

GROUND LEASE

This Ground Lease (this "***Lease***") is entered into by and between the Eanes Independent School District, an independent school district in Travis County, Texas ("***Lessor***") and WH Little League, a Texas non-profit corporation doing business as Western Hills Little League ("***Lessee***") to be effective as of the Effective Date (as defined in Section 1.14 below).

Recitals

A. Lessor owns a tract of land in Travis County, Texas, consisting of approximately 50 acres more particularly described on the attached **Exhibit A** attached hereto and incorporated herein (the "***Property***")

B. The Property has been acquired by Lessor and held by Lessor for future educational related uses.

C. Lessor does not presently need the Property for educational uses, however, Lessor has determined that it would not be in the best interest of Lessor, its students, parents and taxpayers to sell the Property because there is no adequate replacement property in the area and Lessor anticipates a future need for the Property.

D. Lessor has the opportunity to lease the Property for civic uses which would be of benefit to Lessor's students and parents while maintaining Lessor's right to terminate a lease and use the Property for educational uses.

E. Lessor has published notice and conducted a public request for proposals process pursuant to applicable law, including Chapter 272 of the Texas Local Government Code.

F. In response to the public request for proposal process, Lessor received only one response, the response from Lessee.

G. Lessor has determined it would be in the best interest of Lessor, its students, parents and taxpayers to enter into this Lease agreement.

NOW, THEREFORE, the parties enter into this Lease upon the terms and conditions herein set forth.

ARTICLE I DEFINITIONS

In addition to the terms set forth above and elsewhere in this Lease, the following terms shall have the following meanings:

1.01 "***Effective Date***" means the date of the last of the parties to execute this Lease as shown on the signature pages to this Lease.

1.02 "**Expiration Date**" shall be a date fifty (50) years after the Effective Date, or one (1) year after the notice from Lessor to Lessee as provided in Article 3 herein, or the Termination Date, whichever is the first to occur.

1.03 "**Force Majeure**" shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, including, but not limited to, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability. The term "Force Majeure" will specifically include an attack by terrorists upon the United States that results in a disruption of the financial markets for a period of more than two (2) weeks.

1.04 "**Governmental Authority**" means all federal, state, and local governmental agencies having jurisdiction over the Property.

1.05 "**Improvements**" mean as the context implies, the multi-sports park including access and related facilities.

1.06 "**Lease Year**" means (a) the period that commences with the Commencement Date and terminates on December 31st of the same calendar year and (b) thereafter, each successive twelve month period (but if this Lease terminates on a day other than December 31, then the last Lease Year will end on the date of termination of this Lease).

1.07 "**Substantial Completion**" and "**Substantially Completed**" mean that all of the following have occurred: (i) Lessee has completed or caused the construction to be completed in accordance with the Final Construction Drawings (defined in Article 6), subject only to minor or insubstantial details of construction, decoration, or mechanical adjustments ("**Punchlist**") approved by Lessor, (ii) Lessee has provided to Lessor copies of full and final lien waivers from the General Contractor and all first tier subcontractors with: (a) certification of payment of all subcontractors and suppliers, and (b) indemnification of Lessee and Lessor from all claims from all subcontractors and suppliers, and (iii) Lessee has delivered to Lessor a copy of a certificate of occupancy for the Improvements from the appropriate Governmental Authority.

1.08 "**Survey**" means an on-the-ground survey which shall be (i) staked on the ground, with permanent markers for corners; (ii) show the location of all current improvements, highways, streets, roads, creeks or other water courses, fences, easements, access easements, locations of utilities, building set back lines, proposed rights-of-way on or adjacent to the Property, the limits of any 100 year flood plain and the number of acres and the total square footage contained therein; (iii) contain the surveyor's certification that there are no encroachments on or protrusions except as may be shown on the Survey, (iv) the Survey conforms to Category IA, Condition II standards promulgated by the Texas Society of Professional Surveyors and that the acreage contained in such flood plain is correct; (v) sets forth the number of acres contained in the Property, (vi) includes a metes and bounds description of

the Property and (vii) identifies any Schedule B exceptions as outlined on the Title Commitment (as defined in Section 2.03 below).

1.09 "**Taxes**" means all taxes, general and special assessments, and other charges of every description which are levied on or assessed against the Property.

1.10 "**Title Commitment**" means any Commitment for a Leasehold Owner's Policy of Title Insurance issued by the Title Company.

1.11 "**Title Company**" means Heritage Title Company or any other title company or underwriter selected by Lessor.

ARTICLE 2 GROUND LEASE

2.01 **Lease.** Subject to Lessee's right to terminate this Lease as provided herein, Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Property together with all rights, privileges, improvements, easements, appurtenances, and immunities belonging to or in any way appertaining to the Property, including, but not limited to, any and all easements, rights, title, and privileges of Lessor, existing now or in existence at any time during the Lease Term in, to, or under the Property and the non-exclusive right to use adjacent streets, sidewalks and reversions which may later accrue to Lessor as owner of the Property by reason of the closing of any street or sidewalk. This Lease shall not convey to Lessee nor cover any water rights associated with the Property nor underground minerals which may be removed without disturbing the surface of the Property.

2.02 **Quiet Enjoyment.** As long as Lessee performs its obligations under this Lease, Lessee shall lawfully and quietly hold, occupy, and enjoy the Property during the Lease Term without hindrance or molestation by Lessor or any person claiming by, through, and under Lessor, except such portion of the Property, if any, as shall be taken under the power of eminent domain, and all matters of record as of the Effective Date, and any matter that is revealed by the Survey, including visible and apparent easements, encroachments, and boundary line conflicts, if any.

2.03 **Title Commitment and Survey.** Within thirty (30) days after the Effective Date, Lessee shall order and provide to Lessor the Survey and the Title Commitment. The legal description of the Property which is a part of the Survey shall be substituted for the Property description attached as **Exhibit A** and shall become the Property description for this Lease, unless Lessee objects in writing to the content of the Title Commitment or Survey. In the event of such objection, Lessor shall have ten (10) days to cure such objection. If Lessor does not cure such objection, Lessee may, within ten (10) additional days, terminate this Lease and receive a refund of any rent paid.

ARTICLE 3 GROUND LEASE TERM

3.01 Term.

(a) The term of the Lease shall be fifty (50) years from the Effective Date to the Expiration Date.

(b) Notwithstanding the fifty (50) year term, Lessor shall have the right to terminate the Lease and recover full and complete possession of the Property if Lessor determines that Lessor needs the Property for educational uses or Lessor determines after a determination by the Board of Trustees of Lessor that a financial exigency exists and that in order to meet its financial obligations, it must sell the Property and use the proceeds of sale for payment in order to provide educational services to its students. Should Lessor make such determination, Lessor will give Lessee written notice, as provided herein, and state that the Lease will be terminated one (1) year after the date of the written notice. Upon the expiration of the one (1) year notice, the Lease shall terminate and Lessor will have no further obligations to Lessee under this Lease.

(c) As an alternative to Lessor's right to terminate the Lease and recover full and complete possession of the Property as provided in Section 3.01(b), in the event Lessor determines that it requires a portion of the Property for educational uses, or due to financial exigency, Lessor shall present its request for modification of the Lease to exclude a portion of Property to Lessee and Lessee and Lessor agree to negotiate in good faith to revise the Lease to permit Lessor to recover the portion of the Property requested by Lessor. The parties agree that, if in the reasonable judgment of Lessee, the portion of the Property requested to be released by Lessor from the Lease is not property currently being used by Lessee, is not planned for future use by Lessee, and the release of the property will not materially interfere with the use of the remainder of the Property by Lessee, nor interfere with governmental permits granted for use of the Property by Lessee, the portion of the Property requested by Lessor will be released and the Lease and rent will be modified by agreement of the parties.

(d) Also notwithstanding the fifty (50) year term, Lessee shall have the right to terminate the Lease, vacate the Property and return possession of the Property and any Improvements thereon to Lessor if Lessee determines that it is not feasible to complete the project Lessee anticipates for use of the Property. In the event Lessee determines that it intends to terminate the Lease under this provision, Lessee shall give Lessor ninety (90) days written notice of its intent to terminate the Lease. At the end of the ninety (90) day period, the Lease shall be terminated, Lessee shall execute any documents and agreements required by Lessor to evidence termination of the Lease and Lessor shall provide acknowledgement to Lessee of termination of the Lease. Lessee shall be obligated to make all payments to Lessor and perform all obligations it has agreed to under this Lease up until the date of termination of the Lease.

ARTICLE 4 RENT

4.01 **Initial Rent.** The initial rent for the Property shall be Ten Thousand Dollars (\$10,000) per year. The initial rent period shall commence on the Effective Date and shall end on the earlier of four (4) years after the Effective Date or completion and opening for use of the initial project to provide baseball fields on the Property. The initial rent for the first year shall be payable with thirty (30) days after the Effective Date of this Lease. Thereafter, rent shall be payable on the first day of each Lease Year.

4.02 **Rental After Initial Rent.** After the initial rent period, rent shall be Fifty Thousand Dollars (\$50,000) subject to adjustment as provided herein, per Lease Year. Yearly rental shall be due at the beginning of each Lease Year.

4.03 **Rental Adjustment.** Rental shall be adjusted at the end of each five (5) year period after the Effective Date. At the end of each five (5) year anniversary, Yearly Rental shall increase by five (5%) percent of the immediately preceding Yearly Rental. A table of projected rental, not including Additional Rent, is attached as **Exhibit A-1**.

4.04 **Additional Rent.** In addition to the rental and escalation amount provided herein, if Lessee permits use of any facility constructed on the Property and receives income from permitting the use of the facilities, Lessee shall pay to Lessor ten (10%) percent of any income received (without deduction of expenses) from other entities. Income received by Lessee from participants paying fees or other payments to participate in activities on the Property or from concessions sold on the Property shall not be deemed to be income received from other entities. Lessee shall provide a quarterly accounting of fees received and make payments as provided herein on the commencement of each Lease Year.

4.05 **Failure to Pay Rent.** Any failure by Lessee to pay any rent provided in this Article 4 shall be an event of default as provided herein.

ARTICLE 5 IMPROVEMENTS

5.01 **Improvements.** Lessee shall be solely responsible for design, permitting, governmental approvals, construction, operation and maintenance of the Improvements. Lessee shall also be solely responsible for any necessary utilities for the Improvements and access to the Improvements. The responsibility for access shall include Lessee's responsibility for all Improvements required to be made off of the Property in order to provide appropriate access to the Property and the Improvements. If as a condition for issuance of a governmental permit, a governmental entity requires the dedication of right of way from the Property to provide appropriate access to the Property, Lessor will review the request for dedication of access, and if the requested dedication is beneficial to the future use of the Property, will make the dedication of reasonable additional right of way to provide access to the Property. An initial site plan for Improvements and related infrastructure is attached as **Exhibit B**.

5.02 **Approval by Lessor.** Lessee shall keep Lessor continuously informed of all plans and designs for Improvements, proposed and actual requests to any governmental entity for permits or approvals, and changes in plans for Improvements. Lessee shall obtain Lessor's prior written consent to all final plans for Improvements and submission for permits or approvals to any governmental entity. Lessee shall submit preliminary plans for Improvements to Lessor and provide Lessor reasonable time to comment on the plans. Lessee shall prepare and present for Lessor's prior approval to Lessor final construction drawings ("***Final Construction Drawings***") of all Improvements proposed by Lessee for the Property.

5.03 **Compliance with ADA.** Lessee hereby agrees, warrants and represents that Lessee will comply with the Americans With Disabilities Act and Texas Accessibility Standards at least to the same extent Eanes ISD would be required to comply with such act. Lessee will indemnify and hold harmless Eanes ISD and its officers, employees, and agents for, from and against any and all claims by third parties alleged against Eanes ISD for alleged violations of the Americans with Disabilities Act relating to Lessee's operations, programs, and/or failure to make accommodations.

5.04 **Commencement of Construction.** Lessee will commence construction of Improvements within four (4) years after the Effective Date. If Lessee does not commence construction of Improvements by this date, Lessor shall have the option to cancel this Lease after giving Lessee ninety (90) days written notice.

ARTICLE 6 CONSTRUCTION

6.01 **Design.** Lessee shall be responsible at its sole cost and expense, for having prepared by the licensed and qualified professionals, the Plans and the Construction Drawings for the Improvements.

6.02 **Process for Approval of Final Construction Drawings.** Final Construction Drawings will be submitted to Lessor's facilities planning department and the department will be given thirty (30) days to review, comment and approve all such Final Construction Drawings.

6.03 **Performance Under Construction Contracts.** Lessee shall require the General Contractor for the Improvements to provide a Performance and Payment Bond (Private Works) for the Construction Contract--Renovations issued by a surety company reasonably acceptable to Lessee. Lessee shall, upon demand, provide Lessor with a copy of each of the Bonds described in this Section 6.03. Once Lessee has commenced construction (as defined in Section 3.03 above), the construction shall proceed continuously without abatement subject to Force Majeure. If Lessor determines, in Lessor's reasonable judgment and good faith that construction has been abandoned, Lessor may give notice of such fact to Lessee. Lessee shall then have thirty (30) days from its receipt of the notice to present reasonable evidence to Lessor that the construction (i) has not been abandoned and/or (ii) that the construction shall immediately be reinitiated and shall continue uninterrupted until Substantial Completion. In each instance, Lessee shall provide Lessor with reasonable evidence that Lessee has enough money left to complete the Improvements or that Lessee has other funds immediately available to it to complete the

construction. In the event that Lessee fails to provide Lessor with such reasonable evidence within the time required, Lessor may (but shall not be required to), in addition to all other remedies provided to Lessor hereunder, determine that Lessee is in default under this Lease and proceed under the default provisions provided in Article 13 of this Lease.

6.04 **Easements, Dedications and Restrictions.** Lessor shall cooperate with Lessee concerning grants of easements, dedications, and restrictions of the Property which are consistent with the Final Construction Drawings, as applicable. The cost and expense of any action required of Lessor under this Section shall be paid by Lessee, including attorneys, architects, and other professional's fees.

6.05 **Construction.** Lessee shall require that all construction contracts for the construction of Improvements contain the following provisions:

(a) **Insurance.** The General Contractor shall obtain and maintain insurance as required by this Lease.

(b) **Protection of Lessor's Title.** Lessee shall cause the General Contractor to expressly agree that:

(i) **Not Lessor's Agent.** The construction of the Improvements is being completed for and on behalf of Lessee, and not for or on behalf of Lessor.

(ii) **Waiver of Claims Against Lessor.** The General Contractor and all subcontractors will not have, and will not assert or claim, any lien against the fee title to the Property Tract.

(c) **Quality of Construction.** All construction shall be done in a good and workmanlike manner using new materials and shall be in accordance with the building permit. All construction shall comply with all applicable governmental laws, rules and regulations, and all necessary permits and approvals shall be obtained by the General Contractor, or provided to the General Contractor, prior to the commencement of any Improvements. Upon request, Lessee shall provide Lessor with a copy of the fully executed contract with the General Contractor showing compliance with the foregoing requirements prior to, and as a condition precedent to, the commencement of the construction of the Improvements or any subsequent alterations to the Improvements. Upon request, Lessor will be allowed to inspect the construction. Lessee will correct any deficiencies noted by Lessor's inspection within thirty (30) days after notice by Lessor to Lessee.

(d) **Performance and Payment Bonds.** Lessee will cause Performance and Payment Bonds to be recorded with the clerk of Travis County.

ARTICLE 7 MECHANICS' LIENS

Neither Lessee nor anyone claiming any interest in the Property by, through, or under Lessee (including but not limited to contractors, subcontractors, and suppliers) shall have the authority to create any lien or other charge encumbering Lessor's fee title interest in the Property. Lessee shall not cause or permit any liens to be filed against Lessor's fee title interest in the Property by reason of any work, labor, services, or materials supplied or claimed to have been supplied to or for Lessee under the terms of this Lease. If any such lien is filed, Lessee shall either cause the same to be removed based on Lessor's immunity from liens attached to Lessor's real property or if Lessee in good faith desires to contest the lien, take timely action to do so, at Lessee's sole expense. **If Lessee contests the lien, Lessee agrees to indemnify Lessor and hold Lessor harmless from all liability for damages occasioned by the lien or the lien contest and shall cause the lien to be discharged and removed. Should any such lien arise out of the construction of the Improvements, Lessee shall bond against or discharge the same within thirty (30) days after written request by Lessor, and shall defend, indemnify and hold Lessor and the Property harmless therefrom.**

ARTICLE 8 OPERATION, REPAIR, AND MAINTENANCE

8.01 **Permitted Uses.** Lessee and its sublessees shall have the right to use the Property for the construction, operation and management of a multi-sport park. Lessee will not use the Property and Improvements for any use listed on **Exhibit C**. Lessee shall not be entitled to use the Property for any other purpose without Lessor's prior written consent.

8.02 **Adjoining Landowners and Residents.** Lessee represents to Lessor that Lessee has met with and reviewed questions and concerns raised by property owners and other individuals adjoining or in the vicinity of the Property. Lessee shall continue to cooperate with these individuals in the development and operation of the Improvements on the Property to the extent it is feasible to take these concerns into account and allow Lessee to operate the Property and Improvements as Lessee intends. All such construction and operating agreements, if any, between Lessee and any landowners and residents shall be matters between Lessee and these landowners and residents and shall not be requirements that must be enforced by Lessor. Attached as **Exhibit D** is a list of certain agreements between Lessee and certain adjoining landowners and residents. These are agreements between Lessee and these landowners and residents. Lessor shall have no obligation to enforce any of these agreements. It is agreed that no third party beneficiaries are intended or created by inclusion of **Exhibit D**.

8.03 **Operations.** Lessee will operate or will cause the Property to be operated in a clean and workable manner. No alcoholic beverages shall be permitted to be sold or consumed on the Property.

8.04 **Compliance with Laws.** Lessee shall comply with all federal, state and local laws, ordinances, codes, rules, regulations or orders regarding all portions of the Property and

Lessee's use thereof, including, without limitation, all laws relating to health and the environment.

8.05 **Unauthorized Use.** Lessee shall not occupy or use the Property in any manner that will constitute a nuisance or permit any portion of the Property to be occupied or used for any purpose other than as expressly permitted herein.

8.06 **Hazardous Materials.** Lessee shall not bring onto any portion of the Property or the Improvements, any asbestos, petroleum, or petroleum products, explosives, toxic materials, or substances defined as hazardous wastes, hazardous materials, or hazardous substances by any federal, state or local law or regulation ("***Hazardous Materials***"), except in limited quantities required for Lessee's or a subtenant's business that are kept, stored and maintained in strict accordance with all applicable laws.

(a) **Lessee's Protective Actions and Indemnity.** Lessee shall defend, indemnify and hold Lessor harmless from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorney's fees and court costs) caused by or arising out of (i) a violation of the foregoing prohibition or (ii) any release by Lessee (or by any of Lessee's contractors, agents, representatives or subtenants) of any Hazardous Materials on, under, or about all or any portion of the Property or the Improvements located thereon during the Lease Term. Lessee shall clean up, remove, remediate and repair in accordance with the requirements of applicable law any soil or ground water contamination and any other damage caused by the presence of any Hazardous Material brought onto the Property or any of the Improvements by Lessee (or Lessee's contractors, agents, representatives or subtenants) or by the release of any Hazardous Materials in, on, under or about the Property or any of the Improvements by Lessee (or Lessee's contractors, agents, representatives or subtenants) during the Lease Term in accordance with the requirements of applicable law. Lessee shall immediately give Lessor written notice of any suspected breach of the provisions of this section upon learning of the presence or release of Hazardous Materials, and upon receiving any notice from Governmental Authorities of Hazardous Materials pertaining to the Property and/or the Improvements. The obligations of Lessee under this section shall survive the expiration or termination of this Lease for any reason.

8.07 **Removal of Unauthorized Materials and Debris.** Lessee shall remove and properly dispose of all unauthorized materials and construction debris deposited on the Property.

ARTICLE 9 TAXES, INSURANCE, AND INDEMNITY

9.01 **Taxes.** Beginning on the Effective Date and continuing throughout the remainder of the Lease Term, Lessee shall pay, prior to delinquency, all Taxes assessed on the Property and Improvements, if any, directly to the appropriate Governmental Authority.

(a) **Protest of Tax Appraisal.** Lessor and Lessee shall provide to the other a copy of any "Notice of Appraised Value" of the Property received by such party within ten (10) business

days after receipt. If Lessee exercises any right to protest Taxes, Lessee shall be solely responsible for, and shall pay, all costs of such protest, and shall keep Lessor advised as to the status, progress, and results of such protest. Lessor shall cooperate with Lessee, at Lessee's own cost and expense, in any such protest, and will promptly execute all documentation, provide any information to prosecute any permitted contest.

(b) **Lessee's Failure to Pay.** If Lessee fails to pay any portion of the Taxes prior to delinquency, Lessor may give written notice to Lessee of such failure; and if such failure continues for thirty days after such notice, Lessor may pay such portion of the Taxes (but shall have no obligation to do so), and Lessee covenants to reimburse Lessor on demand any amount paid by Lessor, with interest on the amount at ten (10%) percent per annum.

9.02 **Insurance.**

(a) **Property Insurance.**

(i) **By Lessee.** During the Term, Lessee shall maintain property insurance covering the Property and Improvements caused by perils now or hereafter embraced by or defined in a manuscript "all risk" policy (or any successor to such policy), including at least such perils as customarily insured for similar properties in Travis County, Texas, in an amount equal to the full replacement value of the Property and Improvements. The policy shall contain an agreed value endorsement and a laws and ordinances endorsement ("***All Risk Property Insurance***"). Such insurance shall name Lessor and Lessee jointly as loss payees, as their respective interests may appear.

(ii) **By General Contractor.** During construction of the Improvements, Lessee shall require the General Contractor to purchase and maintain Builder's Risk Insurance on the Property and Improvements. Such insurance to be written on a completed value form and in an amount equal to the construction contract amount plus reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the Improvements located away from the site but intended for use at the site, and shall also cover portions of the Improvements in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. Coverage shall be no less broad than that provided by the special causes of loss form CP 10 30 10 91 as promulgated by Insurance Services Office, except that collapse shall be covered as a cause of loss. Such insurance shall be non-cancelable with respect to Lessor. Such Builder's Risk Insurance shall name Lessor as an additional insured, and such endorsement shall be without exceptions for the acts or omissions of any additional insured (including negligence).

(b) **Liability Insurance.**

(i) **By Lessee.** During the Term, Lessee shall maintain a standard policy of commercial general liability insurance against injury or death to persons or damage to

property arising out of occurrences on or about the Property ("**CGL Insurance**") in the amount of \$2,000,000 per occurrence, \$5,000,000 annual aggregate, \$1,000,000 property damage. The CGL Insurance polic(ies) to be maintained by Lessee shall (i) state that it is primary with regard to any other insurance carried by Lessor (and any insurance carried by Lessor shall be excess, secondary, and noncontributing), (ii) name Lessor and such parties as Lessor may reasonably designate as an additional insureds, and such endorsement shall be without exceptions for the acts or omissions of any additional insured (including negligence), (iii) be endorsed to provide cross-liability coverage, and (iv) shall not have a deductible or self-insured retention in excess of \$10,000. Lessor may require Lessee to increase the amount of liability insurance from time to time (but not more often than once every three (3) years) if the amount of liability insurance generally carried by owners of similar properties in Travis County, Texas increases above the amount of insurance required to be carried by this Lease. Any dispute shall be resolved by a third party insurance consultant that (x) has at least ten years of experience in Texas, (y) is unrelated to Lessor or Lessee, and (z) is chosen by Lessee. The cost of any such insurance consultant shall be split between the parties.

(ii) **By General Contractor.** Lessee will cause the General Contractor to obtain and maintain CGL Insurance complying with all provisions of subsection (i) immediately above. Furthermore, if such insurance is subject to a general aggregate, then \$2,000,000 shall be dedicated to this project by Specific Job Limit Endorsement. The products-completed operations coverage shall be maintained in effect for the benefit of the insured and additional insureds for a period of two years following completion of the Work and shall be at least two times its each occurrence limit.

(c) **Other Insurance.** Lessee will cause the General Contractor to obtain and maintain business auto liability and, if necessary, commercial umbrella liability insurance with limits reasonably acceptable to Lessor, which policy shall be endorsed to include Lessor and parties reasonably designated by Lessor as additional insureds (without exceptions for acts or omissions of the additional insureds, including negligence). Lessee will cause the General Contractor to obtain and maintain workers' compensation insurance as required by applicable law.

(d) **Insurance Carriers.** All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state of Texas and rated Policyholder's Rating of "A" and a Financial Size Rating of "VIII" or better by A. M. Best Company.

(e) **Insurance Certificates.** Lessee shall provide or cause to be provided to Lessor certificates of insurance evidencing all insurance required to be carried hereunder, (i) at each milestone date as set forth above and (ii) at least fifteen (15) days prior to the expiration or renewal of any such insurance policy. All such certificates of insurance shall be on an ACORD Form 27 (or any equivalent successor form); provided, however, with the prior review and approval of the other party, an ACORD Form 25-S (or any equivalent successor form) may be used for CGL Insurance provided the other party has been provided with a certified copy of all insurance policies, including all required endorsements, and provided (1) there is attached to the Certificate of Insurance a valid and binding Revised Cancellation Endorsement specifying the

requirement of the carriers to give thirty (30) day advance notice of cancellation or material change in the policies and the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form's cancellation provision and (2) the other party is authorized to contact the issuing insurance agency and the insurance carriers to confirm the existence of the coverages. Furthermore, if requested in writing by any party, Lessor, Lessee and General Contractor will provide to the requesting party a copy of any or all insurance policies or endorsements required by the Lease.

(f) **Failure to Carry Insurance.** If Lessee fails to keep or cause to be kept insurance required in this Lease in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Lessor may, at its option (but shall have no obligation to do so), take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this Article. Upon demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessee pursuant to this section, with interest at ten (10%) percent per annum. Failure to carry insurance required to be carried by Lessee shall be a default under this Lease pursuant to Section 13.01(b).

9.03 **Indemnity and Immunity.**

(a) **Indemnity and Immunity By Lessee.** From the Effective Date, Lessee assumes liability for, and shall indemnify, protect, save and keep harmless Lessor and its officers, trustees, agents, servants, successors and assigns ("*Lessor*") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor, in any way arising out of Lessee's possession or control of any part of the Property or Improvements. If Lessor notifies Lessee of any claim, demand, action, administrative or legal proceeding, investigation or allegation as to which the indemnity provided for in this Section applies, Lessee shall assume on behalf of Lessor and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto; provided, that Lessor shall have the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such claim, demand, action, proceeding, investigation or allegation involves both Lessee and Lessor and Lessor shall have been advised in writing by reputable counsel that there may be legal defenses available to it which are inconsistent with those available to Lessee, then Lessor shall have the right to request that Lessee's insurance carrier provide separate counsel to participate in the investigation and defense of and response to such claim, demand, action, proceeding, investigation or allegation on its own behalf. If any claim, demand, action, proceeding, investigation or allegation arises as to which the indemnity provided for in this Section applies, and Lessee fails to assume promptly (and in all event within a reasonable time after being notified of the claim, demand, action, proceeding, investigation or allegation) the defense of Lessor, then Lessor may contest (or settle, with the prior consent of Lessee, which consent shall not be unreasonably withheld) the claim, demand, action, proceeding, investigation or allegation at Lessee's expense using counsel selected by Lessor; provided, that after any such failure by Lessee which continues for sixty (60) days after written demand has been delivered to Lessee to assume such defense, no such contest

need be made or continued by Lessor and settlement or full payment of any claim may be made by Lessor without Lessee's consent and without releasing Lessee from any obligations to Lessor under this Section if in the written opinion of reputable counsel to Lessor, the settlement or payment in full is clearly advisable. In no event, however will Lessee be required to indemnify Lessor for loss or liability arising from acts or events which occurred before Lessee took possession or control of any portion of the Property or after the Effective Date for loss or liability resulting to the extent of the willful misconduct, negligence, breach of contract, or misrepresentation of Lessor. Lessor shall promptly notify Lessee of any event or condition which requires indemnity hereunder or any allegation of such event or condition. The provisions of this section, except as expressly limited hereby, shall survive the expiration or earlier termination of this Lease.

(b) **No Waiver.** Nothing in this Lease shall be construed as or constitute a waiver of Lessor's governmental immunity.

ARTICLE 10 CASUALTY AND CONDEMNATION

10.01 **Damage or Destruction.**

(a) **Notice of Damage or Destruction.** During the Lease Term, Lessee shall give Lessor immediate written notice if any portion of the Property or Improvements are damaged or destroyed by fire, casualty, or other cause. Upon Lessor's receipt of any notice under this subsection, Lessee shall be entitled to terminate this Lease by giving Lessor written notice within ten (10) days of such casualty or waive such right of termination and receive all the insurance proceeds under any policies of insurance maintained by Lessee.

(b) **Lessee's Obligation to Repair.** In the event of a Casualty, whether partial or total, Lessee, if Lessee does not terminate this Lease, shall repair, restore, and rebuild the Improvements to substantially the same or better condition as existed immediately prior to such Casualty.

(c) **Conditions Precedent to Restoration by Lessee.** To the extent applicable, Lessee shall make the insurance proceeds for damage to the Improvement received by Lessee, after deduction therefrom of all reasonable expenses actually incurred in settling or adjusting the claim, including attorneys' fees, available for the repair and restoration of the Improvements on and subject to the following terms and conditions:

(i) **No Default Exists.** Lessee is not in default under any term or provision of this Lease.

(ii) **Construction Costs Covered.** Lessee furnishes to Lessor an estimate of the cost to fully restore the Improvements, and Lessor is satisfied that the insurance proceeds actually received by Lessor and available to Lessee hereunder, plus any additional amount supplied by Lessee from other sources (which additional amount will

be escrowed with the funds and used prior to the insurance proceeds) are sufficient to pay all of the costs of such restoration.

(iii) **Plan Review.** Within a reasonable time following the Casualty, but in no event more than one hundred eighty (180) days, Lessee provides to Lessor the plans and construction drawings for such restoration and Lessor approves such plans and drawings (which approval shall not be unreasonably withheld or delayed).

(iv) **Construction Quality and Compliance.** Prior to commencement of construction of the restoration work, Lessee obtains all necessary permits from all Governmental Authorities.

(v) **Construction Contract Terms.** Lessee has furnished Lessor a copy of the construction contract(s) for such restoration complying with the applicable provisions of this Lease.

(d) **Disbursal of Proceeds.** If the conditions set forth in this Section are satisfied, then Lessor and Lessee shall execute an Escrow Agreement with such third party as Lessor and Lessee may mutually approve (the "*Escrow Agent*"), which shall contain the following provisions:

(i) **Deposit of Funds.** Lessor and Lessee shall cause the insurance company to deposit with the Escrow Agent the available insurance proceeds and Lessee shall deposit with the Escrow Agent the amount of the estimated costs in excess of the available insurance proceeds (unless Lessee has made arrangements reasonably acceptable to Lessor for the financing and funding of such amount as provided herein.

(ii) **Construction Draws.** The Escrow Agent shall disburse such funds, within ten days after written request of Lessee and provided the Escrow Agent does not receive written objection by Lessor to any or all of such requested disbursement within said ten day period (provided Lessor shall have no right to object in the event Lessee is restoring the damaged property in accordance with the terms of this Lease), but not more frequently than once each calendar month, upon delivery by Lessee to the Escrow Agent (with a copy to Lessor) of draw requests for the amount of the restoration costs then incurred by Lessee (together with bills paid affidavits, releases of liens and other evidence of the payment of such costs as Lessor may reasonably request) and a certificate from Lessee's architect certifying that the work for which such reimbursement is requested has been completed in accordance with the construction drawings; provided an amount equal to ten (10%) percent of such costs (the "*Retainage*") shall be retained from each reimbursement payment. It is agreed, however, that if Lessee causes a payment bond to be recorded in accordance with the provisions of Sections 53.201 to 53.203 of the Texas Property Code, then the amount of the Retainage shall be equal to ten (10%) percent of the construction costs until one-half (½) of the construction is completed, and shall be reduced to five (5%) percent of such costs thereafter provided the Payment Bond surety consents thereto, if consent is required in order not to endanger enforceability of the Payment Bond. The Retainage shall be paid to Lessee thirty-five (35) days after the

date of the completion of the restoration, as evidenced by an affidavit of completion executed by Lessee, Lessee's Architect and the General Contractor, subject to Lessee's delivery to Lessor and the Escrow Agent of a permanent certificate of occupancy issued by the City of Austin (if applicable) and all bills paid affidavits and releases of liens from the contractors and all subcontractors furnishing labor or materials.

(e) **Disposition of Remainder of Insurance Proceeds.** Any and all insurance proceeds remaining after deduction of all reasonable expenses incurred by Lessor and Lessee in settling or adjusting the claim (including reasonable attorneys' fees) in excess of the cost of such repairs and restoration of the Property or clearance shall be paid to Lessee.

10.02 **Condemnation.**

(a) During the Term, Lessor shall give Lessee immediate written notice if an entity having condemnation authority institutes an eminent domain proceeding with regard to any portion of the Property

(b) Following the commencement of the Term, Lessee shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any award or compensation on account of any actual or threatened condemnation or eminent domain proceedings or other action by any person having the power of eminent domain or condemnation of the Property (each, a "***Condemnation***") and shall take all appropriate action in connection with any such Condemnation. No settlement of any such proceeding or action will be made by Lessee or Lessor without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed.

(c) **Total Taking of Property.** During the Lease Term, if title to and possession of all of the Property is taken by Condemnation, then this Lease shall terminate on the day of the earlier to occur of the vesting of legal title to the Property in the entity exercising the power of Condemnation and the taking of actual physical possession of the Property by the entity exercising such power. After such termination, both Lessor and Lessee are released from all obligations under this Lease, except for the provisions of this Lease that expressly survive termination of this Lease.

(d) **Partial Taking of Property.**

(i) **Partial Taking of Land Only and No Adverse Effect on Operations.** If a partial taking shall occur by the taking of only the Property which is unencumbered by the Improvements (a "***Land Taking***") and the Land Taking does not adversely affect the operations of the Improvements, then in that event, this Lease will not terminate and Lessor will be entitled to all Condemnation awards payable as a result of said Land Taking.

(ii) **Partial Taking of Land Only with Adverse Effect on Operations or Partial Taking of Property and Improvements.** In the event that (1) a partial taking of the Property occurs which has a material adverse effect on the operations of the

Improvements or (2) a material portion (but not all) of the Property shall be taken or condemned, then Lessee may terminate this Lease by providing Lessor written notice of same within sixty (60) days after Lessee has received notice of the institution of a Condemnation action under this Section. Thereafter, this Lease shall terminate on the first day of the calendar month following the calendar month in which Lessee serves on Lessor the written notice of termination described in this Section. On termination of this Lease pursuant to this Section, both Lessor and Lessee shall be released from all obligations under this Lease, except for the provisions of this Lease that expressly survive termination or expiration of this Lease. As used in this section, the phrase "material portion" means (A) a taking that results in the inability to qualify for all necessary licenses or permits from any Governmental Authority needed to rebuild, restore or renovate the remaining Improvements, or (B) a taking that caused access to or parking for the Property to be materially and permanently impaired. Any compensation or damages awarded or payable under this Section shall be distributed as provided herein.

(e) **Voluntary Conveyance in Lieu of Condemnation.** Nothing in this Article prohibits Lessor from voluntarily conveying all or part of the Property to a public utility, agency, or authority under threat of a taking under the power of condemnation. Any such voluntary conveyance shall be treated as a taking within the meaning of this Article.

(f) **Temporary Taking.** If the whole or any portion of the Property shall be taken for temporary use or occupancy, (i) the Lease Term shall not be reduced, (ii) Lessee shall continue to satisfy all monetary obligations under this Lease, (iii) except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all non-monetary obligations under this Lease, and (iv) Lessee shall be entitled to receive the entire award therefor unless the period of temporary use or occupancy shall extend beyond the Expiration Date, in which case such award shall be apportioned between Lessor and Lessee in the same ratio that the part of the period for which such compensation is made falling before the day of Expiration Date and that part falling after, bear to such entire period.

(g) **Acts of Lessor.** A termination by Lessor under Section 3.01 or Article 13 shall not constitute a taking or Condemnation hereunder nor shall it trigger any right of Lessor to compensation.

10.03 **Distribution of Proceeds.** In any Condemnation proceeding that will or may potentially affect the Property, the parties will request that the condemning authority grant separate awards for value of the fee estate and for the depreciated value of any Improvements made by Lessee. Lessee understands that other than compensation for the depreciated value of Lessee's Improvements made by Lessee, Lessor shall have no further liability to Lessee for any damages resulting from a full or partial taking of the Property, including, but not limited to, Lessee's loss of use, loss of income or any other direct, indirect, special or consequential damages.

(a) **Separate Awards.** If the condemning authority grants separate awards, then Lessor shall be entitled to the award for the fee title interest in the Property and Lessee shall be entitled to the award for the depreciated value of its Improvements.

(b) **Combined Award.** If the condemning authority refuses to grant separate awards, then the parties shall have the Property that is being taken appraised as provided herein. Such appraisal process will determine the percentage of any award that should be attributed to the fee title interest for the Property (the "***Land Percentage***") and the percentage of any award that should be attributed to the Leasehold Estate (the "***Improvements Percentage***"). The Land Percentage will be fair market value of the Property (not including any improvements) divided by the total award. The Improvements Percentage will be one hundred percent (100%) less the Land Percentage. Lessor shall be entitled to the Land Percentage of any award and Lessee shall be entitled to the Improvements Percentage of any award.

(c) **Use of Condemnation Proceeds.** If the Lease is not terminated by Lessee as a result of the condemnation as expressly permitted above, any condemnation proceeds received by Lessee shall be used to restore the Improvements to an architecturally whole unit, and, to the extent possible given the nature of the taking, to substantially the same or better condition as existed immediately prior to such taking. Following restoration, any remaining Condemnation proceeds shall be disbursed as set forth in Subsection 10.03 above.

ARTICLE 11 NO ENCUMBRANCE OF LEASEHOLD ESTATE

11.01 **No Right to Encumber.** Lessee shall have no right to encumber the Leasehold Estate or Lessor's fee estate, and Lessee shall have no right to subordinate Lessor's fee estate.

ARTICLE 12 NO ASSIGNMENTS OR SUBLEASES

12.01 **No Assignment or Sublease.** Lessee shall have no right to assign this Lease or to sublease under this Lease

ARTICLE 13 DEFAULTS AND REMEDIES

13.01 **Default.** Each of the following events is an "***Event of Default***" by Lessee under this Lease;

(a) **Monetary Defaults.** Failure by Lessee to pay rent or any other liquidated sums of money stipulated in this Lease to be paid by Lessee, and such failure continues for a period of ten (10) days after written notice ("***First Monetary Default Notice***") thereof has been delivered to Lessee.

(b) **Non-Monetary Defaults.** Failure by Lessee to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than as set forth in

subsection (a) above) and such failure continues for a period of sixty (60) days after notice ("**First Non-Monetary Default Notice**") has been delivered to Lessee; provided however, (i) that if any such failure (other than a failure involving payment of liquidated sums of money) cannot reasonably be cured within the 60-day period, then such failure shall not be an Event of Default so long as Lessee proceeds in good faith, continuously, and with due diligence to remedy and correct any such failure, provided that Lessee has commenced to cure such failure after the effective date of the First Notice and within the 60-day period.

(c) **Levy or Attachment.** The initiation of any proceeding whereupon the estate or interest of Lessee in the Property, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within sixty (60) days after the date of such levy or attachment.

(d) **Bankruptcy, Receivership, Etc.** Subject to the provisions of Section 11.05, the entry of any decree or order for relief by a court having jurisdiction in respect of Lessee an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or for any substantial part of the assets of Lessee, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Lessee, if any such decree or order continues unstayed and in effect for a period of sixty (60) consecutive days.

(e) **Voluntary Proceedings.** The commencement by Lessee of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Lessee to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Lessee or for any substantial part of the assets of Lessee, or any assignment made by Lessee for the benefit of creditors.

13.02 **Remedies.** Upon the occurrence and continuance of an Event of Default, Lessor shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) **Performance by Lessor.** Lessor, with or without terminating this Lease (to the extent that termination is expressly permitted hereby), may (but will not be obligated to) perform any obligation of Lessee under this Lease, and Lessor may reenter the Property for such purposes, and Lessee shall fully reimburse and compensate Lessor on demand for all costs and expenses incurred by Lessor in such performance, with interest accruing at ten (10%) percent per annum.

(b) **Judicial Relief.** Lessor may file suit in a court of competent jurisdiction to seek Lessee's specific performance of any action, injunctive relief to prevent its continued performance of any Event of Default, and/or for damages, along with all of its costs of litigation.

(c) **Termination of Lease.** Lessor may, after giving a second notice of default to Lessee allowing an additional sixty (60) days to cure same ("**Second Default Notice**"), terminate

the Lease. The date of the end of the Second Default Notice shall be the Termination Date. In the event of termination of the Lease, Lessor shall be entitled to exercise the remedies set out in Section 13.04 herein but shall not accelerate or attempt to collect future rental payments that may become due after the Termination Date.

13.03 **Payment by Lessee.** Lessee shall pay to Lessor all costs and expenses incurred by Lessor, including court costs and reasonable attorney's fees, in (a) retaking or otherwise obtaining possession of the Property, (b) removing, storing and selling (if applicable), Lessee's or any other occupant's personal property, (c) repairing or restoring the Improvements to the condition in which Lessee is required to deliver the Improvements at the end of the Lease Term, (d) paying or performing the underlying obligation that gave rise to the subject default and that Lessee failed to pay or perform and (e) enforcing any of Lessor's rights arising as a consequence of the Event of Default.

13.04 **Other Remedies.** Any termination of this Lease as provided in this Article shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the Lease at the time of termination, or any claim for damages then or previously accruing against Lessee under this Lease, and any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums that are then due and payable or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the Lease provided Lessor shall not be entitled to recover damages based on rental accruing after the date of termination of this Lease. All rights, options, and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Lease.

13.05 **Lessor's Default.** Lessor shall not be deemed in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to commence such performance promptly within sixty (60) days after written notice by Lessee to Lessor specifying such default; provided, however, if the nature of Lessor's default is such that more than sixty (60) days are required for its performance, Lessor shall not be deemed to be in default if it commences such performance within said 60-day period and diligently prosecutes the same to completion. Unless and until Lessor fails to so cure any default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of Lessor hereunder will be binding upon Lessor only during the period of its ownership of all or a part of the Property and not thereafter. Any liability of Lessor to Lessee arising out of Lessor's obligations under or otherwise relating to this Lease shall be limited to the interest of Lessor in the Property, and neither Lessor nor any officers, directors or employees of Lessor, nor Lessor's agents or employees shall be personally liable for any deficiency. Notwithstanding the foregoing, in the event Lessor does not timely respond or perform, Lessor shall not be deemed to have failed to perform unless Lessor fails to commence such performance (or fails to diligently pursue completion of such performance) within 15 days after written notice from Lessee to Lessor specifying such failure. Lessee hereby waives the provisions of §91.004(b) of the Texas

Property Code (or any successor thereto), and any other laws which may grant to Lessee a lien upon any of Lessor's property or upon any rent due to Lessor.

ARTICLE 14 MISCELLANEOUS

14.01 **Right of Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter the Property for the purposes of determining whether Lessee is in compliance with the terms of this Lease.

14.02 **No Partnership or Joint Venture.** The relationship between Lessor and Lessee at all times shall remain solely that of landlord and tenant and shall not be deemed a partnership or a joint venture.

14.03 **No Waiver.** No waiver by either party of any default or breach of any covenant, condition, or stipulation contained in this Lease shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this Lease.

14.04 **Release.** If Lessor sells or transfers the Property, and as a part of any such transaction assigns all of its right, title and interest in and to this Lease, then from and after the effective date of the sale, assignment, or transfer, Lessor or Lessee as applicable (except for Lessee's obligations hereunder shall have no further liability under this Lease to the other party, except as to matters of liability that have accrued and are unsatisfied as of that date, it being intended that the covenants and obligations of Lessor and Lessee contained in this Lease shall be binding on Lessor and its successors and assigns and Lessee (and its successors and assigns) only during and in respect of their respective successive periods of ownership of the interest under this Lease.

14.05 **Delivery of Payments and Notices.** All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or at the time of mailing. All payments, notices, demands, or requests from Lessee to Lessor shall be given or mailed to Lessor, attention Superintendent, at 601 Camp Craft Road, Austin, Texas 78746, or at such other address as requested by Lessor in writing. All payments, notices, demands, or requests from Lessor to Lessee shall be given or mailed to Lessee at P. O. Box 163132, Austin, Texas 78716 (512/663-5056), or at such other address as requested by Lessee in writing.

14.06 **Parties Bound.** This Lease shall be binding upon and inure to the benefit of the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.07 **Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Lease, and this Lease

shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Lease.

14.08 **Prior Agreements Superseded.** This Lease constitutes the sole and only agreement of the parties to the Lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the Lease.

14.09 **Amendment.** No amendment, modification, or alteration of the terms of this Lease shall be binding unless it is in writing, dated subsequent to the date of this Lease, and duly executed by the parties to this Lease.

14.10 **Rights and Remedies Cumulative.** The rights and remedies provided by this Lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided in this Lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.11 **Attorneys Fees and Costs.** If, as a result of a breach of this Lease by either party, the other party employs an attorney or attorneys to enforce its rights under this Lease, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the Lease.

14.12 **Survival.** All restoration, construction, and renovation obligations of Lessee under this Lease shall survive any termination of this Lease.

14.13 **Limited Right of First Refusal.** In the event of Termination of this Lease by Lessor and Lessor's decision to offer the Property for sale, for a period of one hundred eighty (180) days after Termination of the Lease if permitted by applicable law, Lessor will grant to Lessee a right of first refusal to purchase the Property on the terms and conditions Lessor has determined to offer the Property for sale. Lessee must give Lessor notice of exercise of the right of first refusal within the one hundred eighty (180) day period and close the acquisition of the Property within ninety (90) days after giving Lessor notice of Lessee's exercise of the right of first refusal. The purchase and sale of the Property, in the event Lessee exercises the right of first refusal, will be on terms and conditions set out in a contract of sale between Lessee and Lessor.

[Signatures on Next Page]

This Lease is executed to be effective as of the Effective Date.

LESSOR:

EANES INDEPENDENT SCHOOL DISTRICT, an independent school district in Travis County, Texas.

By: Nola Wellman
Printed Name: Nola Wellman, Ph.D.
Title: Superintendent
Date: 4/13/11

LESSEE:

WH LITTLE LEAGUE, d/b/a WESTERN HILLS LITTLE LEAGUE

By: Michael Shaunessy
Printed Name: Michael Shaunessy
Title: President
Date: 4-15-2011

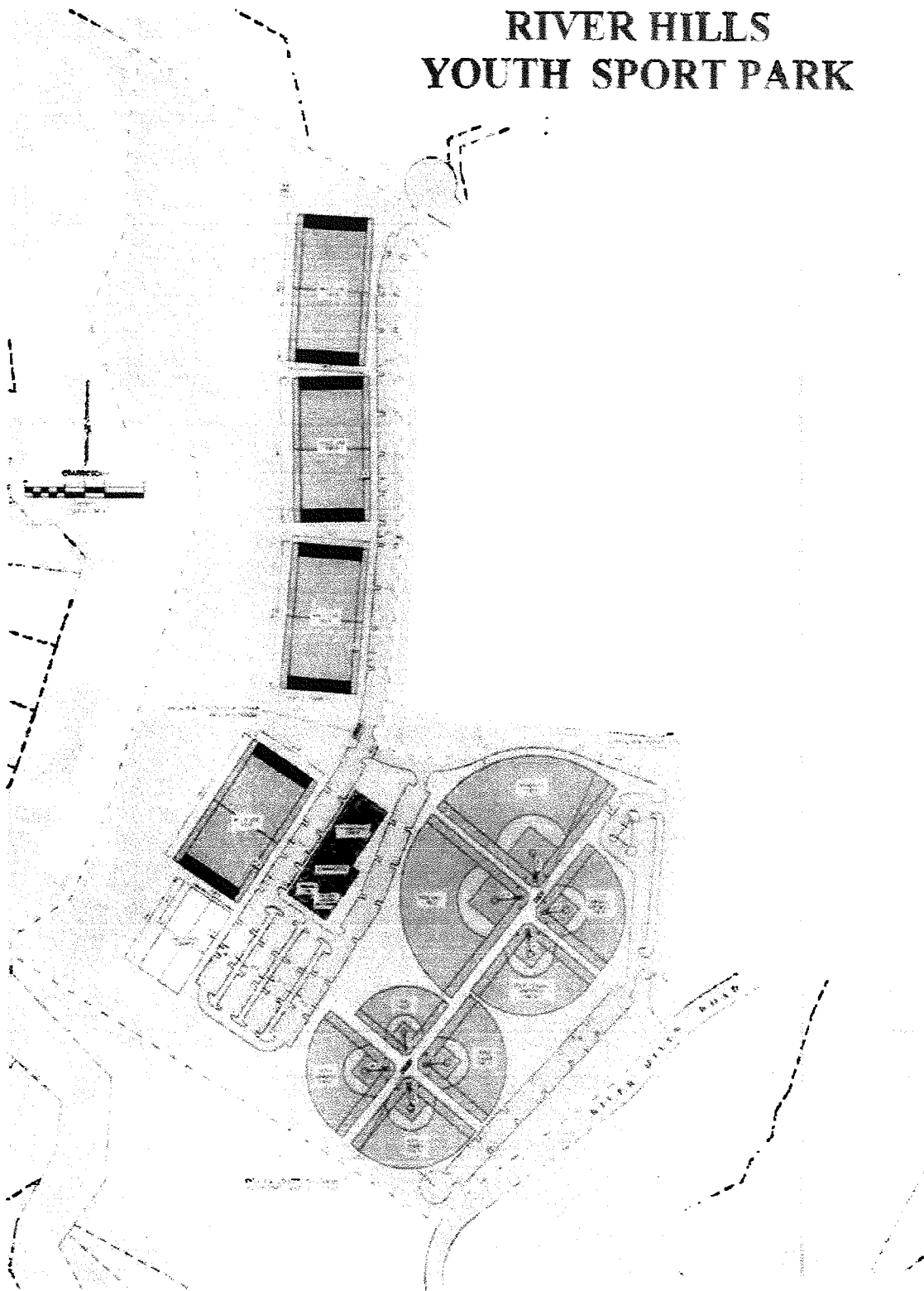
EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

Approximately 50 acres out of an 86.7 acre tract in the Wofford W Survey, ABS 808 SUR 39 and ABS 808 SUR 40, located in Travis County, Texas, as shown in the sketch attached hereto.

An exact legal description of the 50 acre tract will be substituted upon completion of a survey.

RIVER HILLS YOUTH SPORT PARK



OVERALL CONCEPT LAYOUT

CA

CHANDLER & ALLEN, INC.
Engineers & Architects
Tel: (312) 327-7966
Fax: (312) 327-7966
1888 3RD AVE. S.W.
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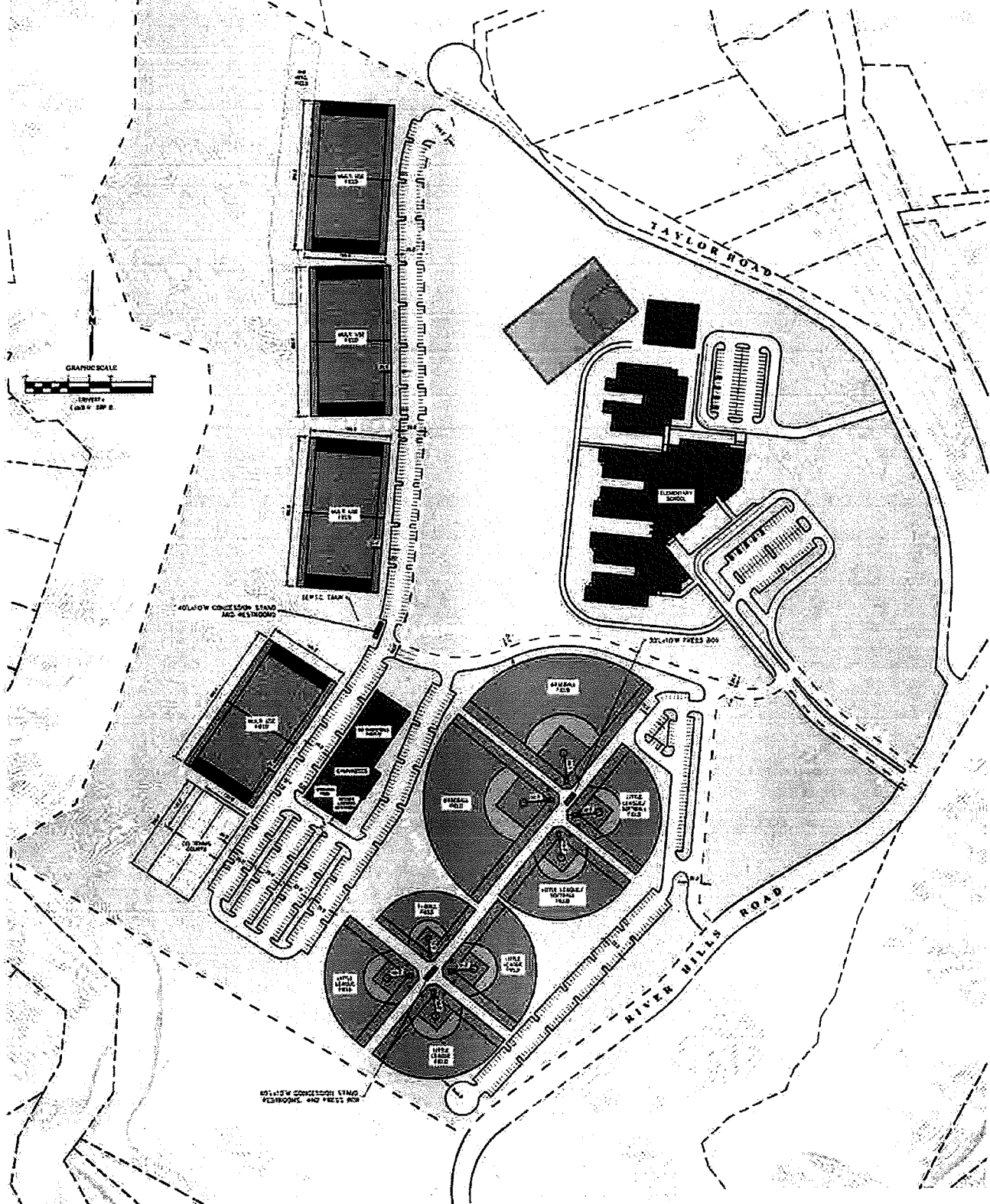
EXHIBIT A

EXHIBIT A-1**TABLE OF PROJECTED RENT, NOT INCLUDING ADDITIONAL RENT**

		Yearly Rent
Year 1	Prorated \$10,000 from Effective Date to December 31, 2011	
Years 2-4	\$10,000 or \$50,000 depending on construction completion and commencement of use	
Year 5		\$50,000
Years 6-10		52,500
Years 11-15		55,125
Years 16-20		57,881
Years 21-25		60,773
Years 26-30		63,814
Years 31-35		67,005
Years 36-40		70,355
Years 41-45		73,873
Years 46-50	(Final year prorated)	77,567

EXHIBIT B
SITE PLAN FOR IMPROVMENTS

RIVER HILLS YOUTH SPORT PARK



OVERALL CONCEPT LAYOUT



Cunningham | Allen, Inc.

Engineers & Surveyors

Tel: (512) 327-2946

www.cunningham-allen.com

18PE REG NO F-284

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EXHIBIT B

EXHIBIT C

PROHIBITED USES OF PROPERTY AND IMPROVEMENTS

Concerts
Motorcycle Rallies

EXHIBIT D

**AGREEMENTS BETWEEN LESSEE AND CERTAIN ADJOINING
LANDOWNERS AND NEIGHBORS**

EXHIBIT D**Agreements Between Lessee and Certain Adjoining Landowners and Neighbors****LIGHTING ISSUES:**

1. No lights on tennis courts if tennis courts built
2. No lights on 2 southern most Baseball Fields (2 fields on the attached Site Plan that are shown closest to the "Burch" property). In addition there shall be no lighting within 250 feet of the "Burch" property line unless the city/county require parking lot lighting in this setback area.
3. No lights on 2 northern most Football Fields (2 fields on the attached Site Plan that are shown closest to Taylor Road). In addition there shall be no lighting within 250 feet of Taylor Road unless the city/county require parking lot lighting in this setback area.
4. Lights on the other 2 Football Fields will be located on the west side of those fields only and will face away from Seven Oaks Subdivision (Only light one side of these fields)
5. All lights on Baseball Fields to be off by 10:00 pm during March, April, May, June, July, August, September and October (ALL LIGHTS ON A TIMER FOR THESE TIMES)
6. All lights on Baseball Fields to be off by 9:00 pm during November, December, January and February (ALL LIGHTS ON A TIMER FOR THESE TIMES)
7. All lights on Football Fields to be off by 8:30 pm (ALL LIGHTS ON A TIMER FOR THESE TIMES)
8. WHLL will commit to use the latest lighting technology that shines light on the intended surface and greatly reduces "bleed" (similar to what is used on the new Westlake HS Practice Fields)
9. Parking lot lighting will be shielded down and WHLL will use the minimum amount of parking lot lighting permitted by city/county codes
10. All parking lot lighting to be turned off 30 minutes after the park closes as long as this is permitted by the city/county.

NOISE ISSUES:

1. All PA systems to be kept below an agreed upon decibel level
2. No PA system on 2 northern most Football Fields (2 fields on attached Site Plan that are shown closest to Taylor Road)
3. PA system speakers on other 2 Football Fields to face away from Seven Oaks
4. No PA system on 2 southern most Baseball Fields (2 fields on the attached Site Plan that are shown closest to the "Burch" property)
5. No PA systems before 9:00 am
6. No PA systems after 8:00 pm on the remaining 6 Baseball Fields (Except for 10:00 pm for Playoffs/Tournaments in June/July only)
7. No PA systems after 8:30 pm on the remaining 2 Football Fields
8. Music can be played on the PA systems up to 7 days per year for Sports League Fundraising Events (only Leagues that build facilities on the site) and shall be subject to the time restrictions specified in the other items in this Exhibit.

9. No Batting Cages or other "repetitive practice devices" to be located within 250 feet of the southern or northern property line (the "Burch" property line and Taylor Road respectively)

TRAFFIC ISSUES:

1. WHLL acknowledges the fact that there are neighborhood traffic concerns related to River Hills Road. WHLL proposes to work with the neighbors to address those traffic issues as required by the City/County/State as WHLL goes through the design phase and the City of Austin/Travis County permitting process.
2. WHLL will work with the neighbors to try to obtain a traffic light at the intersection of River Hills Road and Bee Caves Road.
3. WHLL agrees to retain a Traffic Engineer as part of its development team.
4. WHLL agrees that it will "set aside/hold back" \$200,000 in its development budget (set aside in Escrow Account) for a stop light at River Hills Road and Bee Caves Road should one get approved by the appropriate government entity.
5. No entrance for the WHLL development on the property will be located within 600 feet of the south property line (the "Burch" property)
6. WHLL proposes over 800 parking spaces when fully built out so that there will be no need to park on River Hills Road or Taylor Road. Parking shall be prohibited on River Hills Road and Taylor Road and there shall not be any other obstructions allowed along either roadway which may inhibit traffic flow. Appropriate "no parking/tow away zone" and other signage will be placed along both roadways at the expense of WHLL (so long as permitted by appropriate government authorities). WHLL will enforce towing if anyone parks on River Hills Road or Taylor Road.
7. WHLL will not allow any connection or any entrance or exit on to Taylor Road unless required by the appropriate governmental authority. Should a connection be required by the City/County/State or other governmental agency, then all property owners using Taylor Road for access to their property will be notified in writing within 10 days of WHLL's knowledge of this requirement. Representatives from Taylor Road will be notified of any meetings with City/County/State or other Governmental agencies on this issue and be allowed to attend any meetings. WHLL agrees that they will make all attempts possible to reach a different solution.
8. WHLL is amenable to adding turn lanes on River Hills Road for cars entering into/exiting the property provided that the appropriate governmental authority approve such turn lanes and provided that EISD is willing to donate any needed Right of Way needed to make this happen

SECURITY ISSUES:

1. WHLL will install locking gates on all entrances/exits and the Park will be closed to vehicular and pedestrian traffic 30 minutes after the last event of the day but no later than 10:30 pm.
2. WHLL will ban all Liquor and Drugs from the Park and will provide security (if necessary) to insure this rule is adhered to

3. WHLL agrees to restrict the Park against certain uses. WHLL will work with the neighbors during the lease process to identify this list of prohibited uses (all uses shall be family oriented and/or Sporting Events). No concerts, motorcycle rallies etc.
4. WHLL will pay for security guards to patrol the Park if necessary.
5. WHLL will agree to a 100 foot setback from the north property line abutting the "Ball" property and Taylor Road (unless connection to Taylor Road is required by the appropriate governmental authority) and the south property line (the "Burch" property) with the exception that for the Baseball Fields only the setback will be 75 feet. WHLL will attempt to achieve a 125 foot setback from the Ball property and the Burch Property (exclusive of the Baseball Fields but cannot commit until further engineering and site planning are completed. This setback area shall be considered a "buffer zone" and will be left undisturbed and in its natural state, with no clearing, site work, parking, walking trails, signs, buildings, or other structures except for roadways for ingress and egress to the property and for fencing of the property line).
6. WHLL will provide a 6 foot fence (at WHLL's expense) along the entire perimeter of the property that it leases from EISD. The location of the fencing shall be determined at a later date but it will be constructed in a manner that will encompass all of the facilities that will be built on the property. Along common property lines the fencing will be placed on the property line. Fencing can be either chain link fence or "high fence" like seen on ranch properties. Gates that prevent vehicular and human traffic and are of matching height at all points of ingress and egress will be installed by WHLL. WHLL to maintain gates and fencing.

PERMITTING ISSUES:

1. WHLL will obtain all necessary permits from the appropriate governmental authorities prior to any construction taking place on the property (except for minimal clearing required for certain studies or surveys during the permitting process). WHLL anticipates getting site development and building permits from both the City of Austin and Travis County. In all permit applications, WHLL agrees to file a site plan sketch (not engineering documents) that depict all of the anticipated facilities for the whole park including the latest rendering of the future school proposed on the site.

AMENDMENT TO GROUND LEASE

THIS AMENDEMENT TO GROUND LEASE ("Amendment") is made and entered into as of the ____ day of _____, 2012, by and between the **EANES INDEPENDENT SCHOOL DISTRICT** ("Lessor") and the **WESTERN HILLS LITTLE LEAGUE** ("Lessee").

WHEREAS, Lessor and Lessee had previously entered into a Ground Lease ("Lease"), dated April 15, 2011, concerning approximately 50 acres of land, which is generally located at the Southwest Corner of Taylor Road and River Hills Road, Austin, Texas ("Property"), more commonly known as the River Hills Youth Sports Park; and

WHEREAS, Lessor now requires a portion of the Property for education uses, which Lessor presented to Lessee in a request for modification of the Lease; and

WHEREAS, pursuant to Article 3 of the Lease, the Lessee shall agree to negotiate in good faith to revise the Lease to permit Lessor to recover the portion of the Property requested by Lessor; and

WHEREAS, Lessor and Lessee agree that the portion of the Property requested to be released by Lessor from the Lease is not property currently being used by Lessee, is not planned for future use by Lessee, and the release of the property will not materially interfere with the use of the remainder of the Property by Lessee, nor interfere with governmental permits grants for use of the Property by Lessee; and

WHEREAS, it is the intention of Lessor and Lessee that the terms of this Amendment will govern and take precedence over any provisions contained in the Lease that are inconsistent with the terms of this Amendment, but that all other terms of the Lease not specifically affected by this Amendment remain in full force and effect.

NOW THEREFORE, that portion of the Property requested by Lessor, identified as "35.0 Acres" on the survey prepared by Cunningham | Allen, Inc. (the "Survey"), will be released and the Lease will be modified upon the terms and conditions herein set forth.

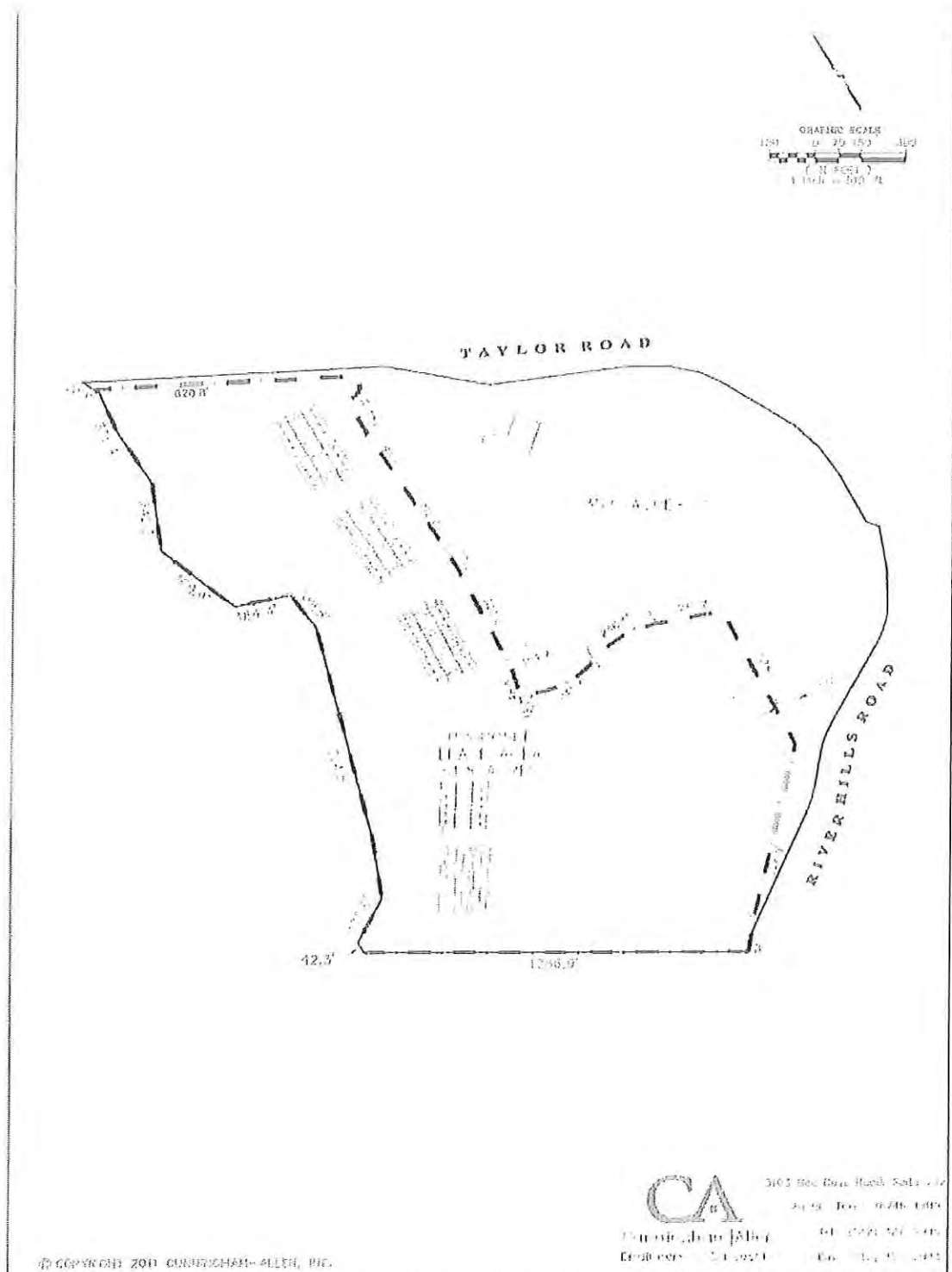
Delete the text of section A of the Recitals in its entirety and substitute the following:

A. Lessor owns a tract of land in Travis County, Texas, consisting of approximately 51.8 acres, more particularly described as "Proposed Lease Area 51.8 Acres" on **Exhibit A** attached hereto and incorporated herein (the "**Property**")

Delete Exhibit A of the Ground Lease and substitute the following:

EXHIBIT A
LEGAL DESCRIPTION FOR PROPERTY

Approximately 51.8 acres out of an 86.7 acre tract in the Wofford W Survey, ABS 808 SUR 39 and ABS 808 SUR 40, located in Travis County, Texas, as shown in the Survey attached hereto.



3101 New Green Road, Suite 100
 P.O. Box 10000
 Charlotte, NC 28211
 Phone: (704) 541-1000

Exhibit A-2

LESSOR:

EANES INDEPENDENT SCHOOL DISTRICT, an independent school district in Travis County, Texas.

By: Nola Wellman
Printed Name: Nola Wellman, Ph.D.
Title: Superintendent
Date: 10/30/12

Reviewed for Eanes ISD by

Allyson Collins

Signature: Allyson Collins

LESSEE:

WH LITTLE LEAGUE, d/b/a WESTERN HILLS LITTLE LEAGUE

By: Adam Hugh Costa
Printed Name: ADAM HUGH COSTA
Title: PRESIDENT
Date: 8/18/12

SECOND AMENDMENT TO GROUND LEASE

THIS SECOND AMENDMENT TO GROUND LEASE ("Second Amendment") is made and entered into as of the 10th day of September, 2013, by and between the **EANES INDEPENDENT SCHOOL DISTRICT** ("Lessor") and the **WESTERN HILLS LITTLE LEAGUE** ("Lessee") (Lessor and Lessee are herein collectively referred to as the "parties" and individually as a "party").

WHEREAS, Lessor and Lessee had previously entered into a Ground Lease ("Lease"), dated April 15, 2011, concerning approximately 50 acres of land, which is generally located at the Southwest Corner of Taylor Road and River Hills Road, Austin, Texas ("Property"); and

WHEREAS, Lessor and Lessee entered into that Amendment to Ground Lease fully executed on or about October 2012 (the "First Amendment") for the purpose of revising the legal description of the Property; and

WHEREAS, it is the intention of Lessor and Lessee to further amend and modify certain terms of the Lease, as amended by that First Amendment, and herein now collectively defined as the "Lease".

NOW THEREFORE, by the execution hereof and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and in consideration of the following mutual covenants and agreements, the parties agree to and accept the following:

1. Section 4.04 of the Lease, titled "**Additional Rent**" is hereby amended to state as follows:

"In addition to the rental and escalation amount provided herein, if Lessee or any sublessee permits use of any facility constructed on the Property by any third party and receives income or revenue from such third party's use of the facilities, including but not limited to income arising out of the subletting of such facilities, tournament fees, entry fees or other use fees collected by Lessee, Lessee shall pay to Lessor ten percent (10%) of any gross income or gross revenues received from each such third party, without deduction or offset of Lessee's expenses. Income and revenue received by Lessee or any sublessee from any person or party for participant registration fees or concessions sold on the Property shall not be deemed to be income or revenue received from other entities. Lessee shall provide Lessor with a quarterly accounting of income and revenue received from Lessor and any sublessees, and shall make payments to Lessor for the Additional Rent described herein on a quarterly basis. Lessee agrees that during the Term of the Lease and for a period of three

(3) years after, Lessee and all sublessee's financial records shall be subject to review, inspection, copying and audit by Lessor or its agents."

2. Section 5.02 of the Lease, titled "**Approval by Lessor**" is hereby be amended by adding the following:

"Lessor shall, at no cost or expense to Lessor, reasonably cooperate with Lessee with the preparation, submission or execution of documents to be submitted to any Governmental Authority as required for the construction of Improvements. To the extent that Lessor incurs any costs or expenses in connection with the preparation, submission, or execution of such documents, Lessee shall reimburse such amounts to Lessor promptly upon request by Lessor."

3. The first sentence of Section 6.03 of the Lease, titled "**Performance Under Construction Contracts**" is hereby amended to state as follows:

"Lessee shall require the General Contractor for the Improvements to provide a Performance and Payment Bond (Private Works and in accordance with Chapter 53 of the Texas Property Code) for the Construction Contract-Renovations, issued by a surety company reasonably acceptable to Lessor."

4. Section 6.05(a) of the Lease, titled "**Insurance**" is hereby amended to state as follows:

"All contractors, including but not limited to the General Contractor, shall obtain and maintain insurance as required by this Lease."

5. The heading and content of Section 6.05(d) of the Lease, titled "Performance and Payment Bonds" are hereby amended to state as follows:

"**Payment Bonds**. Lessee will cause Payment Bonds and bonded contracts to be recorded in accordance with the requirements of the Texas Property Code and the Clerk of Travis County."

6. Section 8.01 of the Lease, titled "**Permitted Uses**" is hereby amended to state as follows:

"**Permitted Uses**. Lessee and its sublessees shall have the right to use the Property for the construction, operation and management of multi-sport park as contemplated in Exhibits A and B, which shall be primarily dedicated to youth sports. Lessee will not use the Property and Improvements for any use listed on **Exhibit C**. Lessee shall not be entitled to use the Property for any other purpose without Lessor's written consent. Lessee and sublessees shall be permitted to

engage in income or revenue generating activities. Such activities shall be subject to the Permitted Uses set forth in this Section and the Additional Rent requirements set forth in Section 4.04.”

7. The following provision shall be added to the Lease as Section 8.08, to be titled **“Lessor’s Rights to Use the Property”**:

“Notwithstanding anything herein to the contrary, Lessor shall have the absolute and priority right to utilize all or any portion of the Improvements constructed by Lessee or any of its sublessee on scheduled school days and during school hours, upon advance notice to Lessee, but without the need for Lessee’s approval. Lessor shall further have the right to request use of all or any portion of the Improvements for use on non-school days and after school hours upon prior notice to Lessee and upon Lessee’s approval. Lessor’s use of the Property and Improvements under this Section shall be at no cost to Lessor.”

8. The heading and first sentence of Section 9.02(b)(ii) of the Lease, titled **“By General Contractor”** are hereby amended to state as follows:

“By Contractors. Lessee will cause all contractors, including but not limited to the General Contractor, to obtain and maintain CGL Insurance complying with all provisions of subsection (i) immediately above.”

9. Section 9.02(c) of the Lease, titled **“Other Insurance”** is hereby amended to state as follows:

“Lessee will cause all contractors, including but not limited to the General Contractor, to obtain and maintain business auto liability and, if necessary, commercial umbrella liability insurance with limits reasonably acceptable to Lessor, which policy shall be endorsed to include Lessor and parties reasonably designated by Lessor as additional insureds (without exceptions for acts or omissions of the additional insureds, including negligence). Lessee will cause all contractors, including but not limited to the General Contractor, to obtain and maintain worker’s compensation insurance as required by applicable law.”

10. The following provision shall be added to the Lease as Section 9.02 (g) to be titled **“Insurance by Lessor:”**

“During the Term, Lessor shall maintain a standard policy of commercial general liability insurance against injury or death to persons or damage to property arising out of Lessor’s use of the Property during the Term, with limits reasonably acceptable to Lessor.

11. Section 12.01 of the Lease, titled "**No Assignment or Sublease**" is hereby amended to state as follows:

"Lessee shall have no right to assign this Lease. Lessee may not sublease under this Lease without the prior written consent of Lessor. Any permitted sublease shall be subject to the Permitted Uses set forth in Section 8.01 and the Additional Rent provisions of Section 4.04. Lessor hereby consents, without the necessity of further consent, that Lessee may sublease to Westlake Pop Warner and Westlake Youth Soccer Association. Any sublessee under this Lease shall be subject to the same terms, conditions and obligations as are binding against Lessee hereunder, and no sublessee under this Lease shall have any greater rights or benefits than have been granted to Lessee hereunder. Furthermore, Lessee shall require any and all sublessees under this Lease to carry, provide and obtain all insurance policies and coverages that Lessee is required to carry, provide and obtain under Section 9.02, and in accordance with the terms and conditions of Section 9.02."

12. Section 14.13 of the Lease, titled "**Limited Right of First Refusal**", is hereby amended to state as follows:

"In the event of a notice of Termination of this Lease by Lessor and Lessor's decision to offer the Property for sale, and subject to Lessor's compliance with the advertising and notice requirements of Local Government Code Chapter 272, or other law applicable at the time of the contemplated sale, Lessor grants Lessee a right of first refusal. Lessee must give Lessor written notice of exercise of the right of first refusal within thirty (30) days from Lessee's receipt of written notice from Lessor of the terms and conditions of the proposed sale, including notice of (i) Lessor's receipt of another bona-fide offer after compliance with applicable laws, or (ii) the fact that Lessor did not receive any other offers after compliance with applicable laws. If exercised, Lessee must close the acquisition of the Property within ninety (90) days after providing Lessor with written notice of Lessee's exercise of the right of first refusal. The purchase and sale of the Property, in the event Lessee exercises the right of first refusal, will be on terms and conditions set out in a contract of sale between and duly approved by Lessee and Lessor."

Except as expressly amended by the provisions hereof and those of the First Amendment, the terms and provisions in the Lease shall continue to govern the rights and obligations of the parties; and all provisions in the Lease shall remain in full force and effect as stated therein. This Second Amendment, the First Amendment, and the Lease taken together shall be construed as one instrument and are the complete agreement of the parties thereto, and supersede all prior proposals, negotiations, agreements and

understandings relating to the subject matter hereof.

IN WITNESS WHEREOF, this Second Amendment is made and entered into in multiple original counterparts on the day and year first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

LESSOR:

EANES INDEPENDENT SCHOOL DISTRICT, an independent school district in Travis County, Texas.

By: Nola Wellman
Printed Name: Nola Wellman, Ph.D.
Title: Superintendent
Date: 9/10/13

LESSEE:

WH LITTLE LEAGUE, d/b/a WESTERN HILLS LITTLE LEAGUE

By: Greg Rives
Printed Name: Greg Rives
Title: President
Date: 9-9-2013