shall end on the last day of the twelfth (12th) succeeding calendar month, (ii) the Lease Year in which the Construction Term ends shall also end on the last day of the Construction Term even though such Lease Year may not constitute a full twelve (12) calendar months, and (iii) if the first day of the Operating Term is not January 1<sup>st</sup>, (x) the first Lease Year of the Operating Term shall be a period longer than a calendar year and shall conclude as of December 31<sup>st</sup> of the first full calendar year to occur after commencement of the Operating Term and (y) thereafter, a “Lease Year” shall be each calendar year during the Term or, if the Lease Expiration Date occurs during the middle of a calendar year, such portion of such calendar year.

**“Leased Premises”** means the Land, together with (a) the Project Improvements (including the Donated Construction Materials), as and when constructed on the Land, and all alterations and modifications thereof pursuant to the terms of this Lease and all other Improvements, (b) all air rights and air space above the Land and (c) all of Landlord’s right, title and interest, if any, in and to all rights, privileges and easements appurtenant to the Land including any intangible property rights, concessions, pouring and branding rights, advertising and broadcasting rights and development rights.

**“Leased Premises Reservations”** has the meaning set forth in Section 3.3.

**“Leasehold Estate”** means, collectively, (i) the leasehold estate in the Leased Premises granted under this Lease and (ii) all other rights, titles and interest granted to Tenant under this Lease.

**“Leasehold Mortgage”** means a Mortgage covering and encumbering all, and not less than all, of the Leasehold Estate, and Tenant’s rights under this Lease and which Mortgage secures a Permitted Project Financing and no other Debt and is otherwise permitted by, and is made in accordance with the provisions of the this Lease.

**“Leasehold Mortgagee”** means, for only so long as the applicable Permitted Project Financing is outstanding, the Permitted Project Financing Holder (or any successor or assignee of a Permitted Project Financing who is a Permitted Project Financing Holder or successor or



assignee of a holder of Permitted Project Financing who is a Permitted Project Financing Holder, whether or not the original holder was a Permitted Project Financing Holder) who is the Mortgagee named in any Mortgage that is a Leasehold Mortgage, the beneficiary named in any deed of trust that is a Leasehold Mortgage or the holder of any lien or security interest named in any other security instrument that is a Leasehold Mortgage or any successor or assignee of any of the foregoing; *provided, however*, such Permitted Project Financing Holder is designated as a Leasehold Mortgagee in a Tenant's Notice of Project Financing delivered by Tenant to Landlord in accordance with Section 25.1.2 of this Lease.

**"Legal Holiday"** means any day, other than a Saturday or Sunday, on which the City's or the County's administrative offices are closed for business.

**"Lien"** means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether choate or inchoate, whether real or personal tangible or intangible, now owned or hereafter acquired.

**"Maintenance"** means all work (including all labor, supplies, materials and equipment) which is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance and repair for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and Components that form any part of the Leased Premises in a manner reasonably consistent with the standards at other Comparable Facilities. Maintenance shall include the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the Components; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) cleaning prior to, during and following, and necessary as a direct result of, all events at the Project Improvements; (vii) Groundskeeping Services and (viii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use.

**"Maintenance and Repair Work"** has the meaning set forth in Section 14.1.1.

**"Major Decisions"** means and is limited to the approval of (i) any Transfer or Permitted Transfer, (ii) any pledge or encumbrance of Tenant's assets as security for any debt, (iii) any amendment to this Lease and (iv) any operating or capital budgets of Tenant, including the Project Budget.

**"Mandatory Substantial Completion Deadline"** means December 31, 2014 as such date may be extended by (i) an Excusable Tenant Delay Period, but as limited in Section 10.1, (ii) Landlord Delay, or (iii) Prime Lessor Delay, each in accordance with the terms of this Lease; *provided, however*, in no event shall an Excusable Tenant Delay Period extend the Mandatory Substantial Completion Deadline past June 30, 2015.

**"Material Additional Work"** means any Additional Improvements (i) that do not substantially conform in any material respect to the Permitted Uses or (ii) that constitute material

changes or alterations in, to or of the Project Improvements that do not conform to the Project Specifications or the Project Schematics which have been Approved pursuant to the terms of this Lease.

**“Material Additional Work Architect”** means a Qualified Design Professional.

**“Material Additional Work Construction Contract”** means the construction contract to be entered into by Tenant with the Material Additional Work Construction Contractor for the construction of Material Additional Work.

**“Material Additional Work Construction Contractor”** means a Qualified Contractor.

**“Material Additional Work Construction Schedule”** means a schedule of critical dates relating to the construction of the Material Additional Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the proceeding task or event), which schedule, shall include the dates for (a) ordering and delivery of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or system of the Improvements, (b) completion of the Material Additional Work Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of all necessary Governmental Authorizations), (c) issuance of all Governmental Authorizations prerequisite to commencement of the Material Additional Work, (d) commencement of the Material Additional Work and (e) Final Completion of the Material Additional Work. The “Material Additional Work Construction Schedule” shall be adjusted as appropriate to reflect the delay in the Material Additional Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of Section 10.1 of this Lease.

**“Material Additional Work Design Contract”** means the services contract to be entered into by Tenant with respect to the Material Additional Work Architect for the design of the Material Additional Work and preparation of the Material Additional Work Plans.

**“Material Additional Work Plans”** means individually and collectively, the concept drawings, schematic drawings, design development drawings and detailed working drawings for the Material Additional Work prepared by the Material Additional Work Architect.

**“Material Additional Work Specifications”** means schematic design plans for the Material Additional Work showing all elements of the Material Additional Work and their effect on the Project Improvements (including conceptual plans, schematic plans and design development plans and specifications), conforming in all respects to the usual and customary standards of the American Institute of Architects for schematic design plans and submitted to Landlord for its Approval.

**“Material Additional Work Submission Matters”** means all of the following:

(a) the proposed Material Additional Work Construction Schedule, together with a statement of whether such Material Additional Work will require any Down Time and, if so, the duration and dates for such Down Time;

(b) the name and qualifications of the proposed Material Additional Work Architect and the Material Additional Work Construction Contractor;

(c) the Material Additional Work Specifications; and

(d) the Material Additional Work Plans.

**“Material Change”** means any modification to the Project Improvements that would cause the Project Improvements not to substantially conform in all material respects to those aspects of the Project Specifications or the Project Schematics previously Approved by Landlord such that (a) the Project Improvements would be materially and adversely impacted with respect to public safety and accommodation, exterior appearance, sustainability, overall capacity or ability to conduct Home Games or TSU games or (b) the overall quality or scope of the Project Improvements would be materially diminished relative to the overall quality and scope reflected by the previously Approved Project Specifications and Project Schematics.

**“Maximum Lawful Rate”** means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Lease, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

**“Mechanic’s Lien”** has the meaning set forth in Section 9.5.

**“MLS”** means Major League Soccer.

**“Mortgage”** means a mortgage, a deed of trust, a security agreement or any other type of security instrument pursuant to which a Lien is granted to secure Debt.

**“Mortgagee”** means the trustee and beneficiary under, and the party secured by, any Mortgage

**“Naming Rights”** has the meaning set forth in Section 26.14.

**“NCAA”** means the National Collegiate Athletic Association.

**“Non-Appropriation”** means and shall be deemed to have occurred with respect to any payment obligation or other monetary obligation of Landlord (in any capacity) that may arise under this Lease during any Lease Year and for which Landlord is determined to have liability or responsibility, if Landlord fails to make an Appropriation within sufficient time to avoid a Landlord Default under this Lease.

**“Notice”** has the meaning set forth in Section 23 of Appendix B.

**“Open Records Act”** has the meaning set forth in Section 26.8.

**“Operating Standard”** means the continuous operation, maintenance and repair of the Project Improvements in a manner consistent with the standards of operations, maintenance and operating and maintenance plans that a Reasonable and Prudent Operator would reasonably be expected to undertake and follow for the operation, maintenance and repair of a Comparable Facility.

**“Operating Term”** has the meaning set forth in Section 5.3.

**“Operating Term Commencement Date”** has the meaning set forth in Section 5.3.

**“Opinion Request”** has the meaning set forth in Section 26.8.

**“Parking Agreement”** has the meaning set forth in Section 8.1.13.

**“Parties”** or **“Party”** has the meaning set forth in the preamble to this Lease.

**“Permitted Exceptions”** means (i) those certain Encumbrances upon and/or exceptions to the title to the Leased Premises that are referenced and/or described on Exhibit D attached hereto, (ii) the Leased Premises Reservations and all rights to use the Leased Premises pursuant thereto and (iii) the Prime Lease.

**“Permitted Investments”** means:

- (a) Obligations of, or guaranteed as to interest and principal by, the United States of America or agencies thereof maturing not more than 90 days after such investment;
- (b) Open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof and not an Affiliate of the Tenant which paper is rated “P-1” or its equivalent by Moody’s Investors Service or “A-1” or its equivalent by Standard & Poor’s Ratings Group;
- (c) Banker’s acceptances and certificates of deposit issued by any bank or trust company having capital, surplus and undivided profits of at least \$500,000,000 whose long-term debt is rated “A” or better by Standard & Poor’s Ratings Group and A2 or better by Moody’s Investors Service and maturing within 90 days of the acquisition thereof; and
- (d) Money market funds consisting solely (except that no more than 10% thereof may be held in cash) of obligations of the type described in clauses (a) through (c) above and the shares of such money market funds can be converted to cash within 90 days.

Payments under the instruments described in clauses (a), (b), (c) and (d) above may not be linked to any variable other than the principal amount thereof and the fixed or floating interest rate thereon.

**“Permitted Project Financing”** means one or more loans with a Qualified Lender secured by a Leasehold Mortgage, together with all modifications, renewals, supplements, substitutions and replacements thereof, entered into by Tenant for the sole purpose of financing

or refinancing Tenant's obligations to design, develop and construct the Project Improvements and to operate the Project Improvements in accordance with the terms of this Lease.

**"Permitted Project Financing Holder"** means any Qualified Lender that is the owner and holder of any component of a Permitted Project Financing.

**"Permitted Transfer"** has the meaning set forth in Section 21.1.

**"Permitted Uses"** has the meaning set forth in Section 12.1.

**"Person"** means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

**"Personal Property"** means any and all movable equipment, furniture, trade fixtures and other tangible personal property that are owned by Tenant or its Subtenants and located on or within the Leased Premises and that do not constitute fixtures and can be removed from the Leased Premises without damage thereto.

**"Physical Obsolescence"** or **"Physically Obsolete"** shall mean any equipment, fixture, furnishing, facility, surface, structure or any other Component of the Leased Premises that does not comply with Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship, ordinary wear and tear or damage (other than as a result of Tenant's failure to perform its maintenance obligations under this Lease). For the purposes of determining if an improvement is Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other Component shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or other Component has deteriorated or has been damaged to a degree that cannot be remedied through Maintenance (including replacement necessitated by repeated breakdown or failure of a Component despite Maintenance).

**"Practice Facility"** means that certain facility to be constructed at Kirby and Airport in Houston, Texas that will initially consist of six (6) soccer fields, the main Team practice field and certain other improvements.

**"Pre-Construction Period"** has the meaning set forth in Section 2 of Appendix E.

**"Pre-Existing Environmental Conditions"** means the Hazardous Materials and other environmental conditions that existed on or under the Land and/or the Leased Premises prior to the Lease Commencement Date (and not caused by or through Tenant or Landlord), including those which have been disclosed to Tenant and are described in the Environmental Reports.

**"Prime Lease"** means the Ground Lease dated February 18, 2011, by and between Prime Lessor, as lessor, and Landlord, as lessee, whereby Landlord leases the Land, as the same may be amended, supplemented, modified, renewed or extended from time to time.

**"Prime Lessor"** means the City and the County, each with a fifty percent (50%) interest, as tenants-in-common.

**"Prime Lessor Delay"** means any delay by Prime Lessor in achieving performance of its obligations under the Prime Lease to the extent such delay has an effect on Tenant's ability to perform its obligations hereunder.

**"Prime Rate"** means the rate of interest from time to time published or otherwise announced by the Reference Bank, as its "prime rate" or "base rate" of interest (or, if it does not announce such a rate of interest, the most comparable rate of interest announced by it from time to time).

**"Private Contract Rights"** has the meaning set forth in Section 26.8.

**"Professional Soccer"** has the meaning set forth in Section 26.15.1.

**"Prohibited Uses"** has the meaning set forth in Section 12.2.

**"Project Architect"** means Populous, Inc., or such subsequent Qualified Design Professional as Tenant identifies in a Notice to Landlord.

**"Project Budget"** means the total budget for the Total Project Costs, broken down in reasonable detail by cost categories including separate line items for the amount payable under each of the Project Construction Document and allowances and contingencies, together with any amendments thereto up to the Project Completion Date. Landlord has Approved the initial Project Budget attached hereto as Exhibit E.

**"Project Completion Date"** means the date upon which all of the obligations of Tenant provided in Section 8.4.7 have been satisfied.

**"Project Construction Contract"** means the contract or contracts between Tenant and its construction contractors for the Project Improvements.

**"Project Construction Contract Bond"** has the meaning set forth in Section 9.4.4.

**"Project Construction Contract Requirements"** has the meaning set forth in Section 9.4.4.

**"Project Construction Documents"** means any and all contracts, documents or other instruments entered into by or on behalf of Tenant or any other of its Affiliates for the development, design or construction of the Project Improvements, including the Project Construction Contract and the Project Design Contract.

**"Project Construction Schedule"** means a schedule of critical dates relating to the Project Improvements Work and the Commencement of Operations (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) ordering and delivering of critical delivery items, such as construction components or items requiring long

lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Project Improvements, (ii) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (iii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the Project Improvements Work, (iv) commencement of any of Tenant's Remedial Work and all other Project Improvements Work, (v) Substantial Completion of the Project Improvements and (vi) all material elements of pre-opening services. The Project Construction Schedule shall be adjusted as appropriate to reflect the delay in the Project Improvements Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of this Lease. Landlord has Approved the initial Project Construction Schedule attached hereto as **Exhibit F**.

**"Project Contractor"** means a Qualified Contractor.

**"Project Costs"** means all documented, direct, out-of-pocket third party costs incurred or to be incurred by Tenant, Project Contractor and the Project Architect and their respective other contractors, consultants, subcontractors and subconsultants in order for Tenant to fulfill its obligations under this Lease to cause Final Completion of the Project Improvements Work, including all amounts payable to a third party under any of the Project Construction Documents. Project Costs shall not include (i) general and administrative costs of Tenant or any Affiliate of Tenant in connection with the Project Improvements Work, (ii) fees, interest and other expenses of financing, (iii) permit fees, utility connection fees and utility costs and similar matters for which participation is not possible, (iv) working capital, (v) the cost of any merchandise, food or beverages or (vi) legal fees or other costs incurred in connection with negotiation or entering into this Lease.

**"Project Design Contract"** means the Architectural Services Agreement between Tenant and the Project Architect for the design of the Project Improvements and preparation of the Project Plans in the form attached hereto as **Schedule 11.1.6**, or such subsequent Project Design Contract as is executed by Tenant with a subsequent Project Architect in accordance with the terms of this Lease.

**"Project Documents"** means this Lease and all other documents, instruments and agreements entered into between Landlord and Tenant during the Term in connection with the transactions contemplated by this Lease, as such documents, instruments and agreements may be amended, supplemented, modified, renewed or extended from time to time.

**"Project Drawings"** means the design development plans and drawings and final site elevations for the Project Improvements prepared by the Project Architect and delivered by Tenant to Landlord for confirmation in accordance with the terms of this Lease, and which are sufficient in detail to allow Landlord to determine whether the same conform in all material respects to the Project Specifications and the Project Schematics.

**"Project Improvements"** means the Improvements and the Personal Property described in the Project Specifications, Project Schematics, Project Drawings and Project Plans.

**“Project Improvements Work”** means the design, development and construction of the Project Improvements in accordance with the terms of this Lease.

**“Project Plans”** means the detailed working construction drawings for the Project Improvements prepared by the Project Architect and delivered by Tenant to Landlord for confirmation in accordance with the terms of this Lease.

**“Project Program”** means the Houston Dynamo Stadium Program Square Foot Summary dated August 18, 2010 prepared by the Project Architect.

**“Project Schematics”** means the concept drawings, schematic drawings and preliminary elevations for the Project Improvements prepared by the Project Architect and delivered to Landlord for Approval in accordance with the terms of this Lease and which (i) show in reasonable detail all proposed buildings, structures, fixtures, signage, facilities, equipment and other improvements to be constructed as part of the Project Improvements Work, (ii) identify in reasonable detail all uses to be made of each area at the Leased Premises (including areas within the Project Improvements) and (iii) be consistent with, and show in reasonable detail, the elements of the Project Specifications.

**“Project Specifications”** has the meaning set forth in Section 9.1.2, as may be modified by Material Additional Work Submission Matters that have been Approved by Landlord pursuant to the terms of this Lease, as and if required.

**“Property”** means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**“Property Insurance Policy”** has the meaning set forth in Section 19.1.4.

**“Property Taxes”** means any real estate ad valorem taxes and assessments, or any other similar form of tax or assessment now or hereinafter levied and assessed against the property in question.

**“Qualified Contractor”** means a general contractor that, on the date its name and qualifications are submitted to Landlord, and if such general contractor thereafter becomes (or replaces the prior) Project Contractor, at all times until Final Completion of the Project Improvements Work, shall satisfy all of the following criteria:

- (a) licensed and otherwise in compliance with all Applicable Laws to do business and act as a general contractor in the State of Texas and the City of Houston, Texas for the type of work proposed to be performed by such contractor;
- (b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent construction contract from a Qualified Surety;
- (c) well experienced as a general contractor in comparable work; and



(d) neither such general contractor nor its Affiliate is in default under any material obligation to Landlord, City or County under any other contract between such contractor or its Affiliate and Landlord, City or County.

Notwithstanding the foregoing, Manhattan Construction Company, an Oklahoma corporation, as of the Execution Date, satisfies the requirements of a Qualified Contractor for purposes of qualifying as the Project Contractor.

**“Qualified Design Professional”** means an architect that, on the date its name and qualifications are submitted to Landlord, and if such architect thereafter becomes the Project Architect, at all times until Final Completion of the Project Improvements Work, satisfies all of the following criteria:

- (i) Licensed and otherwise in compliance with all Applicable Laws to do business and act as an architect in the State of Texas and in the City of Houston, Texas for the type of work proposed to be performed by such architect;
- (ii) Well experienced as an architect in comparable work; and
- (iii) Neither such architect nor any of its Affiliates is in default under any material obligation to Landlord under any other contract between such architect or any of its Affiliates and Landlord.

Notwithstanding the foregoing, Populous, Inc., a Missouri corporation, satisfies the requirements of a Qualified Design Professional for purposes of qualifying as the Project Architect.

**“Qualified Investor”** means a Person (of good character and repute) who is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act of 1933, as amended, or institutional accredited investor within the meaning of Regulation D under the Securities Act of 1933, as amended; *provided, however*, that no such Person may be a Qualified Investor for purposes of this Lease if during the seven (7) years preceding the date in question, any of the following events have occurred with respect to such Person or any Affiliate of such Person unless the same shall have been subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect under Applicable Laws:

- (a) The initiation of any federal or state bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, physical agent or similar officer for the business or assets of any such Person; or
- (b) The conviction of such Person or its Affiliate in a federal or state felony criminal proceeding (including a conviction entered on a plea of nolo contendere but excluding traffic violations and other minor offenses) or such Person or its Affiliate is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offenses) that is pending.

**“Qualified Lender”** means a Person which is: a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution; an insurance company organized and existing under the laws of the United

States or any state thereof or a foreign insurance company; an institutional investor such as, without limitation, a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code of 1986, as amended, or other public or private investment entity which at the date hereof or in the future, is in the business of investing in the real estate assets or making real estate loans, a mutual fund, hedge fund or investment trust; a brokerage or investment banking organization; an employees' welfare, benefits, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency or any combination of the foregoing; *provided, however*, no such Person may be a Qualified Lender for purposes of this Lease if (i) such Person is a Guarantor (but only during the period of its guaranty) or a Controlling Person of Tenant, an Affiliate of any of the foregoing or an Affiliate of Tenant or (ii) during the five (5) years preceding the date in question, any of the following events have occurred with respect to such Person unless the same shall have been subsequently reversed, suspended, vacated, annulled, or otherwise rendered of no effect under applicable Governmental Rule.

(a) The initiation of any federal or state bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, physical agent or similar officer for the business or assets of any such Person; or

(b) The conviction of such Person in a federal or state felony criminal proceeding (including a conviction entered on a plea nolo contendere but excluding traffic violations and other minor offenses) or such Person or its Affiliate is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offenses) that is pending.

Notwithstanding the foregoing, Amegy Bank, National Association, Green Bank, N.A., Texas Capital Bank, TX CDE III, LLC, Waveland Sub CDE XV, LLC and Major League Soccer, L.L.C., are hereby deemed to be Qualified Lenders. Further, notwithstanding the foregoing, Dynamo Stadium Holdings, LLC is hereby deemed to be a Qualified Lender so long as no more than \$4,000.00 in principal is due to Dynamo Stadium Holdings, LLC under any financing secured by a Leasehold Mortgage and such status as a Qualified Lender shall expire on August 17, 2011 (and on such date Dynamo Stadium Holdings, LLC shall no longer be deemed to be a Qualified Lender).

**"Qualified Surety"** means any surety which has been approved by Landlord and which has an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VIII" (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

**"Ready for Construction"** has the meaning assigned to such term in Schedule 2.2 of the Prime Lease.

**"Reasonable and Prudent Developer"** means a developer of projects similar in scope, size and complexity to the Leased Premises seeking in good faith to perform its contractual

obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced developer of projects similar to the Leased Premises complying with all Applicable Laws and engaged in the same type of undertaking.

**“Reasonable and Prudent Operator”** means an operator of multi-use athletic and entertainment projects similar in scope, size and complexity to the Project Improvements seeking to perform its contractual obligations and in so doing and in the general conduct of its undertakings exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator of Comparable Facilities complying with all Applicable Laws and engaged in the same type of undertaking.

**“Recognition Agreement”** has the meaning assigned to such term in Section 8.1.8.

**“Reference Bank”** means JPMorgan Chase Bank (or its successor, by merger or acquisition) or, if none, a banking institution designated by Tenant, subject to the Approval of Landlord Representative, not to be unreasonably withheld.

**“Regular Arbitration”** has the meaning assigned to such term in Appendix D.

**“Related Party”** or **“Related Parties”** means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, tenants, and subtenants. For the avoidance of doubt, in no event shall Landlord be deemed or considered a “Related Party” of City and/or County and vice versa and in no event shall Tenant, Team or any of their respective Related Parties be deemed or considered to be a “Related Party” of Landlord.

**“Rent”** has the meaning set forth in Section 6.2.

**“Responsible Officer”** means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Lease, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

**“Review and Approval Rights”** has the meaning set forth in Section 11.4.1.

**“Reviewing Party”** has the meaning set forth in Section 11.4.1.

**“Season”** means all pre-season, regular season and post-season soccer games played by the professional clubs that make-up MLS or any successor league.

**"Signage"** means all signage (permanent or temporary) in or on the Leased Premises, including scoreboards, jumbotron or other replay screens, banners, displays, time clocks, message centers, advertisements, signs and marquee signs.

**"Site Preparation Work"** has the meaning set forth on **Exhibit G**.

**"Site Tests"** has the meaning set forth in **Section 8.1.5**.

**"Submitting Party"** has the meaning set forth in **Section 11.4.1**.

**"Subsidiary"** means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

**"Substantial Completion"** means, (i) when used with respect to the Project Improvements Work or any component of the Project Improvements Work, (A) the substantial completion of all aspects of such work and Improvements in accordance in all material respects with the Project Plans (as Approved pursuant to the terms of this Lease, as and if required) and all Applicable Laws and in accordance in all material respects with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, substantially all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to Commence Operations and (ii) when used with respect to Additional Work or any component of Additional Work, (A) the substantial completion of all aspects of such work and Improvements in accordance in all material respects with all Applicable Laws (and with respect to Material Additional Work only, the Material Additional Work Plans) and in accordance in all material respects with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to commence or resume, as applicable, operations of the Leased Premises pursuant to the terms of this Lease.

**"Substantial Completion Certificate"** has the meaning set forth in **Section 8.4.6**.

**"Substantial Completion Deadline"** means August 31, 2013, as such date may be extended by (i) an Excusable Tenant Delay Period, but as limited in **Section 10.1**, (ii) Landlord Delay, (iii) Prime Lessor Delay, or (iv) **Section 8.5.1**, each in accordance with the terms of this Lease.

**"Substantially All of the Leased Premises"** has the meaning set forth in **Section 20.1.3**.

**“Subtenant”** means any Person in possession of any portion of the Leased Premises pursuant to a Use Agreement.

**“Tangible Net Worth”** means, for any Person as of any date on which the amount thereof is being determined, the stockholders' equity of such Person determined in accordance with GAAP, minus the sum of (a) the amount of any write-up in the book value of any assets resulting from the revaluation thereof, or any write-up in the excess of the cost of the assets acquired, and (b) the aggregate of all residual values and intangible assets appearing on the asset side of that Person's statement of financial position (balance sheet) including all amounts for goodwill, patents, patent rights, trademarks, trade names, copyrights, design rights, franchises, bond discounts, underwriting expenses, treasury stock, organization expense and other similar items, if any.

**“Tax Proceeding”** has the meaning set forth in Section 13.2.1.

**“Team”** means the Houston Dynamo Soccer Club, a professional soccer club owned by an Affiliate of Tenant pursuant to the rights granted to such Affiliate under the Franchise.

**“Team Event”** means any and all events (other than Landlord Events) which occur at the Leased Premises, including Home Games.

**“Team Lease”** means the Use Agreement between Tenant and the Team which complies with the terms of Section 12.3.4.

**“Tenant”** has the meaning set forth in the preamble to this Lease.

**“Tenant Default”** has the meaning set forth in Section 24.1.1.

**“Tenant Delay”** means any delay by Tenant in achieving performance of its obligations under this Lease, including any of the deadlines set forth in Section 8.1 or Section 8.4 of this Lease with respect to the Project Improvements Work.

**“Tenant Liabilities”** has the meaning set forth in Section 19.8.1.

**“Tenant Representative”** has the meaning set forth in Section 2.2.

**“Tenant Transferee”** has the meaning set forth in Section 21.2.1(a).

**“Tenant's Business Interruption Policy”** has the meaning set forth in Section 19.1.5(e).

**“Tenant's Excess/Umbrella Policies”** has the meaning set forth in Section 19.1.5(d).

**“Tenant's GL Policy”** has the meaning set forth in Section 19.1.5(a).

**“Tenant's Interest”** has the meaning set forth in Section 20.2.1.

**“Tenant's Notice of Project Financing”** has the meaning given to such term in Section 25.1.2 hereof.

**“Tenant’s Remedial Work”** has the meaning set forth in Section 9.3.1.

**“Tenant’s Risks”** has the meaning set forth in Section 7.2.

**“Tenant’s Workers’ Compensation Policy”** has the meaning set forth in Section 19.1.5(c).

**“Term”** has the meaning set forth in Section 5.1.

**“Texas General Arbitration Act”** has the meaning set forth in Appendix D.

**“Total Project Costs”** means all costs directly incurred by Tenant through the Project Completion Date for the design, construction and development of the Project Improvements that conform to the Project Plans for Project Improvements (as Approved pursuant to the terms of this Lease, as and if required) in accordance with the terms of this Lease, including the cost of such Project Improvements, furniture, trade fixtures, equipment and other personal property, construction, architectural, engineering and design costs and fees, legal fees, contractor’s fees, development fees, permits and approvals from Governmental Authorities, title examination and surveying costs, financing fees, and other transactional costs; *provided, however*, in no event shall such costs and expenses be paid or internally allocated to Tenant or Affiliates of Tenant.

**“Transfer”** has the meaning set forth in Section 21.1.

**“TSU”** means Texas Southern University.

**“TSU Default Award”** has the meaning set forth in Section 24.1.1.

**“TSU Sublease”** means that certain Use Agreement by and between Tenant and TSU.

**“Untenantable Condition”** means the existence of a condition (but only to the extent the same is not the result of the failure of Tenant to perform its obligations under this Lease) pursuant to which the operation of the Leased Premises, in Tenant’s commercially reasonable business judgment, cannot be practically conducted in the remaining portion of the Leased Premises (taking into account the amount of Condemnation Award available for restoration), due to physical constraints, Applicable Laws, provisions of any insurance policy required to be maintained by Tenant pursuant to the terms of this Lease or the terms, conditions and covenants of this Lease, in substantially the same manner as conducted immediately prior to such taking.

**“Use Agreement”** means a use, lease, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Leased Premises for any Permitted Use.

**“Utility Upgrade and Extension Costs”** has the meaning set forth in Section 14.2.2.

**APPENDIX B**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Governing Provisions*

The following Governing Provisions shall apply to and govern this Lease.

1. **Accounting Terms and Determinations.** Unless otherwise specified, all accounting terms used in this Lease shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

2. **Survival.** Subject to Section 8.3.2, upon expiration or termination of this Lease, Tenant's covenants, representations and agreements in Section 19.8 shall survive such expiration or termination and shall remain in full force and effect until the later of the date (the "**Expiration Date**") that is (i) two (2) years after the Lease Expiration Date and (ii) the date of payment in full of the Rent and all other amounts payable under this Lease for which claims have been made in writing by the Party due such payment on or before the date set forth in the preceding clause (i) of this Section 2; *provided, however*, that it is understood and agreed that this Lease shall continue in full force and effect with respect to all claims made in writing by either Party on or before the Expiration Date until such claims are paid in full. In addition, the following terms and provisions of this Lease shall survive any expiration or termination of this Lease: Article I, Section 6.1 through Section 6.4 (as to payments applicable to the periods included in the Term), Article VII, Article XIII (as to periods included in the Term), Section 9.3 (as to periods included in the Term), Section 9.4, Section 15.1.1, Section 17.4, Section 18.4.2, Section 18.4.3, Section 19.5.3, Section 19.7, Section 19.9, Section 20.1.2, Section 20.2.1, Article XXII, Article XXIV, Article XXVI, Appendix A (as to provisions that survive termination or expiration of this Lease), Appendix B, Appendix C and Appendix D.

3. **Severability.** If any term or provision of this Lease, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Lease, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

4. **Entire Agreement; Amendment.** This Lease and the Reimbursement Agreement dated as of April 1, 2010, by and between the Team, Landlord and Tenant constitute the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Lease nor any of the terms thereof may be terminated, amended, supplemented, waived or modified

orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

5. **Table of Contents; Headings; Exhibits.** The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Lease are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Lease. All Appendices, Schedules and Exhibits attached to this Lease are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Lease and any Appendices, Schedules or Exhibits, the text of this Lease shall control.

6. **Parties in Interest; Limitation on Rights of Others.** The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Lease, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Lease or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Lease.

7. **Counterparts.** This Lease may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

8. **Law.** **THIS LEASE AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).**

9. **Court Proceedings.** Any suit, action or proceeding against any Party arising out of or relating to this Lease, any transaction contemplated hereby or any judgment entered by any court in respect of any thereof may be brought in any Federal or state court located in the City of Houston, Texas, and the Parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such Suit, action or proceeding. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consents to the service of process in any such Suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for Notice provided for in this Lease. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, action or proceeding in any Federal or state court located in the City of Houston, Texas, and any claim that any such Suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Lease or any transaction contemplated hereby except in a Federal or state court located in the City of Houston, Texas.

10. **Limitation to Capacity as Landlord.** The Parties acknowledge that all references to "Landlord" herein (which, for the purposes of this provision, shall be deemed to include any references in this Lease to Landlord as the holder of the rights to the leasehold



interest in the Leased Premises) shall refer only to Landlord in its capacity as Landlord under this Lease. The term "Landlord" and the duties and rights assigned to it under this Lease, thus exclude any action, omission or duty of Landlord, the City or the County when performing their respective Governmental Functions. Any action, omission or circumstance arising out of the performance of Landlord's, the City's or the County's Governmental Functions may prevent Landlord from performing its obligations under this Lease and shall not cause or constitute a default by Landlord under this Lease or give rise to any rights or Claims against Landlord in its capacity as the "Landlord" hereunder, it being acknowledged that Tenant's rights and remedies in connection with any injury, damage or other Claim resulting from any action, omission or circumstances arising out of Landlord's, the City's or the County's exercise of their respective Governmental Functions shall be governed by the laws and regulations concerning Claims against Landlord, the City or the County as Governmental Entities (which rights and remedies against Landlord, the City or the County with regard to actions by Landlord, the City and the County in exercising their respective Governmental Functions to remain unaffected by this Lease). In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Tenant to Landlord under this Lease as a result of any action or omission of Landlord, the City or the County when performing their respective Governmental Function.

12. **Capacity of Persons Acting on Behalf of Landlord.** Notwithstanding anything to the contrary in this Lease, all references in this Lease to employees, agents, representatives, contractors and the like of Landlord shall refer only to Persons acting in Landlord's capacity as the "Landlord" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of Landlord's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of the City or the County shall be deemed to be acting in connection with the performance of City's and/or County's Governmental Functions.

13. **No Limitation on City's and/or County's Governmental Functions.** The Parties acknowledge that Landlord, the City and the County are Governmental Authorities, and that no representation, warranty, consent, Approval or agreement in this Lease by Landlord shall be binding upon, constitute a waiver by or estop Landlord, the City and/or County from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Lease be deemed to waive any immunities granted to Landlord, the City or the County when performing their respective Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by Landlord is only with respect to matters arising in its capacity as a Party to this Lease and expressly does not constitute a waiver of Landlord's, the City's and/or the County's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of Landlord's, the City's and/or the County's Governmental Functions. It is acknowledged that Tenant's rights and remedies in connection with any injury, damage or other Claim resulting from any action, omission or circumstances arising out of Landlord's, the City's and/or the County's exercise of their respective Governmental Functions shall be governed by the laws and regulations concerning Claims against Landlord, the City or the County as Governmental Entities (which rights and remedies against Landlord, the City or the County with regard to

actions by Landlord, the City and the County in exercising their respective Governmental Functions to remain unaffected by this Lease.

14. **Non-liability of Landlord's Officials and Tenant's Employees.** No member of any legislative, executive, or administrative body of, or affiliated with, Landlord, the City or County or their respective Related Parties, and no official, agent, employee or representative of Landlord, the City or County or their respective Related Parties shall be personally liable to Tenant or any Person holding by, through or under Tenant, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by Landlord, or for any amount which may become due to Tenant or any Person holding by, through or under Tenant, or for any other obligation, under or by reason of this Lease. No officer, director, shareholder, member, agent, employee or representative of Tenant or its Related Parties shall be personally liable to Landlord or any Person holding by, through or under Landlord, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Tenant, or for any amount which may become due to Landlord or any Person holding by, through or under Landlord, or for any other obligation, under or by reason of this Lease. The foregoing shall not limit, waive or release the obligations of the Guarantor under the Guaranty.

15. **Payment on Business Days.** If any payment under such instrument is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

16. **Time.** Times set forth in this Lease for the performance of obligations shall be strictly construed, time being of the essence of this Lease. All provisions in this Lease which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Lease to times or hours of the day shall refer to Central Standard Time

17. **Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Lease or in the resolution of any ambiguity of any provision hereof.

18. **Attorneys' Fees.** If any Party to this Lease defaults in the performance of any covenants, obligations or agreements of such Party contained in this Lease and the other Party hereto places the enforcement of this Lease, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim) or seeks arbitration to handle same, the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees, costs of arbitration and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-

judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment or award on this Lease.

19. **Joint and Several Liability.** If Tenant at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of Rent and for performance of every obligation of Tenant under this Lease.

20. **Relationship of the Parties; No Partnership.** The relationship of Tenant and Landlord under this Lease is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Lease to the contrary, neither the obligation to pay Landlord a rental based on Adjusted Gross Revenues nor any other aspect of this Lease shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Tenant and Landlord. As such, Landlord shall have no direct supervision of or obligation to the employees of Tenant and any communication of employee matters shall be through the Tenant Representative.

21. **Non-Merger of Estates.** The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises shall join in the execution of a written instrument effecting such merger of estates.

22. **Covenants Running with the Estates in Land.** The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Lease, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Leased Premises, and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, Landlord and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Lease.

22. **Payments by Either Party.** All payments required to be made by either Party to the other Party pursuant to the terms of this Lease shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address for payments as set forth in Appendix C, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of Section 25.12. Notwithstanding the provisions of Section 25.12 and for the purposes of this Lease, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

23. **Notice.** Each provision of this Lease and other requirements with reference to the sending, mailing or delivery of any notice, direction, Approval, instructions, request, reply, advice, confirmation and other communications (hereinafter severally and collectively called

**“Notice”**), or with reference to the making of any payment by Tenant to Landlord, shall have been complied with when and if the procedures described in this Section 23 have been complied with by the Party giving such Notice. All Notices must be in writing and given to (A) with respect to a Party under this Lease, such Party at the address set forth in Appendix C to this Lease or at such other address as such Party shall designate by delivering to the other Party five (5) days Notice thereof and (B) with respect to any Leasehold Mortgagee, at the address contained in a Notice delivered pursuant to the terms of this Lease and, and in all cases shall be (i) sent by pre-paid, registered or certified U.S. Mail with return receipt requested, (ii) delivered personally with receipt of delivery, (iii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking or (iv) sent by facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail postage prepaid) to the Party entitled thereto. Such Notices shall be deemed to be duly given or made (i) in the case of U.S. mail in the manner provided above, three (3) Business Days after posting, (ii) if delivered personally with receipt of delivery, when actually delivered by hand and receipted unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, (iii) if sent by nationally recognized overnight courier with electronic tracking service, the next Business Day after depositing same with such overnight courier before the overnight deadline, and if deposited with such overnight courier after such deadline, then the next succeeding Business Day or (iv) in the case of facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail, postage prepaid), when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties (**“Additional Addressees”**) to whom Notice thereunder must be given, by delivering to the other Party five (5) days Notice thereof setting forth a single address for each such Additional Addressee; *provided, however*, that no Party shall have the right to designate more than two (2) such Additional Addressees.

**APPENDIX C**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Address for Payment and Notices*

**A. LANDLORD: HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**

- (1) Payment to Landlord. All payments to Landlord shall be given to Landlord at the following address:

Harris County – Houston Sports Authority  
Two Houston Center  
909 Fannin, Suite 3175  
Houston, Texas 77010  
Attention: Executive Director

with sufficient information to identify the source of such funds.

- (2) Notices. All notices to Landlord shall be sent to:

Harris County – Houston Sports Authority  
Two Houston Center  
909 Fannin, Suite 3175  
Houston, Texas 77010  
Attention: Chairman  
Facsimile: (713) 308-5955

with copies of all notices to Landlord relating to defaults, remedies or indemnification being sent to:

Andrews Kurth LLP  
600 Travis, Suite 4200  
Houston, Texas 77002  
Attention: Mark B. Arnold  
Facsimile: (713) 238-7295

B. **TENANT: DYNAMO STADIUM, LLC**

- (1) Payments to Tenant. All payments to Tenant shall be given to Tenant at the following address:

Dynamo Stadium, LLC  
c/o AEG  
800 W. Olympic Blvd., Suite 305  
Los Angeles, California 90015  
Attention: Dan Beckerman, COO and CFO

- (2) Notices. All notices to Tenant shall be sent to:

Dynamo Stadium, LLC  
c/o AEG  
800 W. Olympic Blvd., Suite 305  
Los Angeles, California 90015  
Attention: Ted Fikre, Chief Legal and Development Officer  
Facsimile: (213) 742-7294

with a copy to:

Greenberg Traurig, LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D.R. Jones, Jr.  
Facsimile: (713) 754-7530

**APPENDIX D**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**  
  
**ARBITRATION PROCEDURES**

Section 1.     Arbitration.

1.1.     Regular Arbitration.     Except for Disputes or Controversies that are required to be resolved by Fast-Track Arbitration (as set forth in Section 1.2 of this Appendix), binding arbitration of Disputes and Controversies shall be conducted in accordance with the following procedures ("Regular Arbitration"):

Party seeking arbitration hereunder shall request such arbitration in writing, which writing shall be delivered to the opposing Party and include a clear statement of the matter(s) in dispute. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction, then such notice of election under this paragraph shall be delivered within ninety (90) days of the date the electing Party receives service of process in such legal proceeding. Except to the extent provided in this Appendix D, the arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association by a single arbitrator to be appointed upon the mutual agreement of the Parties within twenty (20) days of the date the written request for arbitration was delivered to the opposing Party. In order to facilitate any such appointment, the Party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Dispute or Controversy to the opposing Party. In the event the Parties are unable to agree on a single arbitrator within the twenty (20) day period, then the arbitrator shall be appointed by the then-serving administrative judge of the civil trial division of Harris County, Texas or any successor thereto within the next ten (10) day period. The Party seeking arbitration shall make the Parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Dispute or Controversy to said judge. Each Party may submit, but shall not be required to, submit to said judge a list of up to three (3) qualified individuals as candidates for appointment as the arbitrator whose schedules permit their service as arbitrator within the time periods set forth herein. The arbitrator appointed by the judge need not be from such lists.

Within thirty (30) days of the date the arbitrator is appointed, the arbitrator shall notify the Parties in writing of the date of the arbitration hearing, which hearing date shall be not less than one-hundred twenty (120) days from the date of the arbitrator's appointment. The arbitration hearing shall be held in Houston, Texas. Except as otherwise provided herein, the proceedings shall be conducted in accordance with the procedures of the Texas General Arbitration Act, TEX. CIV. PRAC. & REMEDIES CODE §§ 171.001 et seq. (the "Texas General Arbitration Act"). Depositions may be taken and other discovery may be made in accordance with the Texas Rules of Civil Procedure, provided that (i) depositions and other discovery shall be completed within ninety (90) days of the appointment of the arbitrator, (ii) there shall be no evidence by affidavit allowed, and (iii) each Party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the Party in the arbitration hearing at least twenty (20) days prior to the arbitration hearing. The arbitrator shall issue a final ruling within thirty (30) days after the arbitration hearing. Any decision of the

arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and nonappealable by, the Parties and judgment thereon may be entered or enforcement thereof sought by either Party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with this Appendix D.

Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of this Agreement.

## 1.2 Fast-Track Arbitration.

Within sixty (60) days following the Effective Date, Landlord and Tenant shall agree upon an independent third party mutually acceptable to both Parties (the "**Fast-Track Arbitrator**") and an alternate third party (the "**Alternate**") to decide Disputes or Controversies required by this Agreement to be resolved by Fast-Track Arbitration. Within sixty (60) days of the fifth (5th) anniversary of the Effective Date and each successive fifth (5th) anniversary thereafter during the Lease Term, Landlord and Tenant shall again agree upon independent third parties to be the Fast-Track Arbitrator and the Alternate; *provided, however*, that the Parties shall earlier agree on a replacement Fast-Track Arbitrator and/or the Alternate if the existing Fast-Track Arbitrator and/or the Alternate shall become unavailable in the reasonable opinion of a Party. If (i) the Parties are unable to agree on a third party to serve as the Fast-Track Arbitrator or the Alternate, or (ii) if the Fast-Track Arbitrator or Alternate are unable or fail to act in such capacities, any Dispute or Controversy shall be referred to Regular Arbitration pursuant to Section 1.1 of this Appendix D.

Arbitration known as "**Fast-Track Arbitration**" shall be conducted in accordance with the following procedures. If the Dispute or Controversy involves (i) the alleged failure, or alleged potential failure, of Tenant to operate, Maintain or repair the Leased Premises as required under this Agreement, or (ii) a default or potential event of default by Tenant under the TSU Sublease, either Party may refer a Dispute or Controversy to Fast-Track Arbitration instead of Regular Arbitration by providing written notice to the Fast-Track Arbitrator and the other Party. Such notice shall include a clear statement of the matter(s) in dispute and a brief description (no longer than two (2) pages) of the Dispute or Controversy. If a Party gives written notice of the referral of such Dispute or Controversy to Fast-Track Arbitration, the other Party shall be bound to enter into Fast-Track Arbitration as provided in this Section 1.2 and may not resort to Regular Arbitration under the procedures of Section 1.1 of this Appendix D. The Parties may also mutually agree to Fast-Track Arbitration for any other Dispute or Controversy (in addition to those involving the TSU Sublease or the operation, Maintenance or repair of the Leased Premises) by providing joint written notice to the Fast-Track Arbitrator. In the event that the Fast-Track Arbitrator is unavailable to resolve the Dispute or Controversy within the time period stated in the next sentence, the Dispute or Controversy shall be referred to the Alternate. The Fast-Track Arbitrator or the Alternate, as the case may be (the "arbitrator"), shall be directed to resolve the Dispute or Controversy within fifteen (15) days of the referral. The arbitrator shall diligently endeavor to resolve the Dispute or Controversy within such fifteen (15) day time period, taking into account the circumstances requiring an expeditious resolution of the matter.



The Parties shall cooperate in good faith in providing to the arbitrator any information reasonably needed to resolve the Dispute or Controversy. The arbitrator's decision shall be set forth in a written decision. The decision of the arbitrator shall be final and binding upon and non-appealable by the Parties and judgment thereon may be entered or enforcement thereof sought by either Party in a court of competent jurisdiction. The costs and expenses of the arbitrator shall be shared equally by the Parties, and the additional incidental costs of arbitration shall be paid for by the non-prevailing Party in the arbitration; *provided, however*, that where the final decision of the arbitrator is not clearly in favor of either Party, such incidental costs shall be shared equally by the Parties.

Section 2. Further Qualifications of Arbitrators; Conduct. Every person nominated or recommended to serve as an arbitrator shall be and remain at all times neutral and wholly impartial, shall be experienced and knowledgeable in the substantive laws applicable to the subject matter of the Dispute or Controversy and shall have substantial experience with leases of multi-purpose public sports and entertainment facilities by public entities to professional sports teams. All arbitrators shall, upon written request by either Party, provide the Parties with a statement that they can and shall decide any Dispute or Controversy referred to them impartially. No arbitrator shall currently be employed by either Party, the Team, the City, the County, MLS, or any other member team of MLS, or have any material financial dependence upon a Party, the Team, the City, the County, MLS, or any other member team of MLS, nor shall any arbitrator have any material financial interest in the Dispute or Controversy. Further, all arbitrators must meet the qualifications and adhere to the standards of Sections 154.052 and 154.053 of Chapter 154, TEXAS CIVIL PRACTICE AND REMEDIES CODE.

Section 3. Applicable Law and Arbitration Act. The agreement to arbitrate set forth in this Appendix shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act. In deciding the substance of any such Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. The arbitrator shall have authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of the State of Texas, except that the arbitrator shall have no authority to award special, indirect, incidental, consequential, exemplary or punitive damages under any circumstances (whether they be exemplary damages, treble damages or any other penalty or punitive type of damages) regardless of whether such damages may be available under the laws of the State of Texas. The Parties hereby waive their right, if any, to recover special, indirect, incidental, consequential, exemplary and/or punitive damages in connection with any arbitrated Dispute or Controversy.

Section 4. Consolidation. If the Parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the Parties hereby agree that all such proceedings may be consolidated into a single arbitral proceeding.

Section 5. Pendency of Dispute, Interim Measures. The existence of any Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement or any right, duty or obligation arising herefrom; *provided, however*, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a Party, the arbitrator may issue interim measures for preservation or protection of the status quo.

Section 6. Complete Defense. The Parties agree that compliance by a Party with the provisions of this Appendix shall be a complete defense to any suit, action or proceeding instituted in any federal or state court, or before any administrative tribunal by the other Party with respect to any Dispute or Controversy which is subject to arbitration as set forth herein, other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder.

**APPENDIX E**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Site Access Terms*

1. Landlord hereby grants Tenant a non-exclusive license (the "**License**") to enter the Leased Premises during the Pre-Construction Period (as defined below) for the limited purpose of performing the Due Diligence Work and the Site Preparation Work in accordance with the terms of this **Appendix E**.
2. The License shall commence on the Execution Date and expire on the earlier to occur of (a) the termination of this Lease in accordance with **Section 8.3** and (b) the Lease Commencement Date (the "**Pre-Construction Period**").
3. The "**Due Diligence Work**" shall be limited to such tests, studies, or inspections deemed necessary or appropriate by Tenant in order to evaluate the physical condition of the Leased Premises including (i) an environmental audit of the Leased Premises and (ii) taking air, soil, water and any other samples necessary to complete any such environmental audit of the Leased Premises; *provided* that prior to accessing the Leased Premises or performing any Due Diligence Work, Tenant shall provide Landlord with a detailed, written description of the Due Diligence Work to be performed in connection with such access including the type of tests to be performed, and the time during which such access will be undertaken (the "**Work Notice**") for Landlord's approval, with such approval not to be unreasonably withheld. The Work Notice shall be provided by Tenant to Landlord at least three (3) Business Days prior to the proposed Due Diligence Work in question is to be undertaken. Any Due Diligence Work consented to by Landlord shall be performed in accordance with the terms and conditions of Landlord's consent, if any.
4. The Due Diligence Work and the Site Preparation Work shall be performed during reasonable business hours and Landlord shall have the right to have a Landlord representative present during the performance of all Due Diligence Work and the Site Preparation Work.
5. Tenant will, and will cause its contractors, subcontractors (of any tier), agents, representatives, consultants, employees and servants, to conduct the Due Diligence Work and the Site Preparation Work in a commercially reasonable manner and in compliance with all Applicable Laws.
6. In the event the Lease is terminated prior to the Lease Commencement Date or if the Leased Premises are damaged in any manner as a result of any entry upon or use or occupancy of the Leased Premises or performance of any Due Diligence Work or Site Preparation Work by Tenant or any of its agents, employees, servants, representatives, consultants, contractors or subcontractors, Tenant shall, at its sole cost and expense, promptly and with due diligence fully restore and repair the Leased Premises to the same condition as existed prior to such entry, use or occupancy or the performance of the Due Diligence Work or Site Preparation Work.

7. Tenant covenants and agrees that any person or entity, whether a direct employee of Tenant or not, that performs any portion of the Due Diligence Work or Site Preparation Work will (i) possess any and all necessary licenses, certifications and/or permits required by Applicable Laws to perform the portion of the Due Diligence Work or Site Preparation Work in question, (ii) be well qualified and skilled with respect to the Due Diligence Work or Site Preparation Work to be performed by such person or entity and (iii) maintain the same insurance required to be maintained by Tenant pursuant to the terms of Section 11 of this Appendix E and shall evidence same to Landlord prior to performing such Due Diligence Work.

8. Tenant agrees to provide Landlord with a copy of any inspection or test report prepared in connection with any Due Diligence Work (the "Due Diligence Reports") within five (5) business days after its receipt thereof and prior to the issuance of any final version of such report so that Landlord may have an opportunity to object to or dispute any information contained in any Due Diligence Report. Tenant will provide Landlord with a copy of the final version of all Due Diligence Reports and cause the same to be issued in such a manner that will permit Landlord to be legally entitled to rely on such Due Diligence Reports.

9. Tenant covenants and agrees not to reveal to any third party not approved in writing by Landlord the results of its Due Diligence Work or any Due Diligence Reports, *provided* that (A) Tenant lenders, attorneys and consultants shall be deemed to have been approved by Landlord to the extent that such disclosure to such lender, attorney or consultant is reasonably necessary in connection with performing his or her role as a lender, counselor or consultant regarding Tenant's proposed lease and development of the Leased Premises and provided that Tenant causes such lender, attorney or consultant to maintain such information confidential and (B) Tenant may disclose the results of its Due Diligence Work or Due Diligence Reports in the event it is required to do so by Applicable Laws, so long as (x) such disclosure is limited to the extent, and only to the extent, required by such Applicable Laws and (y) Tenant immediately discloses such requirement to Landlord and prior to disclosure as required by such Applicable Laws, to the extent it is permitted to do so under such Applicable Laws, so as to afford Landlord an opportunity to prevent such disclosure.

10. Tenant's indemnification obligations set out in Section 19.8 shall expressly apply to the Pre-Construction Period and Site Preparation Work.

11. Prior to and at all times during the performance of the Due Diligence Work and Site Preparation Work, Tenant shall, and shall require all contractors and subcontractors of every tier to provide, the insurance coverages described below, with commercially reasonable deductibles for their own account, on policy forms reasonably acceptable to Landlord and with limits not less than those shown below, all of which shall be provided at the sole cost and expense of Tenant or its contractors and subcontractors:

<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
Commercial General Liability	Per Occurrence \$1,000,000
Automobile Liability (All owned, Non-owned and Hired)	Combined Single Limit \$1,000,000
Workers' Compensation	Statutory
Employer's Liability	\$100,000

Further, Tenant agrees to provide or cause any transporter of contaminated media or other wastes associated with the Due Diligence Work or Site Preparation Work to provide insurance coverage that will cover any occurrences taking place during the shipment of said wastes. Each of the insurance policies required to be maintained pursuant to this Section shall (i) name Landlord, Prime Lessor and Landlord Insureds as additional insureds, except for any Workers' Compensation policies, (ii) be primary to any insurance carried by Landlord, Prime Lessor and Landlords Insureds (and that such insurance, if any, shall be excess and non-contributory), (iii) be endorsed to the effect that the "other insurance" clause shall not be applicable to Landlord, Prime Lessor and Landlord Insureds, (iv) provide for waivers of subrogation in favor of Landlord, Prime Lessor and Landlord Insureds, (v) be effected under policies issued by insurers approved by Landlord and which have an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VI" and (vi) carry such endorsements as are appropriate or customary for the performance of the Due Diligence Work or Site Preparation Work in question. With respect to the commercial general liability policy, such policy shall (i) afford protection, on an occurrence basis, against liability arising out of personal injury, bodily injury and death and/or property damage arising from, out of or related to the Due Diligence Work and Site Preparation Work or any entry upon, access to, from or across or use of the Leased Premises by Tenant or any of its employees, contractors, subcontractors, servants, agents or representatives and (ii) contain the following endorsements: (a) blanket contractual liability sufficient to cover Tenant indemnification obligations hereunder, (b) cross liability endorsement, (c) broad form property damage coverage, (d) fire legal coverage, (e) premise and operations coverage with explosion, collapse and underground exclusions deleted, (f) an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability, (g) personal injury and advertising injury and (h) owners and contractors protective coverage.

12. Tenant shall, and shall require its contractors and subcontractors of any tier to, furnish to Landlord prior to commencing any Due Diligence Work or Site Preparation Work, certificates (on the ACORD 28 form) evidencing that the insurance required pursuant to this Section is in force. The certificates shall provide that in the event of cancellation or material change to coverage, thirty (30) days' prior written notice shall be given to Landlord. The compliance of Tenant and its contractors and subcontractors with the provisions of this Appendix E and the limits of liability shown for each of the insurance coverages to be provided by Tenant and its contractors and subcontractors shall not be deemed to constitute a limitation of Tenant liability for any claims or in any way limit, modify or otherwise affect Tenant indemnification

obligations. The insolvency, bankruptcy or failure of any insurance company carrying insurance for Tenant or its contractors or subcontractors, or the failure of any insurance company to pay claims accruing shall not be held to waive or invalidate any of the provisions of this Appendix E.

13. Except as expressly set forth in the description of the Site Preparation Work, neither Tenant nor any of its agents, employees, servants, representatives, consultants, contractors or subcontractors shall (i) alter the Leased Premises in any manner, (ii) construct any structures upon the Leased Premises, (iii) excavate any portion of the Leased Premises (unless consented to as part of the Due Diligence Work pursuant to the terms of this Agreement) or (iv) remove or damage any trees or vegetation.

14. Tenant shall not permit any mechanic's or other lien or security interest to be filed against the Leased Premises as a result of any activities by Tenant or any of its agents, employees, servants, representatives, consultants, contractors or subcontractors. **IT IS THE INTENT OF TENANT AND LANDLORD THAT NOTHING CONTAINED IN THIS APPENDIX E SHALL (1) BE CONSTRUED AS A WAIVER OF LANDLORD'S LEGAL IMMUNITY AGAINST MECHANIC'S LIENS ON ITS LEASED PREMISES AND/OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANIC'S LIENS ON ITS LEASED PREMISES, OR (2) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF LANDLORD FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, TENANT THAT WOULD GIVE RISE TO ANY SUCH MECHANIC'S LIEN AGAINST LANDLORD'S INTEREST IN THE LEASED PREMISES, LANDLORD OR ANY PROPERTY OF LANDLORD, OR IMPOSING ANY LIABILITY ON LANDLORD FOR ANY LABOR OR MATERIALS FURNISHED TO OR TO BE FURNISHED TO TENANT UPON CREDIT.**

**SCHEDULE 9.1.2  
TO  
LEASE AND DEVELOPMENT AGREEMENT**

*Preliminary Description of Project Improvements*

**HOUSTON DYNAMO STADIUM  
LEASE AND DEVELOPMENT AGREEMENT  
PROJECT PROGRAM DRAFT 8-18-10**

A	B	C	D	E	F
<b>CLASSIFICATION 1: SPECTATOR FACILITIES</b>					
Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Program Total NSF	Total GSF (*1.15)
Spectator Seating	Reserved Armchair Seating	20,004	5.0	100,020	
	Club Seating	1,020	6.0	6,120	
	Suite Seating	360	7.0	2,520	
	Party Deck	200	12.0	2,400	
	Loge Standing Room	500	5.0	2,500	
	Wheelchair and Companion Seating	210	15.0	3,150	
	<b>SUB-TOTAL - SPECTATOR SEATING</b>	<b>22,294</b>		<b>116,710</b>	<b>116,710</b>
Suites	Luxury Suites	34	260	8,840	
	Other	0	0	0	
	<b>SUB-TOTAL - SUITES</b>			<b>8,840</b>	<b>10,168</b>
Club	Club Lounge	1,020	12	12,240	
	<b>SUB-TOTAL - CLUB</b>			<b>12,240</b>	<b>14,076</b>
Restrooms	Public Restroom - Men	95	50	4,750	
	Public Restroom - Women	193	55	10,615	
	Club Restroom-Men	7	50	350	
	Club Restroom-Women	15	55	825	
	Suite Restroom-Men	4	50	200	
	Suite Restroom- Women	7	55	385	
	Family Toilets (unisex toilets)	6	40	240	
	<b>SUB-TOTAL - PUBLIC RESTROOMS</b>			<b>17,365</b>	<b>19,970</b>
<b>SUB-TOTAL (NET AREA)</b>				<b>155,155</b>	<b>160,922</b>
<b>CLASSIFICATION 2: FOOD SERVICE &amp; RETAIL FACILITIES</b>					
Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Total NSF	Total GSF (*1.15)
Food Service	Main Commissary	1	2000	2,000	
	Central Kitchen	1	2000	2,000	
	Vendor Office	1	800	800	
	Food Service Provider Offices	4	150	600	
	Suite Catering Pantry	2	300	600	
	Concessionaire Lockers/Toilets	2	250	500	
	Uniform Distribution	1	150	150	
	Empties Storage	1	400	400	
	Money Counting room	1	100	100	
	<b>SUB-TOTAL - FOOD SERVICE</b>			<b>7,150</b>	<b>8,223</b>
Concession Stands	Main Concourse Level Public Concessions	86	110	9,460	
	Club Lounge Bar/Concessions	0	0	0	
	Loge Bar	1	500	501	
	Loge Pantry and Service	0	0	0	
	Concession Storage	0	0	0	
	Pitch Concession Stands (concert configuration)	0	0	0	
	Vendors Commissaries	2	500	1,000	
	<b>SUB-TOTAL - CONCESSION STANDS</b>			<b>10,961</b>	<b>12,605</b>
Retail Sales	Team Store	1	1,000	1,000	
	<b>SUB-TOTAL - RETAIL SALES</b>			<b>1,000</b>	<b>1,150</b>
<b>SUB-TOTAL (NET AREA)</b>				<b>19,111</b>	<b>21,978</b>
<b>CLASSIFICATION 3: TEAM FACILITIES</b>					
Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Total NSF	Total GSF (*1.20)
Home MLS Team Locker Facilities	Locker Room	1	1,200	1,200	
	Showers / Toilets	1	750	750	
	Grooming Area	1	200	200	
	Head Coach's Office	1	350	350	
	Training /Hydrotherapy Room	1	1,000	1,000	
	Hydrotherapy Equipment Room	1	120	120	
	Athletic Trainers Office	1	150	150	
	Athletic Trainers Storage Room	1	125	125	
	Assistant Coaches/Trainers Locker Room	1	340	340	
	Team Physicians Office	1	125	125	
	Team Meeting Room	1	300	300	
	Weight Room	1	730	730	



**HOUSTON DYNAMO STADIUM  
LEASE AND DEVELOPMENT AGREEMENT  
PROJECT PROGRAM DRAFT 8-18-10**

A	B	C	D	E	F
	Kick Around Room/Family Waiting Room	1	275	275	
	<b>SUB-TOTAL - HOME TEAM</b>			<b>5,665</b>	<b>6,515</b>
Visiting MLS Team / Home Football Locker	Locker Room	1	1,005	1,005	
	Showers / Toilets	1	750	750	
	Grooming Area	1	150	150	
	Head Coach's Office	1	350	350	
	Training /Hydrotherapy Rooms	1	400	400	
	Athletic Trainers Storage Room	1	290	290	
	Assistant Coaches' Locker Room	1	360	360	
	Visitor Kick Around Room	1	245	245	
	Team Meeting Room	1	245	245	
	<b>SUB-TOTAL - VISITING TEAM</b>			<b>3,795</b>	<b>4,364</b>
Auxiliary Locker Rooms	Locker Room	3	1,000	3,000	
	Showers / Toilets	3	400	1,200	
	Grooming Area	3	150	450	
	Head Coach Office	1	200	200	
	Training /Hydrotherapy	1	300	300	
	Equipment	1	200	200	
	Assistant Coaches Locker Room	1	300	300	
	<b>SUB-TOTAL - AUXILIARY LOCKERS</b>			<b>5,650</b>	<b>6,498</b>
Game Officials	Locker Room	2	300	600	
	Showers / Toilets	2	0	0	
Miscellaneous	Doping Room	1	385	385	
	X-Ray Room	1	450	450	
	Field Toilet-unisex field personel	1	40	40	
	Field Toilets	3	40	120	
	Multipurpose Rooms-	4	220	880	
	Field/Pitch	1	113,850	0	
	Players Benches	2	0	0	
	Stage	1	0	0	
	<b>SUB-TOTAL - OFFICIALS/Misc.</b>			<b>2,475</b>	<b>2,846</b>
<b>SUB-TOTAL (NET AREA)</b>				<b>11,920</b>	<b>13,708</b>

**CLASSIFICATION 4: MEDIA FACILITIES**

Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Total NSF	Total GSF (*1.15)
Press Support	Work Room-Writing Press	1	500	500	
	Broadcast Copy Room	1	100	100	
	Dark Room/Digital Editing	1	150	150	
	Dining Area and Pantry	1	100	100	
	Media Check-In and Accreditation	1	100	100	
	Secured Storage	1	0	0	
	Unit Manager Office	1	80	80	
	Men Press Toilet	1	250	250	
	Women Press Toilet	1	250	250	
	<b>SUB-TOTAL - PRESS SUPPORT</b>			<b>1,530</b>	<b>1,760</b>
Press Box	Writing Press	50	30	1,500	
	TV Broadcast Booth(s)	2	250	500	
	Radio Broadcast Booth(s)	4	80	320	
	Public Announcer Booth	1	80	80	
	Statisticians Booth	1	120	120	
	Home Coaches Booth	1	120	120	
	Visiting Coaches Booth	1	120	120	
	<b>SUB-TOTAL - PRESS BOX</b>			<b>2,760</b>	<b>3,174</b>
Control Rooms	Scoreboard Operator & Video replay	1	700	700	
	Sound Control Room	1	120	120	
	Security Control Command Room/Remote Command Center	1	300	300	
	<b>SUB-TOTAL-CONTROL ROOMS</b>			<b>1,120</b>	<b>1,288</b>
Interview Facilities	Multipurpose-Press Conference Room	1	1000	1,000	
	Flash Interview	2	60	120	
	Mixed Zone	1	2000	2,000	
	<b>SUB-TOTAL - MEDIA FACILITIES</b>			<b>3,120</b>	<b>3,588</b>
TV Truck Parking Area	TV Truck Parking	3	0	0	
	Patch Panels/Broadcast Connections	1	150	150	
	Crew Break Room	1	250	250	
	Crew Unisex Toilet	2	50	100	

**HOUSTON DYNAMO STADIUM  
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A	B	C	D	E	F
	<b>SUB-TOTAL - TV TRUCK PARKING AREA</b>			500	575
<b>SUB-TOTAL (NET AREA)</b>				9,030	10,385
<b>CLASSIFICATION 5: ADMINISTRATION FACILITIES</b>					
Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Total NSF	Total GSF (*1.15)
Ticket Office	Lobby	1	120	120	
	Customer Service	1	0	0	
	Work Area	1	200	200	
	Ticket Windows (Will Call and Sales)	10	75	750	
	Vault/Ticket Storage	1	100	100	
	Ticket Manager Office	1	150	150	
	Assist. Ticket Manager Office	1	120	120	
	Counting Room	1	200	200	
	Supply Room	1	100	100	
	Computer Server Room	1	100	100	
	Men and Women Restroom	2	50	100	
	<b>SUB-TOTAL - TICKET OFFICE</b>			1,820	2,093
<b>SUB-TOTAL (NET AREA)</b>				1,820	2,093
<b>CLASSIFICATION 6: SERVICE &amp; OPERATIONS FACILITIES</b>					
Space Type	Room Description	Recommended Program			
		Approximate Units	Estimated SF	Total NSF	Total GSF (*1.15)
Event Personnel Facilities	Entry / Check-in	1	400	400	
	Uniform Distribution	1	150	150	
	Men's Locker Room	1	200	200	
	Men's Showers / Toilets	1	200	200	
	Women's Locker Room	1	200	200	
	Women's Showers / Toilets	1	200	200	
	Break Room	1	300	300	
	<b>SUB-TOTAL - EVENT PERSONNEL</b>			1,650	1,898
Building Staff/Operations	Reception	1	200	200	
	Building GM Office	1	180	180	
	Operation Manager/Assistant GM Office	1	150	150	
	Turf Managers Office	1	150	150	
	Building Engineer Office	1	150	150	
	Men Staff Locker Room	1	400	400	
	Women Staff Locker Room	1	400	400	
	Staff Break Room	1	300	300	
	Maintenance Workshop	1	4,000	4,000	
	Maintenance Tool Room	1	100	100	
	Maintenance Storage	1	2,500	2,500	
	Maintenance Locker	2	300	600	
	Paint Room	1	100	100	
	Washdown Area	1	100	100	
	Maintenance Breakroom	1	120	120	
	<b>SUB-TOTAL - BUILDING OPERATIONS</b>			9,450	10,868
Groundskeeping	Groundskeeping Work Room	1	400	400	
	Office	1	150	150	
	Vehicle/Groundskeeping Maintenance	1	1,200	1,200	
	Locker Room	1	300	300	
	Showers / Toilets	1	250	250	
	Equipment and Bin Storage Area	1	300	300	
	Chemical Storage Room	1	100	100	
	Break Room	1	120	120	
	<b>SUB-TOTAL - GROUNDSKEEPING</b>			2,820	3,243
Security	Command Center	1	400	400	
	Security Directors Office	1	120	120	
	Briefing Room	1	140	140	
	Radio Storage	1	50	50	
	Unisex toilet room	1	60	60	
	Holding Area	1	150	150	
	<b>SUB-TOTAL - SECURITY</b>			920	1,058
Playing Field	Field Irrigation Control Room	1	100	100	
	Field Pump Room	1	120	120	
	Game Equipment Storage	1	1,500	1,500	
	Soils/Equipment Storage	1	150	150	
	<b>SUB-TOTAL - SECURITY</b>			1,870	2,151

**HOUSTON DYNAMO STADIUM  
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A	B	C	D	E	F
Storage	Promotions	1	1,500	1,500	
	General Building Storage	1	5,000	5,000	
	SUB-TOTAL - STORAGE			6,500	7,475
SUB-TOTAL (NET AREA)				23,210	26,692
CLASSIFICATION 7: CIRCULATION					
		Recommended Program			
Space Type	Room Description	Units	SF	Total NSF	Total GSF (*1.20)
Concourse	Main Concourse	23,185	3.5	81,148	
	SUB-TOTAL - CONCOURSE			81,148	81,148
SUB-TOTAL (NET AREA)				81,148	81,148
SUMMARY					
		Recommended Program			
	Space Type	Units	SF	Total NSF	Total GSF (*1.15)
	SUB-TOTAL CLASSIFICATION 1: SPECTATOR FACILITIES			155,155	160,922
	SUB-TOTAL CLASSIFICATION 2: FOOD SERVICE/RETAIL FACILITIES			19,111	21,978
	SUB-TOTAL CLASSIFICATION 3: TEAM FACILITIES			11,920	13,708
	SUB-TOTAL CLASSIFICATION 4: MEDIA FACILITIES			9,030	10,385
	SUB-TOTAL CLASSIFICATION 5: ADMIN FACILITIES			1,820	2,093
	SUB-TOTAL CLASSIFICATION 6: SERVICE & OPERATIONS FACILITIES			23,210	26,692
	SUB-TOTAL CLASSIFICATION 7: CIRCULATION			81,148	81,148
	TOTAL NET SQUARE FOOTAGE (NSF)			301,394	
	+ NET-TO-GROSS MULTIPLIER (15%)			15,530	
	TOTAL GROSS SQUARE FOOTAGE (GSF)			316,924	316,924

**SCHEDULE 11.1.6  
TO  
LEASE AND DEVELOPMENT AGREEMENT**

*Architectural Services Agreement*

**ARCHITECTURAL SERVICES AGREEMENT**

**BETWEEN**

**DYNAMO STADIUM, LLC**

**AND**

**POPULOUS, INC.**

**Dated: August 6, 2010**

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Exhibit K	–	Site - Legal Description

**ARCHITECTURAL SERVICES AGREEMENT**

THIS ARCHITECTURAL SERVICES AGREEMENT (this "*Agreement*") is made as of the 6<sup>th</sup> day of August, 2010 (the "*Effective Date*"), by and between Dynamo Stadium, LLC ("*Developer*"), and Populous, Inc., a Missouri corporation ("*Architect*").

Developer:	Dynamo Stadium, LLC Attn: Ted Fikre 800 West Olympic Boulevard, Suite 305 Los Angeles, CA 90015 Fax: (213) 742-7294
Architect:	Populous, Inc. 300 Wyandotte, Suite 300 Kansas City, MO 64105 Fax: (816) 221-1578
Project:	Professional design and construction administration services in connection with the construction of a multipurpose sports and entertainment facility containing approximately 21,000 seats for which the basic project elements are described in <b>Exhibit A</b> attached hereto.
Project Manager:	ICON Venue Group, LLC 8101 E. Prentice Avenue, Suite 900 Greenwood Village, CO 80111 Fax: (303) 796-2658

Developer and Architect agree as follows:

**ARTICLE 1**

**DEFINITIONS**

**1.1. DEFINED TERMS.**

In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings set forth below in this Article 1.

"*ADA*" shall mean the Title III of the Americans with Disabilities Act and the regulations and guidelines issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation and commercial facilities.

"*Additional Services*" shall have the meaning set forth in Article 4.

**"ADR Procedures"** shall mean the dispute resolution procedures set forth in **Exhibit I** attached hereto, including the on-site, expedited alternative dispute resolution process set forth therein.

**"Affiliate"** of a specified person or entity shall mean any corporation, partnership, sole proprietorship or other person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the person or entity specified. The term **"control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity.

**"Applicable Laws"** shall mean any applicable law, enactment, statute, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or other direction or requirement of any Governmental Authority (defined below) enacted, adopted, promulgated, entered or issued (including the requirements of the ADA relating to the Project) in force as of the date an action is taken.

**"Architect"** shall mean Populous, Inc.

**"Architect's Consultants"** or **"Consultants"** shall mean those consultants and other professionals, including other architects and engineers, employed or retained by Architect to provide services with respect to the Project.

**"Architectural Program"** shall mean the program statement to be prepared by Architect, and approved by Developer, that sets forth general descriptions and requirements of functions, elements, systems, areas and other program elements to be incorporated into the design of the Project, which program statement shall refine the basic project elements set forth in **Exhibit A** and shall form the basis for the preparation of the Design Documents for the Project.

**"Authority"** shall mean the Harris County-Houston Sports Authority as representative of the City (defined below) and the County (defined below).

**"Authority Representative"** shall mean any Person designated in writing by the Authority by written notice to Developer.

**"Basic Services"** shall have the meaning set forth in Article 3.

**"Bid Package"** shall have the meaning set forth in Section 3.6.2.

**"Bidding or Negotiation Phase"** shall mean that Phase during which Architect shall assist Construction Manager in the bidding and negotiation with the Subcontractors (defined below) and shall assist Developer in negotiating the GMP (defined below) as further described in Section 3.6. The Bidding or Negotiation Phase will overlap the Pre-Design and Design Phase and the Construction Phase.

**"Change Order"** shall mean a written instrument signed by Developer or Developer's authorized agent, Architect and Construction Manager issued after the execution of the Contract



Documents authorizing a change in the scope of Work, the GMP, Construction Manager's compensation or the Construction Schedule.

"**City**" shall mean the City of Houston, Texas.

"**CM Agreement**" shall mean the agreement between Construction Manager (defined below) and Developer, a copy of which will be provided to Architect.

"**Conceptual Design Documents**" shall mean the conceptual design documents of the Project illustrating the scale and relationship of the Project components as further described in Section 3.2.

"**Construction Budget**" shall mean the budget of the Construction Cost, not to exceed \$60,000,000 in total, to be developed by Project Manager, a preliminary draft of which is attached hereto as **Exhibit B**.

"**Construction Change Directive**" shall mean a written order prepared by Architect and signed by Developer and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Contract Time or both.

"**Construction Contingency**" shall mean construction contingency identified in the GMP, if any.

"**Construction Cost**" shall mean the total cost to Developer of all elements of the Project designed or specified by Architect, and shall include the cost of all Work at current market rates of labor and materials, plus the Construction Contingency.

"**Construction Documents**" shall mean the most current working drawings, specifications and addenda thereto that set forth in detail the requirements for construction of the Project, as further described in Section 3.5.

"**Construction Manager**" shall mean that firm designated by Developer, and its permitted successors and assigns as may be designated by Developer from time to time. During the Construction Phase, Construction Manager shall be responsible for the physical construction of the Project and is sometimes referred to herein as the "**Contractor**".

"**Construction Phase**" shall mean that Phase of the Project during which physical construction of the Project has commenced as further described in Section 3.7.

"**Construction Schedule**" shall mean the schedule for the performance and completion of the Work, which schedule shall be furnished by Construction Manager to Developer and Architect as described in the CM Agreement, as the same may be modified from time to time in accordance with the terms of the Contract Documents.

"**Contract Documents**" shall mean, collectively, this Agreement and all exhibits hereto, the CM Agreement, the General Conditions (defined below), the GMP Documents (defined below), the Design Documents, addenda issued prior to execution of this Agreement, and

subsequent Change Orders or modifications issued in accordance with the terms hereof, and the Construction Schedule.

**“Contract Sum”** shall mean the total amount payable by Developer to CM (and Separate Contractors [defined below]) pursuant to their respective agreements for performance of the Work under the Contract Documents.

**“Contract Time”** shall mean the time allowed for the completion of the Project as set forth in the Construction Schedule prepared and approved pursuant to the CM Agreement and, where applicable, for the time allowed for completion of each milestone, Phase or element of the Project.

**“County”** shall mean Harris County, Texas.

**“Defective Work”** shall mean any Work that does not comply with the requirements of the Contract Documents.

**“Deficiency List”** shall mean, at any time, the list of incomplete Work and Work requiring repair or replacement prepared by Architect, and approved in writing by Developer, upon written notification from Construction Manager to Developer and Architect that a particular Subcontract is completed.

**“Design Development Documents”** shall mean drawings and specifications based upon and refining the Schematic Design Documents (defined below) illustrating the scope, relationship, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts as further described in Section 3.4.

**“Design Documents”** shall mean, as applicable, the Conceptual Design Documents, Schematic Design Documents, the Design Development Documents, GMP Drawings and Specifications (defined below) and the Construction Documents.

**“Design Document Package”** shall mean those sets or compilations of Design Documents to be issued pursuant to and in accordance with the Design Schedule.

**“Design Schedule”** shall mean the schedule of architectural services prepared by Architect, the most current edition of which is attached hereto as **Exhibit C**.

**“Developer”** shall mean Dynamo Stadium, LLC.

**“Development Schedule”** shall mean the schedule developed by Project Manager based on the information provided by Developer, Architect, and Construction Manager that sets forth the milestones for each major element of the Project and coordinates and integrates the obligations and responsibilities of the Project Team (defined below).

**“Final Completion”** or **“Finally Complete”** shall mean the stage in the progress of the Work when the Work is completed in accordance with the terms of the Contract Documents and

Construction Manager has satisfied all of its obligations under the Contract Documents, including (i) all Governmental Authorities have given final, written approval of the entire Project, (ii) a final unconditional certificate of occupancy has been granted and issued to the Authority by the appropriate Governmental Authorities, and (iii) all Punch List items have been completed or corrected.

***"Force Majeure"*** shall mean an act of God, fire, tornado, hurricane, named storms, flood, earthquake, explosion, war, terrorism, embargoes, civil disturbance, unusually severe weather that is abnormal for the time of year in Houston, Texas or industry-wide labor strikes or any other matter that is outside of a party's reasonable control.

***"General Conditions"*** shall mean General Conditions of the CM Agreement to be prepared by Developer with the assistance of Architect, as amended and modified, including any supplementary and other conditions attached thereto, if applicable.

***"GMP"*** shall mean the guaranteed maximum price for the Work (or designated portions thereof) as set forth in the GMP Amendment.

***"GMP Amendment"*** shall mean the amendment to the CM Agreement establishing the guaranteed maximum price.

***"GMP Documents"*** shall mean the GMP Drawings and Specifications, the GMP Qualifications and Assumptions and the other documents set forth in the GMP Amendment.

***"GMP Drawings and Specifications"*** shall mean the set of partially complete Construction Documents (which may include more complete Construction Documents for the foundation, structural and roof portions of the Work) as further described in Section 3.5.1.1.

***"GMP Qualifications and Assumptions"*** shall mean the written statement of qualifications and assumptions prepared by Construction Manager, based upon the GMP Drawings and Specifications, and accepted by Developer based on the advice of Architect and Project Manager.

***"Governmental Authority"*** shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project or the Site.

***"Hazardous Materials"*** shall mean any hazardous waste, toxic substance, asbestos containing material, petroleum product, or related materials including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.*; and the corresponding regulations (as amended) issued pursuant to these acts, or other Applicable Laws.

**"Indemnitees"** shall mean Developer, the Authority, the City, the County, Project Manager, Authority Representative, the Lenders (defined below) and their respective officers, board members, shareholders, members, partners and employees.

**"LEED"** shall mean the Leadership in Energy and Environmental Design Green Building Rating System developed by U.S. Green Building Council ("**USGBC**").

**"Lease and Development Agreement"** shall mean that certain Lease and Development Agreement to be negotiated and executed by and between the Authority and Developer.

**"Lender(s)"** shall mean any bank, insurance company, trust, corporation, association, firm, partnership, Person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable Developer to build the Project.

**"MLS"** shall mean Major League Soccer and any successor substitute association or entity of which the Developer is an operator, member or joint owner, and which engages in professional soccer in a manner comparable to Major League Soccer.

**"MLS Documents"** shall mean, collectively, any agreements, rules, guidelines, regulations or requirements of the Office of Major League Soccer and the Office of the Commissioner of the MLS, as applicable, all as the same now exists.

**"Person"** shall mean an individual, sole proprietorship, partnership, corporation, joint stock company, trust, unincorporated association, joint venture, limited liability company, limited liability association, unincorporated association, Governmental Authority, or any other entity.

**"Phase"** or **"Project Phase"** shall mean each of the phases as described in Article 3.

**"Pre-Design and Design Phase"** shall mean that Phase that is preparatory to the physical construction of the Project during which the Schematic Design Documents, Design Development Documents and Construction Documents are completed and concludes upon commencement of the Construction Phase, unless Developer elects to allow the commencement of certain elements or stages of construction prior to the completion of the Construction Documents in their entirety.

**"Project"** shall mean the design and construction of a new stadium in Houston, Texas that shall consist of a sports and entertainment facility containing approximately [21,000] seats, which will be designed by Architect and constructed by CM and its Subcontractors or Separate Contractors and overseen by Developer acting on behalf of the Authority pursuant to the terms and conditions of the Lease and Development Agreement.

**"Project Budget"** shall mean Developer's fixed limit of funds available for all Project costs, which shall not exceed \$78,000,000, subject to adjustment in the sole discretion of Developer.

***“Project Closeout Documents”*** shall mean the record drawings (as further described in Section 3.7.22), all maintenance and operating manuals, all approved Shop Drawings, warranties, guarantees, training manuals and records.

***“Project Manager”*** shall mean ICON Venue Group, LLC, or any successor to the foregoing designated in writing by Developer by written notice to Architect.

***“Project Team”*** shall mean, collectively, Developer, Architect, Project Manager, Authority Representative, Construction Manager and such other members as may be reasonably designated in writing by Developer from time to time.

***“Punch List”*** shall mean the list initially prepared by Construction Manager pursuant to the CM Agreement, reviewed and supplemented by Architect and approved by Developer containing minor items of incomplete Work not impacting Substantial Completion and to be completed or corrected after Substantial Completion.

***“Reimbursable Expenses”*** shall have the meaning set forth in Section 11.2.

***“Schematic Design Documents”*** shall mean the drawings illustrating the scale and relationship of the various Project components, which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, as well as major architectural and interior finishes as further described in Section 3.3.

***“Separate Contractor”*** shall mean any entity hired directly by Developer to perform any construction services for the Project relating to any portion of the Work designed by Architect, except the Construction Manager.

***“Services”*** shall mean all Basic Services, Additional Services and other obligations of Architect under this Agreement.

***“Shop Drawings”*** shall mean drawings, diagrams, illustrations, schedules, performance charts, and other data specifically prepared for the Project by Construction Manager or any Subcontractor, manufacturer, Supplier or distributor, and if prepared by a Subcontractor, manufacturer, Supplier or distributor, then reviewed by Construction Manager for completeness and correctness, which illustrate how specific portions of the Work shall be fabricated or installed.

***“Site”*** shall mean the real property more particularly described in **Exhibit K** attached hereto and made a part hereof.

***“Standard of Care”*** shall mean that standard of professional care, skill, diligence and quality that prevail among design firms engaged in the planning, design, construction and administration of large scale and complex projects of similar scope, function, size, quality, complexity and detail, including the design of similar stadiums, events centers and MLS facilities in comparable urban areas throughout the United States.

***“Subcontractor”*** shall mean a Person who has a direct or indirect contract with Construction Manager to perform any of the Work. The term Subcontractor includes Suppliers.

***“Submittals”*** shall mean Shop Drawings, product data, samples and other submittals.

***“Substantial Completion”*** or ***“Substantially Complete”*** shall mean the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for opening to the general public and full occupancy or use by Developer (it being understood that, without limitation of the foregoing, all suites, concessions and other income-generating areas and all areas serving the general public shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipments, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilating, air conditioning, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; and other work performed to a similar state of essential and satisfactory completion. A minor amount of Work, as determined by and at the discretion of Developer, with the advice of Project Manager and Architect, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred unless (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities, (ii) all terms and Work required under this Agreement have been fulfilled by Construction Manager and same shall have also been approved and accepted by Architect and Developer (including any Work contained on a Deficiency List previously issued), subject only to the Punch List items, and (iii) to the extent applicable, MLS shall have completed an inspection of the Project and shall have given permission, in compliance with MLS facility standards, for playing MLS games at the Project.

***“Supplier”*** shall mean a Person who has an agreement with Construction Manager or its Subcontractors or sub-subcontractors to supply by sale or lease, directly or indirectly, any materials or equipment for the Work.

***“Value Engineering”*** shall mean an analysis of the feasibility of alternative systems, equipment and materials to identify alternative systems, equipment and materials of equivalent quality to those specified in the Design Documents, having equivalent characteristics to those specified in the Design Documents which can be obtained at a lower price without diminishing the quality or architectural design concept reflected in the Design Documents.

***“VE Program”*** shall have the meaning set forth in Section 3.1.5.

"*Work*" shall mean the furnishing of all materials, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements for the Project as set forth in the Contract Documents and items reasonably inferable therefrom, whether or not performed or located on or off of the Site.

1.2. Other Terms. Unless otherwise defined herein, terms in this Agreement shall have the same meaning as those in the General Conditions and words that have well-known technical or construction industry meanings are used in this Agreement with such recognized meanings.

1.3. Context. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or". Wherever the word "incurred" is used herein, it shall mean "actually incurred" as opposed to overhead or similar expense allocations.

1.4. Calendar Day. Whenever the term "day" is used in this Agreement, it shall mean a calendar day, unless otherwise stated herein.

## ARTICLE 2

### ARCHITECT'S RESPONSIBILITIES

#### 2.1. ARCHITECT'S SERVICES.

2.1.1. Scope of Services. Architect's services consist of those services performed by Architect, Architect's employees and Architect's Consultants as enumerated in Articles 2 and 3 of this Agreement, Sections 10.6 and 10.7 hereof and any other services included in Article 13.

2.1.2. Coordination of Services. Throughout the term of this Agreement, Architect shall coordinate its services with Developer, Project Manager, Construction Manager, Authority Representative and the other members of the Project Team. Time is of the essence in the performance of Architect's Services under this Agreement, but shall be extended to the extent Architect is delayed by Force Majeure. Architect acknowledges the crucial aspect of timely completion of the Project, and represents that its Services shall be performed as expeditiously as possible consistent with the Standard of Care, the Design Schedule and the Construction Schedule. Architect shall provide all necessary personnel and supervision to achieve timely completion of each Phase of its Services, and shall comply with all completion schedules to which Developer and Architect agree.

2.1.2.1. Architect shall provide such assistance as Developer may reasonably request in connection with obtaining financing for the Project. Architect agrees that it will make available to Developer, its Lenders and any bond trustees, information relating to the Project, including information relating to the construction progress and expenditures, as any Lenders or bond trustees may reasonably request. Architect shall furnish such consents to assignments and certifications addressed to Developer, its Lenders and any bond trustees, as may be reasonably requested. Architect shall cooperate with the independent engineers, if any, of any Lenders or bond trustees.

2.1.2.2. Architect shall meet with Construction Manager to arrive at a mutual understanding as to the detailed content of the GMP Drawings and Specifications. The detailed description of the content of the foregoing documents shall be submitted to Developer for its review and written approval, not to be unreasonably withheld.

2.1.3. Relationship With the Authority. Architect acknowledges that the City and the County shall jointly own the Project and, pursuant to the Lease and Development Agreement, the Project is to be developed by Developer on behalf of the Authority with respect to the planning, design and construction of the Project. The Authority is expressly acknowledged as a third party beneficiary of this Agreement and the other Contract Documents. Architect shall promptly furnish to the Authority Representative copies of all documents and information required by this Agreement or the Contract Documents to be provided by Developer to the Authority pursuant to the Lease and Development Agreement. Upon Substantial Completion of the Work, Architect shall provide the Authority Representative one original printed set and a disk of the record drawings as set forth in Section 3.7.23. The Authority Representative shall receive from Architect or Construction Manager, at the direction of Developer or Developer's Representative, advance notice of all regularly scheduled Project meetings and copies of all meeting minutes and progress reports prepared by Architect. During construction, the Authority Representative shall have the right to attend all regular Project meetings and inspect the Project at all reasonable times.

2.1.4. Schedule of Architectural Services. Architect shall prepare, for Developer's review and written approval, the Design Schedule. Architect shall adhere to the Design Schedule and shall perform its services in accordance therewith. Subject to Force Majeure, the time limits set forth for performance of Architect's services and delivery of Design Documents established in the Design Schedule shall not be exceeded by Architect without the prior written approval of Developer.

2.1.5. Standard of Care. Architect confirms that it is experienced in large scale and complex projects, including the design and construction administration of similar stadiums, in comparable urban areas and under comparable project conditions, throughout the United States. Given that status, experience and expertise, Architect represents, covenants and agrees that all of the Services to be furnished by Architect and Architect's Consultants under or pursuant to this Agreement shall be performed in a manner consistent with the Standard of Care. ARCHITECT EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND WARRANTIES WITH RESPECT TO ARCHITECT'S PROFESSIONAL SERVICES AS



THE QUALITY OF SUCH SERVICES SHALL BE SOLELY JUDGED AGAINST THE STANDARD OF CARE.

2.1.5.1. Architect shall be aware of and advise Developer as to the technological "state of the art" options for MLS stadium projects and shall advise Developer of changes or advancements in such "state of the art" options throughout the Project. Architect shall actively advise Developer from time to time as to systems or components of the Project that are not, in Architect's opinion, "state of the art." The term "*state of the art*" shall mean current design trends and anticipated technological developments that are generally available within the Project time frame, in part as evidenced by one or more multi-purpose soccer stadiums that are agreed upon by the Architect and Developer as comparable in size, scope and overall quality to the Project. Architect shall clearly identify, in writing, viable options for required decisions of Developer and, in connection therewith, Architect shall provide Architect's opinion of the best applications for the Project to Developer, stating, in writing, the basis for those opinions.

2.1.6. Legal and League Related Requirements and Standards. Architect shall review Applicable Laws relevant to Architect's Services. Architect shall also review all requirements of the MLS and the MLS Documents relating to the Project. The Design Documents shall comply with all Applicable Laws and the MLS Documents. Architect represents and warrants to Developer, and to such other parties as Developer may reasonably request, that on the basis of Architect's best professional judgment and knowledge consistent with the requirements of the Standard of Care, the Design Documents and the Project, when built in accordance therewith, shall conform to all Applicable Laws, the requirements of MLS and the MLS Documents.

2.1.7. Architect's Personnel. Architect represents that, to the extent required by Applicable Laws, all Persons who are directly supervising the professional architectural services for the Project or who execute the Contract Documents for the professional architectural work for the Project, are duly licensed to practice under the laws of the State of Texas and that all engineering services provided hereunder shall be performed under the direct supervision of an engineer, or engineers, licensed to practice under the laws of the State of Texas. Developer reserves the right to approve the principals and key management design personnel of Architect that will be scheduled to work on the Project. A list of the principals and key management design personnel assigned to this Project who will be personally and continually, but not exclusively, involved for the duration of the Project as necessary and appropriate to meet at all times the Standard of Care for the performance of services required in this Agreement is attached as **Exhibit E**. Architect further represents and warrants that it shall commit such personnel, in terms of expertise and number, to fulfill its duties and obligations under this Agreement in accordance with the Standard of Care. No substitutions of any principal or key management design personnel may be made by Architect without the prior written consent of Developer. If any principal or key design management personnel are no longer employed by Architect, Architect shall notify Developer within five (5) days after learning of such event. Architect shall use its best efforts to provide a permanent replacement of any principal or key design

management personnel within thirty (30) days after such event. Developer shall have the right to approve the proposed replacement in advance of an assignment to the Project. Developer may require Architect to remove from the Project any personnel whose performance under this Agreement is not satisfactory.

2.1.7.1. Architect represents to Developer that Architect shall employ a sufficient number of employees, personnel or consultants to perform Architect's duties to Developer pursuant to the Design Schedule. Architect shall (a) not discriminate against any employee or applicant for employment on any basis prohibited by law; (b) provide equal opportunity in all employment practices; (c) use good faith efforts to achieve participation of minority and women business enterprises as set forth in **Exhibit J** attached hereto in the award of all Services that are contracted to Architect's Consultants or other third parties; (d) comply with all other Applicable Laws regarding contracting, hiring and employment; and (e) permit Developer and the Authority (and any agencies or representatives thereof) to timely monitor and review compliance with the equal opportunity provisions of this Section.

2.1.8. Performance of Services. Architect represents that the Construction Documents, when completed, will be accurate and free from material errors and in compliance with all Applicable Laws to the extent required by the Standard of Care. Architect's duties as set forth herein shall at no time be in any way diminished by reason of any acceptance by Developer of the Design Documents or any other work product of Architect, nor shall Architect be released from any liability by reason of such acceptance of Developer. Architect's services shall be performed as expeditiously as is consistent with professional skill, care, diligence and the orderly progress of the Work.

2.1.9. Architect's Consultants. Architect may, subject in each instance to the prior written approval of Developer, enter into written agreements with such civil, structural, mechanical, electrical, plumbing or other engineering or design related firms as Architect deems necessary or appropriate in order to assist Architect in providing its Services hereunder, provided that each such agreement shall provide that: (i) each such Consultant, to the extent of the services to be provided by it, shall be bound by the applicable terms of this Agreement and shall assume toward Architect all the applicable obligations and responsibilities that Architect by the terms of this Agreement assumes toward Developer, and (ii) Developer and the Authority shall be designated as a third party beneficiary to such Consultant's agreement with Architect. Neither Developer nor the Authority shall, however, have, nor be deemed to have, any direct contractual relationship with any such Consultant and shall not be obligated to pay, nor be liable for the nonpayment of, the fees, costs, and expenses of any such Consultant; such fees, costs, and expenses shall be and are the obligation of Architect. To the extent Architect retains Consultants to perform portions of Architect's services hereunder, Architect shall be responsible for their services as though such services had been performed directly by Architect. A list of Architect's Consultants is attached hereto as **Exhibit E**, all of which are acceptable to Developer.

2.1.9.1. Architect represents, covenants and agrees that, to the extent required by Applicable Law, Persons employed by Architect or Architect's Consultants who shall perform professional architectural and engineering work for the

Project shall be duly licensed to practice in the City and under the laws of the State of Texas, and that Architect holds all required corporate certificates and licenses necessary to perform architectural services in such corporate capacity. All Consultants employed by Architect shall be reputable, qualified firms or individuals with an established record of successful performance in their respective fields and licensed, as may be required, to practice in the City and under the laws of the State of Texas. It shall be Architect's responsibility to determine any and all licensing requirements that may be applicable to any aspect of its own work or the work of Architect's Consultants.

2.1.9.2. All formal communications by and with the Architect's Consultants shall be through Architect, but it is expressly understood that Developer and Project Manager may, at any time, directly communicate with, although not direct the work of, any of Architect's employees or the employees of any Consultants regarding minor aspects of the Services. Developer shall inform Architect of any material communications between Developer and Architect's Consultants.

### ARTICLE 3

#### SCOPE OF ARCHITECT'S BASIC SERVICES

3.1. SCOPE OF BASIC SERVICES. Architect's Basic Services consist of those described in Article 2 and this Article 3, Sections 10.6 and 10.7 and any other services identified in Article 13, and include such structural, mechanical, electrical and plumbing and engineering services and such other design/engineering services that are normally and customarily required of projects similar in scope, size and complexity to the Project (the "**Basic Services**").

3.1.1. General. Architect shall, during each Phase of design referenced in this Article 3, submit to Developer and such others as reasonably designated by Developer, "in process" plans, specifications and other documents, and shall meet with Developer to enable Developer to perform cost estimating, Value Engineering, constructability review and scheduling functions. Architect shall also meet, as may be requested by the Authority or as necessary, with City and County officials and other Persons as required by Developer. Architect's Basic Services shall include all consultation and coordination contemplated by this Section 3.1.2. Architect and Developer agree to use all commercially reasonable efforts to fully communicate and cooperate with each other.

3.1.2. Procedures. In performing all aspects of its Services, Architect shall observe the following procedures:

3.1.2.1. Meet with and report to Developer during all Phases.

3.1.2.2. Coordinate its services with Developer, members of the Project Team and other consultants as determined by Developer.

3.1.2.3. Coordinate the services of the Architect's Consultants.

3.1.2.4. Provide timely printed notes of all meetings between Architect and any other member of the Project Team.

3.1.2.5. Meet with, and make presentations to, individuals, committees, area planning agencies, local, state and federal agencies and other entities having jurisdiction over, or otherwise having an interest in, the Project as reasonably required by Developer.

3.1.2.6. Submit all documentation to Developer or Project Team members as directed by Developer in a timely fashion.

3.1.2.7. Obtain Developer's approval of all design concepts.

3.1.2.8. As reasonably requested by Developer, provide a record of quantitative information characterizing the areas contained within each Design Phase in reasonable detail and comparing them with the areas contained within the Architectural Program.

3.1.2.9. Provide typed, printed and electronic copies of all Design Documents and communications to Developer at all stages of design.

3.1.3. Services. Architect shall provide the following services in accordance with the Standard of Care during all Project Phases:

3.1.3.1. Furnish to Developer and present all architectural and engineering data necessary for review and approval of applications to any Governmental Authority, insurance companies, MLS officials, financial consultants or counsel.

3.1.3.2. Coordinate and hold meetings during each Project Phase with the Project Team and any other individuals Developer identifies when required by Developer or this Agreement.

3.1.3.3. Prepare a reasonable number of graphic and narrative materials necessary for presentation to Developer, Governmental Authorities and community groups.

3.1.3.4. Comply with, and assist Developer in complying with, all Applicable Laws and applicable provisions of the MLS Documents. Architect will review the Design Documents with designated ADA "user" groups seeking input on areas of concern for any such group or groups.

3.1.3.5. Assist Developer in preparation of contract forms, including the General Conditions.

3.1.3.6. Prepare typical models, computer aided design renderings and graphics in 2-D and 3-D format to assist in for Developer's complete understanding of the design concepts being advanced by Architect.

3.1.3.7: Prepare five (5) high-quality, special-purpose renderings to be used by Developer for purposes of marketing the Project. The content and style of these renderings are to be mutually approved by Architect and Developer. These five (5) renderings are in addition to the design renderings and graphics required for design communication in Section 3.1.3.6.

3.1.4. Coordination of Drawings. Architect shall be responsible for the coordination of all drawings and Design Documents relating to Architect's design and use on the Project, regardless of whether such drawings and Design Documents are prepared or performed by Architect, by Architect's Consultants, or by others if Developer directs Architect in writing to incorporate such work performed by others in the Design Documents. If preliminary or design development work has been performed by others, including Architect's Consultants, Architect is, nevertheless, fully responsible for and accepts full responsibility for such earlier work when Architect performs subsequent phases of the Basic Services called for under this Agreement, as fully as if the preliminary, schematic and design development work had been performed by Architect itself. Architect shall be responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect shall be responsible for the completeness and accuracy of all Design Documents submitted by or through Architect and for their compliance with all Applicable Laws in accordance with the Standard of Care. The Parties agree that the Project Schedule to be utilized to obtain beneficial occupancy of the Project at the earliest feasible time requires Architect's issuance of portions of the Contract Documents for bidding, contracting and constructing portions of the Work prior to completion of remaining portions of the Contract Documents. Developer acknowledges that the Project Schedule may preclude overall coordination and completion of each portion of the Contract Documents at the time of their issuance, require subsequent revisions to the Contract Documents to effect their overall coordination and completion and require corresponding construction Changes Orders adjusting the Contract Sum. Developer shall maintain a reasonable contingency for such changes.

3.1.5. Assistance in Cost Estimating and Participation in Value Engineering Program. Architect shall work closely with the Project Team throughout the process so that, to the extent reasonably feasible, the Project meets Developer's requirements within the Project Budget. As requested by Developer, Architect shall assist Construction Manager from time to time in providing estimates of Construction Cost for the Project based upon the current Design Documents prepared by Architect. Architect shall have the right to rely on the accuracy of Construction Manager's cost estimates. However, Architect shall notify Developer and Construction Manager in writing if it is aware of elements contained within the estimates of Construction Cost that do not comply with the Project requirements. Architect shall participate in the Value Engineering Program (the "**VE Program**") developed by Developer, with the advice of Project Manager, Architect and Construction Manager, to provide alternate solutions, systems, materials or techniques to achieve Project requirements. The VE Program shall encompass all major facility elements and will consist of such sessions as are necessary from time to time based on the phase of completion of the Design Documents. Through and until the later of (a) the end of the Design Development Phase or (b) the establishment of the GMP, Architect, in conjunction

with Construction Manager, shall provide, as appropriate, alternative design solutions regarding major design features to allow Developer to ascertain that the recommended design achieves a desirable and practical programmatic and economic solution within the limitations of the approved Project Budget.

3.1.6. Site Review. In providing Basic Services hereunder, Architect is required to analyze those aspects of the existing Site and its already existing utility systems and other infrastructure, including existing and planned transportation systems to determine in accordance with the Standard of Care that the program contemplated by Developer may be constructed and operated as contemplated by Developer. Additionally, Architect will evaluate the water and sewer mains, natural gas and utility lines and all other systems that serve the Site, to the end that the drawings and specifications provided by Architect and the Work to be constructed will provide Developer with its contemplated finished product of a fully functioning, appropriate and effective stadium. Architect will develop its plans and designs taking into consideration the existence of current and known future site utilities such that the construction of the Work will not require rerouting and removal of such utilities except as designated in the Design Documents. Architect's obligations under this Section 3.1.6 shall be performed based on information obtained by the Architect through its investigation of the Site consistent with its Standard of Care, including, without limitation, information regarding the Site provided to Architect by Developer.

3.1.7. Developer's Right of Approval of Architect's Work. Developer shall have the right to disapprove any portion of Architect's work on the Project, including work performed during the Conceptual Design Phase, Schematic Design Phase, and Design Development Phase, and any other design work or documents, on any reasonable basis, including aesthetics, or because in Developer's reasonable opinion, the Construction Cost of such design is likely to exceed the Project Budget or otherwise render such Work or the Project not feasible. If any Phase of Architect's work is not approved by Developer, Architect shall proceed, when requested by Developer, with revisions to the design work or documents prepared for that Phase to attempt to resolve Developer's objections and such revisions will be made without adjustments to the compensation provided for hereunder, except where such disapproval is contrary to a prior written approval by or written direction from Developer or Developer's Representative.

### 3.2. CONCEPTUAL DESIGN PHASE.

3.2.1. Development Schedule. Architect agrees to work with Developer and Project Manager to develop the Development Schedule and with the Construction Manager to develop the Construction Schedule. Once the Development Schedule has been agreed to by the Project Team, Architect agrees to comply with those time parameters established for Architect's services as set forth in the Development Schedule, conditioned upon and subject to the timely performance by Developer of its responsibilities required hereunder as specifically necessary for Architect's timely performance of its services.

3.2.2. Design Concept Meetings. Architect shall document the results of design concept meetings in which design factors are agreed to, modifications to previous designs are

made and other material design and construction issues are discussed. Architect shall furnish a copy of the documentation produced under this Section 3.2.3 to each participant attending the design concept meeting, and to Developer, Project Manager and Construction Manager.

3.2.3. Architectural Program. Architect shall prepare the Architectural Program for the review and written approval of Developer, with the advice of Project Manager. When approved by Developer in writing, the Architectural Program shall thereafter form the basis for the preparation of the Design Documents for the Project. Developer may request changes or revisions to the Architectural Program at any time during the Project, recognizing that whether or not such changes or revisions result in Additional Services will be determined in accordance with the terms of this Agreement.

3.2.4. Conceptual Design Phase Services. Based upon the approved Architectural Program, Architect shall prepare the Conceptual Design Documents and submit the same to Developer for Developer's written approval.

### 3.3. SCHEMATIC DESIGN PHASE.

3.3.1. Preparation of Schematic Design Documents. Architect shall not commence work on the Schematic Design Documents until Developer has approved the Conceptual Design Documents in writing. Based upon the Project requirements set forth in the Architectural Program, the Conceptual Design Documents and the Project Budget, Architect shall prepare, for written approval by Developer, based upon the advice and review of Project Manager and Construction Manager, Schematic Design Documents. Such documents shall also contain square footage calculations for the building interior spaces, building exterior spaces (including plazas and seating configurations), elevations of the Project, and sections through the Project and Site as well as the major architectural and interior finishes. The Schematic Design Documents shall address all elements, components and systems of the Project. As a part of the Schematic Design Documents, each of Architect's specialty consultants shall provide written statements describing the systems that they believe are appropriate for the Project, in the specific context of the Schematic Design Documents. The Schematic Design Documents shall be timely submitted to Developer for review and written approval in accordance with the Design Schedule.

3.3.2. Alternative Design Solutions. Architect will participate in the VE Program during the Schematic Design Phase and incorporate changes in the Schematic Documents approved by Developer in writing.

3.3.3. Architect Review of Construction Cost. Architect shall review and evaluate the estimate of Construction Cost prepared by Construction Manager at the completion of Schematic Design Phase. If the estimate of Construction Cost exceeds the Project Budget, either Developer shall increase the Project Budget or require Architect to revise the Architectural Program, Conceptual Design Documents or Schematic Design Documents in scope or quality so that the estimate of Construction Cost is within the Project Budget. Architect shall make such revisions without additional fee or expense to Developer. Architect, after review of the estimate of Construction Cost, shall also advise Developer of any Project scope items that, in Architect's

judgment, may have been in error or omitted from the estimate of Construction Cost prepared by Construction Manager.

### 3.4. DESIGN DEVELOPMENT PHASE.

3.4.1. Design Development Documents. Architect will not commence work on the Design Development Documents until Developer has approved the Schematic Design Documents in writing and there has been a reconciliation between the most recent estimate of Construction Cost and the Project Budget. Based on approved Schematic Design Documents and any revisions authorized in writing by Developer in the Architectural Program or Schematic Design Documents that adjust the scope or quality of the Project or revisions by Developer to the Project Budget, Architect will prepare the Design Development Documents. The Design Development Documents shall be based, in part, upon data and estimates prepared by Construction Manager and shall consist of design criteria, drawings, outline specifications, study models and other documents that establish and describe the size and character of the entire Project and architectural, structural, food service and concession, mechanical, electrical and plumbing systems, materials and such other essential elements as may be appropriate. The Design Development Documents shall include typical construction details, equipment layouts and specifications that identify major materials and systems for a project of the scope, size and complexity of this Project. The Design Development Documents shall incorporate the accepted resolution of all Developer comments on the Schematic Design Documents submittal consistent with the Standard of Care and requirements of Applicable Laws. During the Design Development Phase, Architect shall develop building systems, including architectural, civil, structural, mechanical, electrical, plumbing, HVAC, acoustic, automated movement, security, on-site utility, signage, signage related graphics, media broadcasting, and fire protection systems. Architect shall also develop and prepare design development floor plans, elevations, enlarged floor plans and miscellaneous details for presentation to Developer. Such plans shall provide for architectural, mechanical, structural, electrical, plumbing, vertical transportation, equipment, furnishings and such other elements as may be appropriate. The Design Development Documents shall be timely submitted to Developer for review and written approval in accordance with the Design Schedule.

3.4.2. Distribution of Design Development Documents. Architect shall provide drawings and other documents that depict the current status of development for Developer's, Project Manager's and Construction Manager's information, review and comment upon 50% progress and completion of Design Development Documents.

3.4.3. Review of Budget. Architect shall review, evaluate and discuss with Developer and Construction Manager the estimates of Construction Cost prepared by Construction Manager, which will include at 50% progress and completion of the Design Development Documents. As part of such review, Architect will evaluate whether Construction Manager's assumptions and take-offs are reasonable, whether materials and systems were estimated in accordance with design intent and whether labor and unit pricing on elements of the Project are consistent with Architect's knowledge based on projects similar in scope, size and complexity. Architect shall participate in the VE Program during the Design Development Phase, if necessary. Any revisions to the Design Development Documents as a result of the VE



Program, if applicable, shall be without additional fee to Developer. Upon the conclusion of Architect's review process as described herein, Architect shall provide to Developer a written evaluation of the estimate of Construction Cost. As a part of its evaluation, Architect shall state in writing whether in Architect's opinion any proposed changes arising from its review process are fully appropriate and will comply with the Applicable Laws and the Architectural Program. Architect shall only make revisions to the scope of work characterized by the Design Development Documents with Developer's written consent.

### 3.5. CONSTRUCTION DOCUMENTS PHASE.

3.5.1. GMP Development. Architect understands that the Construction Budget contains a fixed limit of Construction Cost available for the Project. The GMP ultimately agreed upon shall not exceed the Construction Cost limitation set forth in the Construction Budget and shall include all elements of the Architectural Program, unless specifically authorized otherwise by Developer in writing. Accordingly, Architect shall use commercially reasonable efforts to assist Developer in achieving a GMP that, to the extent reasonably feasible, does not exceed the Construction Budget and contains the full project program and scope set forth in the Architectural Program and the approved Design Development Documents.

3.5.1.1. On or before the date set forth in the Design Schedule, based on the approved Design Development Documents, Architect shall prepare, for written approval by Developer, after review and advice from Project Manager, the GMP Drawings and Specifications. The GMP Drawings and Specifications shall take into account all Applicable Laws, the MLS Document and LEED certification requirements, to the extent applicable, and shall meet the level of detail set forth in **Exhibit D**. After receipt of the GMP Drawings and Specifications, the Construction Manager shall submit to Developer, with copies to Project Manager and Architect, its proposed GMP and its qualifications and assumptions based upon the GMP Drawings and Specifications within the period set forth in the CM Agreement. After Developer receives the proposed GMP and GMP qualifications and assumptions, Construction Manager, Developer, Project Manager and Architect (along with Architect's Consultants) shall meet as promptly as possible, but in any event within not more than fourteen (14) days, to reconcile any questions, discrepancies or disagreements relating to the GMP proposal, the GMP qualifications and assumptions, the GMP Drawings and Specifications. The reconciliation shall be documented by an addendum to the GMP qualifications and assumptions that shall be approved in writing by Developer, Architect and Construction Manager. Construction Manager shall then submit to Developer, for Developer's approval, Construction Manager's proposed final GMP based upon the GMP Drawings and Specifications, the approved GMP Qualifications and Assumptions. Once approved, the foregoing documents will be signed by Developer, Construction Manager and Architect and shall constitute the GMP Documents.

3.5.2. Preparation of Construction Documents. Based on previously approved Design Development Documents and any further adjustments authorized in writing by Developer in the scope of the Project, the Construction Budget or the Construction Schedule, Architect shall prepare, for written approval by Developer, Construction Documents consisting of drawings and

specifications setting forth in detail the requirements for construction of the Project. The Construction Documents shall also incorporate the final resolution of review comments from Developer and other authorities having jurisdiction over the Design Development Documents, provided such review comments are provided promptly so as to avoid unreasonable delay in the orderly and sequential progress of Architect's services. Architect shall not incorporate terms in the Contract Documents (including the General Conditions) that are inconsistent with this Agreement unless, after full written disclosure by Architect to Developer of the nature, scope, and impact of any inconsistency or lack of coordination, such change is nonetheless demanded by Developer in writing.

3.5.3. Conformed Construction Documents. At intervals mutually agreeable to Developer, Construction Manager and Architect, Architect shall provide copies of Construction Documents for Developer's and Construction Manager's review. Architect shall prepare conformed Construction Documents that indicate any and all revisions made to the initial set of Construction Documents for each Design Document Package issued pursuant to Architect's Design Schedule.

3.5.4. Preparation and Submittal of Construction Documents. Upon completion of the Construction Documents Phase, Architect shall provide Construction Documents for Developer's written approval. By submitting same to Construction Manager for construction, Architect represents that Architect has informed Developer in writing of any tests, inspections, studies, analyses or reports that Architect deems necessary or advisable to be performed by or for Developer in relation to such Construction Documents. Without limiting the foregoing, such tests shall include all testing in compliance with or required under the International Building Code for a project similar in size and purpose to the Project. The review and approval of the Construction Documents by Developer shall not relieve Architect of its responsibility for compliance with applicable statutes, regulations, and codes, or for design deficiencies, omissions or errors.

3.5.4.1. Architect services during this Phase shall include the following:

(a) Architect shall submit documents for review or approval to all Governmental Authorities having jurisdiction over the Project; Architect shall submit copies of all approvals obtained by Architect to Developer. Architect will work with Construction Manager in determining any building or such other permits that are Developer's responsibility for the Project. Architect shall prepare and submit the necessary forms and applications required and shall assemble the Contract Documents necessary to obtain such building or other permits and approvals. Architect shall also be responsible for promptly responding to requests for information and clarification from such Governmental Authorities as part of the applicable review and approval process and Contract Documents. Architect shall attend and participate, as appropriate, in all governmental or administrative hearings or meetings and other meetings in connection with this Section 3.5.3. Notwithstanding the foregoing, Architect shall not be responsible for obtaining or procuring Subcontractor permits.

(b) Inclusion in the Construction Documents of the following documents in accordance with the Standard of Care set forth herein: (i) plans, elevations, and sections at a scale that is sufficient to give a reasonably clear understanding of the construction, dimensions thereof, materials to be employed, location of utilities and any other pertinent data, (ii) details, diagrams, schedules, photographic reproductions, and other pictorial methods appropriate to define work required to be performed to accomplish the purposes of the Project, and (iii) description of existing conditions of the Site or structures with sufficient clarity to permit their use in the bidding and construction purposes of the process. Relevant design calculations, including those for structural, mechanical, electrical and plumbing work may be submitted separately for approvals or Construction Manager's information.

(c) Unless otherwise agreed to by Developer in writing, the format shall generally follow the divisions of the Construction Specifications Institute. The technical sections of the specifications shall concisely describe the materials to be installed and services to be employed by the Construction Manager or its Subcontractors in the completion of the Work. Such specifications of the Construction Documents shall describe the Work to be done and shall be arranged by work or material in appropriate divisions with suitable cross references for clarity and continuity. The technical sections of the specifications shall be detailed sufficiently to provide a reasonably clear understanding of the Work required with reasonable clarity as to which technical sections of the specifications covers each element of work. The technical sections of the specifications shall state with reasonable clarity the minimum grade, quality, and type of materials and workmanship required. Such specifications shall not restrict competition, where it is available, but shall state a level of quality, which can be objectively determined by Persons normally engaged in the type of trade or practice described. When two or more manufacturers offer materials, equipment or devices of equal quality and usability needed for the Project, Architect shall list several such manufacturers for use on the Project or both if only two manufacturers are available and shall provide its recommendation with respect to such manufacturers.

3.5.4.2. Developer may, in its discretion, issue a written list of recommended changes/corrections to be incorporated in the Construction Documents. Architect shall transmit written replies to review comments issued by Developer or for which clarification requests were identified or for which changes were authorized by Developer and communicated to Architect. Written directions by Developer shall be incorporated into the Construction Documents unless doing so would violate Applicable Law in Architect's reasonable opinion, which opinion shall be communicated in writing to Developer.

### 3.6. BIDDING OR NEGOTIATION PHASE.

3.6.1. Bidding Process. Upon determination by Architect that the final design for each bid package is represented by completed Construction Documents, those documents shall be submitted to Developer and Construction Manager for review and written acceptance prior to release for bidding. Architect shall assist Construction Manager and Developer in the preparation of the necessary bidding information, bidding forms and the General Conditions. Architect shall serve as the professional consultant and advisor to Developer during the bidding

process, including the preparation for and participation in all pre-bid conferences and pre-award conferences.

3.6.2. Bid Packages; Bidding. Architect acknowledges that this Project will be conducted on a multiple and phased bid package basis with four (4) bid packages as described in Exhibit C, and that, accordingly, multiple Subcontractors will be utilized. As a result of the use of multiple and phased bid packages, the Construction Documents may require refinement and detailing from time to time in order to coordinate among the various document issuances, and the cost of all such refinement and detailing shall be included as a Basic Service.

3.6.3. Responses to Bidder Inquiries. During the bidding period, Architect shall assist Developer and Construction Manager in responding to bidder inquiries and Architect shall prepare and issue, in an expeditious manner so as not to cause an unnecessary delay (as reasonably determined by Developer) in the bidding schedule, necessary addenda required to clarify, explain, modify or revise the Contract Documents.

3.6.4. Responses to Requests. Architect shall prepare responses to questions, requests for clarification and information from prospective bidders and provide clarification and interpretations of the bidding documents as Architect deems appropriate by addenda.

3.6.5. Review of Bids. Architect shall assist Developer and Construction Manager in reviewing and analyzing Subcontractor bids.

3.6.6. Requests for Substitution. Architect shall consider requests for substitutions submitted by Construction Manager, any Subcontractor or any bidder, and shall recommend to Developer approval only if such substitutions are: (a) permitted by the bidding documents, (b) proposed as alternates to specified items, and (c) such substitutions provide a more economical solution, system or material without compromising quality in the professional opinion of Architect. If following such recommendation any such substitution is approved by Developer in writing, Architect shall prepare and submit to Construction Manager for distribution, addenda identifying approved substitutions to all prospective bidders.

3.6.7. Responses to Requests for Substitution. If the total hours expended by Architect during the course of the Project reviewing and documenting proposed substitutions exceeds one hundred (100) total hours, then Architect shall so advise Developer and upon Developer's written approval, Architect shall thereafter continue to review and document proposed substitutions and prepare such addenda as an Additional Service hereunder.

### 3.7. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT.

3.7.1. Basic Services for Construction Phase. Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences on Construction Manager's award of the first Subcontract for construction and terminates at the issuance to and approval by Developer of a Final Certificate for Payment, except for the post-occupancy reviews required under this Agreement. However, if Architect's services during the

Construction Phase extend beyond ninety (90) days after the date of Substantial Completion of the Project, except for post-occupancy reviews required under this Agreement, Architect shall provide such services upon the expiration of such respective periods as an Additional Service as set forth in Section 4.1; provided, however, based on the fact that the anticipated date of Substantial Completion will be during the 2012 MLS season, if access to the Stadium by the Construction Manager and Architect for Project close-out is prohibited strictly because of the Team's required use of the Stadium, Developer may request Architect's approval to extend such ninety day period to the end of the MLS season, such approval not to be unreasonably withheld, delayed or conditioned.

3.7.2. Contract Administration. Architect shall provide administration of the construction contracts relating to the Work, as set forth herein and in the General Conditions, including Work performed by Construction Manager under the CM Agreement or by its Subcontractors and the Work performed by Separate Contractors under their respective construction contracts.

3.7.3. Limitations of Authority. The Construction Phase duties, responsibilities and limitations of authority of Architect may be reasonably restricted, modified or extended by Developer after the date of this Agreement with adjustments, if any, in compensation only as mutually agreed upon in writing by Developer and Architect.

3.7.4. Authority of Architect; Meeting Attendance, Participation. Architect shall be a representative of Developer and shall advise and consult with Developer, Project Manager and Construction Manager as provided herein. Architect shall have the authority to act on behalf of Developer only to the extent provided in this Agreement and the General Conditions, unless otherwise modified by written instrument signed by Developer and Architect. Architect shall attend and participate in all Project progress meetings, which shall be held on a periodic basis appropriate to the size, the complexity and scope of the Project Phase. At such Project progress meetings, Developer, Project Manager, Architect, Construction Manager and any appropriate Subcontractor may discuss and resolve administrative matters and discuss other matters such as job progress, construction issues, scheduling and other matters relating to the timely and successful completion of the Project in accordance with the applicable Contract Documents.

3.7.5. On-Site Responsibility; Evaluation Reports Architect, as a representative of Developer, shall review the Project at intervals appropriate to the various stages of construction as Architect deems necessary, in accordance with the Standard of Care, to sufficiently familiarize Architect with the Work (which, in any event, shall not be less than on a bi-weekly basis and more frequently as determined necessary and appropriate by Architect) in order to provide Developer the certifications required hereunder, to evaluate directly the progress and quality of the Work completed and to determine if the Work is proceeding in accordance with the requirements of the Contract Documents (and the Construction Schedule). On the basis of such on-site evaluations, Architect shall keep Developer, Project Manager and Construction Manager informed of the progress and quality of the Work and, in accordance with the Standard of Care, guard Developer against defects and deficiencies in the Work. Although Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, Architect will exercise the Standard of Care and diligence required

hereunder in reviewing the quality and quantity of the Work on at least a weekly basis as part of Architect's Basic Services. Architect shall issue written reports of its review of the Work within five (5) days of each such evaluation.

3.7.6. Services of Construction Manager. Architect shall not have control over or charge of and shall not be responsible for or require any particular construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Architect shall not be responsible for the services provided by Construction Manager. However, if Architect, in the performance of its duties and obligations under this Agreement, observes any construction means, methods, techniques, sequences or procedures or unsafe conditions, or any Work being carried out by the Construction Manager or any Subcontractor or Separate Contractor, which to the knowledge of Architect is not in accordance with the Contract Documents and that Architect recognizes as presenting an imminent danger of serious bodily harm or death, then Architect shall immediately communicate such information to Construction Manager and Developer.

3.7.7. Access to Work. Architect shall at all times have access to the Work wherever it is in preparation or progress, subject to reasonable safety rules and regulations established by Construction Manager and Developer.

3.7.8. Communications. Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, Subcontractors shall communicate with Architect through Construction Manager. Communications by and with Architect's Consultants shall be through Architect and from time to time, as specifically authorized by Architect, directly with Construction Manager or its designated Subcontractors. Copies of all significant communications between Developer, Construction Manager and Subcontractors affecting Architect's services shall be provided to Architect in a timely manner.

3.7.9. Review of Applications for Payment. Based on Architect's evaluation of the progress of construction and quality of the Work, Architect shall review each Application for Payment (whether from Construction Manager or any Separate Contractor) and shall certify the amounts properly due and payable within ten (10) days after its receipt of the Application for Payment.

3.7.9.1. Architect's certification for payment shall constitute a representation to Developer, based on Architect's evaluations at the Site, as provided in Section 3.7.5, and the data comprising the Applications for Payment, that, to the best of Architect's knowledge, information and belief, the Work has progressed to the point indicated in the Application and the quality of the Work is in accordance with the Contract Documents. Construction Manager shall receive all individual Subcontractor Applications, incorporate them into Construction Manager's Application for Payment and forward them in a single pay application for each pay period to Developer with a copy to Project Manager and Architect. The issuance of a Certificate for Payment shall further constitute a representation by Architect to Developer that Construction Manager is entitled to payment of the amount certified. Architect shall coordinate with Construction Manager to maintain a record of all Applications for Payment.

3.7.10. Architect's Authority. Architect shall report to Developer, in accordance with the Standard of Care, deviations from the Contract Documents that Architect observes. Architect shall have authority, with written notification to Developer, to reject Work that does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect will have authority, upon written authorization from Developer, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of Architect nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or a responsibility of Architect to Construction Manager, Subcontractors, Suppliers, their agents or employees or any other Person performing portions of the Work.

3.7.11. Requests for Information; Submittals. Construction Manager shall review Requests for Information ("**Requests**") and Submittals for completeness and conformity with the specified standards of submission before any such Request or Submittal is transmitted to Architect. Architect shall cooperate with Developer in the establishment of a uniform "online" system for the timely and prompt processing of Requests and Submittals. Such system shall be coordinated with Construction Manager's system for processing such Requests and Submittals. Architect shall maintain a master log with a detailed record of the status of each Request and Submittal. Architect shall review and approve or take other appropriate action upon Submittals and Requests to determine design conformance with the design intent expressed in the Contract Documents and for the purpose of determining whether the Work affected and represented by such Requests and Submittals is in general conformance with the requirements of the Contract Documents. Design clarifications shall be developed and issued in writing by Architect to Construction Manager for review and processing. Architect's action with respect to Requests and Submittals shall be taken promptly so as to avoid delay in the Work while allowing sufficient time in Architect's professional judgment to permit adequate review. Notwithstanding the foregoing, consistent with the processing system jointly developed and agreed to by Construction Manager and Architect, Architect's review of: (a) Requests shall, except in unusual circumstances about which Architect shall notify Program Manager and Construction Manager in writing within five (5) days after submission, be completed not later than ten (10) days of receipt by Architect; and (b) Submittals shall, except in unusual circumstances about which Architect shall notify Program Manager and Construction Manager in writing with seven (7) days after submission, be completed not later than fourteen (14) days of receipt by Architect; provided always that Construction Manager and Architect agree upon a submittal schedule and such Submittal is submitted in accordance with the agreed to submittal schedule. Submittals that require review by multiple consultants may require twenty-one (21) days for review. Architect shall promptly advise Developer and Construction Manager of any instances wherein Architect's review of a Request or Submittal, as applicable, may extend beyond the time period stated in this Section 3.7.11, and Architect may request additional time for review. In such event, Architect shall provide to Developer a detailed explanation of the reason for and the amount of the additional time necessary for such review. Architect's request for additional time for review and response to a Submittal or a Request shall be subject to the reasonable review and approval of Developer. Unless otherwise specifically stated by Architect in writing, Architect's review of Requests and Submittals shall not include a review of construction means, methods,

techniques, sequences, procedures, safety issues, tolerances, quantities, dimensioning or fabrication processes except that Architect shall review any of the foregoing to the extent specifically included by Architect in the Construction Documents, and Architect may, in its discretion, comment on any of the foregoing issues observed in Submittals without assuming any obligation for additional review of such Submittal or equivalent or additional review of future Submittals. Architect shall coordinate with Construction Manager to maintain a record of all Requests and Submittals.

3.7.12. Certification of Systems, Materials or Equipment. If professional design services or certification by a design professional related to systems, materials or equipment are specifically required of the Subcontractor, Architect shall specify in writing appropriate design and performance criteria that such services must satisfy. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, Architect shall be entitled to rely upon such certification provided by design professionals retained by the Subcontractor to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents, unless Architect knew or should have known that such certification was not correct.

3.7.13. Change Orders: Construction Change Directives. As requested by Developer, Architect shall prepare, review, sign or take other appropriate action on Change Orders and Construction Change Directives, and review, sign or take other appropriate action on Change Orders prepared by Construction Manager for Developer's approval and execution in accordance with the Contract Documents. Architect shall review requests by Construction Manager or Developer for changes in the Work. If Architect determines that implementation of the requested changes would result in a material change that may cause an adjustment in the Contract Time or Contract Sum, Architect shall so advise Developer, and Developer may reject or accept such change, or authorize further investigation of such change. Architect shall review and take appropriate action upon any proposed Change Orders with respect to Construction Manager's services. Architect shall maintain a system to record all Change Order requests, Construction Change Directives and Change Orders that is coordinated with Construction Manager's system for such documents.

3.7.14. Changes in Work. Architect, with the approval of Developer, may authorize minor changes in Work not involving an adjustment in the Contract Sum or an extension of the Contract Time that are consistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through Construction Manager. Architect shall provide drawings, specifications and other documentation and supporting data in connection with such minor changes, Change Orders and Construction Change Directives as Basic Services.

3.7.15. Punch List Administration. Architect and Project Manager, assisted by Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. Construction Manager shall prepare the initial Punch List and distribute it to each Subcontractor for corrective action, with a copy to Architect, Project Manager and Developer. After Construction Manager has confirmed that the Subcontractor has taken the necessary corrective action, Architect shall review the items initially



contained on the Punch List to confirm the appropriate corrective action has been taken and, as necessary, supplement the Punch List initially prepared by Construction Manager. Upon determining that the Work, or a designated portion thereof, is Substantially Complete, Architect shall prepare and submit a Certificate of Substantial Completion. Warranties and similar submittals required by the Contract Documents that have been received from Construction Manager shall be reviewed by Architect and forwarded to Developer. Architect shall issue a Final Certificate for Payment based upon Architect's final inspection indicating that the Work is Finally Complete and, to the best of Architect's knowledge, information and belief, the Work complies with the Contract Documents. Architect shall cooperate with Developer and Construction Manager to develop a process for performing and administering Punch List reviews and Construction Manager shall communicate this process to appropriate parties involved in the construction of the Project.

3.7.16. Contractor Performance. Architect shall assist Developer in interpreting and providing recommendations concerning self-performance by Construction Manager of any of the Work that could otherwise be performed by a Subcontractor under the requirements of the Contract Documents upon written request of Developer. Architect's response to such requests shall be made within ten (10) days after Architect's receipt of a request unless Architect notifies Developer in writing with five (5) days after such request that a reasonable period of additional time is required, in which event the time period shall be extended for a reasonable period of time as mutually agreed by Architect and Developer in writing.

3.7.17. Interpretations of Architect. Interpretations of Architect shall be consistent with the intent of or reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

3.7.18. Notice from Architect. Architect shall give prompt written notice to Developer if Architect becomes aware of any fault, defect, error, omission, or inconsistency in the Project or in the Contract Documents.

3.7.19. Claims Administration – Assist Developer. Architect shall assist Developer regarding claims, disputes or other matters in question relating to the execution or progress of the Work as provided in the Contract Documents.

3.7.20. Claims Administration - Written Recommendations. Architect shall render written recommendations within a reasonable time, not to exceed fourteen (14) days after Architect's receipt of a written claim, on all claims, disputes or other matters in question relating to the execution or progress of the Work as provided in the Contract Documents.

3.7.21. Start-up and Operations. Architect shall meet with Developer promptly prior to Substantial Completion of the Project to review issues relating to facility start-up and operations.

3.7.22. Project Inspection of Performance. Architect shall review and inspect the Project and the Project's performance for any deficiencies at eleven (11) months from the date of Substantial Completion of each element of the Project. Architect will provide a written report to

Developer within fifteen (15) days of the completion of such reviews and inspections. Architect shall advise Developer of any deficiencies observed during the performance of such reviews.

3.7.23. Record Drawings; Access to Files. Upon completion of the Work, Architect shall compile and deliver to Developer two (2) sets of reproducible record drawings and electronic drawing files conforming to information furnished to Architect by Construction Manager regarding changes in the Work made during construction, including marked up prints, drawings and other data, and revisions and updated information produced by Architect and Architect's Consultants during the Construction Document and Construction Phases to previously issued Construction Documents. To the extent that record drawings are based on information provided to Architect, and revisions and updated information produced, by parties other than Architect and Architect's Consultants, Architect shall not have responsibility for the accuracy of the information contained in such record documents to the extent such information was provided by others. Developer shall have reasonable access to the files of Architect relating to the Project; Developer's access to such files shall survive the termination or completion of this Agreement.

## ARTICLE 4

### ADDITIONAL SERVICES

#### 4.1. GENERAL.

4.1.1. Additional Services - Generally. The services described in this Article 4 are not included in Basic Services, unless identified in other provisions of this Agreement, and are defined as "***Additional Services***" that upon the prior written approval of Developer, and performance thereof by Architect, shall be paid for in addition to the compensation for Basic Services. Unless Developer approves in writing any services described in this Article 4 prior to Architect undertaking such services, the provision of such services shall be deemed part of Basic Services.

4.1.1.1. Unless Developer directs otherwise, Architect shall perform all Additional Services at the rates stated in **Exhibit H**, Architect's Billing Rates, plus its Reimbursable Expenses incurred in providing such Additional Services. If such Services are provided by Architect's Consultants, Architect shall be reimbursed at the cost charged by such Architect's Consultants (so long as it is first approved in writing by Developer) plus five percent (5%). Developer and Architect may agree on a fixed or maximum fee for any item of Additional Services.

4.1.1.2. Architect shall perform all Additional Services Developer requests in writing. If any dispute arises between Architect and Developer concerning the maximum fee for, or other issue concerning, such Additional Services, Architect shall, nevertheless, diligently and timely perform such services, and the disputed issue shall be resolved pursuant to Article 8.

4.1.2. MLS and Applicable Law Changes. Services not reasonably included in Basic Services and reasonably necessary to make material changes in drawings, specifications or other documents after the completion of any applicable set of Design Documents, when such changes are required to address changes occurring in the MLS Documents and MLS Requirements or in Applicable Laws that were not reasonably anticipated by Architect at the time of preparation of the applicable set of Design GMP Documents. At such time, if any, that Developer knows such a change in MLS Documents and MLS Requirements or in Applicable Laws has occurred, Developer shall advise Architect thereof as soon as reasonably practical.

4.1.3. Other Significant Changes. Services not reasonably included in Basic Services and reasonably necessary to make material changes in drawings, specifications or other documents after the completion of any applicable set of Design Documents, when such changes are required to address significant changes in the Project not set forth in or reasonably inferable from, or inconsistent with, the previous written approvals or instructions of Developer, including material changes in size, quality, complexity of the Project, or material changes in the Construction Schedule, which may include approved Change Orders or Construction Change Directives. Architect and Developer acknowledge and agree that significant changes in the Project, as used herein, shall not include those items or components of the Project that (a) were eliminated, modified or deferred in the Construction Budget as part of the VE Program following the issuance of the applicable Design Documents and were subsequently included within the Project and/or Construction Budget, (b) are the result of incomplete or inaccurate work of Architect or (c) are included as add alternates in the Design Documents.

4.1.4. Substitutions. Providing services in connection with substitutions proposed by Construction Manager only when such substitutions, based on information submitted by Architect, require, in Developer's reasonable opinion, substantial revisions to the Construction Documents and other documentation resulting therefrom, unless such substitutions result from to Architect's failure to perform the Basic Services.

4.1.5. Replacement of Damaged Work. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

4.1.6. Termination of Construction Manager. Providing services made necessary by the termination or default of Construction Manager or by defects or deficiencies in the Work of Construction Manager.

4.1.7. Excessive Claims Evaluations. Providing services in evaluating an excessive number of claims (as determined mutually by Developer and Architect) submitted by Construction Manager in connection with the Work, provided that the claims are not the result of the errors or omissions of Architect.

4.1.8. Additional Consultant Services. Providing services of consultants identified in **Exhibit E** for other than architectural, structural, mechanical, electrical, plumbing, technical engineering, food service design, sound system design, broadcast technology, codes,

ADA accessibility, landscape, graphic and signage portions of the Project provided as a part of Basic Services, as further described in Article 13.

4.1.9. Additional Services resulting from VE Program. As described in Section 3.1.5, Architect's participation in the VE Program shall be a Basic Service through the establishment of the GMP. If Architect is required to provide redesign services associated with changes resulting from the VE Program, such redesign services shall not be an Additional Service, except to the extent necessitated by: (1) material errors in a previous cost estimate provided by the Construction Manager; (2) substantial and unforeseeable increases in the price(s) of materials specified by Architect, or (3) an unreasonable delay in the establishment of the GMP, in which case, such redesign services shall be Additional Services.

4.1.10. Life Cycle Cost Analysis. After Developer's acceptance of the GMP Drawings and Specifications, providing any additional life-cycle cost analysis of systems, equipment, materials and components planned to be incorporated in the Project, provided that Architect and Architect's Consultants have previously provided Developer with reasonably adequate analyses on which to base its decisions in accepting the systems, equipment, materials and components shown in the GMP Drawings and Specifications.

4.2. RESPONSIBILITY FOR ACTS OR OMISSIONS. Notwithstanding anything contained herein to the contrary, to the extent architectural or engineering services are made necessary by an act or omission, inconsistency or untimeliness of Architect or Architect's Consultants in the performance of its duties, responsibilities or obligations under this Agreement, Architect shall not be entitled to compensation for such services as an Additional Service under this Agreement.

## ARTICLE 5

### DEVELOPER'S RESPONSIBILITIES

5.1. DEVELOPER PROGRAM DEVELOPMENT. Developer shall, with the assistance of Architect, develop reasonable necessary information regarding Developer's requirements, objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and Site requirements for the Project to be used by Architect in its preparation of the Architectural Program.

5.2. OVERALL BUDGET. Developer shall advise Architect of the overall budget for the Project, which shall include the Project Budget, Architect's fees and expenses, and Developer's other costs and reasonable contingencies.

5.3. PROJECT MANAGER; PROJECT EXECUTIVE. Developer has retained Project Manager to provide project management services pursuant to a separate written agreement. Architect shall be entitled to rely on decisions made or information given by Developer Representative and information Architect transmits to Developer Representative shall be deemed to have been transmitted to Developer. Developer or such authorized representatives

shall render decisions in a timely manner pertaining to information, observations or requests submitted by Architect in writing in order to avoid unreasonable delay in the orderly and sequential progress of Architect's services. It shall be Architect's responsibility to timely advise Developer of all time requirements and restraints with respect to such approvals and decisions. Developer may change the Project Manager by written notice to Architect within five (5) days of such change. Project Manager is not responsible for design or construction management and none of the activities of Project Manager supplants or conflicts with any services or responsibilities customarily furnished by Architect or required of Construction Manager. All instructions by Developer to Architect relating to services performed by Architect will be issued or made by Developer in writing, with a copy to Project Manager. All communications and submittals of Architect to Developer shall be issued or made by Architect in writing to Developer, with a copy to Project Manager.

5.4. SURVEYING SERVICES. Developer shall furnish surveys describing the legal description of the Site. Developer shall obtain and furnish surveys that describe, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage, rights-of-way, encroachments, zoning, locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All of the information on the survey shall be referenced to a Project benchmark.

5.5. GEOTECHNICAL SERVICES AND SPECIAL INSPECTIONS: ADDITIONAL CONSULTANTS. Developer shall furnish the services of geotechnical engineers as reasonably determined by Developer to be appropriate after consultation with the Architect and Architect's Consultants. Such services shall include test borings, test pits, determinations of soil bearing values, percolation tests, and ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions and special inspection and testing as described in Article 13 with reports and appropriate professional recommendations. Architect shall review the reports and recommendations furnished pursuant to this Section 5.5 and either incorporate such information into the Design Documents without comment or, if reasonably necessary in accordance with the Standard of Care, advise Developer that such information is not reasonably sufficient to enable Architect to perform its Services in accordance with the Standard of Care and request any reasonably necessary revisions to the geotechnical engineer's scope of work to provide for reasonably sufficient information. Any revisions to the scope of services to be provided by such geotechnical engineers requested by Architect shall be subject to Developer's review and written approval. Developer shall furnish the services of additional consultants when such services are reasonably required by the scope of the Project, as mutually determined necessary by Architect and Developer, provided that Developer shall retain such consultants only if such consultants are not retained by Architect.

5.6. ENVIRONMENTAL TESTING. Developer shall use commercially reasonable efforts to cause the City to furnish all necessary tests for Hazardous Materials and other environmental tests, inspections and reports required by law or the Contract Documents.

5.7. LEGAL, ACCOUNTING AND INSURANCE COUNSELING. Developer shall furnish its own legal, accounting and insurance counseling services for the Project.

5.8. CERTIFICATIONS. To the extent that forms of certificates or certifications have not been agreed upon prior to the execution of this Agreement or attached hereto by way of exhibit, the proposed language of certificates or certifications requested of Architect or Architect's Consultants shall be submitted to Architect for review and approval at least ten (10) days prior to the requested or required execution date.

5.9. REQUIRED/REQUESTED INFORMATION. Notwithstanding anything to the contrary in this Article 5, Developer shall furnish information or services described in this Article 5 only to the extent that such information or service is both reasonably required and actually requested in writing by Architect in order to perform Architect's services under this Agreement.

5.10. DEVELOPER FURNISHED INFORMATION: TIMELY APPROVALS. Developer shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Architect's services. Developer represents, covenants and agrees to cooperate with Architect in making timely decisions regarding the interrelationship between the Architectural Program, the Project Schedule and Construction Budget, so that Architect can efficiently perform Architect's obligations under this Agreement.

## ARTICLE 6 CONSTRUCTION COST

### 6.1. RESPONSIBILITY FOR CONSTRUCTION COST.

6.1.1. Review of Construction Budget; Construction Cost Estimates. Architect acknowledges that Developer has advised Architect that the Construction Budget is the Developer's fixed limit of Construction Cost for the Project. Architect, as a design professional familiar with the construction industry and the design and construction of similar stadiums, including MLS stadiums, in comparable urban areas, shall assist Construction Manager in developing and evaluating the Construction Budget so as not to exceed the Project Budget, and shall review and accept or take exception to the estimates of Construction Cost prepared by Construction Manager during all Project Phases. Architect's review of the Construction Budget and all estimates of Construction Cost prepared by Construction Manager will be utilized by Architect in preparing the Design Documents. However, Architect does not warrant the accuracy of the estimates of Construction Cost prepared by Construction Manager or represent that bids or negotiated prices will not vary from the Construction Budget approved by Developer, or from the estimates of Construction Cost or other cost estimate or evaluation prepared by Construction Manager.

6.1.2. Developer Options During Pre-Bidding Phases. Notwithstanding any other provision herein, in the Schematic Design, Design Development, or Construction Documents Phases, if the estimate of Construction Cost prepared by Construction Manager exceeds the Project Budget, then Developer shall have the following options or combinations of options:

6.1.2.1. Request that Architect and Construction Manager review, evaluate and recommend options to bring the estimate of Construction Cost within the Project Budget;

6.1.2.2. Require Architect to modify and revise applicable Design Documents, without additional cost to Developer;

6.1.2.3. Authorize an increase in the Project Budget; or

6.1.2.4. Terminate this Agreement.

## ARTICLE 7

### USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

7.1. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP OF DESIGN DOCUMENTS. Upon full payment of all undisputed amounts due to Architect under this Agreement, all Design Documents (and all other Project-related documents, models, computer drawings and other electronic expression, photographs and other expressions) that Architect or Architect's Consultants prepare in connection with this Agreement and the copyrights therein (collectively, the "*Instruments of Service*") shall become the property of Developer. Architect covenants and agrees to execute any additional document reasonably requested by Developer to confirm such assignment without any additional compensation. Architect also agrees that it shall obtain from each of Architect's Consultant a written transfer and consent to transfer such Consultant's intellectual property rights to effectuate the foregoing.

Notwithstanding its ownership of the Instruments of Service, Developer acknowledges that it may only use the Instruments of Service for the purposes of constructing, using and repairing and maintaining the Project, extensions to or modifications of the Project, or correction of any deficiencies to the Project, subject to the following limitations: (1) Developer acknowledges that the Instruments of Service are not intended or represented by Architect to be suitable for: (a) use on the Project unless completed by Architect or Architect's Consultants, or (b) use or reuse by Developer or others on extensions or modifications of the Project or on any other project without written verification or adaption by Architect; (2) any such use or reuse, or any modification of the Instruments of Service, without written verification, completion, or adaption by Architect, as appropriate for the specific purpose intended, will be at the Developer's sole risk and without liability or legal exposure to Architect or to Architect's Consultants; (3) Developer shall indemnify and hold harmless Architect and Architect's Consultants from all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of or

resulting from any use, reuse, or modification of the Instruments of Service without written verification, completion, or adaption by Architect; and (4) Developer shall not transfer ownership of the Instruments of Service to any third parties other than the Authority, the City or the County, subject to the same limitations set forth herein. Architect shall be permitted to retain copies, including reproducible copies, of all Instruments of Service for information and reference.

Developer expressly acknowledges and agrees that the Instruments of Service will contain innumerable individual standard design details, features and concepts, which collectively form part of the design for the Project. These individual standard design details, features and concepts are repetitive in nature, not Project specific, function rather than form-oriented, and were pre-existing and not developed for or identifiable with the Project and Architect assigns no copyright in any such individual standard design details, features and concepts. Nothing herein shall be construed as a limitation on Architect's absolute right to re-use such individual standard design details, features and concepts on other projects, in other contexts or for other clients.

7.2. OWNERSHIP OF ELECTRONIC CADD ITEMS. Upon full payment of all undisputed amounts due to Architect under this Agreement, Architect and Architect's Consultants' electronic CADD (Computer Assisted Design and Drafting) files, tapes, disks, and similar items remain the property of Developer. Architect will provide these electronic items with revisions and updated information produced by Architect during the Construction Document and Construction Phases. Architect shall provide documents to others consistent in content and format with normal document production as reasonably determined by Architect. Developer understands that the use and conversion of electronic data to an alternate format may not be accomplished without the potential for introduction of anomalies or errors and that changes or modifications by anyone other than Architect may result in adverse consequences that Architect can neither predict nor control. Accordingly, Developer agrees that neither Architect nor any of Architect's Consultants shall be liable for and hereby waives all claims arising out of or connected with (a) the use, modification or misuse by Developer of such electronic data; or (b) the decline of accuracy or readability of the electronic data as a result of storage conditions, the passage of time, or otherwise; or (c) any use of said electronic data by any third parties receiving the electronic data from Developer.

## ARTICLE 8

### DISPUTE RESOLUTION

8.1. CLAIMS. Any claims brought under this Agreement shall be subject to the ADR Procedures. Failure of either party to comply with the provisions of the ADR Procedures shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such party of any claim with respect to which it fails to comply with the provisions of the ADR Procedures in any material respect.

8.2. CONTINUED PERFORMANCE. In the event of any dispute arising by or between Developer and Architect, each party shall continue to perform as required under the



Contract Documents notwithstanding the existence of such dispute. In the event of such a dispute, Developer shall continue to pay Architect as provided in the Contract Documents, except only such amount as may be disputed.

## ARTICLE 9

### TERMINATION, SUSPENSION OR ABANDONMENT

9.1. TERMINATION BY EITHER PARTY. This Agreement may be terminated by either party upon not less than thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Any notice shall state, in reasonable detail, the nature of the alleged default.

9.2. SUSPENSION. If the Project is suspended by Developer, Architect shall be compensated for services performed prior to Architect's receipt of written notice of suspension from Developer. If the Project is suspended for more than sixty (60) consecutive days for reasons other than Force Majeure, when the Project is resumed, Architect's compensation shall be equitably adjusted to provide for expenses necessarily incurred in the interruption and resumption of Architect's services. Such expenses shall include only direct costs incurred in shutting down the Project and resumption thereof to the extent such expenses would not have been incurred had the Project not been suspended.

9.3. TERMINATION FOR CONVENIENCE. This Agreement may be terminated by Developer without cause and for its convenience upon not less than ten (10) days' written notice to Architect.

9.4. SUSPENSION FOR FAILURE TO PAY. If Developer fails to make payment that is properly due and payable to Architect for services and expenses, Architect may, upon fourteen (14) days' written notice to Developer, suspend performance of services under this Agreement if all undisputed payments are not made within such fourteen (14)-day period. If Developer believes that Architect is not entitled to payment for services and expenses, Developer shall provide Architect with a written identification and explanation of any and all contested items in Architect's invoices that form the basis for Developer's position that the invoice is not properly due and payable; in any event, Developer shall make timely payment on all invoiced items that are not contested by Developer. Unless payment that is properly due and payable is received by Architect within fourteen (14) days of the date of Architect's notice, Architect's suspension of services shall take effect without further notice.

9.5. COMPENSATION FOR TERMINATION. In the event of termination not the fault of Architect, Architect shall be compensated for services performed in accordance with the terms of this Agreement prior to termination, together with Reimbursable Expenses then due, if any, but not for lost or anticipated profits on the portion of the services that were not performed.

9.6. ARCHITECT'S COOPERATION. In the event of any termination under this Article 9, Architect consents to Developer's selection of another architect of Developer's choice to assist Developer in any way in completing the Project; provided, however, that if such termination occurs after completion of the Design Development Phase and the subsequent design of the Project is materially based on the Design Development Documents, then Architect shall be entitled to refer to itself in its promotional or marketing materials as the Design Architect for the Project, which shall not preclude Developer from allowing a subsequent architect to refer to itself in its promotional or marketing materials as the Design Architect to the extent that such subsequent architect reasonably believes that it materially contributed to the final design of the Project. Architect further agrees to cooperate and provide information requested by Developer in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Developer and such other architect as Developer may desire; provided, however, Developer shall waive any claim against Architect arising from any changes made by Developer or such other architect and Developer agrees to defend and hold harmless Architect from all claims, losses, demands and damages, including reasonable attorneys' fees, against or sustained by Architect arising from such changes to the extent permitted by Applicable Law. In the event of termination under this Article 9, Architect shall promptly deliver to Developer all Design Documents and any other materials, documents, models, reports, Project records, all electronic CADD files, tapes, disks and similar items, provided that Architect shall have received all undisputed payments properly due under this Agreement. Any services provided by Architect that are requested by Developer after termination shall be fairly compensated by Developer as an Additional Service for the time devoted to the Project by Architect.

## ARTICLE 10

### MISCELLANEOUS PROVISIONS

10.1. GOVERNING LAW. Unless otherwise specified, this Agreement shall be governed by the laws of the State of Texas.

10.2. ASSIGNMENT. Developer and Architect, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Architect shall not assign this Agreement without the written consent of Developer, and Architect shall not unreasonably object to any assignment of the Agreement by Developer. Developer shall be permitted to assign this Agreement, without consent of Architect to any Affiliate of Developer, any subsequent owner of the Project, the Authority or any Lender.

10.3. INTEGRATION CLAUSE. This Agreement represents the entire and integrated agreement between Developer and Architect with respect to the Project and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Developer and Architect.

10.4. NO LIABILITY FOR HAZARDOUS MATERIALS. Unless otherwise provided in this Agreement, Architect and Architect's Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of Persons to Hazardous Materials. However, Architect shall report to Developer the presence and location of any Hazardous Material that it observes consistent with the Standard of Care.

10.5. CONFLICT OF INTEREST; CONFIDENTIALITY. Architect covenants that no prior or present services Architect or, to the best of its knowledge, any Consultant provided to third parties conflicts with the interests of Developer in a manner that would materially adversely affect the Project or its development, except as shall have been expressly disclosed in writing to, and consented by, Developer prior to the execution of this Agreement. Architect shall promptly notify Developer of any potential conflict that may arise during the course of the performance of Architect's Services of which Architect becomes aware. Architect shall not engage in any activity, or accept any employment, interest, or contribution that could create an appearance of impropriety of business affairs or the risk of compromise of the Architect's professional judgment, except upon Developer's written consent after full disclosure by Architect of all relevant facts.

10.5.1. Confidential Information. Architect acknowledges that certain of Developer's confidential and proprietary information may come into Architect's possession. Accordingly, Architect agrees to hold in confidence all information it obtains from or about Developer (whether obtained directly from Developer or through any agent, employee or consultant of Developer) that is marked "confidential" or "proprietary" or otherwise communicated in a way that would reasonably indicate the confidential nature thereof ("*Confidential Information*"), not to use Confidential Information other than for the performance of the Services, and to cause any of its employees, Consultants or subcontractors to whom Confidential Information is transmitted to be bound to the same obligation of confidentiality to which Architect is bound. Architect shall not communicate Confidential Information in any form to any third party without Developer's prior written consent. In the event of any violation of this provision, Developer shall be entitled to preliminary and injunctive relief, without the necessity of showing irreparable harm, as well as to an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which Developer may be entitled. The provisions of this Section survive the termination of this Agreement. Confidential Information does not include any information that:

10.5.1.1. was at the time of disclosure, or thereafter became, part of the public domain through no act or omission of the recipient;

10.5.1.2. became available to the recipient from a third party who did not acquire such information under an obligation of confidentiality either directly or indirectly from the disclosing party; or

10.5.1.3. is, in the opinion of the recipient's outside legal counsel, required to be disclosed by law; provided, however, Developer shall be given prior written notification of recipient's intent to so disclose any such proprietary information.

10.6. MONTHLY STATUS REPORTS. It shall be the responsibility of Architect to inform Developer, in a timely and thorough manner, regarding the progress of the planning and design of the Project. To this end, Architect shall furnish Developer with a reasonably detailed monthly status report (in such form and at such time of the month as reasonably determined by Developer and Architect) regarding the performance of its obligations, including, when applicable, as compared to the Design Schedule.

10.7. COORDINATION OF MEETING MINUTES. Architect shall coordinate with Construction Manager the minutes of all meetings for the Project and confirm the same are provided to Developer within ten (10) days following such meetings through the Construction Documents Phase.

10.8. DEVELOPER APPROVAL AND CONSENT. Whenever provision is made herein or in the Contract Documents for the approval or consent of Developer or the Authority, or that any matter be to Developer's or Authority's, as applicable, satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Developer or Authority in its reasonable discretion and determination. Notwithstanding any other provisions herein, Architect's and Architect's Consultants' duties as set forth herein, shall at no time be in any way diminished by reason of any approval by Developer or the Authority of the Design Documents or any other work product or service, nor shall Architect be released from any liability by reason of such approval by Developer (or the Authority) unless such approval expressly so states. Without limiting the foregoing, Architect agrees that Developer's (or the Authority's) review and acceptance of any and all documents or other matters required herein shall be for the purpose of providing Architect with information as to the objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents and shall in no way create any liability on the part of Developer (or the Authority) for errors, inconsistencies or omissions in any approved documents nor shall any such review and approval alter Architect's responsibilities hereunder and with respect to such documents.

10.9. RELATIONSHIP OF PARTIES. This Agreement is entered into solely to provide for the design and administration of the Project and to define the rights, obligations and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other relationship between Architect and Developer other than as expressly provided herein. Architect acknowledges that Developer is not a partner or joint venturer of Architect and that Architect is not an employee or agent of Developer.

10.10. INDEPENDENT CONTRACTOR. Architect agrees that in the performance of its Services under this Agreement, Architect shall act as an independent contractor, and all of its agents, employees and Consultants/professionals shall be subject solely to the control, supervision and authority of Architect or Consultant, as the case may be.

10.11. DISCOUNTS, REBATES AND REFUNDS. All discounts, rebates and refunds obtained with respect to any Reimbursable Expense incurred in connection with Architect's services on the Project shall accrue to Developer.

10.12. ARCHITECT'S REPRESENTATIONS AND WARRANTIES. Architect hereby represents, covenants and warrants to Developer that: (a) Architect is financially solvent and possesses sufficient experience, expertise, licenses, authority, personnel and working capital to complete the services required hereunder; (b) Architect has reviewed the Site and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and (c) none of Architect's work under this Agreement violates or will violate any other agreement to which Architect is a party.

10.13. THIRD-PARTY BENEFICIARIES. Except as specifically set forth in Section 14.2 with respect to Architect's indemnification obligations to the Indemnitees, Architect's contractual relations extend only to Developer, and to the Authority as a third party beneficiary. The services under this Agreement are being performed for the benefit of Developer and the Authority, and no claim against Architect shall accrue to Construction Manager, Subcontractors, Suppliers or any other third party as the result of this Agreement or the performance or nonperformance of Architect's Services and Responsibilities.

10.14. NEGLIGENT ACTS BY ARCHITECT. Without limiting any other remedy, Architect shall perform, without expense to Developer, such professional services as may be required to correct or remedy any negligent act, error or omission of Architect or any of Architect's Consultants.

10.15. ADA COMPLIANCE. Architect shall employ its professional expertise consistent with the Standard of Care in connection with the preparation of design, plans, specifications and Contract Documents for the Project in order that all Work shall comply with the applicable provisions of the ADA. Notwithstanding the foregoing, Developer acknowledges and agrees that the ADA is not a detailed building code and that its requirements are general in nature and open to differing interpretations. Architect represents to Developer that Architect has employed its professional expertise consistent with the Standard of Care in interpreting the ADA, and that Architect and Architect's Consultant have followed the Guidelines contained within the ADA in connection with the preparation of the Work. In the event of any conflict between any ADA law, code, rule or regulation, Architect shall advise Developer of such conflict and absent direction from Developer to the contrary, Architect shall exercise its best judgment and understanding of the applicable provisions of the ADA to resolve such conflict and advise Developer of such resolution.

10.16. PRESS RELEASES. Architect will provide Developer with a written description of Architect for inclusion within all press releases covering the Project through Substantial Completion. If and when appropriate, Developer agrees to provide Architect's description in all press releases and press packets describing the Project through Substantial Completion.

10.17. SEVERABILITY. Except as expressly provided to the contrary in this Agreement, each section, part, term and provision of this Agreement is severable from each other section, part, term and provision and if, for any reason, any section, part, term or provision of this Agreement is determined by a court or agency having valid jurisdiction in a decision that becomes final and unappealed to which the parties are bound, to be invalid and contrary to, or in conflict with, any Applicable Law or regulation, the determination that the section, part, term, or

provision is invalid will not impair the operation of, or have any other affect on, the other portions, sections, parts, terms and provisions of this Agreement as may remain otherwise enforceable, and all of the remaining sections, parts, terms, and provisions of this Agreement will continue to be given full force and effect and be binding. Any sections, parts, terms or provisions so determined to be invalid and contrary to, or in conflict with, any Applicable Law or regulation will be severed from this Agreement without any further action of Architect or Developer to amend this Agreement. It is the intention of Architect and Developer that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall have the meaning which renders it enforceable.

10.18. MULTIPLE COUNTERPARTS; FAXES. This Agreement may be executed in counterparts. It is not necessary that the signature on behalf of each party appear on each counterpart copy, so long as each party executes this Agreement. All counterparts of this Agreement collectively constitute a single agreement. The parties are authorized to combine each party's execution sheets into a single document. A facsimile-transmitted signature of this Agreement or any document, instrument or agreement hereinafter executed or given in connection with this Agreement shall be considered valid and binding upon the parties as if an original.

10.19. REFERENCES TO DOCUMENTS; INCONSISTENCIES. All references in this Agreement to any document, instrument or agreement will be treated as being references to the particular document, instrument or agreement as the document, instrument or agreement exists at the time of the execution of this Agreement. If such document, instrument or agreement may, from time to time, be modified, amended, renewed, restated, consolidated, extended or replaced, and one party wishes to amend this Agreement as a result, the parties agree to meet and confer in good faith regarding such amendment and an equitable adjustment to Architect's fee, if any. All references in any document, instrument or agreement to this Agreement will be treated as being references to this Agreement as this Agreement may, from time to time, be modified, amended, renewed, restated, consolidated, extended or replaced. However, if there are any inconsistencies, conflicts or ambiguities between the terms and provisions of this Agreement and the terms and provisions of any other document, agreement or instrument incorporated herein by reference, the terms and provisions of this Agreement shall control in all respects.

10.20. TIME OF ESSENCE. Architect and Developer acknowledge that Substantial Completion of the Project is scheduled for July 1, 2012. Architect and Developer agree, therefore, that time is of the essence with respect to this Agreement, subject, however, to adjustment in the event of Force Majeure.

10.21. HEADINGS. The headings and titles to the Articles in this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.

10.22. NOTICES. All notices provided for in this Agreement, including, notices of default hereunder and termination of this Agreement, shall be in writing and shall be deemed to have been properly given (a) upon receipt if delivered in Person or by a nationally recognized

overnight courier service or sent by electronic facsimile with receipt confirmed (provided a copy is sent the same day by either overnight courier or certified mail) or (b) as of the third business day after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Developer:                   Dynamo Stadium, LLC  
Attn: Ted Fikre  
800 West Olympic Boulevard, Suite 305  
Los Angeles, CA 90015  
Phone: (213) 742-7115  
Fax: (213) 742-7294

With copies to:                   Greenberg Traurig, LLP  
Attn: Franklin Jones, Jr.  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Phone: (713) 374-3530  
Fax: (713) 754-7530

With copies to:                   ICON Venue Group, LLC  
7400 E. Prentice Avenue, Suite 700  
Greenwood Village, CO 80111  
Phone: (303) 796-2655  
Fax: (303) 796-2658

If to Architect:                   Populous, Inc.  
Attn: Brent Roberts  
300 Wyandotte, Suite 300  
Kansas City, Missouri 64105  
Phone: (816) 221-1500  
Fax: (816) 221-1578

With copies to:                   Populous, Inc.  
Attn: Zachary Rudman  
Chief Legal Officer  
300 Wyandotte, Suite 300  
Kansas City, MO 64105  
Phone: (816) 329-4483  
Fax: (816) 221-1578

Or such other address as may be furnished in writing by either party to the other. Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

10.23. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND INDEMNIFICATIONS. The representations, warranties and indemnifications set forth in this Agreement and the exhibits, schedules and other attachments hereto, and in any document, instrument or agreement executed or given in connection herewith, which by their terms are applicable after the term of this Agreement, will survive the expiration or termination of this Agreement.

10.24. DRAFTING OF THIS AGREEMENT. This Agreement shall be deemed to be drafted by both parties hereto, and no one party shall benefit from any claimed ambiguity in this Agreement based on a theory that the other party drafted this Agreement.

## ARTICLE 11

### PAYMENTS TO ARCHITECT

11.1. HOURLY RATES. Where payment is stipulated as being at the standard hourly rates of Architect it shall mean the rates set forth in **Exhibit H** attached hereto.

11.2. REIMBURSABLE EXPENSES.

11.2.1. Definition. Reimbursable Expenses shall be consistent with the Reimbursable Expense Budget attached hereto as **Exhibit F**, and shall include the following:

11.2.1.1. Reproduction and copying costs incurred;

11.2.1.2. Transportation expenses incurred in connection with travel to and from the Project for travel by any employee of Architect or Architect's Consultant whose office is outside of a radius of fifty (50) miles from the Project at the rate of currently allowed by federal regulations of the Internal Revenue Service, or at the direct cost of transportation expense incurred when traveling by common carrier (airfare: coach class only);

11.2.1.3. Transportation expenses incurred at the written request of Developer, other than travel to and from the Project, in connection with out-of-town travel (out-of-town travel being deemed as one-way travel in excess of fifty (50) miles) at the rate currently allowed by federal regulations of the Internal Revenue Service or at the direct cost of transportation expense incurred when traveling by common carrier (airfare: coach class only);

11.2.1.4. Reasonable living expenses incurred, consistent with the Architect's travel policy attached to the Reimbursable Expense Budget, in connection with out-of-town travel related to providing the Services;

11.2.1.5. All other reasonable expenses typically involved in the job-site office to be occupied by Architect, Architect's Consultants and other Project Team members as approved, in advance, in writing by Developer and incurred. Developer will



provide a reasonable amount of private space for Architect in the construction trailer provided by Construction Manager at no cost to Architect.

11.2.1.6. Architect shall review alternative travel and lodging arrangements that may include possible additional discounts through Developer or the Authority with respect to travel and lodging. travel and living expenses of the Architect's on-site representative described in Section 13.1.17 shall be Reimbursable Expenses; Architect shall also consider short and long term lease arrangements for its personnel as an alternative to overnight lodging.

11.2.2. Developer-Approval of Reimbursable Expenses. For the items of Reimbursable Expense that require Developer's prior written approval, as expressly provided above, Architect shall: (a) provide prior written notice to Developer detailing the basis for the Reimbursable Expense; and (b) Developer must approve payment of the Reimbursable Expense, in advance in writing. Failure of Architect to provide prior written notice or to obtain Developer's prior written approval shall constitute a waiver of any claim by Architect to recover Reimbursable Expenses for such items.

11.2.3. Timing. Architect shall waive its rights to payment by Developer for otherwise Reimbursable Expenses when any of the following deficiencies cannot be corrected by Architect to the reasonable satisfaction of Developer: (a) the expense was incurred more than ninety (90) days before the date on which Developer receives the first valid invoice from Architect requesting payment for that expense; (b) the invoice for that expense is not accompanied by reasonably detailed, credible, and legible documentation indicating the Project-related nature of the expense; or (c) that evidence is produced in a form that is inconsistent with the form of the invoice.

### 11.3. ARCHITECT'S ACCOUNTING RECORDS.

11.3.1. Accounting Records. Records of Architect and Architect's Consultants' Reimbursable Expenses and hours for all those services performed on an hourly basis on this Project shall be kept in accordance with generally accepted accounting principles, which principles shall be consistently applied. The foregoing records shall be available to Developer or its authorized representatives for inspection and copying upon reasonable notice and during regular business hours during the term of this Agreement and for at least five (5) years after the date of the Final Completion of the Project, or such longer period as shall be set forth in the final Lease and Development Agreement. Developer or Developer's authorized representatives shall have the right to conduct an audit or review of Architect's and Architect's Consultants' accounting and financial records, relating to such work performed on an hourly basis or invoices setting forth Reimbursable Expenses on the Project. Such audit or reviews may require inspection and copying from time to time and at reasonable times and places, of information, materials and data, including records, books, papers, documents, subscriptions, recordings, agreement, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters bearing or pertaining to any matters, rights, duties, or obligations under or covered by this Agreement. Such records subject to audit and review shall also include

those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Said audit or review shall be at Developer's expense and at a mutually agreeable time and place.

#### 11.4. LIEN WAIVERS.

11.4.1. Lien Waivers. Architect shall, upon issuance of invoices, discharge any lien filed by it or Architect's Consultants for labor performed or materials or services furnished in connection with the Services.

## ARTICLE 12

### BASIS OF COMPENSATION

Developer shall compensate Architect as follows:

#### 12.1. BASIC COMPENSATION.

12.1.1. Basic Services. For Basic Services, including the services of the Consultants set forth in **Exhibit E**, compensation shall be computed as follows: A stipulated sum of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) plus Reimbursable Expenses incurred consistent with Sections 11.2 and 12.3. Attached as **Exhibit G** hereto is Payment Schedule of Values that assigns values to all intermediate and final deliverables and designed-related construction activities, including, construction administration services and post-construction services. Architect will submit invoices only for the value of that part of each deliverable that has been earned as of the end of Architect's billing cycle, which values may, at Developer's option, be verified by means of an examination of the progress of the Work that has been declared by Architect to have been earned. Architect shall submit with each invoice a current, itemized cumulative statement of amounts invoiced, amounts received, Reimbursable Expenses invoiced and received, all other funds sought and received by the Architect, and remaining contract billing limits. Architect warrants that the Fee for Basic Services stated above is the entire agreed upon consideration for its provision of all Services (including those of Architect's Consultants) payable by Developer for Architect's complete performance in providing the complete design of the Project whether or not those services are individually expressed in this Agreement, the only exceptions to this being the cost of any Additional Services that are the subject of a written agreement between Developer and Architect in accordance with the terms of this Agreement.

12.1.2. Stipulated Sum. Progress payments for Basic Services in each Phase shall not exceed the cumulative limits set forth below:

12.1.2.1.	Conceptual Design Phase:	3.00%
12.1.2.2.	Schematic Design Phase:	10.00%

12.1.2.3.	Design Development Phase:	20.00%
12.1.2.4.	Construction Document Phase:	30.00%
12.1.2.5.	Bidding or Negotiation Phase:	(included below)
12.1.2.6.	Construction Phase:	35.00%
12.1.2.7.	Post-Occupancy Reviews:	2.00%

12.1.4. Compensation for Phase I Services. At Developer's request, Architect has agreed to provide the Basic Services in a preliminary phase ("*Phase I*") from the Effective Date until October 31, 2010 during which time Architect shall provide certain specified services for a specified portion of the stipulated sum. At the end of this period, Developer shall notify Architect whether or not Developer has determined to proceed with the Stadium development. The Phase I services include: (a) Site analysis of the proposed site for the Stadium; (b) preparation of the Program and Concept Design Package for the Stadium; (c) initial development of the Schematic Design and further development of those scopes and trades required to maintain construction schedule of the Stadium, including incorporating the site analysis and Program into a facility that combines functionality with efficient and effective operations of the Stadium, ease of maintenance and systems, fixtures, and furnishings designed for durability while maintaining the expected overall quality and aesthetics for multipurpose stadiums of this nature; and (d) other services as reasonably consistent with Schematic Design for a Stadium. The compensation for Phase I services shall not exceed Five Hundred Fifty-two Thousand Dollars (\$552,000).

## 12.2. COMPENSATION FOR ADDITIONAL SERVICES.

12.2.1. Additional Architect's Services. For Additional Services of Architect, as described in Article 4, but excluding services of Consultants, compensation shall be computed as follows:

Architect's compensation shall be based on the negotiated sum for each such Additional Service provided by Architect, approved in advance, in writing, by Developer. If Developer and Architect do not agree as to the negotiated sum for such Additional Service, Architect shall perform such Additional Service computed on the basis of Architect's hours actually expended times Architect's standard hourly rates for Architect's personnel performing the Additional Service, which rates are contained in **Exhibit H** attached hereto.

12.2.2. Additional Consultant Services. For Additional Services of Consultants, compensation shall be equal to the amounts billed to Architect for such services, provided such Additional Services and the compensation therefore were approved, in advance, in writing by Developer.

## 12.3. REIMBURSABLE EXPENSES.

12.3.1. Reimbursable Expense Budget. For Reimbursable Expenses, Architect shall be paid for such expenses actually incurred by Architect, and Architect's employees and Consultants in the interest of the Project. Architect has prepared a Reimbursable Expense Budget, which budget is attached hereto as **Exhibit F**. Architect shall, on a quarterly basis, review with Developer, the Reimbursable Expenses incurred as of such date. Architect shall advise Developer in writing if the remaining balance in the Reimbursable Expense Budget at each such interval is not sufficient to complete the Project and advise of any action necessary in order to reduce, control or modify the amount of future Reimbursable Expenses to remain within such budget. Developer shall not be obligated to pay for any Reimbursable Expenses incurred in excess of the Reimbursable Expense Budget. Any increases in the Reimbursable Expense Budget shall be subject to Developer's prior written approval.

#### 12.4. ADDITIONAL PROVISIONS.

12.4.1. Extension of Architect's Services. If the Basic Services applicable to this Agreement have not been completed by one hundred twenty (120) days after the date of Substantial Completion of the Project (except for the post-occupancy reviews required under this Agreement) through no fault, act or omission of Architect, an extension of Architect's services beyond that time shall be compensated as provided in Section 12.3.

12.4.2. Payment Schedule. Payments are due and payable within thirty (30) days from the date of Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest, until paid in full, at the lower of the following interest rates (a) the prime rate of interest reported by The Wall Street Journal (or if more than one such rate is reported, by the average of such rates) on the next business day after the date interest begins to accrue, plus two percent (2%), or (b) the maximum rate of interest permitted to be charged by Applicable Laws.

12.4.3. Payments to Consultants. Architect shall pay each Consultant within a reasonable period after receipt of each payment from Developer for Services rendered; unless Architect has a good-faith legal or contractual basis for withholding such payment. Contemporaneously with each invoice hereunder, Architect shall provide Developer with written lien waivers, in form and content reasonably satisfactory to Developer, evidencing that all parties providing goods or services by, through or under Architect in connection with the Project have been fully paid for all goods and services provided or performed through a date that is no more than thirty (30) days before the date on which such invoice is submitted; provided such payments have been received by the Architect if due and payable under this Agreement.

12.4.4. Liens. Architect shall keep Developer and the Project free from all mechanic's and materialmen's liens and all other liens, legal or equitable, arising out of the performance of the Architect's Services hereunder for which payment has been received by the Architect if due and payable under this Agreement. If any such lien or claim is filed by anyone claiming by, through or under Architect, Architect shall remove and discharge the same within thirty (30) days of the filing thereof.

## ARTICLE 13

### OTHER CONDITIONS OR SERVICES

#### 13.1. BASIC SERVICES INCLUDED IN ARTICLE 3.

All of the services or scope of services delineated in this Article 13 are included in Basic Services.

13.1.1. Signage Design. Scope of services shall include consultation, design, documentation and coordination of a comprehensive master plan intended to establish signage. Basic Services will include design and documentation activities associated with the following items:

- 13.1.1.1. Exterior Site Signage
  - . 1 Regulatory and Directional Vehicular orientation
  - . 2 Parking entries and lots
  - . 3 Informational/directional pedestrian signage
- 13.1.1.2. Interior Building Signage
  - . 1 Site directories and orientation maps
  - . 2 Service signing
  - . 3 Visitor direction informational signage
  - . 4 Building directories
  - . 5 Elevator identification
  - . 6 Level and area identification
  - . 7 Restroom and telephone identification
  - . 8 Section and seating identification
- 13.1.1.3. Wayfinding Graphics
  - . 1 Restaurant, Bar, Concession identification
  - . 2 Novelty identification
  - . 3 Team Store identification
- 13.1.1.4. Exterior Building Signage
  - . 1 Project and major facilities identification at Project Site entries
  - . 2 Building identification
  - . 3 Parking and area identification
  - . 4 Building signing address
  - . 5 Loading dock location
  - . 6 Loading dock numbers

13.1.2. Concession and Food Service. Scope of services shall include the development of all concession and food service related areas, including concession commissaries, concession facilities, vendor concession, suite pantries, dining club kitchens and

bars. Definition of each area will be documented for use by the selected food service operator, for the preliminary plan development and specification of each piece of equipment required. The food service and concession Consultant shall develop bid quality equipment drawings, fully coordinated with the food service operator for full compliance with their requirements. Scope of services will include:

13.1.2.1. Identification of size (square footage) and location of all food service related facilities throughout the Project;

13.1.2.2. Drawings identifying location of all equipment;

13.1.2.3. Separate layout of rough-in locations for associated mechanical, electrical, and plumbing requirements;

13.1.2.4. The preparation of equipment criteria cut sheet book outlining the specific performance requirements of each piece of equipment;

13.1.2.5. The specification and location of all equipment, including ventilation hoods, and the preparation of concession/commissary requirements, including mechanical, electrical, gas, plumbing and ventilation requirements for each food service facility location;

13.1.2.6. Drainage requirements specified by Architect; location of all drains and the identification of drain types shall be determined in coordination with the food service operator based upon equipment locations and structural limitations;

13.1.2.7. Coordination with the structural engineer and with the Mechanical/Electrical/Plumbing engineer will be completed during the documentation and administrative Project Phases; and

13.1.2.8. Scope of services shall include the development of the appropriate bid documents identifying all food service items, including equipment layouts, equipment types and a utility load chart defining the requirements for each area.

13.1.3. Code Compliance. Scope of services shall include the preparation of a written report evaluating the design of the Project in terms of compliance with Applicable Laws and development of a master fire protection program for the Project. Intent of the report will be to identify major architectural, mechanical, structural and egress issues required to be resolved during the design process, including ADA compliance. Basic Services will also include presentation to local code and fire marshal representatives to review and evaluate their acceptance prior to submittal of permit documents. The preparation of code variance documentation and presentation to local appeals board is included as part of Basic Services.

13.1.4. Vertical Transportation. Scope of services shall include the analysis of all vertical transportation systems, including elevators and escalators, based upon building population and operational information provided by Developer and as required by Applicable

Laws. Following the initial analysis and determination, of appropriate solutions and allowances, Architect shall provide coordinated Construction Documents to Construction Manager for inclusion within the appropriate Bid Packages. Architect's involvement through the Bidding and Construction Phases shall be included under Basic Services.

13.1.5. Video. Scope of Services shall include the Programming, Design, Documentation and Contract Administration of all video related components within the Project. Specifics of the video system shall include: (a) Research of available technologies and systems currently under development; (b) Establishment of display system parameters; (c) Detailed coordination of control room layout and facilities; and (d) Criteria for accommodation of systems with the balance of the design team. This system will consist of large screen video, systems, matrix boards and scoreboard systems. The video control system will be integrated with the stadium sound control, and feed the main video screen/scoreboard assemblies. Video control and distribution systems will also interface with MATV, locker room and media interface systems.

13.1.6. MATV - Master Antenna Television System. Services provided will include programming, design and documentation of a system to permit the reception of off-air broadcast television, cable TV (if available) and AM/FM radio signals, permit local origination of signals, and provide distribution of those signals to television receiver monitor receptacles in the following areas: suites, club areas, press/media work and office areas, team facilities and public concourses.

13.1.7. Broadcast Facilities/Media Interface Systems. Services will include:

13.1.7.1. Permanent and emergency provisions for TV mobile units and portable satellite earth stations;

13.1.7.2. Installed camera, video, audio and intercom cable between truck parking areas and permanent broadcast booths and permanent camera locations;

13.1.7.3. Architectural pass through and related cable routes for media portable cables to likely occasional media and camera positions for special events anticipated for the Project, such as concerts, meetings and similar events; and

13.1.7.4. Coordination of local broadcast antenna provisions.

13.1.8. Sound Systems. Scope of services includes the design, documentation and construction administration of a sound reinforcement system for both speech and music. The system shall properly serve all anticipated activities scheduled for the Project and desired by Developer. The system shall include a sound distribution system appropriate for emergency management announcements and the distribution of general announcements and event play-by-play. Areas covered by the distributed system shall include all areas required by the local code authority and the areas described in Section 13.1.6. Additionally, Architect shall provide services associated with the administration of final system tests and adjustments to be performed by the Subcontractor, and the final equalization of the sound reinforcement system.

Administration services shall include instruction of the operator's personnel in the proper operation of the system and will provide assistance in operating the system(s) for the first major use.

13.1.9. Lighting. Scope of services shall include the design, documentation and construction administration required for the completion of a lighting package in conformance with the requirements established by Developer, MLS and television networks.

13.1.10. Playing Field Design. Scope of services shall include the design, documentation and construction administration for the completion of the playing field and irrigation system in conformance with the requirements established by Developer, MLS and television networks.

13.1.11. Architectural Lighting. Scope of services shall include the design, documentation and construction administration required for the completion of the facade and specialty lighting system for the Project. The work shall include coordination with Architectural team members involved in the development of the overall design concept.

13.1.12. Security Design. Scope of services shall include the planning, design, documentation and construction administration required for the completion of a comprehensive security program for all areas of the Project and associated functions. Areas include administration, locker room and all public areas. The Architectural Program will include security for both event and non-event hours. Final system documentation to include Security Management Systems; Access Control Systems; Closed-Circuit Television Systems; Alarm Monitoring Systems; and Intrusion Detection Systems. The security package shall be coordinated with all involved team members, including architectural, electrical, video, and hardware consultants retained by Architect.

13.1.13. Telecommunications. Scope of services shall include programming, design, and documentation of the communications infrastructure requirements for the Project. Specific items include communication rooms, communication room hardware (backboard, equipment cabinets/racks, ladder rack, etc.), telecommunications ground system, telecom service duct-bank (underground conduits, manholes, etc.), backbone raceway (cable tray and conduits), backbone cable and terminations, horizontal/station raceway (cable tray, conduits, and j-hooks), and horizontal/station cable and terminations. Through comprehensive discussions with Developer and coordination with the balance of the design team, Architect's Consultant shall prepare Construction Documents for the communication infrastructure.

13.1.14. Hardware. Scope of services shall include the programming, design, documentation and construction administration of all door hardware required for the Project. Scope of work shall include the coordination with the electrical engineering and security design requirements. Programming shall include the definition of all keying requirements throughout the Project and adjacent site structures.

13.1.15. Landscape Design. Scope of services shall include the design, documentation and construction administration in the development of a Site plan for the Project.



Specific activities associated with the Site development include development of the Site landscape plan identifying location and type of all plant material including lawn areas; development of the Site elements, including sidewalks, entry plazas, curbs, stairs, ramps, planters, retaining walls, fences, flagpoles, and Site furnishings; development of a Site grading plan in conjunction with the civil engineering Consultant; development of a Site irrigation system; Site lighting including fixture selection and review of their location; photometrics and final lighting plans; and Site lighting, including all ornamental pedestrian lights.

13.1.16. Transportation and Parking. Scope of services shall include review of Site plans and associated components involved in the movement of vehicles and pedestrians in the Project's parking areas and garage.

13.1.17. On-Site Architectural/M/E/P/Structural Project Representative. Architect shall provide the following on-Site field representation upon commencement of the Construction Phase:

13.1.17.1. Architectural. Responsibilities are in accordance with Section 3.7 herein; provided, however, that Architect shall provide a full time on-site representatives for a three month period during the Construction Phase to be designated by Developer and approved by Architect, such approval not to be unreasonably withheld, conditioned or delayed.

13.1.17.2. Structural Engineering. During construction of the Project, structural engineering Site services shall include, among other activities, attendance at appropriate construction meetings scheduled by Construction Manager, and Site representation to observe and evaluate directly, in accordance with the Standard of Care, the adequacy and quality of the Work, its progress, and to determine if the Work is proceeding in accordance with all of the requirements of the Contract Documents (and the Construction Schedule). During all periods when major structural work described in the Contract Documents is being constructed or erected, Site representation by Architect's Structural Consultant shall be maintained at levels determined necessary and appropriate by Architect and its Structural Consultant in accordance with the Standard of Care, given the requirements of and Phase of the Work, but in no event less frequently than one-half (1/2) day per week. During periods of forming or placement of concrete columns, walls and structural slabs, or active erection of structural steel and precast concrete, structural engineering Site representation shall increase to a level appropriate to requirements of the Work, but in no event less frequently than twice weekly and an intensity level equivalent to at least one-half (1/2) day per week. The Structural Site Representative shall provide Developer with a copy of its field reports within seven (7) days of preparation. The Work of Architect's Structural Consultant's Site Representative(s) will be assisted and supplemented, as appropriate, by technical and support staff in the Structural Engineer's office.

13.1.17.3. Mechanical/Electrical/Plumbing (M/E/P) Engineering Site Representation. During construction of the Project, M/E/P engineering Site services shall include, among other activities, attendance at appropriate construction meetings

scheduled by Construction Manager and Site representation to observe and evaluate directly, in accordance with the Standard of Care, the adequacy and quality of the Work, its progress, and to determine if the Work is proceeding in accordance with all of the requirements of the Contract Documents (and the Construction Schedule). During all periods when work described in Architect's M/E/P Consultant documents is being installed, erected, aimed or adjusted, Site representation by Architect's M/E/P Structural Consultant shall be maintained at levels as determined necessary and appropriate by Architect and its M/E/P Consultant in accordance with the Standard Care given the requirements and Phase of the Work, but in no event less frequently than twice monthly and at an intensity level lower than two (2) days per month. Field reports will be kept and provided to Developer within seven (7) days of preparation. The Work of Architect's M/E/P Consultant's Site Representative(s) will be assisted and supplemented, as appropriate, by technical and support staff in the M/E/P Engineer's office.

13.1.18. Review of Existing Geotechnical Engineering and Other Information. In addition to Architect's obligations described in Section 5.5, the scope of services will include reasonable assistance in the review and evaluation of existing geotechnical data and historic topographic data relevant to the Site provided by Developer.

13.1.19. Interior Design, FF&E and Retail Space. Scope of services shall include the programming, design, documentation and construction administration required for all necessary interior design, selection of furniture, furnishings and equipment and design of retail space within the Project, including preparation of space allocation and utilization plans based on functional relationships, consideration of alternate materials, systems and equipment and development of conceptual design solutions for architectural, mechanical, electrical and equipment requirements in order to establish (a) partition locations, (b) conceptual signage and graphic designs, (c) furniture, furnishings and equipment layouts and selections, (d) color, types and qualities of finishes and materials for furniture, furnishings and equipment, and (e) requirements for the interior construction and for furnishings, fixtures and equipment, interior spaces and retail space.

13.1.20. LEED Certification. As part of Basic Services with respect to the LEED certification required by Developer (the "**LEED Services**"), Architect or its LEED Consultant shall:

13.1.20.1. consult with Developer, research applicable criteria, attend Project meetings, communicate with the Project Team, issue progress reports, and coordinate the services provided by Architect or Architect's Consultants with those services provided by Developer.

13.1.20.2. submit LEED certification documentation to Developer at intervals appropriate to the LEED certification process for purposes of evaluation and written approval by Developer. Architect shall be entitled to reasonably rely on written approvals received from Developer to complete the LEED Services.

13.1.20.3. conduct a predesign workshop with Project Team and appropriate Consultants to review LEED requirements, establish green building goals for the Project, identify and target potential LEED points, examine strategies for implementation, and assess the impact on Developer's program and budget.

13.1.20.4. prepare a "LEED Certification Plan" based on the targeted LEED points. The LEED Certification Plan will describe the LEED certification process and may contain a description of the green building goals established, LEED points targeted, implementation strategies selected, list of participants and their roles and responsibilities, description of how the plan is to be implemented, certification schedule, specific details about design reviews, list of systems and components to be certified, and certification documentation required.

13.1.20.5. revise the LEED Certification Plan as the design and construction of the Project progresses to reflect any changes approved in writing by Developer, such revision shall constitute Additional Services to the extent that the underlying design change also constitutes Additional Services under this Agreement.

13.1.20.6. organize and manage the LEED design documentation and certification process.

13.1.20.7. review the LEED certification process and regularly provide written progress reports to Developer.

13.1.20.8. provide the services of LEED accredited professionals necessary for certification of the Project.

13.1.20.9. register the Project with the USGBC, with any registration fees being a Reimbursable Expense.

13.1.20.10. prepare submittals for credit rulings from the USGBC, with any fees charged for such rulings being Reimbursable Expense.

13.1.20.11. prepare and submit a LEED Certification Application to the USGBC, including all required information for each LEED credit claimed, in accordance with the LEED Certification Plan.

13.1.20.12. prepare responses and submit additional documentation required by USGBC for the certification.

13.1.20.13. provide specifications that incorporate LEED requirements for inclusion in the Contract Documents to achieve the targeted LEED rating.

13.1.20.14. if reasonably requested by Developer, assist the Construction Manager in conducting pre-bid meetings to inform potential Subcontractors

of the applicability to standard construction practices of LEED principles, procedures, and requirements.

13.1.20.15. prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents related to LEED certification.

13.1.20.16. consider requests for substitutions and prepare addenda identifying approved substitutions related to LEED certification.

13.1.20.17. assist Developer in evaluating and selecting a bid or proposal related to LEED certification.

13.1.20.18. review and appropriately respond to reasonable and timely requests submitted by Construction Manager to Developer and Architect for information about the Contract Documents related to LEED certification.

13.1.20.19. if approved in writing by Developer, prepare, reproduce and distribute supplemental Drawings, Specifications and information related to LEED certification.

13.1.20.20. review and take appropriate action with respect to Requests or Submittals regarding LEED certification.

13.1.20.21. review and take appropriate action on written requests by Developer or Construction Manager for changes in the Work related to LEED certification, which would include notifying Developer in writing if Architect determines that implementation of the requested changes would result in a significant change to the LEED certification or other aspect of the Project.

13.1.20.22. prepare a report documenting the Project's achieved LEED rating, the significant materials submitted to or received from USGBC, the LEED points received by the Project, and clarifying all credits and re-certification requirements.

13.1.20.23. review of a Submittal for LEED certification that is out of sequence from any schedule for Submittals prepared by Architect and approved by Developer.

Notwithstanding the foregoing, the following services would be considered to be and compensated as "Additional Services":

(a) revisions to the LEED Certification Plan as needed and requested by Developer,

(b) each review, after two revisions, of each Submittal addressing LEED certification matters, and

- (c) each submittal, after the first submittal, to USGBC.

13.1.21. Establishment of Capital Reserve. Scope of services shall include assistance to Developer in establishing appropriate levels of funding an initial capital reserve budget for the Project based upon the useful life of the major operational systems.

13.1.22. Post Occupancy Warrantv Review. Architect shall after completion of the Work, review the Work eleven (11) months following Substantial Completion and make written recommendations to Developer for correction of any deficiencies in the Work.

## ARTICLE 14

### INSURANCE AND INDEMNIFICATION

#### 14.1. INSURANCE.

##### 14.1.1. Architect's Insurance.

14.1.1.1. During the term of the Agreement and for the extension outlined herein, Architect shall procure and maintain, at its own cost, with companies authorized to do business in Texas and otherwise acceptable to Developer, all necessary insurance outlined herein for coverages at not less than the prescribed minimum liability limits for claims caused or contributed to by Architect. The insurance coverages and liability limits to be provided by Architect shall be as follows:

. 1 Automobile Liability Insurance. Architect will maintain Primary Automobile Liability Insurance, covering all owned, non-owned, hired, leased or borrowed vehicles. Such insurance shall have limits of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

. 2 Workers' Compensation Insurance. Architect will maintain workers' compensation and employers' liability insurance covering its operations in not less than the following limits: Workers' Compensation- as required by applicable state and federal statutes; Employers' Liability- \$1,000,000 Bodily Injury each Accident; \$1,000,000; Bodily Injury by Disease for Each Employee; and \$1,000,000 Bodily Injury Disease Aggregate. Such insurance will include a waiver of subrogation in favor of Developer and Authority.

. 3 Commercial General Liability Insurance. Architect will maintain commercial general liability insurance covering all operations by or on behalf of Architect on an occurrence basis against claims for Personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall have not less than the following limits: \$1,000,000 Each Occurrence; \$1,000,000 General Aggregate with dedicated limits per project site; and \$1,000,000 Products/Completed Operations Aggregate. Extension of coverage to include personal injury, products liability, broad form property damage including explosion, collapse of building or structure, damage to underground structure and utilities,

blanket contractual liability and completed operations for at least three (3) years after termination of services.

. 4 Umbrella/Excess Liability Insurance. Architect will maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above which is at least as broad as each area of the underlying policies. Such umbrella/excess insurance shall have a combined single limit and aggregate limit of not less than \$5,000,000. The amounts of insurance required above may be satisfied by Architect purchasing coverage for the limits specified or by any combination underlying and umbrella limits so long as the total amount of insurance is not less than the limits specified above when added to the umbrella/excess limit specified herein.

. 5 Valuable Papers. Architect will purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records related to this project.

14.1.2. Professional Liability Insurance. Architect shall purchase and maintain insurance to protect against claims arising out of the performance of Architect's services for the Project caused by any errors, omissions or negligent acts for which Architect is legally liable. Such professional liability insurance shall have minimum limits of \$10,000,000 per claim/annual aggregate and a per claim deductible not in excess of \$500,000. Architect shall keep such insurance in effect for a period of not less than five (5) years after the date of completion of its services for the Project. If such professional liability insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of this Agreement and shall include a supplemental extended reporting period provision. Architect shall cause each of Architect's Consultants providing Structural, Mechanical, Electrical and Plumbing design or engineering work to maintain separate professional liability insurance to protect against claims arising out of the performance of such consultant's services with minimum limits of \$3,000,000, and each other of Architect's Consultants providing design or engineering work to maintain separate professional liability insurance with reasonable limits in light of the Scope of Work, but not less than \$1,000,000, or such lower amount normally maintained by similar sized firms in its profession if agreed to in writing by Developer, to protect against claims arising out of the performance of such consultant's services, such approval by Developer not to be unreasonably withheld, delayed or conditioned.

14.1.3. Other Insurance Requirements. The insurance coverages described above shall be placed with insurance companies rated A minus VIII or better by the current edition of Best's Key Rating Guide and approved in advance and in writing by Developer. Such insurance companies shall be authorized to do business in the State of Texas and shall incorporate a provision requiring the giving of written notice to Developer at least thirty (30) days prior to the cancellation, nonrenewal or material modification of any such policies, as evidenced by return receipt of United States mail. Architect shall submit valid certificates of insurance in form and substance satisfactory to Developer evidencing the effectiveness of the referenced insurance policies, along with the original copies of the amendatory riders to any such policies. Such certificates shall be delivered to Developer for Developer's approval before Architect

commences rendering the Services hereunder. Architect shall also deliver to Developer copies of any insurance policies required under this Agreement within ten (10) days after Developer's request for such policies.

14.1.4. Certificate of Insurance.

14.1.4.1. Architect shall provide Developer and the Authority with certificates of insurance, completed by a duly authorized representative of each insurance company that issues any such policy evidencing that at least the minimum coverages required here are in effect and specifying that the liability coverages (except professional liability) are written on an occurrence form. The certificates of insurance shall contain a provision that the coverage afforded under the policy or policies will not be canceled, terminated or materially reduced in coverage or limits without thirty (30) days' prior written notice to the Indemnitees.

14.1.4.2. Failure of Developer or its designated representative to demand such a certificate or other evidence of full compliance with these requirements or failure of Developer or its designated representative to identify a deficiency from evidence provided will not be construed as a waiver of Architect's obligation to maintain such insurance.

14.1.4.3. The acceptance of delivery by Developer or its designated representative of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Developer that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.

14.1.4.4. Developer will have the right, but not the obligation, of prohibiting Architect or any Architect's Consultants or professional subcontractors from entering the Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Developer or the Authority.

14.1.4.5. If Architect fails to maintain the insurance as set forth here, Developer will have the right but not the obligation, to purchase such insurance at Architect's expense. Alternatively, Architect's failure to maintain the required insurance may result in immediate termination of this Agreement at Developer's option.

14.1.4.6. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverages will be submitted with Architect's final invoice.

14.1.5. Policies. All insurance will be provided through companies authorized to do business in the State of Texas and considered acceptable by Developer. Certified copies of all insurance policies required will be provided to Developer within ten (10) days of Developer's written request of those copies.

14.1.6. Insurance Primary. All coverages required of Architect or Architect's Consultants or professional subcontractors will be primary over any insurance or self-insurance program carried by Developer or the Authority.

14.1.7. No Reduction or Limit of Obligation. By requiring insurance, Developer does not represent that coverage and limits will necessarily be adequate to protect Architect. Insurance effected or procured by Architect will not reduce or limit Architect's contractual obligation to indemnify and defend Developer for claims or suits which result from or are connected with the performance of this Agreement.

14.1.8. Additional Insured. To the extent commercially available at no additional cost, policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, shall defend and include Developer or the Authority and their respective employees and officers as additional insureds on a primary basis for work performed under or incidental to this Agreement. The form of the additional insured endorsement will be ISO CG 20 10 11 85 (Form B) or its equivalent. If the additional insured has other insurance applicable to the loss it will be on an excess or contingent basis. The amount of Architect's insurance will not be reduced by evidence of such other insurance.

14.1.9. Duration of Coverage. All required coverages will be maintained without interruption during the entire term of this Agreement.

14.1.10. Retroactive Date and Extended Reporting Period. If any insurance required here it to be issued or renewed on a claims - made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the Project and will state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) will be at least thirty-six (36) months.

14.1.11. Architect's Consultant Insurance. Architect will cause each Architect's Consultant or professional subcontractor employed by Architect to purchase and maintain insurance of the type specified in this Section 14.1. When requested by Developer, Architect will furnish copies of certificates of insurance evidencing coverage for each Architect's Consultant or professional subcontractor.

14.1.12. Cooperation. Architect and Developer agree to fully cooperate, participate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of policies required here, in all areas of safety, insurance program administration, claim reporting and investigating and audit procedures.

## 14.2. INDEMNIFICATION.

14.2.1. Indemnity - Generally. To the fullest extent permitted by and in compliance with Applicable Law, Architect shall and does agree to indemnify, protect, and hold the Indemnitees and their respective Affiliates harmless from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including reasonable attorneys' fees and other reasonable costs of defense, that arise out of, are caused by or result from bodily



injury or death of any Persons or damage or destruction to tangible property to the extent caused by any negligent act or omission or intentional misconduct of Architect, Architect's Consultants, anyone directly or indirectly employed by Architect or Architect's Consultants, or anyone who acts on behalf of Architect. If any such claim, damage, loss, lien, cause of action, suit, judgment or expense results from the concurrent negligence of an Indemnitee and Architect, the duty of Architect to indemnify, and hold such Indemnitee harmless under this Article shall be limited to the extent of Architect's negligence. If a claim against an Indemnitee is solely based upon alleged vicarious responsibility for the negligence of Architect, or if a claim against an Indemnitee is covered by the commercial general liability insurance Architect is required to carry pursuant to Section 14.1.1.1.3, then Architect shall defend such party against such claim.

14.2.2. Indemnity - Copyright; Patent. To the fullest extent permitted by and in compliance with Applicable Law, Architect shall and does agree to indemnify, protect, defend and hold the Indemnitees and their respective Affiliates harmless from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorneys' fees and other reasonable costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right by Architect, anyone directly or indirectly employed by Architect or anyone for whose acts Architect may be liable.

14.2.3. Indemnity - Architect's Consultants. Architect shall cause each agreement between it and any of Architect's Consultants to contain an indemnification provision for the benefit of the Indemnitees and their respective Affiliates in the form contained in Section 14.2.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

EXECUTION COPY

This Agreement entered into as of the day and year first written above.

DEVELOPER:

DYNAMO STADIUM, LLC

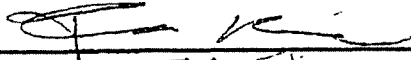
By: AEG Dynamo Stadium, LLC, as  
Managing Member

ARCHITECT:

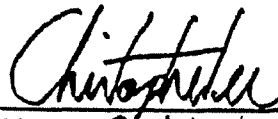
POPULOUS, INC.,

a Missouri corporation

By

  
Name: Ted Fike  
Title: Vice President

By

  
Name: Christopher Lee  
Title: Senior Principal

**Exhibit A**  
**Project Description**

A major league soccer stadium to seat approximately 21,000 patrons including suites, press facilities and a canopy/roof over a portion of the East and West stands. The facility will be designed to feature soccer and accommodate multi-use events such as football, lacrosse, rugby and concerts.

A detailed program that is mutually agreeable to the design team, Project Manager and Developer will be developed during the concept design phase.

**Exhibit B**  
**Construction Budget**

A Construction Budget of \$60,000,000 has been established for the Project.

**Exhibit C**  
**Design Schedule**

**HOUSTON DYNAMO STADIUM**  
Design and Construction Schedule  
August 5, 2010 DRAFT

[illegible]

**Exhibit D**  
**GMP Documents**

A detailed list of GMP documents that is mutually agreeable to the design team, Developer, Project Manager and Construction Manager will be developed.

**Exhibit E**  
**List of Architect and Architect Consultant Key Personnel**

**POPULOUS, INC.**

**Names of Employees**

Christopher Lee

Brent Roberts

Bruce Beahm

Loren Supp

**Position/Responsibility**

Principal

Project Manager

Project Manager/Project Architect

Project Designer

**CONSULTANTS**

Populous, Inc.

Architect of Record/Interiors and  
Graphics

Walter P. Moore

Structural Engineering

ME Engineers, Inc.

MEP Engineering/Security/  
Telecommunication/Fire Protection

Wrightson Johnson Haddon and Williams, Inc.

Audio Visual/Broadcast/Sound

Duray

Food Service Design

Howe Engineers, Inc.

Code Consulting

Ward, Getz & Associates, LLP.

Civil Engineering

Millennium Sports

Playing Field Engineering

Clark Condon Associates, Inc.

Landscape Design



**Exhibit F**  
**Reimbursable Expense Budget**

A budget for Reimbursable Expenses of \$300,000 has been established for the Project.

**Exhibit G**  
**Payment Schedule of Values**

**Fee Breakdown by Phase**

Concept Design	3.00%	\$127,500	<b>Phase 1 Services</b>	<b>\$552,500</b>
Schematic Design	10.00%	\$425,000		
Design Development	20.00%	\$850,000	<b>Phase 2 Services</b>	<b>\$3,697,500</b>
Construction Documents	30.00%	\$1,275,000		
Bidding (included in CA)				
Construction Administration	35.00%	\$1,487,500		
Post Occupancy	2.00%	\$85,000		
<b>Total</b>	<b>100.00%</b>	<b>\$4,250,000</b>		<b>\$4,250,000</b>

**Exhibit H**  
**Architect's Hourly Rates**

**2010 Generic Rate Table**

<b>Job Title</b>	<b>2010 Published</b>
Senior Principal	\$325
Senior Architect	\$250
Architect	\$200
Senior Architect Technican	\$125
Architect Technician	\$100
CADD Technician	\$100
Senior Urban Planner	\$275
Senior Landscape Architect	\$250
Landscape Architect	\$140
Senior Landscape Architect Technician	\$125
Landscape Architect Technician	\$100
Senior Interior Designer	\$160
Interior Designer	\$140
Senior Interior Design Technician	\$100
Interior Design Technician	\$80
Senior Graphic Designer	\$130
Graphic Designer	\$100
Graphic Design Technician	\$80
Director of Equestrian Services	\$200
Senior Facility Operations Consultant	\$250
Facility Operations Consultant	\$200
Facility Operations Technician	\$85
Event Manager	\$225
Model Maker	\$80
Administrative Assistant	\$90
Intern	\$50

**Exhibit I**  
**Dispute Resolution Procedures**

1. With respect to any claim, prompt notice thereof shall be given in writing and within fourteen (14) days of the event giving rise to the claim. At the next Project meeting following delivery of such notice, Architect and Developer shall reserve time at the end of such Project meeting to attempt to resolve such claim at the field level through discussions between Architect's representatives and Developer's representative, and, if applicable, the Construction Manager's representatives. If a claim cannot be resolved through Architect's representatives and the Developer's representatives within thirty (30) days after the initial attempt, then, Architect's Senior Representative (who is Brent Roberts) and the Developer's Senior Representative (who is Ted Fikre), upon the written request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim. Prior to any meetings between the parties, the parties shall exchange such relevant information as then exists that will assist the parties in resolving their claim. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given at least ten (10) days' notice of such intention and may also be accompanied by an attorney.
2. If, after meeting, the Senior Representatives determine that the claim cannot be resolved on terms satisfactory to both parties, the parties shall, within fourteen (14) days after the meeting of the Senior Representatives, submit the claim to non-binding mediation administered jointly by the parties to the mediation and otherwise in accordance with the Construction Industry Claim Resolution Procedures of the American Arbitration Association (AAA) then in effect. Unless otherwise agreed by the parties, the parties shall select one of the pre-qualified mediators (if any) set forth in Section 8 of this **Exhibit I** below. Within seven (7) days after the selection of the mediator, the parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the parties and each party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the claim. The parties will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator, will assert no claims against the mediator as a result of the mediation, and will hold the mediator harmless from claims by third parties arising out of or relating to the mediation provided for in this Section 2. Notwithstanding anything in the above to the contrary, if a claim has not been resolved within one hundred twenty (120) days after the initial meeting between Architect's Senior Project Manager and the Developer's Senior Representative, then either party may elect to proceed under Section 4 below.
3. In the event of any dispute arising by or between Developer and Architect, each party shall continue to perform as required under the Agreement notwithstanding the existence of such dispute. In the event of such a dispute, Developer shall continue to pay Architect as provided in the Agreement, except only such amount as may be disputed in good faith.

4. Unless the parties otherwise agree, if a claim has not been settled or resolved within one hundred twenty (120) days after the initial meeting of Architect's representatives and the Developer's representatives, then either party shall notify the other party in writing of its intent to pursue the claim further.
5. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations; provided, however, notwithstanding anything in the Agreement to the contrary, if any claim has not been resolved to the mutual agreement of the parties within any applicable statute of limitation period, then either party may commence litigation on such claim prior to the expiration of such period in order to preserve its rights.
6. Any arbitration arising out of or relating to the Agreement may include, by consolidation or joinder or in any other manner, other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described therein or with a person or entity not named or described therein. The agreement to arbitrate under this **Exhibit I** shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award of the arbitrators may be entered as a judgment in any court of competent jurisdiction.
7. In any dispute between Developer and Architect, the prevailing party in any arbitration or litigation shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled; provided, however, that a plaintiff shall never be considered to be a prevailing party under this provision if the final award is less than the last written offer of settlement issued by the defendant prior to the institution of either arbitration or litigation and a defendant shall be considered to be a prevailing party if the final award is less than the last written offer of settlement issued by the defendant prior to the institution of either arbitration or litigation.

**Exhibit J**  
**MBE/WBE, EEO and Other Requirements**

1. **MBE/WBE**. Architect shall use good faith efforts to meet the minority business enterprise (“***MBE***”) and women business enterprise (“***WBE***”) participation goals to be established for the Project in accordance with the Lease and Development Agreement.
2. **Equal Opportunity**. Developer is an Equal Opportunity Employer. Architect agrees to adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, promote, and upgrade the position of employees regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, or marital status.

**Exhibit K**  
**Site-Legal Description**





**TEXAS AVENUE**  
(100' WIDE R.O.W.)

1

**HARRIS COUNTY, TEXAS  
VICINITY MAP  
NOT TO SCALE**

**DOWLING STREET**  
(80' WIDE R.O.W.)

**CAPITOL AVENUE**  
(80' WIDE R.O.W.)

**CAPITOL AVENUE**  
(80' WIDE R.O.W.)

CALLED 12.145 ACRES  
 UNRESTRICTED RESERVE \*A\*  
 BLOCK 1  
 EAST END ECONOMIC  
 DEVELOPMENT SITE  
 F.C. NO. 637006, H.C.M.R.

**RUSK AVENUE**  
(80' WIDE R.O.W.)

**RUSK AVENUE**  
(30' WIDE R.O.W.)

**DOWLING STREET**  
(50' WIDE R.O.W.)

**WALKER AVENUE**  
(80' WIDE R.O.W.)

**BASTROP STREET**  
(80' WIDE R.O.W.)

**HUTCHINS STREET**  
(80' WIDE R.O.W.)

**DESCRIPTION**

ALL OF UNRESTRICTED RESERVE "A" BLOCK 1 OF EAST END ECONOMIC DEVELOPMENT SITE, MAP OR PLAT THEREOF RECORDED UNDER FILM CODE NO. 637006 OF THE HARRIS COUNTY MAP RECORDS, SITUATED IN THE JAMES WELLS SURVEY, ABSTRACT NO. 832, HARRIS COUNTY, TEXAS

**QUESTIONS**

**09-07**

- [illegible]

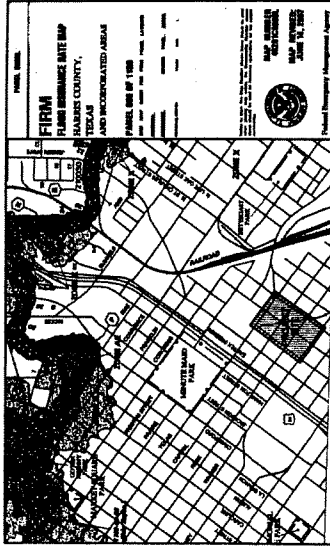
**PROJECT BENEFICIARIES**

PRIMARY BEDROCK MARK IS FLOODPLAIN SETBACK MARK NUMBER 120041. AN H.C.F.A. DAM TO BE BUILT FROM INTERSECTION OF I-10 (EAST FRONT) WITH MOUNTAIN STREET BLVD. WITH A 3.3 MILE SETBACK MARK IS LOCATED ON ONE OF THE SETBACK MARK LINES AND OCCURRED ON THE DOWNSTREAM SIDE OF BRIDGE AND STREAM CENTRALISE.

**SCHEDULE "B" NOTES**

1. SUBMITTAL TO RESPECTIVE COMRADES RECORDED UNDER FILE CODE NO. 837008 OF THE MAP RECORDS OF TAMM COUNTY, TEXAS.
2. SUBMITTAL TO 1956 FARMER LABORERS RECORDED UNDER F.C. NO. 837008, N.C.A.R. (AS ABOVE HEREIN)
3. SUBMITTAL TO 16 MARCHES LINE ALONG NORTHEASTERN AND SOUTHERNLY BOUNDARY RECORDED UNDER F.C. NO. 837008, N.C.A.R. (AS ABOVE HEREIN)
4. SUBMITTAL TO 25 MARCHES LINE ALONG NORTHEASTERN AND SOUTHERNLY BOUNDARY RECORDED UNDER F.C. NO. 837008, N.C.A.R. (AS ABOVE HEREIN)

## FLOOD INFORMATION



## GENERAL NOTES

1. RESEARCH ON THE RECENT PAST OF THE SUBJECT, HAS DISCLOSED THAT ON APPROXIMATELY SEPTEMBER 11, 1944, THE SUBJECT, WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK.
2. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
3. THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK ARE OF THE OPINION THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
4. CONSEQUENT TO THE RESEARCH ON THE RECENT PAST OF THE SUBJECT, IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
5. THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK ARE OF THE OPINION THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
6. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
7. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
8. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
9. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.
10. IT IS THE OPINION OF THE OFFICIALS OF THE ARMY IN THE STATE OF NEW YORK THAT THE SUBJECT WAS DETAINED AT THE DETENTION CAMP OF THE ARMY IN THE STATE OF NEW YORK ON APPROXIMATELY SEPTEMBER 11, 1944.

## PREVENTION

[illegible]

10-57-10



**Windrose Land Services, Inc.**  
3628 Westchase  
Houston, Texas 77043  
Phone (713) 468-2281 Fax (713) 461-1151

ALTA/ACSM SURVEY OF  
ALL OF UNRESTRICTED RESERVE 'A', BLOCK 1 OF  
EAST END ECONOMIC DEVELOPMENT SITE  
SITUATED IN THE  
JAMES WELLS SURVEY, A-832  
HARRIS COUNTY, TEXAS

**THE UNIVERSITY OF CHICAGO**

**EXHIBIT A**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Land*

Unrestricted Reserve "A" , East End Economic Development Site, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.

**EXHIBIT B**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Memorandum of Lease*

**MEMORANDUM OF LEASE**

**THE STATE OF TEXAS**   §  
                                      §  
**COUNTY OF HARRIS**   §

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into effective as of the 18th day of February, 2011, by and between **HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**, a sports and community venue district created under Chapter 335 of the Texas Local Government Code ("**Landlord**"), and **DYNAMO STADIUM, LLC**, a Delaware limited liability company ("**Tenant**").

A. Landlord and Tenant have entered into that certain LEASE AND DEVELOPMENT AGREEMENT (the "**Lease**") having an execution date of February 18, 2011, pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the real property located in Harris County, Texas described on **Exhibit A** attached hereto (the "**Leased Premises**") pursuant to the terms and conditions of the Lease; and

B. Landlord and Tenant desire to execute this Memorandum to provide notice of Tenant's rights, titles and interest under the Lease and in and to the Leased Premises.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**Section 1.   Definitions and Usage.** Unless the context shall otherwise require, capitalized terms used in this Memorandum shall have the meanings assigned to them in the Lease, which also contains rules as to usage that shall be applicable herein.

**Section 2.   Lease.** The Leased Premises have been leased to Tenant pursuant to the terms and conditions of the Lease, which is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Lease, the Lease shall control.

**Section 3.   Lease Term.** Landlord has leased the Leased Premises to Tenant for an initial Term commencing at 12:00 a.m. on \_\_\_\_\_, 2011 and ending, unless sooner terminated in accordance with the provisions of the Lease, at 11:59 p.m. on \_\_\_\_\_, 20\_\_.

**Section 4. Successors and Assigns.** This Memorandum and the Lease shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject however, to the provisions of the Lease regarding assignment.

**LANDLORD:**

**HARRIS COUNTY-HOUSTON SPORTS  
AUTHORITY**

By: \_\_\_\_\_  
J. Kent Friedman, Chairman

**TENANT:**

**DYNAMO STADIUM, LLC,**  
a Delaware limited liability company

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

STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS           §

This instrument was acknowledged before me on \_\_\_\_\_, 2011 by J. Kent Friedman, the Chairman of the Board of Directors of HARRIS COUNTY-HOUSTON SPORTS AUTHORITY, a sports and community venue district created under Chapter 335 of the Texas Local Government Code, on behalf of such entity.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2011 by \_\_\_\_\_, \_\_\_\_\_ of DYNAMO STADIUM, LLC, a Delaware limited liability company, on behalf of such entity.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

After recording, return to:

Harris County-Houston Sports Authority  
Two Houston Center  
909 Fannin, Suite 3175  
Houston, Texas 77010  
Attention: Chairman

**EXHIBIT C**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Guaranty*

This Guaranty (the "Guaranty") is made as of \_\_\_\_\_, 2011 (the "Execution Date") by DYNAMO SOCCER, L.L.C., a Delaware limited liability company ("Dynamo Soccer"), and ANSCHUTZ ENTERTAINMENT GROUP, INC., a Colorado corporation ("AEG Entity") (collectively, "Guarantor") in favor of HARRIS COUNTY-HOUSTON SPORTS AUTHORITY, a sports and community venue district organized under the laws of the State of Texas ("HCHSA").

**RECITALS**

A. DYNAMO STADIUM, LLC, a Delaware limited liability company ("Developer") and HCHSA are parties to that certain LEASE AND DEVELOPMENT AGREEMENT ("Lease and Development Agreement") dated as of even date herewith, pursuant to which Developer will, among other things, (i) design, develop and construct certain improvements and (ii) lease the Leased Premises from HCHSA, all on the terms and conditions set forth in the Lease and Development Agreement.

B. The Lease and Development Agreement provides for a Guaranty in the form of this Guaranty, and HCHSA has made it a Condition to Commencement that such a Guaranty be executed and delivered by Guarantor.

C. Guarantor or an Affiliate is an equity investor in Developer and Guarantor expects to receive substantial direct and indirect benefits from HCHSA entering into the Lease and Development Agreement with Developer.

D. Guarantor wishes to guarantee the payment and performance of all of Developer's obligations under the Lease and Development Agreement as provided herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the adequacy, receipt and sufficiency of all of which are hereby acknowledged, Guarantor hereby, jointly and severally, covenants and agrees as follows:

1. **Definitions.**

1.1 Capitalized Terms. All capitalized terms used herein without definition shall have the respective meanings provided therefor in the Lease and Development Agreement. The meanings of all defined terms used in this Guaranty shall be equally applicable to the singular and plural form of the terms defined.

1.2 Additional Definitions. As used in this Guaranty, the following terms shall have the respective meanings set forth below in this Section 1.2:

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. §101 et seq.

**“Bankruptcy Proceeding”** means any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, receivership, winding-up, liquidation, dissolution or composition or adjustment of debt, including any voluntary or involuntary proceeding pursuant to Sections 301, 302, 303 and/or 304 of the Bankruptcy Code.

**“Material Adverse Effect”** means any event, development, condition or circumstance that (a) has a material adverse effect on the business, assets, properties, performance, operations, financial condition or prospects of Guarantor or Developer, (b) materially impairs the ability of Guarantor or Developer to perform their obligations under this Guaranty or the Lease and Development Agreement, or (c) materially and adversely affects the rights or remedies of, or benefits available to, HCHSA under this Guaranty or the Lease and Development Agreement.

**“Obligations”** means, collectively, all indebtedness, obligations and liabilities, whether or not matured or unmatured, liquidated or unliquidated, or secured or unsecured and whether or not arising by contract, operation of law, or otherwise.

**“Solvent”** means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not reasonably believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The determination of whether a Person is Solvent and the facts and circumstances relevant thereto (including the amount of contingent and actual liabilities) on the applicable date shall be computed in the light of all the facts and circumstances existing at such time.

## 2. **Guaranty of Payment and Performance.**

- 2.1 Guarantor hereby irrevocably, absolutely, unconditionally, jointly and severally guarantees (as primary obligor and not merely as a surety) to HCHSA the following (collectively, the **“Guaranteed Obligations”**), including, without limitation, all Guaranteed Obligations that would become due but for the operation of the automatic stay pursuant to §362(a) of the Bankruptcy Code or the operation of Sections 365, 502(b) or 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code which would limit payment or performance of any Obligations of the Developer, the full, faithful and punctual payment and

performance by Developer of each and every one of Developer's Obligations of every nature whatsoever under the Lease and Development Agreement; *provided, however*, that upon Final Completion of the Project Improvements Work in compliance in all material respects with the terms and provisions of the Lease and Development Agreement, AEG Entity shall be automatically released from any further liability under this Guaranty.

This Guaranty is direct, immediate and primary and is a guarantee of the full payment and performance of all Guaranteed Obligations and not of their collectability only and is in no way conditioned or contingent upon any requirement that HCHSA first attempt to collect or enforce any of the Guaranteed Obligations from the Developer or upon any other event, contingency or circumstance whatsoever. It is expressly understood and agreed by Guarantor that to the extent Guarantor's obligations hereunder relate to Guaranteed Obligations which require performance other than the payment of money, HCHSA may proceed against Guarantor to effect specific performance thereof or for payment of damages resulting from the Developer's nonperformance.

2.2 If Developer fails to pay or perform any Guaranteed Obligation when due or required for any reason (which failure constitutes an Event of Default under the Lease and Development Agreement), Guarantor will pay or cause to be paid, or perform or cause to be performed, as applicable, such Guaranteed Obligation directly upon HCHSA's demand therefor and without HCHSA having to make prior demand on Developer. All payment or performance hereunder shall be made without reduction, whether by offset, payment in escrow, or otherwise. Guarantor is liable for, and hereby indemnifies HCHSA for, HCHSA's reasonable costs and expenses, including reasonable attorneys' fees, costs and disbursements, incurred in any effort to collect or enforce any of the Guaranteed Obligations under this Guaranty, whether or not any lawsuit is filed.

2.3 All payments made by Guarantor hereunder shall be made to HCHSA, in the manner and at the place of payment specified therefor in the Lease and Development Agreement.

3. **Guaranty Absolute, Irrevocable and Unconditional.**

3.1 The obligations of Guarantor under this Guaranty are absolute, irrevocable and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Lease and Development Agreement or any other agreement or instrument, the insolvency, bankruptcy, reorganization, dissolution or liquidation of Developer or any change in ownership of Developer or any assignment by Developer or any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Guarantor hereby expressly waives all setoffs and counterclaims it may have against HCHSA arising under any agreements or other instruments. This Guaranty is an unlimited and continuing guarantee of payment and performance and is applicable to the Lease and Development Agreement and all amendments, changes, modifications and extensions thereof as the parties thereto



may from time to time agree upon. It is part of Guarantor's agreement herein that Developer and HCHSA may deal freely and directly with each other without notice to or consent of Guarantor and may enter into such amendments, changes, modifications and extensions to Developer's covenants, duties and obligations under the Lease and Development Agreement as the parties thereto may agree upon and deal with all related matters without diminishing or discharging to any extent Guarantor's liability hereunder. Guarantor hereby waives all notice to which Guarantor might otherwise be entitled by law in order that the guarantee herein should continue in full force and effect, including, without limiting the generality of the foregoing, notice of any change, modification or extension of the Lease and Development Agreement or notice of any default of Developer in performance or payment thereunder.

- 3.2 Without limiting the foregoing, the obligations of Guarantor hereunder shall not be affected, modified or impaired, and Guarantor shall have no right to terminate this Guaranty or to be released, relieved or discharged, in whole or in part, from its payment or performance obligations referred to in this Guaranty by reason of any of the following:
- (a) any amendment, supplement or modification to, settlement, release, waiver or termination of, consent to or departure from, or failure to exercise any right, remedy, power or privilege under or in respect of the Lease and Development Agreement, the Guaranteed Obligations, or any other agreement or instrument relating thereto to which the Developer or HCHSA is a party; or
  - (b) any insolvency, bankruptcy, reorganization, dissolution or liquidation of, or any similar occurrence with respect to, or cessation of existence of, or change of ownership of the Developer or HCHSA or any rejection of any of the Guaranteed Obligations in connection with any Bankruptcy Proceeding or any disallowance of all or any portion of any claim by HCHSA, its successors and assigns, in connection with any Bankruptcy Proceeding; or
  - (c) any lack of validity, enforceability or value of or defect or deficiency in any of the Guaranteed Obligations, the Lease and Development Agreement or any other agreement or instrument relating thereto; or
  - (d) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any Person; or
  - (e) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guarantee of any of the Obligations, or failure to apply such security or collateral or failure to enforce such guarantee; or

- (f) any failure on the part of the Developer to perform or comply with any term of the Lease and Development Agreement or any other Person's (except Landlord) failure to perform or comply with any term of the Lease and Development Agreement; or
- (g) the assignment or transfer of (i) this Guaranty, (ii) the Lease and Development Agreement (whether or not in accordance with the terms thereof) or any other agreement or instrument referred to in the Lease and Development Agreement or applicable thereto or (iii) the Guaranteed Obligations, by Developer to any other Person; or
- (h) any change in the ownership of any equity interest in Developer (including any such change that results in Guarantor no longer owning (directly or indirectly) an equity interest in the Developer); or
- (i) any other event, circumstance, act or omission whatsoever (except a Landlord Default under the Lease and Development Agreement) which might in any manner or to any extent vary the risk of Guarantor or otherwise constitute a legal or equitable defense or discharge of a surety or guarantor responsible for the performance of any of the Guaranteed Obligations.

3.3 There are no conditions precedent to the enforcement of this Guaranty. It shall not be necessary for HCHSA, in order to enforce payment by Guarantor under this Guaranty, to exhaust its remedies against Developer, any other guarantor, or any other Person liable for the payment or performance of the Guaranteed Obligations. Guarantor waives any rights under Chapter 34 of the Texas Business and Commerce Code, Section 17.001 of the Texas Civil Practice and Remedies Code, and Rule 31 of the Texas Rules of Civil Procedure related to the foregoing. HCHSA shall not be required to mitigate damages or take any other action to reduce, collect, or enforce the Guaranteed Obligations.

3.4 Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall be permitted to assert as a defense in any action by HCHSA to enforce the obligations of Guarantor under this Guaranty that HCHSA's failure to perform its obligations as Landlord under the Lease and Development Agreement rendered Developer not liable for the Guaranteed Obligations for which payment or performance is being sought by HCHSA thereby relieving Guarantor of its liability under this Guaranty for such Guaranteed Obligations, but only to the extent such assertion is proven to be accurate.

4. **Reinstatement.** This Guaranty shall continue to be effective or be automatically reinstated, as the case may be, and Guarantor shall continue to be liable hereunder, if at any time any payment or performance of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded, restored or repaid by HCHSA, its successors or assigns, for any reason, including as a result of the insolvency, bankruptcy, dissolution,

liquidation or reorganization of Developer or any guarantor, or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Developer or any guarantor or any substantial part of its property or otherwise, all as though such payment or performance had not occurred.

5. **Interest.** The Guaranteed Obligations shall include, without limitation, interest accruing at the Default Rate following the commencement by or against Developer of any Bankruptcy Proceeding, whether or not allowed as a claim in any such Bankruptcy Proceeding to the extent such interest is provided for under the Lease and Development Agreement.
6. **Unenforceability of Obligations Against Developer.** If for any reason Developer has no legal existence or is under no legal obligation to discharge any of the Guaranteed Obligations, or if any of the Guaranteed Obligations have become irrecoverable from Developer by reason of Developer's insolvency, bankruptcy or reorganization or by other operation of law or for any other reason (other than a Landlord Default under the Lease and Development Agreement), this Guaranty shall nevertheless be binding on Guarantor to the same extent as if Guarantor at all times had been the principal obligor on all such Guaranteed Obligations. In the event that acceleration of the time for payment of any of the Guaranteed Obligations pursuant to the Lease and Development Agreement is stayed upon the insolvency, bankruptcy or reorganization of Developer, or for any other reason, all such Guaranteed Obligations otherwise subject to acceleration under the terms of the Lease and Development Agreement or any other agreement, evidencing, securing or otherwise executed in connection with any Guaranteed Obligation shall be immediately due and payable by Guarantor.
7. **Waiver.** Guarantor hereby waives:
  - (a) notice of acceptance of this Guaranty, of the creation or existence of any of the Guaranteed Obligations and of any action by HCHSA in reliance hereon or in connection herewith;
  - (b) presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest with respect to the Guaranteed Obligations; and
  - (c) any requirement that suit be brought against, or any other action by HCHSA be taken against, or any notice of default or other notice be given to (except as required by the Lease and Development Agreement), or any demand be made on, Developer or any other Person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against Guarantor.
8. **Subrogation.** Until all of the Guaranteed Obligations shall have been irrevocably paid to HCHSA in full, Guarantor shall not exercise, and during such period hereby waives, any rights against Developer arising as a result of any payment or performance by Guarantor

hereunder by way of subrogation, reimbursement, restitution, contribution or otherwise, and will not prove any claim in competition with HCHSA in respect of any payment or performance hereunder in any Bankruptcy Proceeding. Guarantor will not claim setoff, recoupment or counterclaim against Developer in respect of any liability of Guarantor to Developer, and Guarantor waives any benefit of and any right to participate in any collateral security that may be held by HCHSA. If any amount shall be paid to the Guarantor on account of such subrogation, reimbursement, restitution, contribution or other rights at any time when all the Guaranteed Obligations shall not have been irrevocably paid to HCHSA in full, such amount shall be held in trust for the benefit of HCHSA and shall forthwith be paid to HCHSA to be applied to the Guaranteed Obligations.

9. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be delivered by U.S. mail, registered or certified, return receipt requested, postage prepaid, or delivered personally, or delivered by telecopier. Notices shall be sent to the following addresses:

HCHSA:

Harris County – Houston Sports Authority  
Two Houston Center  
909 Fannin, Suite 3175  
Houston, Texas 77010  
Attention: Chairman  
Facsimile: (713) 308-5955

with copies of all notices being sent to:

Andrews Kurth LLP  
600 Travis, Suite 4200  
Houston, Texas 77002  
Attention: Mark B. Arnold  
Facsimile: (713) 238-7295

Guarantor:

Dynamo Stadium, LLC  
c/o AEG  
800 W. Olympic Blvd., Suite 305  
Los Angeles, California 90015  
Attention: Ted Fikre, Chief Legal and Development Officer  
Facsimile: (213) 742-7294

and

Anschutz Entertainment Group, Inc.  
c/o AEG  
800 W. Olympic Blvd., Suite 305  
Los Angeles, California 90015  
Attention: Ted Fikre, Chief Legal and Development Officer  
Facsimile: (213) 742-7294

with a copy to:

Greenberg Traurig, LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D.R. Jones, Jr.  
Facsimile: (713) 754-7530

Developer:

Dynamo Stadium, LLC  
c/o AEG  
800 W. Olympic Blvd., Suite 305  
Los Angeles, California 90015  
Attention: Ted Fikre, Chief Legal and Development Officer  
Facsimile: (213) 742-7294

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

10. **No Waiver; Remedies.** No failure on the part of HCHSA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. HCHSA may proceed to enforce its rights hereunder by any action at law, suit in equity, or other appropriate proceedings, whether for damages or for specific performance. Any remedies herein provided are cumulative and not exclusive of any remedies provided by law.
11. **Term; Termination.** This Guaranty shall remain in full force and effect until the later of a date (the "**Expiration Date**") that is (i) four (4) years after the Lease Expiration Date and (ii) the date of payment in full of the Guaranteed Obligations and all other amounts payable under this Guaranty for which claims have been made in writing by HCHSA on or before the date set forth in the preceding clause (i) of this Section 11.

12. **Successors and Assigns.** This Guaranty is a continuing guaranty, shall apply to all Guaranteed Obligations whenever arising, shall be binding upon the parties hereto and their successors, transferees and permitted assigns and shall inure to the benefit of and be enforceable by the parties hereto and their successors and permitted assigns; provided Guarantor shall have no right, power or authority to delegate, assign or transfer all or any of its obligations hereunder unless it has obtained the prior consent of HCHSA. HCHSA may assign or otherwise transfer this Guaranty to any Person to whom it may transfer the Lease and Development Agreement, and such Person shall thereupon become vested, to the extent set forth in the agreement evidencing such assignment, transfer or participation, with all rights in respect hereof granted to HCHSA herein.
13. **Amendments, Etc.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and HCHSA. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver or consent shall be in writing and signed by HCHSA. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.
14. **Representation and Warranties of Dynamo Soccer.** As an inducement to HCHSA to enter into the Lease and Development Agreement and accept this Guaranty, Dynamo Soccer represents and warrants to HCHSA as follows:
- a. *Organization.* Dynamo Soccer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The business which Dynamo Soccer carries on and which it proposes to carry on may be conducted by Dynamo Soccer. Dynamo Soccer is duly qualified to do business and is in good standing in all jurisdictions where such qualification might be required by reason of performance under this Guaranty.
  - b. *Authority.* The execution, delivery and performance of this Guaranty by Dynamo Soccer and the consummation of the transactions contemplated hereby are within Dynamo Soccer's powers and have been duly authorized by all necessary action of Dynamo Soccer.
  - c. *No Conflicts.* Neither the execution and delivery of this Guaranty nor the consummation of any of the transactions contemplated hereby nor compliance with the terms and provisions hereof will contravene the organizational documents of Dynamo Soccer or any Applicable Laws to which Dynamo Soccer is subject or any judgment, decree, license, order or permit applicable to Dynamo Soccer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Dynamo Soccer pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Dynamo Soccer is a party or by which Dynamo Soccer is bound, or to which Dynamo Soccer is subject.

- d. *No Consents.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or any other Person is required for the execution, delivery and performance by Dynamo Soccer of this Guaranty or the consummation of the transactions contemplated hereby.
- e. *Valid and Binding Obligation.* This Guaranty is the legal, valid and binding obligation of Dynamo Soccer, enforceable against Dynamo Soccer in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights or remedies of creditors generally and by general principles of equity.
- f. *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Dynamo Soccer, threatened against or affecting Dynamo Soccer, which the management of Dynamo Soccer in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Dynamo Soccer under, this Guaranty to perform its obligations under this Guaranty or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Dynamo Soccer or on the ability of Dynamo Soccer to conduct its business as presently conducted or as proposed or contemplated to be conducted.
- g. *Solvency.* Dynamo Soccer is Solvent as of the Execution Date.

15. **Representation and Warranties of AEG Entity.** As an inducement to HCHSA to enter into the Lease and Development Agreement and accept this Guaranty, AEG Entity represents and warrants to HCHSA as follows:

- a. *Organization.* AEG Entity is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. The business which AEG Entity carries on and which it proposes to carry on may be conducted by AEG Entity. AEG Entity is duly qualified to do business and is in good standing in all jurisdictions where such qualification might be required by reason of performance under this Guaranty.
- b. *Authority.* The execution, delivery and performance of this Guaranty by AEG Entity and the consummation of the transactions contemplated hereby are within AEG Entity's powers and have been duly authorized by all necessary action of AEG Entity.
- c. *No Conflicts.* Neither the execution and delivery of this Guaranty nor the consummation of any of the transactions contemplated hereby nor compliance with the terms and provisions hereof will contravene the organizational documents of AEG Entity or any Applicable Laws to which AEG Entity is subject or any judgment, decree, license, order or permit applicable to AEG Entity, or

will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of AEG Entity pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which AEG Entity is a party or by which AEG Entity is bound, or to which AEG Entity is subject.

- d. *No Consents.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or any other Person is required for the execution, delivery and performance by AEG Entity of this Guaranty or the consummation of the transactions contemplated hereby.
  - e. *Valid and Binding Obligation.* This Guaranty is the legal, valid and binding obligation of AEG Entity, enforceable against AEG Entity in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights or remedies of creditors generally and by general principles of equity.
  - f. *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of AEG Entity, threatened against or affecting AEG Entity, which the management of AEG Entity in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of AEG Entity under, this Guaranty to perform its obligations under this Guaranty or (b) have a material and adverse effect on the consolidated financial condition or results of operations of AEG Entity or on the ability of AEG Entity to conduct its business as presently conducted or as proposed or contemplated to be conducted.
  - g. *Solvency.* AEG Entity is Solvent as of the Execution Date.
16. **Governing Law and Venue.** THE LAWS OF THE STATE OF TEXAS SHALL GOVERN THE VALIDITY, INTERPRETATION, CONSTRUCTION, AND PERFORMANCE OF THIS GUARANTY WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT SUCH PRINCIPLES WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THIS GUARANTY SHALL BE IN HARRIS COUNTY, TEXAS.
17. **Further Assurances.** Guarantor agrees that it will from time to time, at the request of HCHSA, do all such things and execute all such documents as HCHSA may consider reasonably necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of HCHSA hereunder. Guarantor acknowledges and confirms that Guarantor itself has established its own adequate means of obtaining from Developer on a continuing basis all information desired by Guarantor concerning the financial condition of Developer and that Guarantor will look to Developer and not to



HCHSA in order for Guarantor to be kept adequately informed of changes in the Developer's financial condition.

18. **Attorneys' Fees.** If any party shall prevail in any litigation instituted by or against the other related to this Guaranty, the prevailing party, as determined by the court, shall receive from the non-prevailing party all costs and reasonable attorneys' fees incurred in such litigation, including costs on appeal, as determined by the court.
19. **Miscellaneous.** This Guaranty constitutes the entire agreement and complete agreement of Guarantor with respect to the matters set forth herein. This Guaranty shall be in addition to any other guaranty or collateral security for any of the Guaranteed Obligations. If any provision of this Guaranty shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Guaranty and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability. Captions and headings in this Guaranty are for reference only and do not constitute a part of the substance of this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the Execution Date.

DYNAMO SOCCER, L.L.C.,  
a Delaware limited liability company

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

ANSCHUTZ ENTERTAINMENT GROUP, INC.,  
a Colorado corporation

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

**EXHIBIT D**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Permitted Exceptions*

1. Restrictive Covenants recorded in/under Film Code No. 637006 of the Map Records of Harris County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
2. 15' X 15' Visibility Triangle in the northeast corner as reflected by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
3. Building set back line 25 feet in width along the southeast property line(s) as reflected by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
4. Building set back line 10 feet in width along the northeast and southwest property line(s) as reflected by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
5. Drainage easement 15 feet in width on each side of the center line of all natural drainage courses as shown by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
6. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument filed for record under Harris County Clerk's File No. S770653. (As to Block 204 S.S.B.B.)
7. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument filed for record under Harris County Clerk's File No. T012732. Title to said interest not checked subsequent to date of execution. Surface rights waived therein. (As to Block 205 S.S.B.B.)
8. All oil, gas and other minerals of every character in and under the Land described property, as reserved in instrument filed for record under Harris County Clerk's File No. T275322. (As to Block 219 S.S.B.B.)
9. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument recorded in Volume 3447, Page 69 of the Deed Records of Harris County, Texas. (As to Lots 6, 7 and 12, Block 220 S.S.B.B.)
10. Subject to City of Houston Ordinance 2010-418 abandoning the rights-of-way of Rusk, Capital and Bastrop within the Land.

**EXHIBIT E**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Project Budget*

<b>Houston Dynamo Stadium Project Budget</b>		6-Dec-10
<b>DESIGN/PROFESSIONAL SERVICES</b>		
Basic Design & Engineering Services	\$	4,250,000
Additional Services - Architecture		389,669
Reimbursable - Architecture		300,000
Site Surveying (Boundary & Topographic)		24,000
Traffic and Parking Studies		50,000
Geotechnical Report/Ground Water Analysis		40,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>5,053,669</b>
<b>LEGAL &amp; GOVERNMENTAL SERVICES</b>		
Legal Services (Land, Approvals, Public Transactions)	\$	677,500
Legal Services (Project Transactions & Administrative)	\$	600,000
Legal Services (Insurance / Risk Mgmt)		200,000
HCSA Fees and Expenses		517,000
MBE/WBE Facilitator (diversity coordinator)		150,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>2,144,500</b>
<b>PROJECT ADMINISTRATION</b>		
HCSA - Project Rep		237,000
Program Manager Services	\$	1,841,817
Program Manager Reimbursable		300,000
Project Office Expense		100,000
Office Build-out Expense		50,000
Furniture, Fixtures, & Equipment (Administration related)		35,000
Printing/Reproduction Expenses		100,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>2,663,817</b>
<b>CONSTRUCTION</b>		
Preconstruction Services Fees	\$	155,750
Hard Construction Cost	\$	57,920,759
<b>SUBTOTAL</b>	<b>\$</b>	<b>58,076,509</b>
<b>SYSTEMS &amp; EQUIPMENT</b>		
Concession Menu Boards, Condiments Stands, Misc. (sch B)	\$	250,000
Scoreboard & Video Systems		1,900,000
Other Arena FFE		1,900,000
Display Systems - Sponsorship		250,000
Highway Marquee Sign		1,000,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>5,300,000</b>
<b>PERMITS, TESTING, FEES, and SPECIAL TAXES</b>		
Building Permit Fees/Approvals	\$	500,000
System Development Charges (Water and Sanitary)		800,000
Health Department Fees		100,000
Owners Testing Fees		400,000
Electric and Gas Fees (Tap Fees)		230,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>2,030,000</b>
<b>INSURANCE, FINANCING &amp; TRANSACTION COSTS</b>		
Construction Insurance - Property		162,394
Bonds & Insurance		111,000
Interest Reserve	\$	1,650,000
Capitalized Interest	\$	2,205,000
Legal Fees and Expenses (Borrower and Lenders)	\$	2,000,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>6,128,394</b>
<b>OTHER</b>		
Pre-Opening Costs	\$	1,000,000
<b>SUBTOTAL</b>	<b>\$</b>	<b>1,000,000</b>
<b>CONTINGENCY</b>		
Owner Design Development Contingency	\$	1,573,246
Owner Construction Contingency	\$	1,639,246
<b>TOTAL PROJECT COSTS</b>	<b>\$</b>	<b>85,609,381</b>

**EXHIBIT F**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Project Construction Schedule*



## Houston Dynamo Stadium Project Schedule

	Start	Finish
Architect Selection	May 24, 2010	June 7, 2010
Contractor Selection	July 19, 2010	August 10, 2010
<u>Design</u>		
Schematic Design	September 14, 2010	October 15, 2010
SD Approval	October 18, 2010	December 15, 2010
Design Development to 50%	December 16, 2010	January 28, 2011
50% DD Approval	January 31, 2011	March 2, 2011
Design Development to 100%	January 31, 2011	March 11, 2011
GMP Development	March 1, 2011	April 12, 2011
GMP Approval	April 13, 2011	April 26, 2011
Construction Documents	March 14, 2011	July 1, 2011
CD Approval	July 4, 2011	July 22, 2011
Construction	January 19, 2011	March 22, 2012
Substantial Completion	March 22, 2012	March 22, 2012
Final Completion	March 23, 2012	June 22, 2012

**EXHIBIT G**  
**TO**  
**LEASE AND DEVELOPMENT AGREEMENT**

*Tenant's Site Preparation Work*

The "Site Preparation Work" shall be the following:

Installation of Project Sign

Site Security and Access Control – The exterior perimeter of the Leased Premises.

Temporary Construction Utility Installation – Services for use during construction. This will include power, water, sanitary sewer, telecommunications.

Trailer Compound Placement – Office and Storage facilities for Project Contractor and Sub-contractors.

Site Clearing – 1) removal of abandoned streets (Bastrop, Capitol and Rusk) including the in-street utilities after notice to, and coordination with the City; and 2) removal of all existing vegetation and removal of two (2) to four (4) feet of non-reusable soils, trash and rubble.

Site Utility Installation — Permanent services to the site will be coordinated with the efforts of both the METRO and the City. Installations will occur as scopes of work of each party progresses.



## **EXHIBIT C**

### **PERMITTED ENCUMBRANCES**

1. Restrictive Covenants recorded in/under Film Code No. 637006 of the Map Records of Harris County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
2. 15' X 15' Visibility Triangle in the northeast corner as reflected by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
3. Building set back line 25 feet in width along the southeast property line(s) as reflected by plat recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.
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6. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument filed for record under Harris County Clerk's File No. S770653. (As to Block 204 S.S.B.B.)
7. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument filed for record under Harris County Clerk's File No. T012732. Title to said interest not checked subsequent to date of execution. Surface rights waived therein. (As to Block 205 S.S.B.B.)
8. All oil, gas and other minerals of every character in and under the Land described property, as reserved in instrument filed for record under Harris County Clerk's File No. T275322. (As to Block 219 S.S.B.B.)
9. All oil, gas and other minerals of every character in and under the Land, as reserved in instrument recorded in Volume 3447, Page 69 of the Deed Records of Harris County, Texas. (As to Lots 6, 7 and 12, Block 220 S.S.B.B.)
10. Subject to City of Houston Ordinance 2010-418 abandoning the rights-of-way of Rusk, Capital and Bastrop within the Land.

## EXHIBIT D

### FORM OF MEMORANDUM OF GROUND LEASE

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made and entered into effective as of the 18th day of February, 2011, by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas (the "City") and Harris County, Texas a political subdivision of the State of Texas (the "County") each with an undivided fifty percent (50%) interest as tenants-in-common (collectively, the "Landlord"), and **HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**, a sports and community venue district created under Chapter 335 of the Texas Local Government Code ("Tenant").

### RECITALS

A. Landlord and Tenant have entered into that certain Ground Lease (the "Ground Lease") dated effective as of February 18, 2011, pursuant to which Landlord leased to Tenant and Tenant leased from Landlord the following (the "Leased Premises");

B. The tract of real property described on Exhibit A attached hereto together with all subsurface rights, air rights, air space and appurtenances associated therewith (the "Stadium Site"), together with (i) any and all other rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, any and all (a) rights, privileges, easements and appurtenances of Landlord as the owner of fee simple title to the Stadium Site now or hereafter existing, (b) subsurface rights below the surface of the Stadium Site, (c) reversions which may hereafter accrue to Landlord as owner of fee simple title to the Stadium Site by reason of the closing of any adjacent street, sidewalk or alley or the abandonment of any rights by any Governmental Authority, and (d) strips and gores relating to the Stadium Site; and (ii) such other easements, rights of way, licenses and other rights as may hereafter be entered into or granted by Landlord pursuant to Section 2.1 of the Ground Lease (including, without limitation, air and subsurface rights above and below the public streets, roads and rights of way adjacent to the Stadium Site) for the installation, operation, repair, maintenance and continued use of other Improvements contemplated by the Project Documents, including, without limitation, easements and rights of way for the installation, operation, maintenance, repair and continued use of utilities, communication and other lines, such rights being subject to the express terms and conditions of the instruments creating or granting same.

C. Landlord and Tenant desire to execute this Memorandum to provide notice of Tenant's rights, titles and interest under the Ground Lease and in and to the Leased Premises.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and confessed, the Parties, intending to be and hereby being legally bound, do hereby agree as follows:

**Section 1. Definitions and Usage.** Unless the context shall otherwise require, capitalized terms used in this Memorandum shall have the meanings assigned to them in the Ground Lease, which also contains rules as to usage that shall be applicable herein.

**Section 2. Lease.** The Leased Premises has been leased to Tenant pursuant to the terms and conditions of the Ground Lease, which is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Ground Lease, the Ground Lease shall control.

**Section 3. Term.** The Landlord has leased the Leased Premises to Tenant for a term (the "Term") commencing at 12:00 a.m. on the day immediately following the date that is the later of (i) the date on which all of the Conditions to Commencement described in Section 8.1 of the Lease and Development Agreement have been fully satisfied and (ii) the date Landlord receives written certification from Tenant, stating that all of the Conditions to Commencement described in Section 8.1 of the Lease and Development Agreement have been satisfied (the "Commencement Date"). The Term shall end on the date which is thirty (30) years after the Operating Term Commencement Date (as such term is defined in the Lease and Development Agreement), unless sooner terminated in accordance with the provisions of the Ground Lease.

**Section 4. Third Party Beneficiary Status.** Pursuant to Section 16.2 of the Ground Lease, Landlord and Tenant acknowledge that Subtenant is, and shall at all times, be a third party beneficiary of the Ground Lease.

**Section 5. Subtenant's Rights of First Negotiation and Renewal.** Pursuant to Section 16.1 of the Ground Lease, Landlord has granted the Subtenant a certain Right of First Negotiation prior to the expiration of the Lease and Development Agreement.

**Section 6. Successors and Assigns.** This Memorandum and the Ground Lease shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject however, to the provisions of the Ground Lease regarding assignment.

IN WITNESS WHEREOF, this Memorandum has been executed by Landlord and Tenant as of the date first above written.

**ATTEST:**

By: \_\_\_\_\_  
Anna Russell, City Secretary

**APPROVED:**

By: \_\_\_\_\_  
Andrew F. Icken,  
Chief Development Officer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David Feldman,  
City Attorney

**APPROVED AS TO FORM:**

VINCE RYAN  
Harris County Attorney

By: \_\_\_\_\_  
Douglas P. Ray,  
Assistant County Attorney

**LANDLORD:**

**CITY OF HOUSTON, TEXAS**, a home-rule city  
organized under the laws of the State of Texas

By: \_\_\_\_\_  
Annise D. Parker, Mayor

**COUNTERSIGNED:**

By: \_\_\_\_\_  
Ronald C. Green, Controller

**DATE OF COUNTERSIGNATURE:**

\_\_\_\_\_

**HARRIS COUNTY, TEXAS**

By: \_\_\_\_\_  
David Turkel, Director,  
Community Services Department

**TENANT:**

**HARRIS COUNTY-HOUSTON SPORTS  
AUTHORITY**, a sports and community venue  
district created under Chapter 335 of the Texas  
Local Government Code

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

J. Kent Friedman, Chairman

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by \_\_\_\_\_, Mayor of the CITY OF HOUSTON, TEXAS, a home-rule city organized under the laws of the State of Texas, on behalf of said home-rule city.

{SEAL}

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

Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by \_\_\_\_\_, \_\_\_\_\_ of the HARRIS COUNTY, TEXAS, a political subdivision of the State of Texas, on behalf of said entity.

{SEAL}

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

Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2011 by \_\_\_\_\_, \_\_\_\_\_, of HARRIS COUNTY - HOUSTON SPORTS AUTHORITY, a sports and community venue district created under Chapter 335 of the Texas Local Government Code, on behalf of said sports and community venue district.

{SEAL}

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

Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

EXHIBIT A

Stadium Site

Unrestricted Reserve "A", East End Economic Development Site, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Film Code No. 637006 of the Map Records of Harris County, Texas.



## SCHEDULE 2.2

### **READY FOR CONSTRUCTION**

“Ready for Construction” means the following described work has been performed with respect to the Leased Premises in accordance with all applicable Governmental Rules:

- (i) The demolition and removal of all existing vertical improvements and resulting debris located upon the Stadium Site required to be removed in order to deliver the Stadium Site to the Tenant in a construction-ready condition.
- (ii) All City Remedial Work as provided in Section 14.1.
- (iii) All on-site archeological work necessary to comply with the Texas Antiquities Code;
- (iv) The abandonment and disconnection of all public and private utility lines crossing the Stadium Site or any portion thereof; provided, however, that the buried public and private utility pipelines within the former ROW's and service feeds to the former buildings will remain in place but have been removed from service. Removal from the Site will be by Subtenant during the normal course of excavation for the Stadium to the extent necessary for the Stadium.
- (v) The abandonment of any public or private streets within the Stadium Site; provided, that the removal of the pavement and appurtenances will be by Subtenant.
- (vi) All work necessary to cause utilities to be available at the Stadium Site as described below. Water supply is available in the public utility easement that is the former Hutchins right of way. The sanitary sewer lines will be available in the Walker ROW on March 1, 2011. The storm sewer collection system within the Site to be constructed by Subtenant will convey storm water from the existing storm water collection system, entering the Site from the south at the Bastrop and Walker Street intersection, through the Site via the Site's conveyance system to a discharge point to be installed by METRO on the west side of Dowling immediately south of Texas Avenue. This conveyance system will be constructed in accordance with City of Houston's Infrastructure Design Manual. All other utility services will be arranged by Subtenant.