

## FISHERS SPORTS & ENTERTAINMENT COMPLEX LEASE AGREEMENT

THIS FISHERS SPORTS & ENTERTAINMENT COMPLEX LEASE AGREEMENT ("Lease") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the City of Fishers Redevelopment Commission, a commission created and existing pursuant to Ind. Code § 36-7-14 *et. seq.* ("Tenant"), and GK Sports Development, LLC, an Indiana limited liability company ("Landlord") as follows:

WHEREAS, Landlord is constructing the Fishers Sports & Entertainment Complex which will include an arena containing 4,200 permanent seats (which may accommodate additional temporary seating depending on use), 245,000 square feet field house, sports medicine office building to provide performance training and rehabilitation and a parking garage containing three (3) floors and approximately six hundred and thirty (630) spaces (collectively and as set forth in 2.01(B), "Development") all of which is depicted in **Exhibit A** attached hereto and incorporated herein;

WHEREAS, the Development will be generally located west of Olio Road and south of 136<sup>th</sup> Street in Fishers, Indiana as more specifically described and depicted in **Exhibit B** attached hereto and incorporated herein ("Fishers Site");

WHEREAS, the two-story field house is planned to accommodate at least twenty-eight (28) different sports, and include, on the first floor, (a) sports fields comprised of a 600' x 250' turf area, (b) twelve (12) hard surface courts that can be used for a variety of court sports, (c) a separate turf area containing approximately 17,600 square feet; and, on the second floor, a viewing area concourse, walking and jogging track and offices (collectively, "Fieldhouse");

WHEREAS, the arena includes fifteen (15) corporate suites and will be constructed and used to host a myriad of sporting events, including, among others, hockey, basketball and volleyball; entertainment events, including without limitation, concerts, shows and consumer trade shows; and educational events ("Arena");

WHEREAS, Developer plans to begin construction of the Fieldhouse in the second quarter of 2015 and open the Fieldhouse approximately nine (9) months thereafter;

WHEREAS, Developer will construct a three (3) floor parking garage containing approximately six hundred thirty (630) parking spaces to accommodate the Development ("Garage") which Garage will be open to the public by or before June 1, 2016; and

WHEREAS, Landlord desires to (a) lease and make available to Tenant for public use, including but not limited to use by the Southeastern Program of Recreational Team Sports ("S.P.O.R.T.S."), portions of the Fieldhouse; (b) lease the Arena for not less than three (3) events each year; and (c) have access to and use of on-site parking and the Garage during Tenant's dates and times of use of the Fieldhouse.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## **ARTICLE 1. RECITALS**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Lease and are hereby incorporated into and made a part of this Lease as though they were fully set forth in this Article 1.

## **ARTICLE 2. LEASE OF PREMISES**

### **Section 2.01. Basic Lease Provisions and Definitions.**

#### **A. Leased Premises:**

##### **1. Fieldhouse:**

(i) School Year: During the school year (as determined by the Hamilton Southeastern Schools (“HSE”) Yearly Calendar (“School Calendar”)) - 60,000 gross square feet that includes twelve (12) basketball courts and non-exclusive use of associated Common Area (for purposes of this Agreement “Common Area” shall mean all areas at or about the Fieldhouse not intended and set aside for exclusive use of Landlord or other Tenants, including, without limitation, landscaped green spaces intended to be used by members of the public (but not including any sports fields), lobbies, corridors, stairways, parking lots, ramps, garages, elevators, restrooms and other areas of ingress and egress) Monday – Thursday; 3:00 p.m. - 9:00 p.m., daily (as of the date of the agreement, approximately 11,232 hours, annually) (the “Tenant Allocated Hours”).

Landlord acknowledges and agrees that Tenant may use up to thirty percent (30%) of its Tenant Allocated Hours for turf or track equipment (individually or jointly “Alternative Equipment”) rather than the courts, if the Alternative Equipment has not been previously scheduled for use by other users of the Fieldhouse. Upon Tenant’s request to use Alternative Equipment rather than the courts, the market rates for such courts and Alternative Equipment shall be determined and the value of Tenant’s court time applied to the use of Alternative Equipment. The rates for use of basketball courts and Alternative Equipment as provided in this Section 2.01 A.1.(i) will be adjusted based upon an annual fee schedule determined by Landlord in its reasonable discretion, which fee schedule sets the public rental rates for public use of the courts and Alternative Equipment (the “Fee Schedule”). As of the Effective Date each hour of use for each basketball court (with each partial hour of use being rounded up to the next full hour) shall be deemed to have a value of \$60.00 (the “Court Fee”). During the Term, each hour of use for the Alternative Equipment (with each partial hour of use being rounded up to the next full hour) shall be deemed at all times to have a value for each hour of use of the hourly Court Fee multiplied by five (5) (the “Alternative Equipment Fee”).

If Tenant uses a combination of court and Alternative Equipment time in any calendar month during the School Calendar having a total value in excess of the value of Tenant Allocated Hours for such period based upon the Fee Schedule, Tenant shall remit to Landlord the amount of the cost of such excess usage within thirty (30) days after Landlord has invoiced Tenant for such excess usage. If Tenant uses court and Alternative Equipment time in any such calendar month during the School Calendar having a total value less than the value of Tenant Allocated Hours, Tenant shall be entitled to carry-over unused Tenant Allocated Hours for use at a later time during that same calendar year, on any day of the week, including weekends, subject to availability of the Field House. Hours remaining but unused by December 31<sup>st</sup> of each calendar year shall expire, and Tenant shall not be entitled to reimbursement for unused and expired hours.

(ii) Summer Hours: During the summer break (as determined by the School Calendar) - 245,000 gross square feet (the entire Fieldhouse, whether court or turf) Monday –Thursday for 3.5 consecutive hours between 8:00 a.m. and 6:00 p.m., as reasonably determined by the City of Fishers, Indiana (the “City”) and communicated to Landlord not less than ninety (90) days prior to the commencement of such summer break each year;

(iii) Year-Round Access: Walking track surrounding the 2<sup>nd</sup> floor mezzanine overlooking the turf and courts together with the permanently installed track approximately one-half (1/2) mile in length; Monday – Friday 8:00 a.m. to 2:00 p.m. on a non-exclusive basis; provided, however, Landlord shall be entitled to restrict Tenant’s use of the walking track during any time when the Fieldhouse is closed for holidays or inclement weather or when the Fieldhouse is being used for events for which (a) an admission fee is charged and (b) the presence of walkers on the track will materially interfere with an event being held at the Fieldhouse;

(iv) Office: Exclusive, continuous access during normal business hours, which hours are anticipated to be 8 a.m. – 10 p.m., Monday through Sunday (except for recognized holidays), to approximately 250 square ft. of office space on the 2<sup>nd</sup> floor of the Fieldhouse as depicted on the floor plan for the Fieldhouse attached hereto and incorporated herein as Exhibit C (the “Office”), and Landlord may, upon agreement of Tenant, which agreement shall not be unreasonably withheld, designate the Office to be used by Tenant and relocate such Office from time to time, as long as easily accessible to Tenant; and

(v) First Floor Equipment Storage: exclusive, continuous access to approximately 250 rentable square ft. secure area on the 1<sup>st</sup> floor of the Fieldhouse as depicted on Exhibit C, and Landlord may, upon agreement of Tenant, which agreement shall not be unreasonably withheld, designate equipment storage space to be used by Tenant and relocate such equipment storage space from time to time.

## **2. Arena:**

(i) Three (3) events each calendar year hosted within the main space of the Arena on a date and at a time scheduled in accordance with the procedures set forth in Section 2.03 B.; and

(ii) Arena Suite: Six (6) VIP tickets in the Landlord's suite made available free of charge ("Tenant's Tickets") at all Arena events.

**3. Garage:**

Approximately six hundred thirty (630) parking spaces will be available to the general public (including users of the Fieldhouse permitted pursuant to this Lease on a non-exclusive basis), free of charge, during normal business hours (which is defined as TBD) on the dates and during the times set forth in (i) – (iii) above, except when ticketed events are being held in the Fieldhouse and/or the Arena (and Landlord may charge for parking for the periods commencing two hours before the scheduled time of such event and during such event; and the use of six (6) reserved parking spaces associated with the Tenant's Tickets to Arena events.

**B. Development:** collectively, the Fieldhouse, Arena, Garage, Sports Medicine Complex and all Common Areas;

**C. Bi-Annual Rental Installments:** \$802,425.00, annually; due semi-annually with the first such payment being due on the Commencement Date (prorated for any partial month and for any period between February and August, so that by way of example if the Commencement Date is March 15, the first payment will be \$305,581.03, based on 139 days from March 15 to July 31) and with the next full installment payment (\$401,212.50) due on or before August 1<sup>st</sup> during the first year of the Term and thereafter on the 1<sup>st</sup> day of February and 1<sup>st</sup> day of August of each and every year thereafter during the Lease Term, all subject to annual appropriation (each an "Bi-Annual Rental Installment").

**D. Commencement Date:** upon occurrence of all of the following (a) execution of this Lease; (b) Substantial Completion of the Fieldhouse; and (c) satisfaction of the contingencies included in Section 2.02.

**E. Substantial Completion:** the date that the developer of the Development receives a certificate of occupancy for the Fieldhouse or an equivalent approval permitting Tenant to occupy the Fieldhouse under the terms of this Lease.

**F. Lease Term:** twenty (20) years beginning on the Commencement Date.

**G. Security Deposit:** None

**H. Brokers:** None.

**I. Permitted Use:** Sports, exercise, entertainment, educational Events, community events office, & storage (individually or collectively, "Permitted Use") under the terms and

conditions of this Lease and for no other purposes without Landlord's prior written consent and subject to the rules and regulations pursuant to Section 7.02, below.

**J. Address:** For notices and payments are as follows:

Tenant: City of Fishers Redevelopment Commission  
Attn: Mayor (currently Scott Fadness)  
One Municipal Drive  
Fishers, IN 46038

With a copy to:

Fishers City Attorney, currently Chris Greisl  
1 Municipal Drive  
Fishers, Indiana 46038

Landlord:

**K. Option to Renew:** Tenant may renew the Lease for two (2) additional terms of ten (10) years each. Rental for years 1 -5 of the first 10-year renewal term ("First Renewal Term") shall be Eight Hundred Eighty-Two Thousand Six Hundred Sixty-Eight and no/100 Dollars (\$882,668) and for years 6 -10 of the First Renewal Term shall be Nine Hundred Twenty-Six Thousand Eight Hundred One and no/100 Dollars (\$926,801); rental for years 1-5 of the second 10-year renewal term ("Second Renewal Term") shall be Nine Hundred Seventy-Three Thousand One Hundred Forty One and no/100 Dollars (\$973,141) and for years 6 -10 of the Second Renewal Term shall be One Million Twenty One Thousand Seven Hundred Ninety-Eight and no/100 Dollars (\$1,021,798) (the First Renewal Term and the Second Renewal Term are sometimes hereinafter each referred to as a "Renewal Term").

**Section 2.02. Lease of Premises.** Contingent upon satisfaction of the following conditions on or before July 1, 2016: (a) issuance of a certificate of occupancy for the Fieldhouse or an equivalent approval permitting Tenant to occupy the Fieldhouse under the terms of this Lease; (b) Substantial Completion of the Fieldhouse; (c) approval and execution of the Amended and Restated Revenue Deposit and Pledge Agreement Among City of Fishers, Indiana Redevelopment Commission, Interchange Diversified, LLC and Regions Bank attached hereto and incorporated as **Exhibit D**; (d) execution of a non-disturbance agreement by the holder of any mortgage on the property that the Lease, in the absence of an Event of Default, will not be disturbed upon foreclosure in a form reasonably acceptable to Landlord and Tenant; (e) exchange of the certificates of insurance required by Article 10; and (f) recordation of the Lease or summary memo of the Lease in the Office of the Hamilton County Recorder, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises. subject to the terms and conditions of this Lease.

**Section 2.03. Use of Premises.**

A. Fieldhouse. Tenant is specifically authorized to make the Fieldhouse available for any Permitted Use by the public or organizations, including specifically, without limitation S.P.O.R.T.S. (individually or jointly, "Authorized Users"), including all Common Areas, under the terms and conditions of this Lease and for no other purposes without Landlord's prior written consent and subject to the rules and regulations pursuant to Section 7.02, below (including compliance with all security measures and reasonable standards of conduct imposed by Landlord, and Tenant shall be responsible for causing such Authorized Users to comply with such rules and regulations and security measures and standards of conduct). To transition courts to turf or turf to courts, Tenant shall provide Landlord not less than ninety (90) days' notice prior to the required transition. Tenant acknowledges and agrees that its request to transition to Alternative Equipment may be denied if Landlord provides reasonable documentation showing that the Alternative Equipment has been previously scheduled for use by other users of the Fieldhouse at the time of Tenant's request.

Further, for all ticketed events in the Fieldhouse, Operator shall charge a One and no/100 Dollar (\$1.00) per ticket fee ("Fieldhouse Ticket Fee") and remit one hundred percent (100%) of the proceeds of such Fieldhouse Ticket Fee to the City of Fishers monthly on or before the 15<sup>th</sup> day of each succeeding month after the Commencement Date and continuing throughout the Term. The City shall have right, if it so chooses, to increase this fee beginning with the 11<sup>th</sup> year of the Lease Term provided the total fee per ticket shall never exceed Two and no/100 Dollars (\$2.00). Notwithstanding any other provision in this Section 2.03 A., Landlord shall have sole discretion whether to designate any event as a ticketed event to which the Fieldhouse Ticket Fee shall apply and shall in no event be required to charge a Fieldhouse Ticket Fee for any event for which no other ticket charge is imposed (such as practices on the courts, recreational walking using the track, etc.).

B. Arena.

i. Events. Landlord shall provide to Tenant, on or before the first day of each calendar quarter during the Term, a complete schedule of upcoming Arena events and, as updated information becomes available, Landlord promptly shall provide to Tenant a schedule of upcoming Arena Events; notwithstanding the foregoing, in the event that Landlord has not updated the information regarding upcoming Arena events, Landlord may deny Tenant the right to use the Arena for any Tenant Events (as hereinafter defined) if, prior to the date on which Landlord receives Tenant's notice of any proposed Tenant Events, another user has entered into a written letter of intent or memorandum of understanding ("MOU") under which Landlord thereafter enters into contract with Operator to use the Arena on the proposed date of the Tenant Event. Tenant acknowledges and agrees that all schedule information, until publication, is proprietary and confidential information that, to the extent permitted by law, will be maintained as confidential by Tenant and not be made public by Tenant.

ii. Tenant Events. Not less than two hundred seventy (270) days prior to use, Tenant shall notify Landlord of the range of dates (being seven or less consecutive days) that it anticipates will encompass the dates on which Tenant will use the Arena for Tenant Events. Tenant and Landlord anticipate that two (2) Tenant Events each year will be (i) a sectional or regional basketball tournament and (ii) the HSE vs. Fishers High School basketball game, including boys and girls freshman, junior-varsity and varsity games; provided, however, in no event shall Tenant be entitled to use the Arena for more than a total of four (4) days for all such

Tenant Events. Landlord and Tenant acknowledge and agree that the schedule for the sectional or regional tournament and the HSE vs. Fishers basketball game is determined by organizations not a party to this Lease, and as such, Tenant shall only be obligated to notify Landlord of the dates of those events upon reasonably receiving notice of them (individually or collectively, “Tenant Events”).

iii. With respect to Tenant Events, the Arena Operator, expected to be GAME 7 SEVEN (“Operator”), shall be entitled to all revenue generated from patrons at such Tenant Event, including, without limitation concessions, tickets and parking fees, except to the extent revenue sharing is required with the Indiana High School Athletic Association (“IHSAA”), in which instance, IHSAA rules shall govern (“IHSAA Fees”). If revenue from Tenant Events equals or exceeds Operator’s net marginal costs to open and operate the Arena for such Tenant Event, then Tenant shall not be liable for any additional costs or charges. If, however, Operator’s net marginal costs exceed the revenue received for such Tenant Event (net any IHSAA Fees), Tenant shall, within sixty (60) days of receipt of an invoice from Operator, reimburse Operator an amount equal to the difference between revenue and marginal costs. For purposes of this Lease, “marginal cost” shall be defined as the increase in Operator’s expenses as a direct result of Tenant’s Use without regard to any fixed, overhead costs of operation of the Arena.

Further, for all events in the Arena, including Tenant Events, Operator shall charge a Two and no/100 Dollar (\$2.00) per ticket fee (“Arena Ticket Fee”) and remit one hundred percent (100%) of the proceeds of such Arena Ticket Fee to the City of Fishers monthly on or before the 15<sup>th</sup> day of each succeeding month after the Commencement Date and continuing throughout the Term. The City shall have right, if it so chooses, to increase the Arena Ticket Fee beginning with the 11<sup>th</sup> year of the Lease Term; provided the total fee per ticket shall never exceed Three and no/100 Dollars (\$3.00). Notwithstanding any other provision in this Section 2.03 B., Landlord shall have sole discretion whether to designate any event as a ticketed event to which the Arena Ticket Fee shall apply and shall in no event be required to charge a Ticket Fee for any event for which no other ticket charge is imposed

C. Tenant’s Tickets for use of the Landlord’s Arena suite shall be made available to Fishers, free of charge, for each event held at the Arena during which other suites are open and made available for use as set forth in Section 2.01 A. 2, above.

D. Landlord shall make available not less than six (6) parking spaces in the Garage, free of charge, to Tenant and Authorized Users associated with the Tenant’s Tickets to Arena events. Except as set forth in Section 2.03C., parking spaces in the Garage shall be made available to Tenant during events, including Tenant Events, in the same manner and at the same prices as made available to the general public.

### **ARTICLE 3. DESIGN AND CONSTRUCTION**

In addition to reviewing the Development’s compliance with City of Fishers zoning and permitting ordinances and rules, Tenant shall review and provide written approval of architecture and design documents for the Development (“Design Development Documents”) prior to Landlord entering into construction contracts for construction of the Development. Tenant’s

review of Design Development Documents shall be limited to determining whether the preliminary design (a) is consistent with the construction budget for the Development and (b) meets Tenant's reasonable needs. Within ten (10) days after the Tenant receives the Design Development Documents, Tenant shall deliver to Landlord written notice that it approves or rejects the Design Development Documents; provided that, if Tenant rejects all or any part of the Design Development Documents, then such notice shall: (i) specify the part or parts that the Tenant is rejecting; and (ii) include the specific basis for such rejection. Any failure by Tenant to deliver its notice of approval or rejection within such 10-day period shall be deemed to be approval of the Design Development Documents.

#### **ARTICLE 4. TERM**

##### **Section 4.01. Term and Renewal Term.**

A. Term. The Lease Term shall commence as of the Commencement Date and shall continue in full force and effect, subject to annual appropriation by the Common Council of the City of Fishers or the Tenant, for a term of twenty (20) years.

B. Renewal Term. Tenant may renew the Lease for two (2) additional terms of ten (10) years each. Rental for years 1 -5 of the first 10-year renewal term ("First Renewal Term") shall be Eight Hundred Eighty-Two Thousand Six Hundred Sixty-Eight and no/100 Dollars (\$882,668) and for years 6 -10 of the First Renewal Term shall be Nine Hundred Twenty-Six Thousand Eight Hundred One and no/100 Dollars (\$926,801); rental for years 1-5 of the second 10-year renewal term ("Second Renewal Term") shall be Nine Hundred Seventy-Three Thousand One Hundred Forty One and no/100 Dollars (\$973,141) and for years 6 -10 of the Second Renewal Term shall be One Million Twenty One Thousand Seven Hundred Ninety-Eight and no/100 Dollars (\$1,021,798) (the First Renewal Term and the Second Renewal Term are sometimes hereinafter each referred to as a "Renewal Term").

Section 4.02. Construction of Development. Landlord covenants and warrants that Landlord shall use commercially-reasonable efforts to cause Development, Leased Premises and other improvements in the Common Area to be well built, properly constructed, structurally safe and sound on or before December 31, 2016 subject to delays resulting from events of Force Majeure, as hereinafter defined (the "Target Completion Date"), that such construction conforms to and complies with all applicable codes, ordinances and regulations including without limitation, all applicable building and fire codes and the Americans with Disabilities Act, and that during the Lease Term, such construction will be so maintained. Landlord shall construct and install all improvements before the Target Completion Date.

Section 4.03. Surrender of the Leased Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, excepting reasonable wear and tear, damage by casualty or condemnation, and repairs and damages Landlord is obligated to repair hereunder, (b) remove from the Leased Premises or where located Tenant's Property (as defined in Section 10.01 below), and (c) repair any damage caused by any such removal or the initial installation of Tenant's Property, and restore the



Leased Premises to the condition existing upon the Commencement Date, excepting reasonable wear and tear, damage by casualty or condemnation, and repairs and damages Landlord is obligated to repair hereunder. All of Tenant's Property that is not removed within ten (10) days following Landlord's written demand therefor shall be conclusively deemed to have been abandoned, and Landlord shall be entitled to dispose of such property at Tenant's cost without incurring any liability to Tenant. This Section 4.03 shall survive the expiration or any earlier termination of this Lease.

Section 4.04. Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease with Landlord's prior approval, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month to month, subject to all the provisions, conditions and obligations of this Lease insofar as the same can be applicable to a month to month tenancy. If, however, Tenant holds over without Landlord's prior approval, Tenant shall be a tenant at sufferance at one hundred twenty five percent (125%) of the Annual Rental of the Leased Premises (pro-rated to the duration of the holding over), and otherwise upon the terms, covenants and conditions herein specified, so far as applicable and acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month tenancy. In the event a month-to-month tenancy is created by operation of law, either party shall have the right to terminate such month-to-month tenancy upon thirty (30) days' prior written notice to the other, whether or not said notice is given on the rent paying date. This Section 4.04 shall in no way constitute a consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

## **ARTICLE 5. RENT**

Section 5.01. Bi-Annual Rent. Tenant shall pay to Landlord the Bi-Annual Rental Installments set forth in Section 2.01C. with the first such payment being due on the Commencement Date (prorated for any partial month and for any period between February and August, so that by way of example if the Commencement Date is March 15, the first payment will be \$305,581.03, based on 139 days from March 15 to July 31) and with the next full payment due on or before August 1<sup>st</sup> during the first year of the Term and thereafter on the 1<sup>st</sup> day of February and 1<sup>st</sup> day of August of each and every year thereafter during the Lease Term, all subject to annual appropriation (each an "Bi-Annual Rental Installment").

Section 5.02. Late Charges. Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue for a period beyond twenty (20) days after the date that an Annual Rental Installment is due, (a) Tenant shall remit to Landlord a late fee equal to five percent (5%) of the unpaid Annual Rental Installment, and (b) such unpaid amount shall bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal (the "Prime Rate") plus six percent (6%) per annum.

## **ARTICLE 6. SECURITY DEPOSIT**

**[INTENTIONALLY OMITTED]**

## **ARTICLE 7. OCCUPANCY AND USE**

**Section 7.01. Use.** Tenant shall use the Leased Premises for the Permitted Uses and for no other purpose without the prior written consent of Landlord.

**Section 7.02. Covenants of Tenant Regarding Use.**

A. Tenant shall (i) use and maintain the Leased Premises and conduct its operation therein in a safe, careful, reputable and lawful manner, in accordance with the terms and conditions of this Lease (including, without limitation, the non-exclusive nature of Tenant's use of the facilities except as otherwise expressly set forth in this Lease and subject to Landlord's rights under Section 7.03) (ii) comply with (x) all covenants that encumber the Leased Premises existing on the date of execution of this Lease that Landlord has disclosed to Tenant in writing ("Existing Encumbrances") and (y) all laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including, without limitation, those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises; provided, however, that Landlord shall be responsible for performing any alterations or improvements to the Leased Premises and Development that pertain solely to the use of the Leased Premises for sporting, recreational and entertainment purposes and that are not attributable or specific to Tenant's operations or specific use or activities, and (iii) comply with and obey all reasonable directions, rules and regulations of Landlord, including the Development Rules and Regulations attached hereto as **Exhibit E** and made a part hereof, as may be modified from time to time by Landlord on reasonable notice to Tenant provided that any future modifications to the Development Rules and Regulations will neither impair or interfere with Tenant's Permitted Uses of the Leased Premises nor impose an additional economic burden on Tenant. In the event of any conflict between the terms of this Lease and the directions, rules and regulations of Landlord, the terms of this Lease shall prevail. Landlord shall comply with all Existing Encumbrances and all laws, rules, regulations, orders, ordinance, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force that relate to the use of the Leased Premises in general.

B. Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Development or injure them. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner, other than the Permitted Uses that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Fieldhouse, Arena, Garage and Common Areas, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

Section 7.03. Landlord's Rights Regarding Use. Without limiting any of Landlord's rights specified elsewhere in this Lease (a) Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the Common Areas in such manner as it deems necessary or proper, and (b) Landlord, its agents, employees and contractors and any mortgagee of the Development shall have the right to enter any part of the Leased Premises for the purposes of examining or inspecting the same, showing the same to prospective users or tenants, and making such repairs, alterations or improvements to the Leased Premises or the Development as Landlord may deem necessary or desirable. Landlord shall incur no liability to Tenant for such entry. Emergencies excepted, Landlord shall not unreasonably interfere with Tenant's operation or Permitted Uses. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's operations in the Leased Premises. Landlord and Tenant recognize that with respect to Tenant's use of the Fieldhouse, there may be times, although minimal, when large events, repairs or other situations cause the Fieldhouse to be unavailable to Tenant on its designated dates or during its designated times. Landlord and Tenant shall work together, in good faith to minimize such occurrences and communicate not less than two (2) months in advance regarding such situations.

#### **ARTICLE 8. UTILITIES AND OTHER DEVELOPMENT SERVICES**

Landlord shall furnish to Tenant, except as noted below, the following utilities and other services to the extent reasonably necessary for Tenant's use of the Leased Premises for the Permitted Uses, consistent with other Developments, or as may be required by law or directed by governmental authority:

- A. Heating, ventilation and air-conditioning;
- B. Lights and electricity as necessary for operation of the Fieldhouse, Arena and other portions of the Development in which the Leased Premises is located, together with lights and electric current for the Office to be occupied by Tenant in amounts which are consistent with other office operations in the Fieldhouse.
- C. Water in the Common Areas for lavatory and drinking purposes;
- D. Automatic elevator service;
- E. Cleaning and janitorial service provided on a regular basis throughout the Development to ensure the Development is continuously maintained in a clean, sanitary manner;
- F. Washing of windows at intervals reasonably established by Landlord;
- G. Replacement of all lamps, bulbs, starters and ballasts in the Development as required from time to time as a result of normal usage; and
- H. Maintenance of the Common Areas, including the removal of rubbish, ice and snow.

## **ARTICLE 9. REPAIRS, MAINTENANCE AND ALTERATIONS**

Section 9.01. Repair and Maintenance of the Leased Premises. Landlord shall cause all necessary repairs and replacements to the Leased Premises, roof, exterior walls, exterior doors, windows, corridors and other Common Areas to be made, and Landlord shall cause the Development to be kept in a clean and neat condition and use reasonable efforts to keep all equipment used in common with other tenants in good condition and repair, in a manner consistent with other sports facilities in the Indianapolis metropolitan area that are similar in size, age, configuration, purpose and use as the Development. To the extent any such repairs, replacements or maintenance are solely required because of the negligence, misuse or default of Tenant, its sublessees, employees, contractors, customers or invitees, Tenant shall be responsible for such repair. Further, Tenant shall be solely responsible for any repair or replacement with respect to Tenant's Property (as defined in Section 10.01 below) located in the Leased Premises or the Common Areas.

Section 9.02. Alterations. Tenant shall not make or permit alterations in or to the Leased Premises unless and until Landlord has approved the plans therefor in writing, which approval may be granted or withheld in Landlord's sole discretion. As a condition of such approval, Landlord may require Tenant to remove the alterations and restore the Leased Premises upon termination of this Lease, which Landlord will expressly state in writing when approving said plans; otherwise, all such alterations shall, at Landlord's, option become a part of the realty and the property of Landlord, and shall not be removed by Tenant.

## **ARTICLE 10 - INDEMNITY AND INSURANCE**

Section 10.01. Release. All of Tenant's equipment, inventory, office furniture and computer equipment, and all other personal property in or about the Leased Premises ("Tenant's Property") shall be and remain at Tenant's sole risk; office furniture and computer equipment may not be stored or located in any area other than Tenant's Office space. Landlord shall not be liable to Tenant or to any other person, and Tenant hereby releases Landlord from any and all liability for theft or damage to Tenant's Property unless caused by the willful misconduct of Landlord. Nothing contained in this Section 10.01 shall limit (or be deemed to limit) the waivers contained in Section 10.06 below. In the event of any conflict between the provisions of Section 10.06 below and this Section 10.01, the provisions of Section 10.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 10.02. Indemnification by Tenant. Tenant shall protect, defend, indemnify and hold Landlord, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and reasonable and documented expenses at the trial and appellate levels) to the extent (a) arising out of or relating to any act, omission, negligence, or willful misconduct of Tenant, Authorized Users, Tenant's employees, contractors, customers or invitees in or about the Leased Premises or the Common Areas; or (b) arising out of or relating to any of Tenant's Property, in all such cases except to the extent of personal injury caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 10.02 shall limit (or be deemed to limit) the waivers contained in

Section 10.06 below. In the event of any conflict between the provisions of Section 10.06 below and this Section 10.02, the provisions of Section 10.06 shall prevail. This Section 10.02 shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing or anything to the contrary contained herein including in Section 10.06 below, Landlord hereby acknowledges and agrees that financial exposure of Tenant or other governmental bodies affiliated with the Tenant for certain claims is limited by the Indiana Tort Claims Act, and Tenant's obligation to indemnify and save Landlord, its agents, and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and reasonable and documented expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 10.03. Indemnification by Landlord. Landlord shall protect, defend, indemnify and hold Tenant, its agents, employees and contractors guests and invitees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees and reasonable and documented expenses at the trial and appellate levels) to the extent arising out of any other act or occurrence within the Common Area, in all such cases except to the extent of personal injury caused directly by the negligence or willful misconduct of Tenant, its agents, employees or contractors. Nothing contained in this Section 10.03 shall limit (or be deemed to limit) the waivers contained in Section 10.06 below. In the event of any conflict between the provisions of Section 10.06 below and this Section 10.03, the provisions of Section 10.06 shall prevail. This Section 10.03 shall survive the expiration or earlier termination of this Lease.

Section 10.04. Tenant's Insurance.

(a) During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall maintain the following types of insurance, in the amounts specified below:

(i) Liability Insurance. Commercial General Liability Insurance (which insurance shall not exclude blanket, contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Leased Premises and Tenant's use thereof against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than **\$2,000,000**, for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(ii) Property Insurance. Special Form Insurance in the amount of the full replacement cost of Tenant's Property and betterments (including alterations or additions performed by Tenant pursuant hereto), which insurance shall include an agreed amount endorsement waiving coinsurance limitations.

(b) All insurance required to be carried by Tenant hereunder shall (i) be issued by one or more insurance companies reasonably acceptable to Landlord, licensed to do business in the

State of Indiana and having an AM Best's rating of A IX or better, and (ii) provide that said insurance shall not be materially changed, canceled or permitted to lapse on less than thirty (30) days prior written notice to Landlord (to the extent such coverage is available). In addition, Tenant's insurance shall protect Tenant and Landlord as their interests may appear, naming Landlord, Landlord's managing agent, and any mortgagee requested by Landlord, as additional insureds under its commercial general liability policies. On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within thirty (30) days prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 25 or ACORD 25-S (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, together with a copy of the endorsements to Tenant's commercial general liability policy evidencing primary and non-contributory coverage offered to the appropriate additional insureds. Upon Tenant's receipt of a request from Landlord, Tenant shall provide Landlord with copies of all insurance policies, including all endorsements, evidencing the coverages required hereunder.

Section 10.05. Landlord's Insurance. [SUBJECT TO REVIEW BY RISK MANAGEMENT]

(a) During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Landlord shall maintain the following types of insurance, in the amounts specified below:

(i) Liability Insurance. Commercial General Liability Insurance (which insurance shall not exclude blanket, contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Common Areas against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than **\$2,000,000**, for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(ii) Property Insurance. Special Form Insurance (which insurance shall not exclude flood or earthquake) in the amount of the full replacement cost of the Development, including fixtures and Landlord's Personal Property, but excluding Tenant's.

(b) All insurance required to be carried by Landlord hereunder shall (i) be issued by one or more insurance companies reasonably acceptable to Tenant, licensed to do business in the State of Indiana and having an AM Best's rating of A IX or better, and (ii) provide that said insurance shall not be materially changed, canceled or permitted to lapse on less than thirty (30) days prior written notice to Tenant (to the extent such coverage is available). In addition, Landlord's insurance shall protect Tenant and Landlord as their interests may appear, naming Tenant, as an additional insured under its commercial general liability policies. On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within thirty (30) days prior to the expiration of each such policy, Landlord shall furnish Tenant with certificates of insurance in the form of ACORD 25 or ACORD 25-S (or other evidence of insurance reasonably acceptable to Tenant), evidencing all required coverages, together with a copy of the endorsements to Landlord's commercial general liability policy evidencing primary and non-contributory coverage offered to the appropriate additional insureds. Upon Landlord's

receipt of a request from Tenant, Landlord shall provide Tenant with copies of all insurance policies, including all endorsements, evidencing the coverages required hereunder.

Section 10.06. Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby waive any rights each may have against the other on account of any loss of or damage to their respective property, the Leased Premises, its contents, or other portions of the Development or Common Areas arising from any casualty or other event, including any risk which is required to be insured against by Sections 10.04(a)(ii) and 10.05(b) above. The special form coverage insurance policies maintained by Landlord and Tenant as provided in this Lease shall include an endorsement containing an express waiver of any rights of subrogation by the insurance company against Landlord and Tenant, as applicable.

## **ARTICLE 11. CASUALTY**

If the Development is totally or partially destroyed by fire or other casualty, Landlord agrees promptly to restore and repair same, subject to the availability of insurance proceeds sufficient to enable restoration and repair within the time period set forth below. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable because of any such damage. Notwithstanding the foregoing, if the Leased Premises are (a) so destroyed that they cannot be repaired or rebuilt within one hundred eighty (180) days after adjustment of the insurance claim for such damage or destruction; (b) destroyed by a casualty that is not covered by the insurance required hereunder or, if covered, such insurance proceeds are not released by any mortgagee entitled thereto or are insufficient to rebuild the Development and the Leased Premises or (c) destroyed in the last year of the Lease Term or any Extension Term; then, in case of a clause (a) casualty, either Landlord or Tenant may, or, in the case of a clause (b) or (c) casualty, then Tenant may, upon thirty (30) days' written notice to the other party, terminate this Lease with respect to matters thereafter accruing. Tenant waives any right under applicable laws inconsistent with the terms of this paragraph.

## **ARTICLE 12. ASSIGNMENT, SUBLEASE OR LICENSE**

Section 12.01. Assignment. Except to assign to other City of Fishers' entities, bodies, commissions or boards, Tenant shall not assign this Lease without Landlord's prior, written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing or anything contrary contained herein, Tenant and Landlord expressly acknowledge and agree that any permitted assignee shall be responsible for, among other obligations included herein, Annual Rental Installments as specifically set forth in Section 2.01(c).

Section 12.02. Use by Authorized Users. Tenant shall be entitled to permit or license Leased Premises or any portions thereof from time to time to Authorized Users, including (i) S.P.O.R.T.S.; (ii) other users performing functions consistent with Tenant's objectives to provide sports, recreational and entertainment, educational or cultural programming or events to Fishers' citizens; and (iii) other users performing functions consistent with and similar to the Permitted Uses. If Tenant permits use of the Leased Premises or any portion thereof by Authorized Users, Tenant shall permit such use only under the terms of a use agreement in form and substance

reasonably acceptable to Tenant, and Tenant shall remain liable hereunder and shall cause such subtenant to observe the Development Rules and Regulations, and otherwise abide by the terms of this Lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, unless otherwise agreed to by Landlord in writing.

Section 12.03. Landlord hereby further acknowledges that Landlord anticipates that hotels, restaurants and additional developments may be constructed adjacent to the Fishers Site following construction of the Development (individually or collectively, the “Additional Facilities”). In further consideration of this Agreement, Landlord hereby agrees that to the extent any such Additional Facilities are constructed in the future, such Additional Facilities shall be granted a non-exclusive easement for use of the Garage by such Additional Facilities, for which Landlord and/or the owner at that time of the Garage may charge parking fees for use of the Garage by such Additional Facilities and the occupants thereof.

### **13. DEFAULT AND REMEDY**

Section 13.01. Default. The occurrence of any of the following shall be an "Event of Default":

- (a) Tenant fails to pay any Annual Rental Installments within twenty (20) days after due.
- (b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord.
- (c) The filing of an application by Tenant for, or consent to the appointment of, a receiver, trustee, or liquidator of itself or of all its assets;
- (d) The filing of a petition in bankruptcy, by, or against Tenant, or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they become due;
- (e) The making by Tenant of a general assignment for the benefit of creditors;
- (f) The filing by Tenant of an answer admitting material allegations of or consenting to or defaulting in answering a petition filed against it in any bankruptcy proceedings;
- (g) The entry of an order, judgment, or decree by any Court of competent jurisdiction adjudging Tenant a bankrupt or appointing a receiver, trustee, or liquidator of it, or all of its assets, and such order, judgment, or decree continuing unstayed and in effect for any period of sixty (60) consecutive days;
- (h) Abandonment of the Leased Premises by Tenant;



(i) The transfer, assignment, subletting, passing or devolution of this Lease, or any portion of Tenant's estate or rights hereunder, to any person or party, except in a manner herein expressly permitted; or

(j) A levy under execution or attachment against Tenant or any of its property which execution or attachment is not vacated or removed by court order, bonding, or otherwise within thirty (30) days

In addition to the Events of Default described above, the parties agree that if Tenant receives written notice of a breach by Tenant of the performance of any (but not necessarily the same) term or condition of this Lease set forth in subsection (b) to be observed or performed by Tenant three (3) or more times during any twelve (12) month period or any failure to pay Rent after notice more than two (2) times in any period of twenty-four (24) consecutive months, regardless of whether such breaches are ultimately cured, then such conduct shall, at Landlord's option and upon prompt notice to Tenant, represent a separate Event of Default.

Section 13.02. Remedies. Upon the occurrence and during the continuance of any Event of Default, it is covenanted and agreed that if Tenant shall neglect or fail to perform or observe any material covenants, terms, provisions or conditions contained herein within thirty (30) days after written notice of an Event of Default, or such additional time as is reasonably required to correct any such Event of Default (except for payment of rent or other charges, in which case, said period of notice shall be twenty (20) days), Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Landlord may re-enter the Leased Premises and cure any uncured Event of Default of Tenant, and Tenant shall reimburse Landlord for any reasonable and documented costs and expenses which Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action.

(b) Upon terminating this Lease under the terms set forth in this Section, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises, and the Term hereby demised, and all rights of Tenant under this Lease shall expire and terminate, in which event (i) Tenant shall thereupon quit and surrender the Leased Premises; but shall remain liable as hereinafter provided; (ii) Landlord may without notice, reenter and repossess the Leased Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefor, and Tenant shall nevertheless remain liable as hereinafter provided for the remainder of the Term hereof; and (iii) notwithstanding the termination of this Lease, Tenant shall continue to be liable for all Rent for the balance of the Term, and Tenant shall then be liable for the same to Landlord, together with all loss or damage Landlord may sustain by reason of such default and termination (Landlord shall be entitled to recover all Rent, costs, attorneys' fees, costs of reletting the Leased Premises and any other amounts necessary to properly address any damages suffered due to Tenant's default), it being expressly agreed and understood that such liabilities and remedies herein specified shall survive the termination of this Lease. Tenant shall immediately surrender the

Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have.

Section 13.03. Landlord's Default and Tenant's Remedies.

(a) If Landlord is in default under any of its obligations under this Lease and such default continues for more than thirty (30) days after written notice from Tenant to Landlord, Tenant may pursue all remedies at law or in equity; provided, however, in the event of any default for which notice has been given as provided herein, which because of its nature can be cured (but not within such 30-day period, other than the failure to pay a sum of money which shall in all events be cured within such 30-day period), such default shall be deemed remedied if the correction thereof shall have been commenced within said thirty 30-day period and shall, when commenced, be diligently prosecuted to completion. Tenant's right to seek any remedy for Landlord's default shall not be deemed waived by the failure to exercise said right nor shall any such failure estop Tenant from afterward asserting said right to seek any remedy as provided herein or as provided by law. The remedies of Tenant shall be cumulative, and include any and all remedies as provided by law or in equity, and no one of them shall be construed as exclusive of any other or of any remedy provided by law. Any recovery by Tenant shall include reasonable and documented costs, expenses and reasonable attorneys' fees incurred by Tenant; provided, however, that unless Tenant has been materially and substantially impaired in its ability to use the Leased Premises for twenty (20) or more consecutive days, Tenant may not (i) offset or withhold Rent until and unless Tenant has obtained a final, non-appealable judgment for a specific sum, which sum Tenant may credit against any Rent thereafter owed under this Lease until such judgment amount is paid in full, or (ii) terminate this Lease, except to the extent permitted under applicable law. Any prior waiver of any of Tenant's rights under the Lease shall not constitute a waiver of Tenant's rights to damages in event of subsequent default or breach of Landlord.

b. Further, it shall be deemed an event of Default and Tenant shall be entitled to exercise all rights and remedies available to Tenant at law or in equity if (a) Landlord files a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Landlord (and Landlord fails to secure a stay or discharge thereof within sixty (60) days thereafter); (b) Landlord is insolvent and unable to pay its debts as they become due and Landlord fails after notice from Tenant claiming such insolvency or inability to provide to Tenant, within thirty (30) days after such notice to provide adequate assurances to Tenant that Landlord has sufficient financial resources to enable Landlord to continue to perform its obligations under this Lease; (c) Landlord makes a general assignment for the benefit of creditors; (d) Landlord takes the benefit of any insolvency action or law; (e) the appointment of a receiver or trustee in bankruptcy for Landlord or its assets if such receivership has not been vacated or set aside within thirty (30) days thereafter.

Notwithstanding the foregoing or anything contained herein the contrary, if Landlord fails to open the Leased Premises or make it available for use by Tenant for the Permitted Uses as herein defined for a period of twenty (20) consecutive days, Tenant shall be entitled to withhold Rent or terminate this Lease.

Section 13.04. Nonwaiver of Defaults. Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 13.05. Attorneys' Fees. If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease in accordance with the terms and conditions set forth in this Lease and the non-defaulting party obtains a judgment against the defaulting party, then the defaulting party agrees to reimburse the non-defaulting party for reasonable attorneys' fees incurred in connection therewith.

#### **ARTICLE 14. LANDLORD'S RESPONSIBILITY REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES**

##### Section 14.01. Environmental Definitions.

(a) "Environmental Laws" shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Federal Water Pollution Control Act; the Federal Clean Air Act; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; all other corresponding and related state and local statutes, ordinances and regulations, including, without limitation, any dealing with underground storage tanks; and any other environmental law, regulation or ordinance now existing or hereinafter enacted.

(b) "Hazardous Substances" shall mean those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" "solid waste" or "infectious waste" under Environmental Laws and petroleum products.

Section 14.02. Restrictions on Landlord. Landlord shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Development, or the transportation to or from the Development of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 14.03. Notices, Affidavits, Etc. Landlord shall promptly (a) notify Tenant of (i) any violation by Landlord, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Development, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Development, and (b) deliver to Tenant any notice received by Landlord relating to (a)(i) and (a)(ii) above from any source. Landlord shall execute affidavits, representations and the like within five (5) days of Tenant's request therefor concerning Landlord's best actual knowledge and belief, without inquiry, regarding the presence of any Hazardous Substances on, under or about the Development.

Section 14.04. Landlord's Obligations. In no event shall Tenant, any sublessees, employees, contractors, guests and invitees be liable for any claims, losses, liabilities, costs, expenses and damages, including costs of testing and remediation costs, incurred by Tenant in connection with any breach by Landlord of its obligations under this Article 14. The covenants and obligations under this Article 14 shall survive the expiration or earlier termination of this Lease.

Section 14.05. Tenant's Covenants and Indemnification. Tenant, and all of its officers, directors, employees, representatives, agents, contractors, subcontractors, successors, assigns, lessees, sub lessees, concessionaires, invitees and any other occupants of the Leased Premises (collectively, "Tenant Representatives"), shall abide by all Environmental Laws and other municipal, county, state and federal statutes, laws, ordinances, administrative rules and regulations and guidelines applicable to the disposal of Hazardous Materials. Tenant shall not use, handle, deposit or dispose of any Hazardous Materials which require special handling into the waste disposal facilities provided by Landlord. Tenant shall, at Tenant's expense, employ or engage private waste management services to dispose of any and all waste of Tenant which must be handled in any manner other than general waste collection provided by Landlord through public or private waste collection service. Without limiting the foregoing, Tenant shall employ or engage a licensed waste disposal service to provide any required containers or storage facilities and to remove any Hazardous Materials which Tenant must handle in a manner as provided for in all Environmental Laws. Tenant hereby agrees that Tenant and Tenant's Representatives shall not (i) use, generate, manufacture, refine, produce, process, store or dispose of, on, under or about the Leased Premises or the Building, or transport to or from the Leased Premises or the Building in the future for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials, except in compliance with all applicable Environmental Laws. Furthermore, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant's Representatives of Hazardous Materials on the Leased Premises, including (without limitation) discharge of (appropriately treated) materials or wastes only as provided by law; or (ii) permit any lien arising under or related to any of the Environmental Laws to attach to any part of the Development. Tenant shall indemnify, defend and hold harmless Landlord, each mortgagee and their respective partners, shareholders, directors, officers, agents and employees (the "Indemnified Parties") from and against any and all claims arising from or in connection with any act, omission or negligence of Tenant, or any of its

subtenants or licensees, or its or their partners, directors, officers, agents, employees or contractors, relating to or arising out of the disposal of Hazardous Materials from the Leased Premises, such indemnity to include all costs, expenses and liabilities incurred in or in connection with each such claim, action or proceeding with respect thereto, including, without limitation, all attorney's fees, and expenses. In the event any Indemnified Parties shall be made a party to any litigation or proceeding commenced by or against Tenant, then Tenant shall protect, indemnify and hold such Indemnified Parties harmless with respect thereto, and Tenant shall pay all costs, expenses and reasonable outside counsel and in-house attorneys' fees (in all proceedings) incurred or paid by such Indemnified Parties in connection with such litigation or proceeding, or in enforcing the covenants and agreements of this Section 14.05. TENANT ACKNOWLEDGES AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF TENANT TO ASCERTAIN AND COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH HANDLING AND DISPOSAL OF HAZARDOUS MATERIALS OR ANY OTHER MATERIALS FROM THE LEASED PREMISES. Landlord hereby acknowledges and agrees that financial exposure of Tenant or other governmental bodies affiliated with the Tenant for certain claims is limited by the Indiana Tort Claims Act, and Tenant's obligation to indemnify and save Landlord, its agents, and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and reasonable and documented expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

## **ARTICLE 15 - MISCELLANEOUS**

Section 15.01. Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 15.02. Governing Law. This Lease shall be governed in accordance with the laws of the State of Indiana.

Section 15.03. Representations and Warranties. Landlord and Tenant make the following representations and warranties:

(a) Tenant hereby represents and warrants that (i) Tenant is a public body of the State of Indiana or a political subdivision thereof; and (ii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Development is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms..

Section 15.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein.

Section 15.05. Indemnification for Leasing Commissions. The parties hereby represent and warrant that no other party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto.

Section 15.06. Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the party who is to receive such notice at the address specified in Section 2.01J. If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

Section 15.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 15.08. Signage. Landlord, at its cost and expense, shall provide Tenant with standard signage on the main interior Fieldhouse directory and at the entrance to the Leased Premises, if applicable (and shall include Tenant's subdivisions on any lobby directory). Any changes requested by Tenant to the initial directory shall be made at Tenant's sole cost and expense and shall be subject to Landlord's approval. Landlord may install such other signs or tenant identification information on the access doors to the Leased Premises. Tenant shall not place any exterior signs on the Leased Premises or interior signs visible from the exterior of the Leased Premises without the prior written consent of Landlord. Notwithstanding any other provision of this Lease to the contrary, Landlord may immediately remove any sign(s) placed by Tenant in violation of this Section 16.10.

Section 15.09. Parking. Tenant shall be entitled to the non-exclusive use of the parking spaces designated for the Development as otherwise set forth herein, subject to all rights and obligations set forth in any declaration of restrictions and/or parking easements encumbering the Development. Tenant agrees to reasonably cooperate with other tenants and guests in the use of the parking facilities and to abide by the conditions and restrictions imposed upon Landlord. All driveways, ingress and egress, and all parking spaces are for the joint use of all tenants and guests.

Section 15.10. Intentionally Deleted.

Section 15.11. Time. Time is of the essence of each term and provision of this Lease.

Section 15.12. Patriot Act. Each of Landlord and Tenant, each as to itself, hereby represents its compliance and its agreement to continue to comply with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 ("Executive Order"). Each of Landlord and Tenant further represents (such representation to be true throughout the Lease Term) (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac).

Section 15.15. Quiet Enjoyment. Landlord covenants and warrants that so long as an Event of Default has not occurred and is continuing, Landlord will keep and maintain Tenant in quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the Lease Term and any Extension Term. If at any time during the Lease Term, Tenant's ability to use or occupy the Premises for purposes permitted by this Lease is materially interrupted or impaired (including without limitation by any act of a government, administrative, zoning, municipal, or regulatory authority, third-party, or nearby landholder) not resulting from Tenant's negligence, then Tenant may terminate this Lease as of a date not earlier than sixty (60) days after Tenant gives Landlord written notice of such termination. Tenant may exercise this right of termination without incurring any fee, penalty or other obligation on account of such termination, including in respect with any period subsequent to the termination date. Landlord represents and warrants that, as of the Commencement Date, (a) the Development and the Leased Premises will be properly zoned and in compliance with applicable provisions of the Americans with Disabilities Act to permit Tenant to fully perform the Permitted Uses under this Lease; and (b) the Permitted Use of the Leased Premises will not invalidate any Existing Encumbrances or any policy of insurance now or hereafter carried by Landlord on the Development, or increase the rate of premiums payable on any such insurance policy by Landlord. By Landlord's delivery of the Leased Premises to Tenant, Landlord represents to Tenant, that the Leased Premises, Development and the Common Area (i) were completed in a good and workmanlike manner and in substantial accordance with the plans and specifications, (ii) are in good operating condition in a manner consistent with the other comparable developments, and (iii) comply in all material respects with all applicable laws, rules, regulations, ordinances and codes.

Section 15.16. Modifications. This Lease may not be changed or modified unless mutually agreed upon in a writing signed by an authorized representative of each party. The term "Lease" shall mean and encompass all extensions, renewals and modifications.

Section 15.17. Force Majeure. In the event that either party shall be delayed or hindered in or prevented from doing or performing any act or thing required in this Lease by reason of

strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, insurrection, war or other causes beyond the reasonable control of such party,, then such party shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, in no event shall either party be excused from any obligation regarding the payment of money by reason of any event of Force Majeure.

Section 15.18. Estoppel Certificates. Within thirty (30) days of receipt of a request by the Landlord, the Tenant agrees to deliver in recordable form to the Landlord or to any prospective mortgagee or purchaser of any portion of the Development, a statement or statements in writing setting forth: (i) the commencement and termination dates of this Lease; (ii) the Rent; (iii) certification that this Lease is or is not in full force and effect; (iv) certification that the Tenant has or has not accepted the Leased Premises and is or is not in full and complete possession thereof; (v) that the Lease has not been changed, modified or amended, or if it has, stating the specific changes, modifications or amendments thereto; (vi) that all improvements to the Leased Premises to be made by the Landlord have been fully completed, or stating specifically any failure to so complete such improvements; (vii) that, as of the date of certification, the Tenant has not paid Rent for more than the current month, or stating the amount of Rent so paid; (viii) there are no defaults under this Lease nor defenses or offsets thereto, or if there are any such defaults, defenses or offsets, stating the specific defaults, defenses or offsets claimed by the Tenant; (ix) and such other matters as may be requested by Landlord.

Section 15.19. Subordination. Upon request by the Landlord, the Tenant agrees that it shall subordinate its rights hereunder to the lien of any mortgage or any other lien resulting from any other method of financing or refinancing now or hereafter in force against the land and building of which the Leased Premises are a part or against any buildings hereafter placed upon the land on which the Leased Premises are situated and to all advances made or hereafter to be made thereunder; provided, however, that the Tenant shall not be required to so subordinate its rights unless the beneficiary thereof shall agree in writing not to disturb the tenancy of the Tenant so long as the Tenant is not in default under this Lease. To the extent subordination documents are reasonably acceptable to Tenant, Tenant agrees to execute all necessary documents to effect such subordination, including any subordination agreement required by any mortgagee. In the event of any foreclosure or sale under the provisions of any mortgage now or hereafter encumbering the Leased Premises, the Tenant agrees that it shall attorn to the purchaser at such foreclosure or sale and that it shall recognize such purchaser as the Landlord under the terms and provisions of this Lease and shall continue this Lease in full force and effect regardless of whether such mortgage was superior or subordinate to this Lease.

Section 15.20. Landlord's Interest. Anything to the contrary herein contained notwithstanding, there shall be absolutely no personal liability on persons, firms or entities who constitute Landlord with respect to any of the terms, covenants, conditions and provisions of this Lease, and Tenant shall, subject to the rights of any first mortgagee, look solely to the interest of Landlord, its successors and assigns, in the Leased Premises for the satisfaction of each and



every remedy of Tenant in the event of default by Landlord hereunder; such exculpation of personal liability is absolute and without any exception whatsoever.

(SIGNATURES ON FOLLOWING PAGE)



LANDLORD:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, by me known to be the \_\_\_\_\_ and \_\_\_\_\_ of the Town of Fishers Redevelopment Commission, who acknowledged the execution of the foregoing " Lease" on behalf of said body.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Signature)

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_

EXHIBIT A

DEPICTION OF DEVELOPMENT

EXHIBIT B

LOCATION OF FISHERS SITE (Legal and Survey)

EXHIBIT C

FLOOR PLAN OF FIELDHOUSE

EXHIBIT D

EXECUTED AMENDED AND RESTATED REVENUE DEPOSIT AND PLEDGE  
AGREEMENT

EXHIBIT **E**

DEVELOPMENT RULES AND REGULATIONS