

## 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 Westlake Athletic Center, a Texas limited liability company ("***Lessee***") to be effective as of the Effective Date (as defined in Section 1.02 below).

### Recitals

A. Lessor owns a tract of land in Travis County, Texas, consisting of approximately 5.68 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 instructional 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 has a current need for the Property for athletic purposes, and may have a future instructional need for the Property.

D. Lessor has the opportunity to lease the Property to a lessee who plans to develop the Property for athletic purposes to benefit both Lessor's students and the community at-large, while maintaining Lessor's right to control and manage the use of the Property, and if necessary, terminate this lease if the Property is needed in the future for instructional purposes or for reasons of financial exigency.

E. Lessor has published notice and conducted a public request for proposals process for interested Ground Lease lessees 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 a response from Lessee.

G. Lessor, as an alternative to self-funding and self-constructing certain athletic facilities, is entering into this Lease to provide the facility to its students. Lessor has determined it would be in the best interest of Lessor and its students to enter into this Lease agreement with Lessee, while providing a public benefit to the community.

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 ***"Commencement Date"*** means the earlier of (i) the date in which the Improvements, as defined in Section 1.06, are substantially complete and the Lessee commences operations; or (ii) that date which is three (3) years following the Effective Date.

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

1.03 ***"Expiration Date"*** shall be the last date of the Lease Term, or two hundred seventy (270) days after the notice from Lessor to Lessee as provided in Article 3 herein, or the Termination Date, whichever is the first to occur.

1.04 ***"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.

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

1.06 ***"Improvements"*** mean as the context implies, a multipurpose indoor athletic center, which shall include, without limitation, court facilities, a turf field, storage, and related areas; as well as all access and related facilities to be constructed by Lessee, in accordance with the terms and provisions of this Lease. The Improvements shall be named the Westlake Athletic and Community Center.

1.07 ***"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).

1.08 ***"School Days"*** means between the hours of 6:00 a.m. and 5:30 p.m. on days in which Westlake High School is open for regular academic classes, and during the month of August after the start of practice for University Interscholastic League ("UIL") activities, as provided in Section 8.07. It does not include the remainder of the summer or student holidays.

1.09 "**Substantial Completion**" and "**Substantially Completed**" mean that all of the following have occurred: (i) Lessee has completed or caused the construction of the Improvements 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 Lessee's general Contractor (the "**General Contractor**") (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.

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

## **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 that may be removed without disturbing the surface of the Property.

2.02 **Quiet Enjoyment.** As long as Lessee performs its obligations under this Lease, and subject to Lessor's priority rights to utilize the Property, 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 Title Commitment, including visible and apparent easements, encroachments, and boundary line conflicts, if any.

## **ARTICLE 3 GROUND LEASE TERM**

### **3.01 Term.**

(a) The term of the Lease (the "Lease Term") shall be the earlier of (i) the expiration of thirty-five (35) years from the Commencement Date, subject to the extension options provided herein, or (ii) the effective date of a termination of the Lease as provided for in this Lease. Lessee may, at its option, and except in the event of a termination as provided in the Lease, extend the Lease Term for three (3) additional and subsequent five (5) year terms, by providing

written notice of such option to Lessor no sooner than 270 days prior to the expiration of the then current Lease Term.

(b) Lessor shall have the right to terminate the Lease and recover full and complete possession of the Property, or any portion thereof, if (i) Lessor determines that Lessor needs any or all of the Property for educational uses, other than athletic, sports, or other school-related extracurricular uses or activities (and provided that such need arises after the Effective Date hereof) or (ii) Lessor determines after a determination by the Board of Trustees of Lessor that a Financial Exigency, as defined by 19 Texas Administrative Code, Chapter 109, Subchapter BB (or other standards set by the Commissioner of Education), exists and that in order to meet its financial obligations, it must sell any or all of the Property and use the proceeds of sale for payment in order to provide educational services to its students. Lessor shall not be entitled to terminate the Lease under reason (i) above prior to the expiration of six (6) years following the Effective Date. If, Lessor terminates the Lease for reasons (i) or (ii) herein, Lessor will give Lessee written notice, as provided herein, and state that the Lease, as to all or the affected portion of the Property, will be terminated two hundred seventy (270) days after the date of the written notice, and will provide the basis for the termination. Upon the expiration of the two hundred seventy (270) days notice, the Lease shall terminate as to all or the affected portion of the Property, as applicable, and Lessor will have no further obligations to Lessee under this Lease.

(c) 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. In the event of such termination as set forth in this Section 3(c), Lessor may elect to either (i) receive title to all Improvements constructed on the Property up to the termination, at no cost to Lessor and free and clear of any debts or liens; or (ii) direct Lessee to return the Property, at no cost to Lessor, to its condition prior to the undertaking of the construction of the Improvements, to the extent reasonably practicable; and Lessee shall comply with such election by Lessor by either executing all necessary documents reflecting the transfer of title of all Improvements located on the Property, free and clear of any debts or liens, or taking the necessary action to return the property to its prior condition to the extent reasonably practicable, as applicable.

(d) In the event of such termination by Lessor pursuant to Section 3.01(b), title and ownership to and of all Improvements shall transfer to Lessor, free and clear of any debts or liens, and Lessor shall pay to Lessee, on or before the effective date of the termination, the "Unamortized Value" of the Improvements. As used herein, the "Unamortized Value" of the Improvements shall be the unamortized portion of the "Original Cost" of the Improvements, amortized over a period of fifteen (15) years from the Commencement Date. "Original Costs" as used herein shall mean the amount of the capitalized cost of the Improvements, using generally

accepted accounting procedures, as reported on WAC's balance sheet as of the Commencement Date of the Lease, but excluding any amounts attributable to funds, goods or services donated by any person or party. If either Lessor or Lessee disputes the Unamortized Value, the parties agree to submit the matter to binding arbitration and the prevailing party shall have its expenses (including attorneys' fees) related to the arbitration paid for by the non-prevailing party. The parties agree that other than the Unamortized Value determination herein, no other dispute arising under this Lease shall be subject to binding arbitration.

## **ARTICLE 4 RENT**

4.01 **Ground Lease Rent.** Lessor shall be compensated with the following financial and other consideration to be provided by Lessee:

(a) Lessor shall have the ability to use the Improvements in accordance with Section 8.07, at no cost to Lessor;

(b) Lessee shall, during the entire Lease Term, perform all maintenance, repair and operations obligations for the Property, as provided in this Lease and at no cost to Lessor (except where reimbursement by Lessor for repairs is required elsewhere in this Lease);

(c) Lessee shall be responsible for payment of all utilities for the Property for the entire Lease Term, in accordance with Section 5.05 of this Lease, at no cost to Lessor;

(d) Lessee shall transfer ownership of the Improvements to Lessor, at no cost to Lessor, upon the expiration of the Tenth (10<sup>th</sup>) year following the Commencement Date.

(e) Lessee shall make Yearly Rental payments to Lessor in accordance with the rental schedule attached hereto as Exhibit B (the "Yearly Rental Schedule"). Yearly Rental shall be due in quarterly installments on January 1, April 1, July 1, and October 1 of each Lease Year following the Commencement Date. The first year of the Yearly Rental Schedule shall be the year during which the Commencement Date occurs, and the Yearly Rental for that year shall be pro-rated.

4.02 **Failure to Pay Yearly Rental.** Any failure by Lessee to pay the Yearly Rental as 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, subject to Lessors prior written approval thereof, as well as any future modifications, additions and renovations to the Improvements, during Lessee's period of ownership of the Improvements. Prior to commencing with the preparation of construction documents for any Improvements to be located within the Property, Lessee shall, at Lessee's sole cost and, expense, conduct and Environmental Site Assessment and a Traffic Impact Analysis if required by a governmental authority, and shall provide a copy of the result of such studies to Lessor. 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 to make or construct 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 a reasonable additional right of way to provide access to the Property.

5.02 **Approval by Lessor.** Lessee shall keep Lessor continuously informed of all plans and designs for Improvements and any subsequent modifications, additions or renovations to the Improvements, proposed and actual requests to any governmental entity for permits or approvals. The design and specifications of the Improvements, and any subsequent modifications, additions or renovations to the Improvements, shall conform, at a minimum, to the Lessor's facilities standards for similar facilities, and any educational specifications set forth in the Texas Administration Code for school facilities. The design and specifications of the Improvements, and any subsequent modifications, additions or renovations to the Improvements, shall be subject to Lessor's prior written approval, which approval shall not be unreasonably denied. Prior to and as a condition precedent to, the commencement of construction of the Improvements, and any subsequent modifications, additions or renovations to the Improvements, Lessee shall obtain Lessor's prior written consent, which shall not be unreasonably denied and which shall be given no later than ten (10) business days after delivery, to all plans and specifications for Improvements and submission for permits or approvals to any governmental entity. 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, and any subsequent modifications, additions or renovations to the 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.

5.03 **Compliance with ADA.** Lessee hereby agrees, warrants and represents that Lessee will comply with the Americans With Disabilities Act ("ADA") at least to the same extent Lessor would be required to comply with such act. Lessee will indemnify and hold harmless Lessor and its officers, employees, and agents for, from and against any and all claims by third parties alleged against Lessor for alleged violations of the ADA relating to Lessee's operations, programs, and/or failure to make accommodations. Lessee's responsibilities hereunder shall continue even after ownership of the Improvements transfers to Lessor under Section 5.07.

5.04 **Commencement of Construction.** Lessee shall commence construction of Improvements within two (2) years after the Effective Date; If Lessee does not commence construction of Improvements by the date set forth herein, Lessor shall have the option to cancel this Lease after giving Lessee ninety (90) days written notice, and Lessor shall have no further obligations to Lessee under this Lease.

5.05 **Utilities.** Lessee shall be solely responsible for payment of all charges for any utilities incurred in connection with its use and maintenance of the Property and Improvements, including but not limited to charges relating to electricity, gas, water, sewer, and trash collection as well as the cost of the installation of any meters or submeters, as may be necessary to measure Lessee's use thereof. Lessee shall be solely responsible for obtaining all utilities accounts in Lessee's name. Lessee's responsibilities hereunder shall continue even after ownership of the Improvements transfers to Lessor under Section 5.07.

5.06 **Maintenance.** Lessee shall, at Lessee's sole cost and expense repair and maintain the Property and Improvements visibly attractive, well-groomed, and in good and working condition at all times during the Term. Lessee's responsibilities hereunder shall continue even after ownership of the Improvements transfers to Lessor under Section 5.07.

5.07 **Ownership of Improvements.** Lessee shall retain all ownership and title rights to the Improvements until the expiration of the tenth (10<sup>th</sup>) year following the Commencement Date. Upon the expiration of the tenth (10<sup>th</sup>) year following the Commencement Date, ownership and title rights to the Improvements shall automatically transfer to Lessor, free and clear of any debts or liens, without any payment by Lessor to Lessee. Upon transfer of ownership of the Improvements to Lessor, Lessee shall, upon request by Lessor, execute any and all reasonable documents to reflect such ownership and title of Lessor as required by Lessor, free and clear of any debts or liens, and in form and substance reasonably acceptable to Lessor. Notwithstanding the foregoing, ownership and title rights to all Improvements shall nonetheless become the property of Lessor, free and clear of any debts or liens, upon the expiration or termination of this Lease for any reason, and neither Lessee, nor any party acting or claiming on Lessee's behalf, shall be entitled to any compensation from Lessor, except as provided under Sections 3.01(d), 10.03, or 14.12 of this Lease, and only to the extent applicable at the time of such expiration or termination.

## **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 necessary plans and construction drawings for the Improvements, and any subsequent modifications, additions or renovations to the Improvements.

6.02 **Process for Approval of Final Construction Drawings.** Final construction drawings for all Improvements will be submitted to Lessor's facilities planning department and the department will be given seven (7) business days to review, comment and approve, or reject, in writing, all such final construction drawings. This requirement shall also apply to any subsequent modifications, additions or renovations to the Improvements.

6.03 **Performance Under Construction Contracts.** 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. Once Lessee has

commenced construction of the Improvements, the construction shall proceed continuously without abatement subject to Force Majeure. If Lessor determines, in Lessor's reasonable judgment and good faith that construction of all or any portion of the Improvements 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 sufficient funds available to achieve Substantial Completion of the construction of the Improvements. In the event that Lessee fails to provide Lessor with such reasonable evidence within the time required, and fails to subsequently immediately reinitiate construction of the Improvements, 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. This requirement shall also apply to any subsequent modifications, additions or renovations to the Improvements.

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.** All contractors, including but not limited to 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 Lessor or Lessor's 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 obtained therefor. All construction shall comply with all applicable governmental laws, rules and regulations, and all necessary permits and approvals, which shall be obtained by the General Contractor, or provided to the General Contractor by Lessee, 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 a commercially reasonable time period, after notice by Lessor to Lessee. This requirement shall also apply to any subsequent modifications, additions or renovations to the Improvements.

(d) **Payment Bonds.** Lessee will cause Payment Bonds and bonded contracts to be recorded in accordance with the requirements Chapter 53 of the Texas Property Code and the Clerk of Travis County. This requirement shall also apply to any subsequent modifications, additions or renovations to the Improvements.

## **ARTICLE 7 MECHANICS' LIENS**

Neither Lessee nor anyone claiming any interest in the Property by, through, or under Lessee (including but not limited to General Contractor, 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 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 an athletic and community center, which shall be primarily dedicated to youth sports, fitness and wellness, and which Lessee shall be required to name the Westlake Athletic and Community Center. Lessee shall not be entitled to use the Property for any other purpose without Lessor's prior 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.

8.02 **Operations.** Lessee will operate or will cause, at Lessee's expense, 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. Lessee's responsibilities hereunder shall continue even after ownership of the Improvements transfers to Lessor under Section 5.07.

8.03 **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.

8.04 **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.

8.05 **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, licensees, invitees, or subtenants, if any) 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, if any) 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, invitees, licensees or subtenants, if any) 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.

8.06 **Removal of Unauthorized Materials and Debris.** Lessee shall remove and properly dispose of all unauthorized materials and construction debris deposited on the Property. Lessee's responsibilities hereunder shall continue even after ownership of the Improvements transfers to Lessor under Section 5.07.

8.07 **Lessor's Rights to Use the Property.** Notwithstanding anything herein to the contrary, Lessor shall have the priority right to utilize all or any portion of the Property and the Improvements constructed by Lessee or any of its sublessees at the following times and in the following manner:

(a) Lessor has the absolute and priority right to reserve all or part of the Property and the Improvements during School Days, upon fourteen (14) days advance notice to Lessee, but without the need for Lessee's approval. Notice should include:

- (i) The athletic team, extracurricular club, academic class, or other school-related group reserving the Property and Improvements;
- (ii) The time and date Lessor wishes to reserve the Property and the Improvements;
- (iii) The portion of the Property and the Improvements Lessor wishes to reserve.

(b) Lessor shall have the priority right to reserve all or part of the Property and Improvements during the month of August for 50% of the available School Day, upon the start of practice for UIL activities, provided Lessor provides Lessee with written notice by March 1<sup>st</sup> of the same calendar year. Notice should include all of the information required in Section 8.07(a)(i)-(iii) above.

(c) Lessor has the right to reserve all or part of the Property and the Improvements during School Days upon less than fourteen (14) days advance notice to Lessee, subject to Lessee's prior approval, such approval not to be unreasonably withheld.

(d) Notwithstanding the above, in the event rain, lightning or freezing temperatures necessitates one of Lessor's athletic teams, extracurricular clubs, academic class, or other school-related groups to cancel an outdoor activity during a School Day, Lessor shall be permitted to utilize the Property and the Improvements upon two (2) hours advance notice to Lessee, subject to Lessee's approval, which shall not to be unreasonably withheld.

(e) In addition to Lessor's rights related to use of the Property and Improvements as provided above, Lessor has the right to request use of the Property and the Improvements at times other than School Days, which shall be subject to availability and subject to Lessee's approval, at Lessee's discretion.

(i) Notwithstanding anything herein to the contrary, during the month of August, during student holidays, and upon one or more of Westlake High School's athletic teams, extracurricular clubs, academic classes, or other school-related groups advancing past the regular season of the applicable activity, Lessor has the right to reserve all or part of the Property and the Improvements upon fourteen (14) days advance notice to Lessee, subject to Lessee's prior approval, such approval not to be unreasonably withheld.

(f) Lessor has the right to use the parking spaces located on the Property during School Days and Westlake High School Varsity Football home games, except that Lessee shall be able to reserve up to fifty (50) spaces for its exclusive use at all times, which shall be chosen by Lessee.

(g) Lessor's exclusive use of the Property and Improvements under this Section shall be at no cost to Lessor and is part of the valuable consideration exchanged between Lessor and Lessee.

(h) Lessor shall, at its expense, repair all property that is destroyed or damaged during Lessor's use of the Property and Improvements. Further, during Lessor's use of the Property and Improvements, Lessor agrees to maintain the Property and Improvements in a clean and operable condition. If Lessor fails to commence such repairs within ten (10) business days following receipt of written notice and demand from Lessee, then Lessee may repair the damage created by Lessor. In such event, Lessor agrees, upon delivery of a list of expenses and repairs from Lessee, along with adequate supporting documentation evidencing the cost and necessity of repairs, to reimburse Lessee within ten (10) business days for reasonable expenses actually incurred by Lessee in connection with repairs by Lessee of damage caused by Lessor.

(i) Lessor's right, as detailed in this Section 8.07, shall be used only for the benefit of Westlake High School athletic teams, extracurricular clubs, academic classes, or other school-related groups. Lessor may not charge a third party to use the Property and the Improvements, or otherwise engage in revenue generating activities for Lessor.

8.08 **Lessee's Right to Use Lessor's Property.** Lessee has the right to use up to fifty (50) parking spaces in Lessor's adjacent Westlake High School parking area upon 30 (thirty) days advance written request to Lessor and upon Lessor's written approval, which shall not be unreasonably withheld.

8.09 **Criminal Background Checks.** Lessee shall, prior to the commencement of any work by Lessee's employees, contractors and sub contractors within the Property, certify, on a form provided by Lessor upon Lessee's request, that, for Lessee, each employee of Lessee, and each employee or independent contractor of Lessee's or such contractor's subcontractors who (1) will have direct contact with students (substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional District employee), and (2) will have continuing duties related to the Lease or the Property, Lessee has obtained, as required by Texas Education Code Section 22.0834 and Texas Administrative Code Sections 153.1101 and 153.1117:

- (a) national criminal history record information from a law enforcement or criminal justice agency for Lessee and each employee of Lessee hired before January 1, 2008;
- (b) national criminal history record information from the Texas Department of Public Safety for Lessee and each employee of Lessee hired on or after January 1, 2008; and
- (c) national criminal history record information from the Texas Department of Public Safety for each employee or independent contractor of each subcontractor of Lessee during the Lease Term.

Any employee or independent contractor of a contractor or subcontractor who will have direct contact with students must not have been convicted of an offense identified in Texas

Education Code Section 22.085 (or any higher standard established by the District's Board of Trustees).

8.10 **Maintenance and Operations Reserves.** Lessee shall be required to maintain, and shall provide proof thereof to Lessor, a dedicated account for the payment of maintenance and operations expenses. Lessee shall keep a minimum reserve balance of the greater of (i) two months of estimated maintenance and operating expenses, or (ii) \$150,000. Lessor shall have the right to verify the reserve balance upon written request.

## **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, arising as a result of this Lease. All taxes shall be paid directly to the appropriate Governmental Authority, even if such taxes are billed directly to Lessor.

(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 (30) 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, plus interest on such amount at a rate of ten (10%) percent per annum.

### **9.02 Insurance.**

#### **(a) Property Insurance.**

(i) **By Lessee.** During the time Lessee owns the Improvements it shall maintain property insurance covering the Property 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.** 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. 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).

(iii) **By Lessor.** During the time Lessor owns the Improvements it shall maintain property insurance covering the Property 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.

(b) **Liability Insurance.**

(i) **By Lessee.** During the Lease 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 minimum 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

mutually agreed upon by Lessor and 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 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.

(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.** Each of the Lessee and the General Contractor shall provide or cause to be provided to the Lessor certificates of insurance evidencing all insurance required to be carried hereunder (i) before the commencement of any construction, if applicable; (ii) at least fifteen days prior to the expiration or renewal of any such insurance policy; (iii) at any other time upon request from Lessor. 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, plus interest on such amount at a rate of ten (10%) percent per annum.

(g) **Insurance by Lessor.** During the Lease 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 Lease Term, with the same limits imposed upon Lessee under this Lease..

#### 9.03 **Indemnity and Immunity.**

(a) **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, to the extent of such loss or liability resulted from the willful misconduct or gross negligence 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) **Lessor's Immunity.** Nothing in this Lease shall be construed as or constitute a waiver of any of Lessor's governmental immunities.

## **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 substantially damaged or destroyed by fire, casualty, or other cause (a "***Casualty***"). Upon Lessor's receipt of any notice under this subsection, Lessee shall be entitled to terminate this Lease by giving Lessor written notice within thirty (30) days of such Casualty or waive such right of termination and receive all the insurance proceeds under any policies of insurance maintained by Lessee, provided Lessee is still the owner of the Improvements.

(b) **Lessee's Obligation to Repair.** In the event of a Casualty, whether partial or total, Lessee, and if Lessee does not terminate this Lease pursuant to Section 10.01(a), Lessee shall repair, restore, and rebuild the Improvements to substantially the same or better condition as existed immediately prior to such Casualty. Lessee's responsibilities hereunder shall terminate once ownership of the Improvements transfers to Lessor under Section 5.07.

(c) **Conditions Precedent to Restoration by Lessee.** To the extent applicable, and provided Lessee is still the owner of the Improvements, 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 Lessee 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 in writing (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, which shall be in compliance with the applicable provisions of this Lease.

(d) **Disbursal of Proceeds.** If the conditions set forth in this Section are satisfied, and provided Lessee is still the owner of the Improvements, 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 (10) days after submittal by Lessee of a Draw Request as described below, and provided the Escrow Agent does not receive written objection by Lessor to any or all of such requested disbursement within said ten (10) 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). Not more frequently than once each calendar month, Lessee may submit to the Escrow Agent (with a copy to Lessor) draw requests (the "***Draw Request***") for a reimbursement payment 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, provided Lessee is still the owner of the Improvements.

(f) Upon transfer of ownership of the Improvements to Lessor, Lessor shall be required to comply with the same requirements imposed on Lessee as set forth in Sections 10.01(b) and 10.01(c) above, except that Lessor shall not be obligated, under any circumstances, to expend any school district funds for repairs, restorations or reconstruction, and shall only be required to expend the full amount of net insurance proceeds received by Lessor under Section 10.01(c). Lessee and Lessor agree that Lessor shall be entitled make any necessary modifications to the plans and drawings for repairs, restoration or reconstruction in order to reduce the costs of such repairs, restorations or reconstruction to an amount that can be fully funded from the net insurance proceeds received by Lessor. In the event Lessee is not in agreement with Lessor's plans and drawings for repairs, restoration or reconstruction, which shall be provided to Lessee for review prior to the commencement of any work by Lessor, Lessee shall have the right to terminate this Lease upon at least thirty (30) days written notice to Lessor. Any contracts entered into by Lessor for repairs, restorations or reconstruction under this provision shall be subject to the laws, policies and requirements applicable to school district construction contracts, and any provision of this Lease that conflicts with such laws, policies or requirements shall not be binding on Lessor. Notwithstanding the foregoing, Lessor and Lessee agree that Sections 10.01(c)(ii), 10.01(c)(iii), 10.01(c)(v), 10.01(d) and 10.01(e) shall not be binding on Lessor.

#### 10.02 **Condemnation.**

(a) During the Lease 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. Upon Lessee's receipt of any notice under this subsection, Lessee shall be entitled to terminate this Lease.

(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 (i) the vesting of legal title to the Property in the entity exercising the power of Condemnation; or (ii) 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 either Section 3.01 or Article 13 of this Lease shall not constitute a taking or Condemnation hereunder, nor shall it trigger any of Lessee's rights to compensation.

10.03 **Distribution of Proceeds.** In the event that the Lease is terminated, as set forth above, pursuant to a Condemnation proceeding, Lessor shall recover the value of the land and any improvements without burden or benefit of any Lessee constructed improvements; and Lessee shall not be entitled to recover for any damages to the leasehold estate. Notwithstanding the foregoing, if condemnation occurs during the first fifteen (15) years following the Commencement Date, Lessee shall recover only the Unamortized Value of the Improvements as determined in accordance with the provisions of Section 3.01(d), with Lessor recovering the remaining portion of any proceeds. In the event condemnation occurs after the expiration of fifteen (15) years from the Commencement Date, Lessee shall not be entitled to any condemnation proceeds, and all improvements on the Property, whether constructed by Lessor or Lessee, shall be considered to be the property of Lessor for purposes of the award.

## **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 ASSIGNMENTS OR SUBLEASES**

12.01 **Assignment or Sublease.** Lessee shall have no right to assign this Lease, except for terms set forth in Section 12.02, which require Lessor's prior written approval. 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 this Lease.

12.02 **Aquatics Center.** Notwithstanding the above, during the term of this Lease, Lessee and Lessor anticipate that Westlake Aquatics Center, LLC, a Texas limited liability company ("WAQC"), shall sublease a portion of the Property from Lessee or remove a portion of the Property from the Lease and allow Lessor to enter into a separate lease agreement with WAQC in order for WAQC to build and operate an aquatics center which shall include a swimming pool measuring no less than 25 yards in length and 60 feet in width and featuring no less than 8 lanes with an attached shallow end pool for children ("Pool"). WAQC shall have the exclusive right to build and operate the Pool. The rights hereunder are conditioned upon WAQC's execution of a sublease of this Lease with Lessee, or a separate lease with Lessor, within a period of 3 years from the Effective Date. Any agreement(s) and amendments pertaining to this Section 12.02 must be in writing and will require approval by Lessee, WAQC, and Lessor's Board of Trustees. In the event WAQC has not, within three (3) years from the Effective Date, entered into a sublease with Lessee or separate lease with Lessor for the purpose

of building and operating the Pool, then Lessor shall be entitled, notwithstanding the provisions of Section 3.01(b), to terminate a portion of this Lease for the purpose of constructing or allowing another entity to construct an aquatics center on a vacant portion of the Property. Lessee agrees, in such event, to cooperate in the execution of any documents necessary to accommodate the aquatics center on the Property. Any partial termination under this Section 12.02 shall not be subject to the provisions of Section 3.01(d). Additionally, any sublease or separate lease negotiated pursuant to this section shall set forth express provisions addressing the method for calculation of any payment due to Lessee upon termination or condemnation of any portion of the lease area on which an aquatics center is constructed. In the absence of any such express terms in a sublease or separate lease, the provisions of Section 3.01(d) of this Lease shall not be applicable to aquatic center improvements.

### **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 Yearly Rental 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 thirty (30) 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 30-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 30-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 thirty (30) days after the date of such levy or attachment.

(d) **Insolvency or Cessation of Operations.** If Lessee, at any time, vacates the Property, ceases its business operations for a period of sixty (60) consecutive days, or becomes insolvent.

(e) **Bankruptcy, Receivership, Etc.** 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 thirty (30) consecutive days.

(f) **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. Lessee shall provide Lessor with ninety (90) days advance written notice of its intent to file a voluntary petition for bankruptcy, or its consent to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official).

(g) **Criminal Conviction.** The conviction of Lessee of any felony criminal offense or any criminal offense involving moral turpitude.

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 for such amount accruing at a rate of 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 thirty (30) 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. If Lessor terminates this Lease during the first fifteen (15) years following the Commencement Date due to an Event of Default, then Lessee shall not be entitled to receive any payment for the Unamortized Value of the Improvements as defined by Section 3.01(d), nor shall Lessee be entitled to any other damages or compensation from Lessor.

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 or in equity, 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 thirty (30) 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 thirty (30) days are required for its performance, Lessor shall not be deemed to be in default if it commences such performance within said 30-day period and diligently pursues 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, trustees, directors or employees of Lessor, nor Lessor's agents or employees shall be personally liable for any deficiency. 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 Lessor and Lessee 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 shall have no further liability under this Lease to the Lessee, 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 contained in this Lease shall be binding on Lessor and its successors and assigns only during and in respect of Lessor's period 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, if delivered personally, or on the second (2<sup>nd</sup>) business day after depositing same in the United State Mail in accordance with this Section 14.05. 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, attention Jeff Buch, at 2301 South Capital of Texas Highway, Building H, Austin, Texas 78746, 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. No other intended beneficiaries are created under this Lease.

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

14.12 **Limited Right of First Refusal.** In the event of a notice of termination of this Lease by Lessor under Section 3.01(b) and Lessor's decision to offer the Property for sale under Section 3.01(b), and further 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 one hundred twenty (120) 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, and will take into account any credit owed to Lessee for the Unamortized Value of the Improvements due to Lessee under Section 3.01(d), if this Right of First Refusal is exercised during the first fifteen (15) years following the Commencement Date.

14.13 **Approvals by Lessor.** As contemplated in this Lease, for any action, condition or decision that requires Lessor's approval or consent, it is understood that such approval or consent must be given in writing by the Eanes Independent School District Director of Maintenance & Operations. Notwithstanding, any amendment to this Lease shall require approval of a formal amendment by Lessor's Board of Trustees.

14.14 **Lessee's Financial Statements.** For each year of the Lease Terms, Lessee shall be required to provide to Lessor a copy of Lessee's annual financial report, within 3 months of each year-end, to include an income statement, balance sheet, change in equity report including any distributions, and cash flow statement.

14.15 **Future Improvements.** In the event Lessee receives sufficient funding, which shall be determined by Lessee in its sole discretion, from any source, sufficient to expand the size of the indoor football field constructed by Lessee, Lessee shall use its best efforts to expand the indoor football field by an additional twenty (20) yards in length, for a total of 80 yards in length. Such expansion activities shall be governed by the same approval and other requirements set forth in this Lease concerning the original construction of the Improvements, or any subsequent modifications, additions or renovations to the Improvements.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*  
*[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: 

Printed Name: Rob Hargett

Title: President, Board of Trustees

Date: August 27, 2014

**LESSEE:**

**WESTLAKE ATHLETIC CENTER, LLC**

By: 

Printed Name: Jeff Buch

Title: Manager

Date: 9-10-14

## **EXHIBIT A**

### **LEGAL DESCRIPTION FOR PROPERTY**

Approximately 5.68 acres of land, more or less, out of The Alexander Eanes Survey No. 507, in Travis County, Texas, being the same property conveyed to Ben Hur Temple by deed of record in Volume 5144, Page 1087, Deed Records, Travis County, Texas.

## EXHIBIT B

### YEARLY RENTAL SCHEDULE

| INDEX | YEAR OF<br>COMMENCEMENT | RENT         | Cumulative<br>Collected |
|-------|-------------------------|--------------|-------------------------|
| 0.00% | 1                       | \$0          | \$0                     |
| 0.00% | 2                       | \$0          | \$0                     |
| 0.00% | 3                       | \$0          | \$0                     |
| 0.00% | 4                       | \$0          | \$0                     |
| 0.00% | 5                       | \$0          | \$0                     |
| 0.00% | 6                       | \$0          | \$0                     |
| 0.00% | 7                       | \$0          | \$0                     |
| 0.00% | 8                       | \$0          | \$0                     |
| 0.00% | 9                       | \$0          | \$0                     |
| 0.00% | 10                      | \$0          | \$0                     |
| 2.50% | 11                      | \$60,000.00  | \$60,000.00             |
| 2.50% | 12                      | \$61,500.00  | \$121,500.00            |
| 2.50% | 13                      | \$63,037.50  | \$184,537.50            |
| 2.50% | 14                      | \$64,613.44  | \$249,150.94            |
| 2.50% | 15                      | \$66,228.77  | \$315,379.71            |
| 2.50% | 16                      | \$67,884.49  | \$383,264.20            |
| 2.50% | 17                      | \$69,581.61  | \$452,845.81            |
| 2.50% | 18                      | \$71,321.15  | \$524,166.95            |
| 2.50% | 19                      | \$73,104.17  | \$597,271.13            |
| 2.50% | 20                      | \$74,931.78  | \$672,202.91            |
| 2.50% | 21                      | \$76,805.07  | \$749,007.98            |
| 2.50% | 22                      | \$78,725.20  | \$827,733.18            |
| 2.50% | 23                      | \$80,693.33  | \$908,426.51            |
| 2.50% | 24                      | \$82,710.66  | \$991,137.17            |
| 2.50% | 25                      | \$84,778.43  | \$1,075,915.60          |
| 2.50% | 26                      | \$86,897.89  | \$1,162,813.49          |
| 2.50% | 27                      | \$89,070.34  | \$1,251,883.83          |
| 2.50% | 28                      | \$91,297.10  | \$1,343,180.92          |
| 2.50% | 29                      | \$93,579.52  | \$1,436,760.45          |
| 2.50% | 30                      | \$95,919.01  | \$1,532,679.46          |
| 2.50% | 31                      | \$98,316.99  | \$1,630,996.44          |
| 2.50% | 32                      | \$100,774.91 | \$1,731,771.35          |
| 2.50% | 33                      | \$103,294.28 | \$1,835,065.64          |
| 2.50% | 34                      | \$105,876.64 | \$1,940,942.28          |
| 2.50% | 35                      | \$108,523.56 | \$2,049,465.84          |
| 2.50% | 36                      | \$111,236.65 | \$2,160,702.48          |
| 2.50% | 37                      | \$114,017.56 | \$2,274,720.04          |
| 2.50% | 38                      | \$116,868.00 | \$2,391,588.05          |
| 2.50% | 39                      | \$119,789.70 | \$2,511,377.75          |
| 2.50% | 40                      | \$122,784.44 | \$2,634,162.19          |
| 2.50% | 41                      | \$125,854.05 | \$2,760,016.24          |
| 2.50% | 42                      | \$129,000.41 | \$2,889,016.65          |
| 2.50% | 43                      | \$132,225.42 | \$3,021,242.07          |
| 2.50% | 44                      | \$135,531.05 | \$3,156,773.12          |
| 2.50% | 45                      | \$138,919.33 | \$3,295,692.45          |
| 2.50% | 46                      | \$142,392.31 | \$3,438,084.76          |
| 2.50% | 47                      | \$145,952.12 | \$3,584,036.88          |
| 2.50% | 48                      | \$149,600.92 | \$3,733,637.80          |
| 2.50% | 49                      | \$153,340.94 | \$3,886,978.74          |
| 2.50% | 50                      | \$157,174.47 | \$4,044,153.21          |