

## **FIRST AMENDED AND RESTATED LEASE AGREEMENT**

Whereas the City of McKinney and the Dallas Stars, L.P. entered into that certain Lease Agreement dated effective August 15, 2008 (the "**Effective Date**"); and

Whereas the City of McKinney and the Dallas Stars, L.P. entered into that certain Amended and Restated Lease Agreement dated effective January 9, 2009; and

Whereas the Dallas Stars, L.P. assigned the Amended and Restated Lease Agreement to DSE Hockey Centers, L.P.; and

Whereas the parties desire to make certain amendments to the Amended and Restated Lease Agreement in the form of this First Amended and Restated Lease Agreement (referred to herein as the "**FARLA**" or the Lease) which shall supersede and control over the Amended and Restated Lease Agreement; and

Whereas this FARLA (referred to herein as the "**Lease**" or "**Lease Agreement**") is entered into as of the 1st day of August, 2017 (the "**Expansion Effective Date**"), by and between the City of McKinney ("**Landlord**") and DSE Hockey Centers, L.P., a Delaware limited partnership ("**Tenant**").

### **ARTICLE I.** **DEFINITIONS**

"**Affiliate**" means an entity which (i) directly or indirectly controls Tenant, or (ii) is under the direct or indirect control of Tenant, or (iii) is under common direct or indirect control with Tenant. For purposes of this definition only, "**control**" shall mean ownership of fifty-one percent (51%) or more of the voting securities or rights of the controlled entity.

"**Alterations**" has the meaning set forth in Section 10.2.

"**Approved Budget**" means that certain original \$12,300,000 budget for the construction of the Facility, the construction and installation of the related Improvements, and the purchase of the Facility Personal Property, approved by Landlord and Tenant and attached hereto as Exhibit "D".

"**Approved Facility Expansion Budget**" means that certain \$8,500,000.00 budget for the design and construction of the Facility Expansion, the construction and installation of the related Improvements, and the purchase of the Facility Expansion Personal Property, approved by Landlord and Tenant and attached hereto as Exhibit "E".

"**Approved Plans**" means the "Drawings and Specifications" prepared pursuant to the Scope of Work (as such terms are defined in the Construction Contract) approved by all necessary parties from time to time under the Construction Contract.

"**Architect**" has the meaning set forth in Section 6.1.

"**Base Annual Rental**" has the meaning set forth in Section 4.2(a).

"**Budget Overrun**" means if total actual or reasonably anticipated construction costs for the Facility Expansion exceed the total amount set forth in the Approved Facility Expansion Budget.

"**CCRs**" has the meaning set forth in Section 5.6.

"City" means the City of McKinney, Texas, and its successors and assigns.

"City Manager" has the meaning set forth in Section 6.1.

"Common Area" means and includes the common areas located within the Development, including, without limitation, any common roadways, service areas, driveways, areas of ingress and egress, sidewalks and other pedestrian ways, private drives, landscaped areas, landscaped public rights-of-way, utility systems and other facilities or areas in the Development that are designed or available for common use, but such term shall not include the Leased Premises.

"Construction Contract" has the meaning set forth in Section 6.2 below.

"Construction Manager" has the meaning set forth in Section 6.2.

"Contractor" means [REDACTED].

"Dallas Stars" means the Dallas Stars, a member team of the NHL, including any successor of said hockey team and the franchise in the NHL relating thereto.

"Development" means the project containing the Expanded Facility, Expanded Facility Land, the Parking Area, the Common Area, the Overflow Parking Area and all other improvements relating thereto as more particularly shown on Exhibit "F".

"Environmental Laws" has the meaning set forth in Section 7.2.

"Expanded Facility" includes the Facility and the Facility Expansion meaning that community-style, recreational ice skating facility constructed on the Expanded Facility Land pursuant to the terms of this Lease, consisting of three (3) ice surfaces, locker room facilities, at least 2 party/meeting rooms, retail area, concession area, and specifically including the Facility Expansion upon completion, comprising approximately 130,606 square feet of gross floor area, as shown and/or described in the Project Scope Criteria attached as Exhibit "B" hereto, including 455 additional parking spaces constructed south of the Facility Expansion and as such description is further hereafter amended and modified by the Approved Plans.

"Expanded Facility Land" means the Land and the Expansion Parcel.

"Expansion Parcel" means an approximately 4.37 acre parcel of land to be incorporated by the City into the Development to enable Landlord to construct the Facility Expansion.

"Facility" means that community-style, recreational ice skating facility constructed on the Land pursuant to the terms of this Lease, consisting of two (2) ice surfaces, locker room facilities, at least 2 party/meeting rooms, retail area, concession area, comprising approximately 84,000 square feet of gross floor area, as shown and/or described in the Project Scope Criteria attached as Exhibit "B" hereto, and as such description is further hereafter amended and modified by the Approved Plans.

"Facility Expansion" means that addition to the Facility constructed on a 4.37 acre parcel (the Expansion Parcel) immediately south of the Land and as a building extension of the Facility pursuant to the terms of this Lease, consisting of one (1) ice surface, locker room facilities, seating for at least 1,770 people, two (2) viewing suites with at least 36 suite seats collectively, extra rooms for warmup, shooting and/or other sport-related purposes, comprising approximately 46,117 square feet of new,

gross floor area, as shown and/or described in the Project Scope Criteria attached as Exhibit "B-2" hereto, including 455 additional parking spaces constructed south of the Facility Expansion building improvements on the Expansion Parcel and as such description is further hereafter amended and modified by the Approved Plans.

**"Facility Personal Property"** means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C" attached hereto.

**"Facility Expansion Personal Property"** means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C-1" attached hereto.

**"GMP"** means the maximum financial obligation of the City for the construction of the Facility Expansion, the Improvements for the Facility Expansion, and the Facility Expansion Personal Property, and the Parking Area for the Facility Expansion under the design-build construction contract.

**"Governmental Regulations"** means all laws, ordinances, rules, regulations, statutes, and building codes of all governmental authorities having jurisdiction over the Leased Premises or Tenant's use thereof, including, without limitation, all health, environmental and regulatory requirements, whether currently in effect or hereafter enacted.

**"Hazardous Materials"** has the meaning in Section 7.2.

**"Improvements"** means the Expanded Facility, the Parking Area, and all infrastructure improvements from time to time constructed, installed, or situated on the Expanded Facility Land that are necessary for the operation of the Expanded Facility and which exclusively serve the Expanded Facility, including, without limitation, water or sewer facility, and any renovations to or replacements of any of the foregoing, but shall not include Capital Repairs.

**"Invitees"** means suppliers, employees, agents, customers, contractors, invitees, subtenants, licensees and concessionaires.

**"Land"** means that certain real property situated in the City of McKinney, Collin County, Texas, being more particularly described on Exhibit "A" attached hereto.

**"Landlord's Security"** has the meaning set forth in Section 6.9.

**"Leased Premises"** means the Expanded Facility Land, the Improvements and the Personal Property, and all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Improvements.

**"Leasehold Mortgage"** means any mortgage, deed of trust or other instrument in the nature thereof which encumbers any of Tenant's rights, titles and interests in and to use the Leased Premises, including, without limiting the generality of the foregoing, its right to use and occupy the Leased Premises and all of its rights, titles and interests in and to any and all Improvements.

**"Leasehold Mortgagee"** means any mortgagee, trust or anyone that claims an interest by, through or under a Leasehold Mortgage.

**"Likeness"** has the meaning set forth in Section 5.3(c).

"**Mortgaged Premises**" means all of Tenant's leasehold estate under this Lease covered by a Leasehold Mortgage as applicable.

"**NHL**" means the National Hockey League.

"**Overflow Parking Area**" means 100 spaces of parking located generally west and adjacent to the Leased Premises as depicted on Exhibit "F".

"**Parking Area**" means the paved parking lot and any structures built on the Expanded Facility Land which will serve as the primary paved parking area for the Expanded Facility.

"**Parking Agreement**" has the meaning set forth in Section 5.5(c).

"**Personal Property**" means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C" for the Facility hereto and the Facility Expansion Personal Property more particularly described on Exhibit "C-1".

"**Primary Lease Term**" means from October 1, 2009 until twenty (20) years from and after the Rent Adjustment Date, subject to extension and earlier termination as provided herein.

"**Project Management Fee**" has the meaning set forth in Section 6.2.

"**Project Scope Criteria**" has the meaning set forth in Section 6.1.

"**Renewal Lease Term**" has the meaning set forth in Section 3.2.

"**Rent Adjustment Date**" means the first day of the month following the month of completion of the Facility Expansion.

"**Rent Commencement Date**" means October 1, 2009.

"**StarCenters**" means those recreational ice skating facilities (including various other amenities) in other municipalities in the Dallas-Fort Worth metropolitan area owned and operated or leased and operated by Tenant in Euless, Farmers Branch, Frisco, Plano, and Richardson, Texas.

"**Subtenant**" means any person or entity to whom or to which Tenant grants or licenses any rights to occupy, use, operate, manage, provide services in, or sell food, beverages, services, merchandise or sporting goods within the Leased Premises.

"**Taxes**" has the meaning set forth in Section 8.1.

"**Term**" means the Primary Lease Term, or if Tenant has exercised its renewal option under this Lease, the then current Renewal Lease Term.

## **ARTICLE II** **LEASED PREMISES**

**Section 2.1. Leased Premises.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Leased Premises. TO

HAVE AND TO HOLD said Leased Premises for the Term of this Lease, all upon the terms and conditions set forth in this Lease.

**ARTICLE III.**  
**TERM**

**Section 3.1. Primary.** This Lease will continue in force during a period beginning on the Effective Date of this Lease and ending on the expiration of the Term, unless this Lease is terminated early or extended to a later date pursuant to the terms of this Lease. The Term will commence and the obligations of Tenant with respect to the Leased Premises (including, without limitation, payment of Base Annual Rental or Adjusted Base Annual Rental, as applicable) will accrue beginning on the Rent Commencement Date or Rent Adjustment Date, as applicable, and continue in full force and effect for the Primary Lease Term, subject to extension and earlier termination as provided herein.

**Section 3.2. Renewal.** So long as Tenant is not in default hereunder, the Term of this Lease may be extended for up to two consecutive five (5) year periods after the Primary Lease Term (each of which is herein sometimes called a "**Renewal Lease Term**"). The option for each Renewal Lease Term may be exercised by Tenant by written notice to Landlord at least one year before the end of the Primary Lease Term or the then effective Renewal Lease Term, as the case may be. Upon the timely giving of such one year notice, the renewal and extension of this Lease for a Renewal Lease Term shall be on and under the same covenants, agreements, terms, provisions, and conditions that are contained herein for the Primary Lease Term, except that Base Annual Rental or Adjusted Base Annual Rental, as applicable, shall be as stated in Section 4.2(b) below. Once Tenant shall exercise any renewal option, Tenant may not thereafter revoke such exercise, except as expressly set forth below. Tenant shall not have the right to exercise any renewal option at any time that an Event of Default under this Lease has occurred without having been subsequently cured to Landlord's satisfaction under the terms of this FARLA. Tenant's failure to exercise timely any renewal option for any reason whatsoever shall conclusively be deemed a waiver thereof and of any future renewal option. Tenant shall take the Leased Premises "as is" for each Renewal Lease Term and Landlord shall have no obligation to make any improvements or alterations to the Leased Premises.

**ARTICLE IV.**  
**RENTAL**

**Section 4.1. Construction Periods (Facility and Facility Expansion).** Except as otherwise provided herein, no rent is due from Tenant for the period from the Effective Date to the Rent Commencement Date. Thereafter, Base Annual Rental shall continue from the Rent Commencement Date until the Rent Adjustment Date after which date the Adjusted Base Annual Rental shall continue for the remainder of the Primary Lease Term.

**Section 4.2. Base Annual Rental.** Tenant shall to pay to Landlord, on or before the Rent Commencement Date and on the first day of each calendar month after the Rent Commencement Date for which this Lease is in effect, by wire transfer, check or cash, one-twelfth (1/12) of the Base Annual Rental (as hereinafter defined) or the Adjusted Base Annual Rental (as hereinafter defined), as applicable, together with any other charges due and payable by Tenant hereunder. Any wire transfer shall be made to the following account: Legacy Texas Bank, ABA# 111901234, Beneficiary: City of McKinney, Beneficiary credit account #0860585, Attn: Sheryl Coleman, unless Landlord notifies Tenant in writing of another account for such wire transfers. Any payment which is not a wire transfer shall be made to Landlord at its address set forth in Section 17.13 unless Landlord notifies Tenant in writing of another place of payment.

(a) **Primary Lease Term.**

- i. The term "**Base Annual Rental**" shall mean the amount of base rent payable by Tenant on an annual basis during the Term until the Rent Adjustment Date. The Base Annual Rental for the Primary Lease Term is as follows:

<b>Lease Year</b>	<b>Base Annual Rental</b>	<b>Monthly Amount</b>
1-5	\$528,000.00	\$44,000.00
6 through Rent Adjustment Date	\$588,000.00	\$49,000.00

- ii. **Adjusted Base Annual Rental.** The term "**Adjusted Base Annual Rental**" shall mean the amount of base rent payable by Tenant after the Rent Adjustment Date and on an annual basis during the remainder of the Primary Lease Term as follows:

<b>Commencement Date</b>	<b>Adjusted Base Annual Rental</b>	<b>Monthly Amount</b>
Rent Adjustment Date through 60 <sup>th</sup> month thereafter	\$720,000.00	\$60,000.00
From the 61 <sup>st</sup> month after the Rent Adjustment Date through the end of the Primary Lease Term	\$780,000.00	\$65,000.00

(b) **Renewal Lease Term.** The Adjusted Base Annual Rental for each Renewal Lease Term for which Tenant has effectively exercised Tenant's option hereunder shall be \$780,000.00 (\$65,000.00/mo.) and \$780,000.00 (\$65,000/mo.), respectively. In addition, notwithstanding anything herein to the contrary, Landlord and Tenant shall be jointly responsible for any capital repairs during a Renewal Lease Term, if any, with Landlord being responsible for fifty (50%) percent of any capital repair costs and Tenant responsible for the other fifty (50%) percent of such capital repair costs.

**ARTICLE V.  
USE OF DEMISED PREMISES**

**Section 5.1. Use.** The Leased Premises may be used by Tenant primarily as a public recreational ice skating facility, and for no other purpose without the prior written consent of Landlord, except that Landlord acknowledges that the Leased Premises shall additionally be used for certain ancillary purposes related to the ice skating rinks, including, without limitation, locker room facilities, concession areas, meeting rooms, a retail store selling sporting goods and equipment and other goods ancillary thereto, and such additional uses as are shown and/or described in the Approved Plans. The Leased Premises may only be used by Tenant as permitted by, and in full and strict compliance with, all Governmental Regulations. Landlord represents and warrants that there are no restrictive covenants or other documents applicable to the Expanded Facility Land that prohibit the use of the Leased Premises for the purposes contemplated by this Lease. Tenant and Landlord acknowledge that the Facility and Expanded Facility are primarily intended to serve youth and adult sports and recreational users in the city of McKinney and the McKinney region. Tenant and Landlord further acknowledge the City's primary intent in constructing the Expanded Facility is not economic development. Tenant agrees to provide Landlord, by notice to the McKinney Director of Parks and Recreation, with periodic reports on scheduled activities, use statistics, concessions and facility use pricing, and community relations, including reports regarding all obligations required of Tenant under Sections 16.1-16.4.

**Section 5.2. Limitations on Use.**

(a) Tenant shall not, without Landlord's prior written consent, keep anything within the Leased Premises or use the Leased Premises for any purpose which invalidates any insurance policy carried on the Leased Premises.

(b) Tenant shall not permit any objectionable or unpleasant odors to emanate from the Leased Premises; nor place any antenna, awning or other projection on the exterior of the Leased Premises (other than those indicated on the Approved Plans or otherwise approved in advance by Landlord in writing); nor take any other action which would constitute a nuisance. Tenant shall comply with local noise ordinances in the operation of radios, televisions, loudspeakers or amplifiers on the Leased Premises.

(c) Tenant shall keep the Leased Premises neat, clean and reasonably free from dirt or rubbish at all times, reasonable wear and tear excepted. Tenant shall store all trash and garbage within the Leased Premises or in such area outside the Leased Premises as may be designated for such purpose by Landlord and Tenant shall arrange for the regular pickup of such trash and garbage at Tenant's expense. Tenant shall not operate an incinerator or burn trash or garbage.

**Section 5.3. Operational Rights; Revenue.**

(a) Subject to the terms and provisions of this Lease, Tenant shall have full and exclusive control of the management and operation of the Leased Premises, including, without limitation, the Expanded Facility. Without limiting the generality of the foregoing, Tenant shall own all revenues of any source generated by or from the Leased Premises or the operation or management or the name thereof.

(b) Subject to all Governmental Regulations, Tenant shall have exclusive authority, control and rights in selecting the name of the Expanded Facility, as well as the sponsor or sponsors for which the Expanded Facility (or portions thereof) will be named from

time to time or for which signage and advertising will be sold within or without the Expanded Facility, including, without limitation, the right to retain all proceeds therefrom; provided, however, that the name of the Expanded Facility must include a reference to "McKinney" or the "City of McKinney" and under no circumstances will the name given to the Expanded Facility include any reference to a proper geographic name, unless such reference is to "McKinney" or the "City of McKinney". Landlord agrees to the initial name of the Expanded Facility to be "Dr Pepper StarCenter McKinney @ Craig Ranch"; subject to approval and payment by the sponsor(s).

(c) Notwithstanding anything in Section 5.3(a) or Section 5.3(b) above to the contrary, the name given to the Expanded Facility shall not include a reference to or the name of a company that produces or distributes alcoholic beverages or tobacco products or that relates to any reasonably objectionable subject matter. Subject to the foregoing and the limitations in Section 5.3(b) above, Tenant shall have the full and exclusive control and discretion as to the name of the Expanded Facility and all other Improvements.

(d) Subject to the terms and provisions of this Lease, Tenant shall have the right to install and shall have the full and exclusive control of any and all advertising signage displayed within the Expanded Facility and on the exterior roof or facade thereof, subject to all Governmental Regulations; provided, however, the signage on the exterior of the Expanded Facility shall not include a reference to or the name of a company that produces or distributes alcoholic beverages or tobacco products or that relates to any reasonably objectionable subject matter.

(e) Tenant shall own all rights, including intellectual property rights, in, to and relating to the Leased Premises, including, without limitation, the Expanded Facility, whether now in existence or created in the future, including, without limitation, all copyrights, trademarks, trade names, trade dress and merchandising rights of, in or relating to the Leased Premises and any and all names, logos or other likenesses of the Leased Premises as well as the rights to protect, enforce and license any or all of the foregoing (collectively, the "Likenesses"). Tenant shall provide Landlord, or shall cause the owner of such documents to provide Landlord, copies of any drawings, renderings, designs, and plans and specifications for the Expanded Facility, and Landlord will be entitled to retain and use them in connection with the construction of the Expanded Facility, or, in the event of the occurrence of an Event of Default under this Lease, for the purpose of satisfying Tenant's obligations under this Lease. In addition, Landlord and its agents and contractors shall have the right to use the Expanded Facility name, logo and image in connection with any Landlord-approved or Landlord-sponsored campaign marketing the City of McKinney, Texas.

**Section 5.4. Common Area.** Tenant shall have no responsibility for Common Area costs or maintenance.

**Section 5.5. Parking Area.**

(a) Throughout the Term but at all times subject to the extent of the rights held by Landlord under the CCRs, Tenant and its Invitees shall have the exclusive right to use the Parking Area.

(b) Landlord warrants that the Parking Area will contain the minimum number of parking spaces required by zoning and other Governmental Regulations. Landlord agrees that at least 250



parking spaces within the Parking Area will be available at all times for use by Tenant and its Invitees and that by the Rent Adjustment Date at least 705 parking spaces within the Parking Area will be available at all times for use by Tenant and its Invitees.

(c) The Parking Area will be provided solely for the users of the Expanded Facility. In accordance with Section 17.27 below, Landlord and the Owner of the Overflow Parking Area will enter into a Parking Agreement to be attached to this Lease as Exhibit "E" (the "**Parking Agreement**") granting Landlord, its lessees and assigns, an easement to the shared use the Overflow Parking Area and an easement for ingress and egress over any accessways and driveways that are reasonably necessary to access the Leased Premises from the Overflow Parking Area, if the CCRs and Replat of the Development do not otherwise grant such rights to the Landlord, which shall be consistent with the following:

(i) The Parking Agreement will provide that the Owner of the Overflow Parking Area shall restrict its invitees, tenants and the general public from using the Parking Area in any manner inconsistent with Landlord's rights thereunder.

(ii) The Parking Agreement shall provide that the Tenant shall have the shared right to the use the Overflow Parking Area lot for Tenant's invitees along with the Owner of the Overflow Parking Area under a parking easement in favor of Landlord.

(d) Tenant shall have the right to charge patrons for parking in the Parking Area for special events held at the Expanded Facility, including events and tournaments involving professional or junior ice hockey teams or figure skating clubs held at the Expanded Facility.

**Section 5.6. Declaration of Covenants, Conditions and Restrictions.** Tenant acknowledges and agrees that a Declaration of Covenants, Conditions and Restrictions ("**CCRs**") governing the Development may be recorded after the Effective Date, which grants certain easements relating to ingress and egress within the Development and provides for the maintenance and operation of the Common Areas of the Development. Once the CCRs are recorded, Landlord shall not make any modifications, additions, deletions or amendments to the CCRs that materially and adversely affect the Tenant, the Leased Premises, Tenant's use and development of the Leased Premises, and any rights or privileges granted under this Lease or the CCRs to Tenant or the owner of the Leased Premises without the prior written consent of the Tenant, which shall not be unreasonably withheld, conditioned or delayed. If the Land is not subject to the CCRs, Tenant shall have no rights under this Section 5.6.

## **ARTICLE VI.**

### **DESIGN, CONSTRUCTION, INSTALLATION AND LIEN CLAIMS**

**Section 6.1. Design of Facility and Facility Expansion.** Landlord and Tenant acknowledge that the Facility has been heretofore constructed and accepted in general conformity to this Article VI. Contractor shall be responsible for the planning, design, and engineering of the Facility Expansion in substantial conformity with the preliminary site plans, floor plans and elevations to which Landlord has given conceptual approval, which site plans, floor plans and elevations are attached hereto as Exhibit "B" and comprise the "**Project Scope Criteria**" and Tenant shall be responsible for overseeing and monitoring such work by the Contractor. Notwithstanding anything to the contrary set forth in Section 6.2 below, Landlord shall pay any additional costs if the costs exceed the GMP, defined below. Tenant shall be responsible for assuring that the Approved Plans for the Facility Expansion (a) satisfy any and all Governmental Regulations applicable to the construction and operation of the Facility (including, without limitation, if applicable, (i) United States Occupational Safety and Health Administration

requirements, (ii) the Americans with Disabilities Act of 1990 (as amended) and comparable state laws, (iii) building codes and zoning requirements, and (iv) stormwater, utility and related requirements), and (b) do not violate the easements, CCRs and other restrictions encumbering or otherwise affecting the Leased Premises that are listed on Exhibit "E" attached hereto.

In accordance with the Construction Contract (as hereinafter defined), Contractor shall hire, terminate, and replace, as the case may be, and shall pay all fees and costs, provided Landlord may pay certain costs directly as provided herein in this Section 6.1, of the architect (the "Architect"), engineers and other design professional Subcontractors (as that term is defined in the Construction Contract) for the design development of the Facility Expansion, with the understanding that the structural elements of the Facility Expansion shall be engineered in accordance with generally accepted engineering practices which will result in a useful life of the structural elements of not less than twenty (20) years. The fees and expenses of the Architect and the engineers shall be included in the Approved Facility Expansion Budget. The Construction Contract shall contain a provision whereby Landlord shall pay directly the Contractor's vendors for the Facility Expansion Personal Property, the Architect and the Project Management Fee which fee shall be paid directly to Tenant. The Construction Contract shall further provide that if Landlord terminates the Construction Contract under Section 6.10, Landlord and Tenant shall have no obligation to Contractor, Landlord or any other party as a result of such termination. The Construction Contract shall be generally in the form attached hereto as Exhibit B-1.

The Construction Contract shall provide that the Approved Plans shall be prepared by the Architect from time to time during the course of construction, and Tenant shall be responsible to assure that such Approved Plans are without material deviation from the Project Scope Criteria, and copies thereof made available to Landlord and approved by Tenant as provided in this Lease. Tenant will cause Contractor to provide Landlord, within thirty (30) days upon receipt of Landlord request, a construction progress schedule, and immediately upon their availability from time to time, copies of the Approved Plans and all other related construction documents. **LANDLORD'S PAYMENT TO ARCHITECT, ITS APPROVAL OF THE PROJECT SCOPE CRITERIA, ANY OF THE DRAWINGS AND SPECIFICATIONS, OR THE CONSTRUCTION PROGRESS SCHEDULE DOES NOT IMPOSE ON LANDLORD ANY RESPONSIBILITY WHATSOEVER, INCLUDING WITHOUT LIMITATION, RESPONSIBILITY FOR THE ADEQUACY OF THE CONSTRUCTION TIME PROVIDED, THE SUFFICIENCY OF THE PLANS OR COMPLIANCE WITH ANY GOVERNMENTAL REGULATIONS, FOR WHICH THE ARCHITECT AND CONTRACTOR SHALL HAVE FULL AND COMPLETE RESPONSIBILITY.** Upon either party's desire for a change to the Approved Plans, or any other change under the Construction Contract, the requesting party shall provide the non-requesting party with written notice thereof, and the non-requesting party shall respond to the requesting party's request within five (5) days of such notice. Landlord shall have final approval of any requested change.

In designing the Facility Expansion, Tenant shall ensure that (i) the Architect and the engineers reasonably consult with Landlord and the City's City Manager (the "City Manager"), or the City Manager's authorized designee, with respect to satisfaction of the City's code requirements applicable to the design of the Facility Expansion, and (ii) the Contractor obtains all City permits, licenses and approvals required by law, rule, regulation or ordinance in connection with the construction of the Facility Expansion and all other permits or approvals, if any, issued by other governmental agencies, to the extent required by law. Landlord hereby acknowledges that the City has agreed to waive any construction and design permits and fees in connection with the construction of the Facility Expansion.

**Section 6.2. Construction of Facility Expansion, including the Parking Area.** Upon Tenant's coordination to Landlord's satisfaction of all requisites under state law for a design-build

public procurement, Landlord shall execute a contract (the "**Construction Contract**") with Contractor as the general contractor for the development and construction of the Facility Expansion. The Construction Contract shall be the form of Exhibit B-1, and shall contain, among other things, Contractor's obligation to obtain and, at all times during the term of such contract, carry insurance sufficient to satisfy Landlord's insurance requirements. The Construction Contract shall be for a design-build (not construction-manager-at-risk) project. The Construction Contract shall further set out Landlord's guaranteed maximum price ("**GMP**") for construction of the Facility Expansion, the Facility Expansion Personal Property and the Parking Area, whereby Landlord's agreed cost shall be no greater than an amount equal to \$8,500,000.00, the same amount as the Approved Facility Expansion Budget; however the Construction Contract shall provide that Landlord shall pay directly to Contractor's vendors for the Facility Expansion Personal Property, to the Architect for the Architectural fees, and to the Tenant the Project Management Fee, subject to agreed change orders. Landlord's payment to Contractor's vendors shall not create any third-party beneficiary liability to Landlord. Landlord has agreed, at Tenant's and Contractor's request, to allow an agent of Tenant to be "Landlord's Representative" for purposes of the management of the construction of the Facility Expansion under the Construction Contract (the "**Construction Manager**"), with Landlord retaining only limited approval rights under the Construction Contract as more particularly described therein. Tenant acknowledges and agrees that Construction Manager is responsible, as between Landlord and Tenant, for assuring that construction of the Facility Expansion: (a) will be constructed in accordance with the construction progress schedule, the Project Scope Criteria and the Approved Plans, and (b) will be performed in a good and workmanlike manner as provided in the Construction Contract. **Tenant shall insure conformity to all state procurement laws in coordination of Landlord's construction of the Facility Expansion.** The Construction Contract shall contain a provision whereby any savings on the subcontracts for constructing the Facility Expansion shall be shared between the Contractor and Tenant. Subject to Contractor's written approval under the Construction Contract, Landlord agrees to a correlative reduction (applied ratably to each month of the Term) in the Adjusted Base Annual Rental for any savings Tenant elects to apply to reduce the GMP. The Construction Contract shall include liquidated damages from Contractor in favor of Landlord in the event the Contractor does not complete construction and obtain a Certificate of Occupancy by November 15, 2018. The amount of liquidated damages from Contractor shall equal \$2,000.00 per day. Landlord agrees to assign to Tenant such actual amounts received from Contractor in an amount equal to \$1,500.00 per day; however no amounts shall be owing to Tenant unless actually received by Landlord (through its credit against payments due Contractor under the Construction Contract). Tenant shall have no liability to Landlord, Contractor or any other party as a result of such event.

Under no circumstances whatsoever shall Tenant authorize, without Landlord's prior written approval, any change, alteration, or addition to the Approved Plans which Landlord or Tenant reasonably believes would (a) increase the total cost to complete the construction of the Facility Expansion over the amount in the Approved Facility Expansion Budget or GMP, (b) delay the completion of the Facility Expansion beyond the completion date set forth in the Construction Contract, or (c) have a material adverse impact on the quality of the completed Facility Expansion.

Landlord shall be responsible for any agreed increase in the GMP that is a result of (i) any changes to the plans solely requested or required by Landlord, or (ii) any City of McKinney Fees relating to Construction of the Leased Premises. Tenant shall be responsible for any agreed increase in the GMP that is a result of any changes to the plans solely requested or required by Tenant and approved by Landlord.

During the construction of the Facility Expansion and related Improvements, Tenant shall require the Construction Manager to attend "job progress" meetings on a regular basis as necessary to

provide appropriate coordination, and Landlord shall be notified in advance of, and Landlord and the City Manager shall be entitled to attend, all such meetings. During the construction of the Facility Expansion, Landlord and the City Manager shall be entitled to monitor and inspect all aspects of the construction of the Facility Expansion. To ensure that neither the design nor the construction of the Facility Expansion is delayed, Landlord will cause the City Manager, the City Manager's authorized designees, and other City personnel to respond in a reasonably expeditious manner to all submissions and requests by Tenant, the Architect, the engineers, the Contractor or other contractors.

As expressly set forth in Section 17.22 hereof, Landlord is making no representations and is providing no warranties of any kind in connection with the construction of the Facility Expansion and related Improvements. However, upon the completion of construction of the Facility Expansion and related Improvements, Landlord will assign to Tenant any and all warranties obtained by Landlord in connection with the construction of the Facility Expansion and related Improvements; provided, however, that Tenant agrees to assign to Landlord any and all such warranties remaining upon the expiration or earlier termination of this Lease. Landlord further agrees that it will not, without the consent of Tenant, waive or release any rights or claims that Landlord may have against the Contractor or any of the other contractors, subcontractors, material suppliers, architects, design consultants, or other third parties regarding the design or construction of the Facility Expansion or related Improvements.

**Section 6.3. Construction Costs.** Except as otherwise provided herein, Landlord shall be solely responsible for the costs and expenses related to construction and completion of the Facility Expansion, including the Parking Area, in accordance with the requirements of this Lease.

**Section 6.4. Purchase of Personal Property.** Landlord, through the Construction Contractor or through Tenant's procurement, shall purchase for Tenant's use the Personal Property. Landlord agrees that Tenant may modify the list attached to this Lease as Exhibit "C" and Exhibit "C-1"; provided, however, that (a) the total cost to Landlord for Facility Expansion Personal Property shall not exceed the amount therefor set forth in the Approved Facility Expansion Budget, provided that if the actual project costs are below the Approved Facility Expansion Budget, Tenant may allocate such savings to additional funds for Facility Expansion Personal Property or, if approved by Landlord, to a reduction in the Base Annual Rent or Adjusted Based Annual Rent, as applicable; and (b) Tenant provides to Landlord, within ten (10) days after the final advance is made for such Facility Expansion Personal Property, a detailed listing and description of the Facility Expansion Personal Property, as modified, including serial numbers, if any. In the event the actual cost of the Facility Expansion Personal Property exceeds the amount estimated therefor in the Approved Facility Expansion Budget and Landlord or Tenant believe that such increase will result in an increase to the total amount of the Approved Facility Expansion Budget, Tenant will deposit such deficiency with Landlord within ten (10) days after Landlord's written request therefor. All Personal Property purchased by Landlord shall remain at the Leased Premises unless replaced by Tenant with items of comparable quality, characteristics and value or unless such items have become obsolete; provided, however, that any such replacement or disposal of the Personal Property shall remain subject to the notice requirements of Section 6.7 below.

**Section 6.5. Project Management.** Tenant shall use commercially reasonable efforts to oversee the development of the Facility Expansion to ensure the Expanded Facility are constructed by Landlord in a quality, workmanlike manner reasonably comparable to other StarCenters operated by Tenant. As part of the Approved Facility Expansion Budget, Landlord shall pay Tenant the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "**Project Management Fee**") as a management fee for overseeing the development and construction of the Facility Expansion payable to

Tenant in ten (10) monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00) each. The Project Management Fee shall be paid by either a check made payable to Tenant and mailed to its notice address (or to such other address as may be designated by Tenant from time to time) or by wire transfer to Tenant's designated bank account. Tenant's oversight of the project shall include a review of the Construction Contract between Landlord and Contractor under Section 6.1.

**Section 6.6. Ownership of Improvements.** The Expanded Facility, the Parking Area, the Personal Property, and all other Improvements of any nature constructed on the Expanded Facility Land, together with any modifications, replacements or substitutions for any of the foregoing, shall be owned by and shall be the property of Landlord, free of any claim of Tenant or any party claiming by, through or under Tenant. Any and all fixtures which are a part of the Improvements shall remain at the Leased Premises unless replaced by Tenant with items of comparable quality, characteristics and value.

Notwithstanding the foregoing, Tenant may elect to replace the Personal Property from time to time, at Tenant's sole cost and expense, and any replacements of the Personal Property purchased by Tenant shall be deemed owned by Tenant and may, unless affixed to the Expanded Facility, be removed by Tenant upon the expiration or early termination of this Lease. In addition, Tenant may dispose of items of the Personal Property which have become obsolete. However, Tenant shall provide Landlord thirty (30) days prior written notice of Tenant's intent to replace or dispose of any item of the Personal Property, the original cost of which was in excess of \$500.00. Landlord shall be entitled, but not obligated, to remove such Personal Property from the Expanded Facility within such thirty (30) day period, and to sell or otherwise dispose of such Personal Property in such manner and upon such terms as Landlord deems appropriate, in Landlord's sole discretion, and any proceeds therefrom shall be the sole property of Landlord.

Upon the expiration or earlier termination of this Lease, Tenant shall deliver up the Leased Premises, including the Improvements and any remaining items of the Personal Property, to Landlord in good condition, reasonable wear and tear excepted. Upon the expiration of this Lease, Tenant may, and at Landlord's request shall, at Tenant's sole cost, remove any and all furniture, trade fixtures, equipment, and other personal property not permanently affixed to the Improvements and purchased at Tenant's cost (expressly excluding any remaining items of the Personal Property), title to which shall not be in or pass automatically to Landlord upon such expiration, repairing all damage caused by such removal. Property not so removed shall, unless requested to be removed, be deemed abandoned by Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale.

Upon the termination of this Lease, Tenant will execute, at Landlord's written request, a release or other recordable instrument, of all Tenant's interest in the Leased Premises, and Landlord and Tenant shall further execute such other instruments as may be necessary to evidence the termination of this Lease and stating the termination date.

**Section 6.7. Tenant's Work.** Tenant shall have no right, authority or power to bind Landlord for any claim for labor or material or for any other charge or expense incurred in connection with any construction work done by Tenant on the Leased Premises or any change, alteration or addition thereto, or replacement or substitution therefor, or to render the Landlord's interest in the Leased Premises liable to any lien or right of lien for any labor or material or any other charge or expense incurred in connection therewith, and Tenant shall in no way be considered as the agent of Landlord in the construction or operation of the Improvements or any replacement or substitution therefor.

All work at any time done by Tenant within the Leased Premises shall be performed in a good and workmanlike manner, in compliance with all Governmental Regulations, and in such manner as to

cause a minimum of interference with other construction in progress. Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any loss, liability or damage resulting from Tenant's work, and Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.

**Section 6.8. Zoning and Permits.**

(a) Landlord shall be responsible, at its sole cost and expense, to obtain rezoning of the Leased Premises if necessary to use the Leased Premises for the purposes contemplated in this Lease. Tenant shall reasonably cooperate with Landlord in obtaining such rezoning, at Landlord's sole cost and expense. Landlord must keep Tenant apprised of the rezoning process and must obtain Tenant's written approval, which shall not be unreasonably withheld, conditioned or delayed, prior to any rezoning of the Leased Premises.

(b) Landlord shall be responsible, at its sole cost and expense, to replat the Leased Premises if necessary to construct the Leased Premises in accordance with the Approved Plans. Tenant shall reasonably cooperate with Landlord in obtaining such replat, at Landlord's sole cost and expense. Landlord must keep Tenant apprised of the replatting process and must obtain Tenant's written approval of the final replat of the Leased Premises, which shall not be unreasonably withheld, conditioned or delayed.

(c) Landlord shall be responsible for obtaining the issuance of all permits, licenses and approvals by all public authorities that are required in connection with the construction of the Facility Expansion and the Parking Area, including a Certificate of Occupancy for the Facility Expansion.

(d) Tenant shall obtain the issuance of all permits, licenses and approvals by all public authorities which are required in order for Tenant to carry on its business upon the Leased Premises.

**Section 6.9. Discharge of Liens.** If any mechanic's, materialman's or other types of liens or lien claims are filed against the whole or any part of the Leased Premises, arising or resulting from actions or omissions by Tenant or Construction Manager, including, without limitation, Construction Manager's failure to cause Contractor to retain the amounts required under the Construction Contract or under applicable law, then Tenant shall promptly secure their release, or if Tenant wishes to contest any such lien or claim and has a reasonable basis for a contest, Tenant may do so, but only if Tenant furnishes Landlord with surety bonds or escrow funds ("**Landlord's Security**") sufficient in amount to protect Landlord's interest in the Leased Premises and Landlord's and Tenant's interest in this Lease during the pendency of the contest. If Tenant does not secure a lien release or furnish Landlord's Security, such failure shall constitute an Event of Default by Tenant hereunder and, in addition to all other rights and remedies available to Landlord by reason thereof, Landlord may, after thirty (30) days' prior written notice, pay such lien or claim and secure such release, and Tenant shall be obligated to reimburse Landlord for all sums reasonably expended by Landlord in paying such lien or claim and securing such release, including reasonable attorney's fees, plus interest at the highest lawful rate from the date of Landlord's payment until it is reimbursed. Nothing contained in this Section 6.9 or elsewhere in this Lease shall be deemed or construed as an authorization by or consent of Landlord to the filing of any mechanic's or materialman's lien against the Land, or against all or any portion of the Leased Premises or any interest therein.

**Section 6.10. Conditions Relating to Construction.** Both Landlord and Tenant shall each have the right to terminate this FARLA, without obligation to the other party except as provided in this FARLA, in the event of any of the following: (i) Landlord's or Contractor's failure to execute a

Construction Contract on or before January 1, 2018 containing a construction completion date and a Certificate of Occupancy received on or before November 15, 2018; (ii) Landlord's failure to accept the conveyance of a construction-ready, improved lot comprising the Expansion Parcel having a condition of title acceptable to Landlord on or before September 8, 2017, or (iii) Landlord's failure to obtain confirmation of funding for the Approved Facility Expansion Budget, including funding from the McKinney Community Development Corporation for the Facility Expansion, on or before September 1, 2017. In the event Landlord or Tenant elects to terminate the FARLA under this Section 6.10, the Amended and Restated Lease Agreement shall immediately be revived and shall thereafter govern the rights and obligations of the Parties as if this FARLA had not been executed.

## **ARTICLE VII.** **COMPLIANCE WITH LAW**

### **Section 7.1. Compliance with Laws.**

(a) Tenant shall comply, and shall require any Subtenants of the Leased Premises at all times to comply, at Tenant's and/or Subtenants' sole cost and expense, with (i) any and all Governmental Regulations applicable to the Leased Premises, including, without limitation, those related to the use and occupancy of the Leased Premises, (ii) any Governmental Regulations relating to the design and construction of the Facility Expansion, including, without limitation, those related to signage at the Leased Premises, and (iii) all governmental orders for the correction, prevention and abatement of nuisances or other violations of Governmental Regulations on or about the Leased Premises, including, without limitation, any repairs, additions or alterations which are required in connection therewith.

(b) Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Leased Premises and/or in any way related to the Leased Premises, including, without limitation, any permits required in connection with the sale of alcoholic beverages, if any, at the Expanded Facility.

(c) Tenant shall comply, and shall require any Subtenants of the Leased Premises at all times to comply, at Tenant's and/or Subtenants' sole cost and expense, with the CCRs, easements and other restrictions encumbering or otherwise affecting the Leased Premises that are described on Exhibit "E" attached hereto.

(d) City shall waive all permit and construction fees to the extent permitted by law. Such fees shall not be included in the Approved Facility Expansion Budget.

**Section 7.2. Environmental Covenants.** Tenant shall not, and shall not direct, suffer or permit Subtenants or any of Tenant's or Subtenants' Invitees to at any time handle, use, manufacture, store or dispose of, in or about the Leased Premises in violation of Environmental Laws, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any Environmental Law, as hereinafter defined (collectively, "Hazardous Materials"), nor shall Tenant suffer or permit any Hazardous Materials to be used in or on the Leased Premises and appurtenant land in any manner not fully in compliance with all Environmental Laws or allow the environment to become contaminated with any Hazardous Materials. The term "Environmental Laws" shall mean, collectively, any and all federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of

them, and all rules and regulations issued pursuant to any of such laws or ordinances. Notwithstanding the foregoing, Tenant and Subtenants may:

(a) subject to Landlord's prior consent, handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for general office use; and

(b) store and use on the Leased Premises such quantities of anhydrous ammonia, gasoline, refrigeration oil, water base house paint, spray paint, mineral spirits, automotive oil, grease, and household cleaning products, as are reasonably necessary in connection with Tenant's use of the Leased Premises;

provided that Tenant and Subtenants shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Leased Premises, the appurtenant land, or the environment in violation of Environmental Laws. Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and reasonable attorney's fees) incurred by reason of any actual or asserted failure of Tenant or Subtenants to fully comply with all applicable Environmental Laws, or by reason of any actual or asserted failure of Tenant or Subtenants to keep, observe, or perform any provision of this Section 7.2. Notwithstanding anything to the contrary contained herein, Tenant shall have no liability to Landlord for (a) any Hazardous Materials which are located at the Leased Premises prior to Tenant taking possession of the Leased Premises and which have not been placed at the Leased Premises by Tenant, Subtenants, or Tenant's or Subtenants' agents, employees or contractors, (b) any Hazardous Materials which are placed or disposed of in or about the Leased Premises by Landlord, its employees, agents, or contractors; or (c) any Hazardous Materials which are released underground or into the groundwater by parties other than Tenant, Subtenants, or Tenant's or Subtenants' agents, employees or contractors; provided, however, that Tenant shall give immediate written notice to Landlord upon becoming aware of any such actual or alleged contamination, and shall cooperate with Landlord in Landlord's investigation and/or cleanup thereof.

## **ARTICLE VIII.** **TAXES**

**Section 8.1. Payment of Taxes.** Tenant shall pay all property taxes, assessments and other governmental charges and impositions levied or assessed against the Leased Premises or any part thereof, including, without limitation, the Land, the Expansion Parcel, the Improvements, and the Personal Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise) (collectively, "**Taxes**") before the same become delinquent, and Tenant, at the request of Landlord, shall furnish to Landlord receipts or copies thereof showing payment of such Taxes. Tenant shall be entitled to pay any Taxes in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Landlord agrees to cooperate with Tenant in seeking the delivery of all notices of Taxes to Tenant directly from the applicable taxing authorities. Landlord shall promptly deliver all notices of Taxes to Tenant which are delivered to Landlord. In no event shall Tenant be in default under this Lease for failure to pay any Taxes before the same become delinquent if Landlord fails to forward or deliver to Tenant notice of such Taxes at least thirty (30) days before the date the same become delinquent. Landlord shall use good faith efforts to obtain any exemption on Taxes that may be applicable as a result of the Leased Premises, the Land, the Expansion Parcel, the Improvements and



the Personal Property being owned by the City of McKinney and used for public purposes, and Tenant shall receive the full benefit of any such exemption. In addition, Landlord shall use good faith efforts to assist Tenant in obtaining a waiver of Taxes from any other taxing authority having jurisdiction over the Leased Premises.

**Section 8.2. Contest of Taxes.** If the levy of any of the Taxes shall be deemed by Tenant to be improper, illegal or excessive, or if Tenant desires in good faith to contest the Taxes for any other reason, Tenant may, at Tenant's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Tenant shall deem necessary and appropriate; provided, however, that Tenant shall not permit any lien which may be imposed against the Leased Premises for contested Taxes to be foreclosed and, within sixty (60) days after the commencement of such contest, Tenant shall provide to Landlord reasonable security therefor. Subject to the foregoing, any item of contested Taxes need not be paid until it is finally adjudged to be valid. Tenant shall be entitled to any refund of any Taxes (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Taxes shall have been either (a) paid directly by Tenant, or (b) shall have been paid directly by Landlord and Landlord was reimbursed therefor by Tenant. Landlord shall contest in court, if necessary, along with Tenant, any attempt by the Appraisal District to place Landlord's property, including real and personal property, on the tax rolls for the purpose of levying, assessing, establishing and collecting ad valorem taxes.

**Section 8.3. Standing.** If Tenant determines that it lacks standing to contest any Taxes imposed by a governmental authority other than the City or to obtain an extended payment period from any such entity, Landlord (to the maximum extent allowed by law) at Tenant's expense shall join in such contest or otherwise provide Tenant with sufficient authority to obtain such standing.

## **ARTICLE IX. TENANT'S INSURANCE**

**Section 9.1. Liability Insurance.** Tenant agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$5,000,000 Combined Single Limit, protecting Landlord, the City, and Tenant against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired), liquor liability, and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies and may be obtained and maintained by a Subtenant with respect to that portion of the Leased Premises subleased to such Subtenant. Landlord and the City shall be named as additional insureds on all insurance policies required by this Section 9.1, whether provided by Tenant or by any Subtenant.

**Section 9.2. Workers' Compensation and Employers Liability Insurance.** Tenant agrees, at its sole expense, to obtain and maintain during the Term of this Lease, (a) workers' compensation insurance, as required by applicable law, and (b) employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease--each employee.

**Section 9.3. Property Insurance.** At all times during the Term of this Lease, Tenant shall, at its sole expense, obtain All Risk or Special Form coverage protecting Tenant and Landlord against loss of or damage to the Leased Premises, including, without limitation, the Improvements and the Personal

Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise), to the full replacement value of the property so insured. Coverage must be written by reputable insurance companies authorized to transact business in the State of Texas. Landlord shall be named as additional insured or loss payee, as appropriate, on all such coverage, and will have the right to settle all claims covered by such insurance.

**Section 9.4. Policies.** All insurance policies required by this Article IX shall provide for at least thirty (30) days written notice to Landlord before cancellation. Certificates or copies of policies of insurance shall be delivered to Landlord on or before the date Tenant takes possession of the Leased Premises and at least 30 days prior to any renewal of such policies. If any blanket general insurance policy of Tenant complies with the terms of this Article IX, the naming of Landlord therein as an additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy.

**ARTICLE X.**  
**MAINTENANCE AND REPAIR; ALTERATIONS; UTILITIES; SECURITY**

**Section 10.1. Maintenance and Repair.** Tenant shall maintain in good repair and condition the entire Leased Premises and all of the Improvements and the Personal Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise) and keep them free from waste or nuisance.

**Section 10.2. Alterations.** Tenant shall have the right, from time to time, to make additions, alterations and changes (hereinafter sometimes referred to collectively as "**alterations**") in or to the Improvements, provided that no Event of Default shall exist by Tenant in the performance of Tenant's covenants or agreements in this Lease, subject, however, to the following:

- (a) subject to the Governmental Regulations, no structural alterations or alterations to the original facade or exterior of the Improvements will be commenced without Landlord's prior written consent of such alterations, which consent shall not be unreasonably withheld or delayed;
- (b) no alterations will be made which would impair the structural soundness of the Improvements;
- (c) no alterations will be undertaken until Tenant has obtained all building permits, licenses and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall join, but without expense to Landlord, in the application for such permits, licenses or authorizations whenever such action is necessary and is requested by Tenant;
- (d) no alterations will be made which would be in violation of the terms and provisions of any easements or other restrictions listed on **Exhibit "E"** attached hereto;
- (e) no alterations will be made which are inconsistent with Tenant's use of the Leased Premises, as set forth in this Lease;
- (f) any alterations shall be made within a reasonable time and in a good and workmanlike manner and in substantial compliance with all applicable permits, licenses and authorizations, and building laws and with all other Governmental Regulations; and

(g) Tenant will upon demand by Landlord give reasonably satisfactory proof or assurances to Landlord that the funds required to pay for such alterations are or will be available to Tenant for such purpose.

**Section 10.3. Utilities.** Landlord agrees to initially install such utility service as is provided for in the Approved Plans, the cost of which will be included in the Approved Facility Expansion Budget. Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the Leased Premises from and after the Effective Date and Expansion Effective Date, as applicable to the Facility and Facility Expansion, until the end of the Term. Landlord shall in no event be liable or responsible for any cessation or interruption in, or damage caused by, any such utility services, unless the cessation or interruption results from Landlord's intentional or negligent conduct.

**Section 10.4. Security.** Landlord will not be responsible for providing security to the Leased Premises, except as otherwise required by Section 5.4 hereof.

**Section 10.5. Inspection.** Tenant shall permit Landlord and its agents, upon no less than twenty-four (24) hours prior written notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Tenant's and any Subtenant's quiet enjoyment of the same is not interfered with.

**Section 10.6. Capital Repairs.**

(a) Tenant shall be responsible for all costs associated with the maintenance and operation of the Facility and the Facility Expansion, including all capital repairs, which shall include capital replacements, deemed necessary to keep the Expanded Facility in the same condition as delivered to Tenant (normal wear and tear excluded) from the Effective Date until the end the Primary Lease Term. Notwithstanding the foregoing and for those capital repairs made during the Primary Lease Term which involve improvements having a useful life which extend beyond the Primary Lease Term, the cost of such capital repairs shall be prorated based upon the useful life of the particular improvement in relation to the end of the Primary Lease Term using straight-line depreciation. The balance of the cost of such improvement shall be the responsibility of Landlord. By way of example for the proration in this Section 10.6, if there are four (4) years remaining on the Primary Lease Term, and the Facility Expansion or Facility was to require a capital repair of \$5,000,000 that was estimated to last for 10 years, the cost of that capital repair would be shared as follows:

a) Capital repair	\$5,000,000
b) Amortization of cost (straight line)	\$500,000/year
c) Useful life	10 years
d) Remaining term of this Lease	4 years
e) Tenant's required contribution	\$2,000,000 (\$500,000 x 4 years)
f) Landlord's required contribution	\$3,000,000 (\$5,000,000 - \$2,000,000)

(b) Landlord and Tenant agree to follow commonly accepted accounting rules to distinguish capital repair expenses from operating expenses. Landlord and Tenant agree that capital repairs to the Facility and Facility Expansion will be approved by both parties hereto prior to the repair. The foregoing obligation for capital repairs by

Landlord shall not apply to any alterations, reconfigurations or remodeling undertaken by Tenant under Section 10.2 above.

- (c) As stated in Section 4.2(b), Landlord and Tenant agree that any capital repair expenses during a Renewal Lease Term, if any, shall be the joint responsibility of Landlord and Tenant with each being responsible for fifty (50%) percent of the costs of any capital repair expenses.

**ARTICLE XI.**  
**CASUALTY DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 11.1. Casualty Damage or Destruction.**

(a) **Tenant's Obligation to Restore.** Should any of the Improvements or the Personal Property (or any other equipment, furniture or fixtures in replacement thereof or substitution therefor or otherwise purchased by Tenant) be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever, Tenant shall promptly repair, replace, restore or reconstruct the same in substantially the form and condition in which the same existed prior to any such casualty. Such work shall commence on or before sixty (60) days from the event giving rise to such construction obligation and shall be completed thereafter with reasonable diligence.

In the event of any casualty damage to the Improvements during the last twelve (12) months of the Term of this Lease which would require more than ninety (90) days to repair and restore after commencement of restoration, Tenant shall have the option to terminate this Lease at any time prior to commencement of rebuilding by giving notice of termination to Landlord. Upon Tenant's exercise of such option, (i) this Lease shall terminate as of the termination date specified in such notice to Landlord, which shall not be less than thirty (30) days after the date of such notice; (ii) Tenant shall be required to pay the Adjusted Base Annual Rental through the 20<sup>th</sup> anniversary of the Rent Adjustment Date hereof and all other payments due and owing as of the termination date; (iii) Tenant shall not be required to repair the damage; and (iv) all insurance proceeds available as a result of such damage shall be paid to and be the property of Landlord.

(b) **Deposit of Funds for Restoration.** All insurance proceeds shall be deposited with a national bank in Dallas, Texas selected by Tenant ("**Qualified Bank**"). Such proceeds shall be received, held and paid out by such Qualified Bank, and shall be disbursed for restoration of the Improvements and replacement of the Personal Property (and any other equipment, furniture or fixtures in replacement thereof or substitution therefor or otherwise purchased by Tenant) as follows:

- (i) Tenant must first secure Landlord's reasonable approval of (A) the budget for such restoration and replacement, and (B) the plans and specifications for the proposed restorative work if such plans and specifications for restoration deviate materially from the original plans and specifications for the Improvements which have been so damaged. The insurance proceeds will be disbursed by such Qualified Bank after delivery of evidence reasonably satisfactory to Landlord that (x) such repair, restoration, rebuilding or replacement for which a disbursement has been requested has been completed and effected in compliance with this Lease and all applicable laws, and (y) no mechanics' or materialmen's liens have attached to the fee or leasehold estate. At

the option of Tenant, such proceeds may be disbursed by such Qualified Bank in reasonable installments. Each such installment (except the final installment) is to be disbursed by such Qualified Bank in an amount equal to the cost of construction of the work completed or Personal Property (or other equipment, furniture, or fixtures purchased by Tenant) replaced since the prior advance (or since commencement of work, as to the first advance) according to a certificate by the Tenant's architect in charge, less statutorily required retainage in respect of mechanics' and materialmen's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Landlord that no lien affidavit has been filed in Collin County for any labor or material in connection with such work. The final payment or disbursement shall then be made upon the architect's proper certificate of completion and upon receipt of evidenced required by (i)(x) and (i)(y) above, but in no event shall such Qualified Bank be required to advance more than the balance of such insurance proceeds remaining on deposit with such disbursing agent;

(ii) Should the cost of said repairs, restoration, rebuilding or replacement be estimated by Tenant's architect in charge to be in excess of said insurance proceeds or should the actual cost determined after Tenant has commenced restoration and replacement be in excess of said proceeds, Tenant will deposit the necessary funds to cover such deficiency with such Qualified Bank; and

(iii) Any and all such insurance proceeds in excess of the cost of such repairs, restoration, rebuilding or replacement shall be paid over to Landlord.

(c) **No Abatement.** In the event of any such casualty, the Base Annual Rental and the Adjusted Base Annual Rental and other payments herein provided for shall not be abated, and the happening of any such casualty shall not cause a termination of this Lease except as herein provided.

#### **Section 11.2. Condemnation.**

(a) **Total Taking.** Landlord and Tenant agree that should the whole of the Leased Premises be taken (which term when used in this Section 11.2 shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the Government of the United States, State of Texas, the City, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should the whole of said Leased Premises and improvements be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then the award will paid to Landlord and this Lease shall terminate as of the date of taking of possession by the condemning authorities as if such date were the expiration of this Lease, no obligation for rental payments shall accrue after the later of (i) the date of such earlier termination of this Lease or (ii) the date Tenant delivers possession of the Leased Premises to Landlord.

(b) **Partial Taking.** Landlord and Tenant agree that should the fee simple title to part of the Leased Premises be taken by the Government of the United States, State of Texas, the City, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should a part of said Leased Premises be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then in such event this Lease shall nevertheless continue in effect as to

the remainder of the Leased Premises unless so much of the Leased Premises shall be so taken or condemned as to materially interfere with Tenant's use of the remainder for the uses and purposes contemplated herein, in which latter event this Lease shall terminate upon notice of termination by the Tenant to Landlord, with such termination to be effective as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Premises had been thus taken or condemned. In the event of such taking or condemnation of a portion of the Leased Premises where this Lease is not terminated thereby under the provisions of the first sentence of this Paragraph, the Base Annual Rental or the Adjusted Base Annual Rental payable during the remainder of the Term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis taking into consideration the extent, if any, to which Tenant's use of the remainder of the Leased Premises shall be impaired or interfered with by reason of such partial taking or condemnation.

(c) **Award.** In the event that a part of the Leased Premises is taken under the power of eminent domain, or by condemnation proceedings, then the award will be distributed to Landlord. If this Lease is not terminated by virtue of such taking, and repairs and/or restoration to the Improvements are required, Tenant shall commence and thereafter proceed with reasonable diligence to repair, alter and restore the remaining part of the Improvements so as to constitute complete, rentable Improvements (the foregoing being herein referred to as the "**Work**"). Landlord shall make the award received available to Tenant to complete the Work, and the award will be disbursed by Landlord to Tenant in reasonable installments after delivery of evidence satisfactory to Landlord that (i) the Work for which a disbursement has been requested has been completed and effected in compliance with this Lease and all applicable laws, and (ii) no mechanics' or materialmen's liens have attached to the fee or leasehold estate. Each such installment (except the final installment) is to be advanced by Landlord, in an amount equal to the cost of construction of the Work completed since the prior advance (or, for purposes of the first advance, since commencement of the Work) according to a certificate by the Tenant's architect in charge, less statutorily required retainage in respect of mechanics' and materialman's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Landlord that no lien affidavit has been filed in Collin County for any labor or material in connection with such Work. The final payment or disbursement shall then be made upon the architect's proper certificate of completion and upon receipt of evidenced required by (i) and (ii) above, but in no event shall Landlord be required to advance more than the balance of the award remaining. Should the cost of the Work be estimated by Tenant's architect in charge to be in excess of the award or should the actual cost determined after Tenant has commenced restoration be in excess of said award, Tenant will deposit the necessary funds to cover such deficiency with Landlord. Any portion of the award in excess of the cost of the Work will be retained by Landlord.

(d) **Voluntary Dedication; Easement Grants.** Landlord shall dedicate portions of the Land or Expansion Parcel in a manner consistent with the Approved Plans for public streets along the boundaries of the Land if such dedication is required by the City as a condition to approve construction of the Improvements. Landlord agrees to obtain any change in zoning required for Tenant's use of the Leased Premises.

Landlord and Tenant further agree that easements over and upon the Leased Premises may be granted to the City or to any utility company if such easements are consistent with the Approved Plans and are reasonably necessary in connection with the construction and operation of Improvements on the Land.

Any dedication of any portion of the Land by plat or easement grant approved in connection with the construction of the Improvements or for utilities or other purposes as provided above shall not result in any reduction or abatement of Base Annual Rental or the Adjusted Base Annual Rental under this Lease.

**ARTICLE XII.**  
**ASSIGNMENT AND SUBLETTING; TRANSFERS BY LANDLORD**

**Section 12.1. Assignment.** Except for Approved Subleases (as defined below) of space within the Improvements and except as otherwise provided in Section 12.5 below, Tenant shall not sell, assign, mortgage, pledge, or otherwise transfer any portion of its leasehold estate, or undivided interests therein without the prior written consent of Landlord.

**Section 12.2. Subleasing.** Subleases of space within the Improvements that satisfy the requirements of this Section 12.2 are referred to herein as "**Approved Subleases.**"

(a) **Conditions for Sublease.** Tenant shall not sublet all or any portion of the Leased Premises for occupancy by any Subtenant unless (i) such sublease is consistent with Tenant's use of the Leased Premises, (ii) such Subtenant is a reputable and quality business or restaurateur, and (iii) prior written notice of such sublease is provided to Landlord.

(b) **Sublease Terms.** In addition to the other required provisions contained in this Lease, Tenant's sublease agreements shall include provisions which provide that:

(i) the sublease is subject to every provision of this Lease;

(ii) the sublease shall not be for a term extending beyond the Term of this Lease;

(iii) the Subtenant is responsible for complying with all Governmental Regulations and other easements and restrictions encumbering or otherwise affecting the Leased Premises, and that Subtenant's failure to cure after receiving notice of non-compliance will result in Tenant's right to terminate the sublease;

(iv) the Subtenant is responsible for obtaining insurance identical to that required of Tenant as described in Article IX; and

(v) the Subtenant has no right to sublease or otherwise assign or encumber its interest in the Leased Premises.

Tenant shall provide to Landlord copies of any and all subleases of any portion of the Leased Premises, together with the names and addresses of all Subtenants.

(c) **Subtenant Attornment.** If this Lease terminates for any reason, including Tenant's default, Landlord shall accept the attornment by Subtenants in good standing and paying fair market rentals under Approved Subleases. In no circumstance is Landlord required to accept a sublease that (i) reduces rental payable to Landlord or calls for the granting of concessions in rent at any time, (ii) allows the prepayment of rent beyond the current month for which rent is due and payable (except the prepayment of rental for the last month of the term of a sublease made to an actual space occupant for the space to be occupied by him), or (iii)

imposes on the Landlord any obligation to make alterations to the Leased Premises under the sublease or to reimburse Subtenant for alterations made by the Subtenant.

**Section 12.3. Continuing Obligations.** Except as otherwise stated herein, Tenant shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this Lease (even if future assignments and sublettings occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Landlord's approval has been obtained for such future assignments and sublettings). Landlord shall be permitted to enforce the provisions of this Lease against the undersigned Tenant and/or any assignee without demand upon or proceeding in any way against any other person. Tenant shall reimburse Landlord for Landlord's reasonable expenses incurred by Landlord in connection with any request by Tenant for assignment or subletting which requires Landlord's prior consent.

**Section 12.4. Landlord Transfers and Mortgages.**

(a) Landlord may freely assign, transfer, sublet, hypothecate, pledge or mortgage the Land and Landlord's interest under this Lease, subject to the terms and provisions of this Lease, without Tenant's prior written consent; provided, however, that upon the sale, lease or other transfer of the Leased Premises, Landlord shall not be released from its obligations under this Lease unless the assignee or transferee assumes all such obligations in writing. If Landlord, in its sole discretion, determines it is desirable or necessary for obtaining project funding, Landlord and Tenant agree to restructure this Lease whereby MCDC shall lease the Expanded Facility from Landlord and Tenant shall become the Sub-Tenant of MCDC, as Sub-Landlord.

(b) Every lienholder to whom Landlord shall grant a mortgage, pledge, lien or other encumbrance upon Landlord's interest in the Land or hereunder must expressly agree in the loan documents that (i) all notices to Landlord of any default or defaults of Landlord under such loan documents or in connection with such loan, including notice of acceleration of the maturity of the indebtedness, will be given to Tenant as well as to Landlord and shall not be effective until so given to Tenant, (ii) such lienholder will accept a cure of any default under such loan documents by Tenant, but that Tenant shall not be required to cure any such default, and (iii) all payments so made and all things so done or performed by Tenant shall be effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies the same as if paid, done or performed by Landlord. Tenant shall not be or become liable to any such lienholder as a result of the right and option to cure any such default or defaults by Landlord.

**Section 12.5. Approved Assignments.**

(a) Notwithstanding anything to the contrary set forth herein, Tenant shall be permitted to assign this Lease to an Affiliate of Tenant without the prior consent of Landlord, if all of the following conditions are first satisfied:

- (i) Tenant shall give Landlord at least thirty (30) days prior written notice of such assignment;
- (ii) No Event of Default (or event which, with notice or lapse of time or both, would constitute an Event of Default) has occurred and is continuing under this Lease;



- (iii) A fully executed copy of such assignment, the assumption of this Lease by the assignee, and such other information regarding the assignment as Landlord may reasonably request, shall have been delivered to Landlord;
- (iv) The Leased Premises shall continue to be operated solely for the use specified in this Lease;
- (v) Tenant shall pay Landlord's reasonable costs, including reasonable attorneys' fees, in connection with Landlord's review of the assignment and other documentation required under this Section 12.5;
- (vi) The Affiliate remains an Affiliate of Tenant during the Term of this Lease; and
- (vii) The net worth of the Affiliate at the time of such assignment is at least equal to the net worth of Tenant upon the execution of this Lease.

Tenant acknowledges and agrees (and agrees at the time of such assignment to confirm) that in each instance described above, Tenant shall remain liable for the performance of the terms and conditions of this Lease despite such assignment.

(b) Notwithstanding anything to the contrary set forth herein, Tenant may assign or transfer this Lease without the consent of Landlord to any person or entity who acquires the ownership interests of the Dallas Stars NHL Franchise. Upon such assignment, the assignee shall execute and deliver to Landlord a written assumption, in form and substance reasonably satisfactory to Landlord, of all Tenant's obligations hereunder accruing after the date of such assignment. Tenant will thereafter be released of all liabilities or obligations arising under this Lease after the date of such assignment.

#### **Section 12.6. Leasehold Mortgages.**

(a) Leasehold Mortgages Permitted. Tenant, from time to time and at any time, shall have the right to grant a Leasehold Mortgage. In the event that Tenant grants a Leasehold Mortgage, upon Tenant's written request to Landlord, Landlord will execute and deliver an estoppel certificate addressed to the Leasehold Mortgagee setting forth the information described in Section 17.5 of this Lease, confirming the terms of this Section 12.6, and providing Landlord's agreement to recognize the Leasehold Mortgagee or any purchaser of the Mortgaged Premises at foreclosure in the same manner as an assignee pursuant to Section 12.1 of this Lease. Notwithstanding the foregoing, no Leasehold Mortgagee shall acquire, by virtue of the Leasehold Mortgage, any greater right in the Mortgaged Premises and in any building or improvements thereon than Tenant then had under this Lease. In no event shall Tenant have the right to encumber, subordinate or render inferior in any way Landlord's fee simple title in and to the Leased Premises.

(b) Notices to Leasehold Mortgagees. If at any time after execution and recordation of any Leasehold Mortgage in the Real Property Records of Collin County, Texas, in accordance with the provisions of Section 12.6(a) hereof, the Leasehold Mortgagee shall notify Landlord in writing that the Leasehold Mortgage on the Mortgaged Premises has been given and executed by Tenant, and shall furnish Landlord at the same time with the address to which the Leasehold Mortgagee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices, Landlord hereby agrees that it will thereafter deliver in the manner specified in Section 17.13 to the Leasehold Mortgagee and to the agent or representative so designated by the Leasehold Mortgagee, at the address so given, duplicate copies of any and all notices

in writing which Landlord may from time to time give or serve upon Tenant under and pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Landlord against Tenant. No notice to Tenant shall be effective as to the Leasehold Mortgagee unless duplicate copies thereof are delivered to such Leasehold Mortgagee at the same time the notice is given or served upon Tenant.

(c) Leasehold Mortgagee's Right to Cure. If Landlord shall ever be entitled to exercise a right hereunder to terminate this Lease after the giving of notice and/or the passage of time, as applicable, Landlord, subject to notification by Leasehold Mortgagee pursuant to Section 12.6(b) hereof, shall deliver additional written notice to Leasehold Mortgagee of Landlord's intention to so terminate this Lease and describing the existing defaults, and Leasehold Mortgagee thereafter shall have thirty (30) days to cure the defaults described in such written notice. Notwithstanding the foregoing, but subject to the provisions of Section 14.2 hereof, in the event (a) such default is not capable of cure within such 30-day period, this Lease may not be terminated if Leasehold Mortgagee shall deliver to Landlord, within such 30-day period, written notice of Leasehold Mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within 120 days of the date of such notice, or (b) any Leasehold Mortgagee is not in actual possession of the Mortgaged Premises on the date of the additional notice given the Leasehold Mortgagee under this Section 12.6(c) and possession is necessary in order to cure any default, then the time within which such Leasehold Mortgagee may commence to cure such default shall be extended for a reasonable time not to exceed 120 days until such Leasehold Mortgagee can obtain actual possession of the Mortgaged Premises. No purported termination of this Lease shall be effective until such written notice shall have been given to Leasehold Mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Leasehold Mortgagee may, at its option and at any time before the rights of Tenant under this Lease have been terminated, pay any of the Base Annual Rental or Adjusted Base Annual Rental due hereunder, procure any insurance required hereunder, pay any taxes required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Tenant by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by any such Leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of Tenant hereunder as if performed by Tenant.

(d) New Lease. Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination of this Lease for any reason prior to the stated expiration date, Landlord shall promptly notify all Leasehold Mortgagees of such termination. If the Leasehold Mortgagee having the highest priority with respect to the Lease cures (subject to Section 12.6(e) hereof) all defaults giving rise to such termination as provided below, Landlord shall enter into a new lease of the Mortgaged Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination of this Lease, at the Base Annual Rental or Adjusted Base Annual Rental payable hereunder and upon all the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(i) the Leasehold Mortgagee entitled to the new lease shall make written request to Landlord for a new lease within sixty (60) days of receipt by the Leasehold Mortgagee of written notice from Landlord of the date of termination of this Lease; and

(ii) at the time of the execution and delivery of the new lease, the Leasehold Mortgagee or its designee shall pay to Landlord all amounts specified in the notice of termination delivered by Landlord which would have been due hereunder except for such termination and which

are currently due except for such termination, and shall promptly cure (subject to Section 12.6(e) hereof) all other defaults giving rise to such termination.

(e) Certain Cure Requirements. Notwithstanding the provisions of Section 12.6(d) above, a Leasehold Mortgagee's right to enter into a new lease with Landlord as provided in said Section 12.6(d) shall not be conditioned upon such Leasehold Mortgagee curing any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

(f) Survival. The provisions of Section 12.6(d) and Section 12.6(e) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if said Section 12.6(d) and Section 12.6(e) were a separate and independent contract among Landlord, Tenant and any Leasehold Mortgagee.

(g) Leasehold Mortgagees' Liability. Unless a new lease shall have been executed pursuant to Section 12.6(d) hereof, no Leasehold Mortgagee shall be or become personally liable to Landlord as an assignee of this Lease, for the payment or performance of any obligation of Tenant unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any Leasehold Mortgagee, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of Tenant under the terms of this Lease; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of Tenant hereunder.

**Section 12.7. Nondisturbance Agreement.** Upon the written request of Tenant, Landlord will enter into a Nondisturbance Agreement (herein so called) with any Subtenant or Leasehold Mortgagee. Such Nondisturbance Agreement shall include such reasonable provisions as requested by a Subtenant or a Leasehold Mortgagee, subject to the reasonable approval of Landlord, but in any event shall (a) reaffirm Landlord's ownership of the Leased Premises, (b) confirm (if true) that this Lease is in full force and effect without default by Tenant (or, if a default exists, specifying the default and the remedy required by Landlord), and (c) in the case of a Subtenant, provide, in substance, that, so long as the Subtenant complies with all of the terms of its sublease or other applicable agreement, Landlord, in the exercise of any of its rights or remedies under this Lease, shall not deprive the Subtenant of possession, or the right of possession, of the subleased property during the term of the sublease, deprive the Subtenant of any other rights under the sublease or other applicable agreement or join the Subtenant as a party in any action or proceeding to enforce or terminate this Lease or obtain possession of the property leased in the sublease for any reason other than a breach by the Subtenant of the terms of the sublease or other applicable agreement which would entitle Tenant to dispossess the Subtenant thereunder or otherwise terminate the Subtenant's rights thereunder.

### **ARTICLE XIII. INDEMNIFICATION**

**Section 13.1. Tenant Indemnification.** From and after the Rent Commencement Date, Tenant agrees to protect, defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against any and all loss, cost, damage, liability and expense (including court costs and reasonable attorneys' fees) arising from (i) the failure by Tenant, any Subtenant, or any of their agents, employees, or contractors, including, without limitation, Construction Manager, to comply with the terms and conditions of this Lease and/or to perform their respective duties and obligations under this Lease in accordance with the terms hereof, (ii) the use, possession, management,

and maintenance of the Leased Premises; (iii) any work done in, on, or about the Leased Premises by Tenant, its agents, contractors, or employees; or (iv) any accident, injury or damage to any person or property occurring in, on, or about the Leased Premises; provided, however, that none of the foregoing will apply when any of the following apply: (i) when such loss results from a default by Landlord under this Lease or the willful misconduct or gross negligence of Landlord, its agents, employees, or contractors, (ii) to the extent of any insurance proceeds received by Landlord or payable under Landlord's insurance, (iii) any claims relating to the creek or flood plain on the Land, except as arising directly from Tenant's use of the Land, and (iv) any claims relating to construction of the Facility Expansion or Improvements.

**Section 13.2. Third Parties and Subtenants.** In connection with its management, operation, promotion and subleasing of the Leased Premises, including, but not limited to Tenant's business operations, Tenant shall insert, in each and every contract or sublease entered into, a clause exculpating Landlord from personal liability under the contract or lease and a clause pursuant to which the third party or Subtenant agrees to indemnify and hold harmless Landlord for the matters set forth in Section 13.1.

**ARTICLE XIV.**  
**TENANT'S DEFAULT AND LANDLORD'S REMEDIES**

**Section 14.1. Default.** Each of the following events is an "**Event of Default**" by Tenant under this Lease:

(a) Tenant fails to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, or any other payment or reimbursement to Landlord required by this Lease, and such failure shall continue for a period of five days after written notice that such payment was not made when due.

(b) Tenant fails to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease which is not provided for in another clause of this Section 14.1 and such failure continues for a period of thirty (30) days after written notice thereof; provided, however, that if such failure cannot reasonably be cured within said thirty-day period despite Tenant's diligent good faith efforts, the occurrence of such failure shall not constitute an Event of Default if Tenant commences reasonable efforts to cure such failure within said thirty (30) day period and thereafter diligently pursues such efforts until such failure is cured.

(c) Tenant fails to vacate the Leased Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

(d) Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

(e) A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

**Section 14.2. Landlord's Remedies for Tenant Default.** Upon the occurrence and during the continuance of an Event of Default, Landlord shall have all remedies available at law or in equity, including, without limitation, termination, injunction and specific performance, subject to the provisions of Article 12 of this Lease. All remedies of Landlord under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

**Section 14.3. Lien For Rent.** In consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien and security interest in all property of Tenant, if any (including, but not limited to, all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Leased Premises and owned by Tenant, together with the proceeds from the disposition of those items) (the "Collateral"), now or hereafter placed in or upon the Leased Premises, as security for payment of all rent and other sums agreed to be paid by Tenant herein. The provisions of this Section 14.3 constitute a security agreement under the Texas Uniform Commercial Code, and Landlord has and may enforce a security interest in the Collateral. Upon the occurrence of an Event of Default under this Lease, the Collateral shall not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder have been paid and discharged. Tenant shall, upon Landlord's request, execute a Financing Statement to perfect this security interest pursuant to the Texas Uniform Commercial Code. Landlord may at its election at any time file a copy of this Lease as a Financing Statement. Landlord, as Secured Party, has all of the rights and remedies afforded a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the landlord's liens and rights provided by law or by the other terms and provisions of this Lease.

**Section 14.4 Rights of Leasehold Mortgagees.** Notwithstanding any other provision of this Article XIV, all rights and remedies of Landlord under this Lease are subject to the provisions of Section 12.7 hereof.

## **ARTICLE XV. REPRESENTATIONS AND WARRANTIES**

**Section 15. Landlord's Representations, Warranties and Special Covenants.** Landlord hereby represents, warrants and covenants as follows:

(a) **Existence.** Landlord is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Local Government Code and Texas Government Code.

(b) **Authority.** Landlord has all requisite power and authority to purchase and own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance

of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) **Binding Obligation.** This Lease is a valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights generally, or (ii) general principles of equity.

(d) **No Defaults.** The execution by Landlord of this Lease and the consummation by Landlord of the transactions contemplated hereby (i) do not, as of the Expansion Effective Date, result in a breach of any of the terms or provisions of or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under any resolution, indenture, agreement, instrument or obligation to which Landlord is a party; and (ii) do not, to the knowledge of Landlord, constitute a violation of any law, order, rule or regulation applicable to Landlord of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) **Consents.** Except as expressly stated otherwise herein, no permission, approval or consent by third parties or any other governmental authorities is required in order for Landlord to enter into this Lease, make the agreements herein contained or perform the obligations of Landlord hereunder other than those which have been obtained.

(f) **Quiet Enjoyment.** From and after the date Landlord delivers possession of the Leased Premises to Tenant, and subject to the terms of this Lease, Tenant shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Landlord or any person or entity acting by, through or under Landlord.

#### **Section 15.2. Tenant's Representations, Warranties and Special Covenants.**

(a) **Existence.** Tenant is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) **Authority.** Tenant has all requisite power and authority to lease the Leased Premises, execute, deliver and perform its obligations under this Lease, operate its business, and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease, and the consummation of the transactions herein contemplated.

(c) **Binding Obligation.** This Lease is a valid and binding obligation of Tenant and is enforceable against Tenant in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights generally, or (ii) general principles of equity.

(d) **No Defaults.** The execution by Tenant of this Lease and the consummation by Tenant of the transactions contemplated hereby (i) do not, as of the Expansion Effective Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under the organizational

documents of Tenant or under any indenture, agreement, instrument or obligation to which Tenant is a party or is bound, and (ii) do not, to the knowledge of Tenant, constitute a violation of any law, order, rule or regulation applicable to Tenant of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

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

(f) **Proceedings.** There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Tenant, threatened or asserted against Tenant affecting Tenant, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

## **ARTICLE XVI.**

### **ADVERTISING AND PROMOTIONS**

**Section 16.1. Advertising.** Each Lease Year during the Term, Tenant shall provide the following to Landlord:

(a) one mention promoting StarCenters (including the Facility) on the jumbotron at each Dallas Stars NHL home game;

(b) one advertisement promoting StarCenters (including the Facility) in each of the following:

(i) Dallas Stars Yearbook;

(ii) Dallas Stars game night program (currently titled "Stars Tonight"); and

(iii) Dallas Stars newsletter to season ticket holders (currently titled "In the Crease") per season;

(c) one 1/2 page advertisement promoting birthday parties or similar activities at StarCenters (including the Expanded Facility) in the Dallas Stars game night program (currently titled "Stars Tonight");

(d) one full-page, full-color advertisement to be used at Landlord's discretion, subject to prior approval by Tenant, in each of the following (Landlord shall provide artwork for such advertisements at its sole cost and expense in accordance with specifications and deadlines established by Tenant in its sole discretion):

(i) Dallas Stars Yearbook; and

(ii) Dallas Stars game night program (currently titled "Stars Tonight");

(e) Promotion of Dr Pepper StarCenters (including the Expanded Facility) on the matrix panels at each Dallas Stars NHL home game;

(f) one (1) promotional read promoting StarCenters (including the Expanded Facility) during each of the following-

(i) radio broadcasts of Dallas Stars NHL regular season and playoff games; and

(ii) television broadcasts of Dallas Stars NHL regular season and playoff games;

(g) reasonable use of the Dallas Stars logos and trademarks to promote the Expanded Facility and for such other purposes as desired by Landlord; provided, however, that any and all uses of such logos and trademarks by Landlord shall be subject to prior written approval by Tenant, in its sole discretion;

(h) reasonable efforts to include Expanded Facility and the Dr. Pepper StarCenters on Dallas Stars social media channels in Tenant's discretion.

**Section 16.2. Promotions.** Each calendar year during the Term, Tenant shall ensure that the following events occur at the Expanded Facility:

(a) One (1) practice by the Dallas Stars, at a date selected by Tenant; and

(b) One (1) appearance by a Dallas Stars player or coach, such player or coach and appearance date to be selected by Tenant.

In addition, upon request by a visiting NHL team as to availability of practice ice, Tenant shall, when such ice is available at the Expanded Facility, notify such visiting team of such availability at the then prevailing rates. Tenant is under no further obligations with respect to such practice ice and makes no representation that any visiting team shall rent such ice or otherwise utilize the Expanded Facility.

**Section 16.3. Landlord's Use of Facility.** Each calendar year during the Term, Landlord shall be entitled to (a) one hundred fifty (150) hours of free ice time at the Facility, based on availability, during Non-Prime-Time Hours, and (b) thirty-six (36) hours of free ice time at the Facility, based on availability, during Prime-Time Hours, in each instance on dates and at times mutually agreed upon by Landlord and Tenant. During March and April of each calendar year during the Term, Landlord and Tenant shall confirm the schedule of dates/times for Landlord's use. As used herein, the term "**Prime-Time Hours**" means 4:00 p.m. through 11:00 p.m., Monday through Friday, and 7:00 a.m. through 11:00 p.m. on Saturdays and Sundays. As used herein, the term "**Non-Prime-Time Hours**" means any hours during which the Facility is open to the public that are not Prime-Time Hours. Landlord shall be required to notify Tenant of its desire to use ice pursuant to this Section 16.3 not later than three (3) business days prior to the date of such desired use. If the desired ice is available upon such notification, such party shall be entitled to use the ice times desired. In the event such ice time is not available, such party shall not have access to the ice as desired and Tenant shall have no liability therefor. Use of one (1) sheet of ice at the Facility for one (1) hour shall constitute one (1) hour of ice usage for the purposes of this Section 16.3. Use of both sheets of ice at the Facility for one (1) hour shall constitute two (2) hours of ice usage for the purposes of this Section 16.3. Landlord's ice time use shall also include the use of party rooms necessary to facilitate the scheduled Landlord event(s). Landlord will be responsible for any non-operational costs incurred when using the ice during such free ice time, including, without limitation, the cost of instructors. The rights granted pursuant to this Section 16.3 are personal to the City of McKinney and are not transferable or assignable to subsequent owners of the Facility or



otherwise. The use of the ice pursuant to this Section 16.3 may only be used by the City of McKinney on a non-revenue-producing basis and cannot be used for any purpose which competes with Tenant's use of the Facility. Tenant agrees to program a minimum amount of public skating/public hockey in its operational schedule (on a fee basis) as follows, per each calendar year:

Public skating	520 hours
Adult Drop in Hockey	364 hours
Youth Drop in Hockey	364 hours

**Section 16.4. Additional Benefits.** In addition, Tenant shall use commercially reasonable efforts to do the following:

(a) at Tenant's sole expense, to promote various community-type programs of Landlord;

(b) to provide occasional donations of Dallas Stars tickets or other merchandise (not more than three (3) donations per year) to local charity auctions being held in the City of McKinney;

(c) to provide tickets at a discount for events at the Facility on a similar basis to the discount provided for citizens at other StarCenters within the Dallas-Fort Worth Metroplex;

(d) to provide fifteen (15) youth hockey league scholarships and ten (10) skating scholarships for skating or figure skating schools (with a value equal to: the then-current youth hockey league registration fee and the free rental of each participant's basic equipment, but shall not include private lessons) to McKinney residents annually, which shall be awarded based upon financial need-based criteria to be mutually agreed between Tenant and Landlord, and

(e) to provide City of McKinney residents at least 3-business-day priority registration for major programs at the Expanded Facility (including, but not limited to, hockey leagues, hockey clinics/camps, and ice skating schools) over non-residents.

**ARTICLE XVII.**  
**MISCELLANEOUS**

**Section 17.1. Rent on Net Return Basis.** It is intended that the rent provided for in this Lease shall be a net return to Landlord as provided herein, without any offsets or deductions whatsoever. Tenant shall pay all operating expenses with respect to the Leased Premises, including, without limitation, insurance premiums, utility charges, maintenance and repair costs, and taxes and assessments, and this Lease shall be construed in accordance with and to effectuate this intention.

**Section 17.2. Holding Over.** If Tenant, or any of Tenant's successors in interest, fails to surrender the Leased Premises, or any part thereof, on the expiration of the Term of this Lease (whether by lapse of time or otherwise), the holding over shall constitute a tenancy from month-to-month terminable at any time by either Landlord or Tenant after 30 days prior written notice to the other, at a monthly rental equal to 200% of the rent paid for the month preceding the expiration of the Term of this Lease.

**Section 17.3. Waiver of Default.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

**Section 17.4. Estoppel Certificates.** Both parties hereto agree that from time to time, on 10 days prior written request, the non-requesting party, at the requesting party's cost, will deliver to the requesting party a statement in writing certifying:

- (a) if the facts permit, that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications);
- (b) the dates to which rent and other charges have been paid;
- (c) that either the requesting party is not in default under any monetary obligation or other material term or provision of this Lease, or if in default the nature thereof in detail in accordance with an exhibit attached thereto;
- (d) that rent has not been paid more than one (1) month in advance; and
- (e) any other information reasonably requested by the requesting party.

**Section 17.5. No Partnership.** It is understood and agreed that in leasing and operating the Leased Premises, Tenant is acting independently and is not acting as agent, partner, joint venturer or employee of Landlord.

**Section 17.6. Survival.** All of the terms, provisions, conditions, agreements and covenants contained in this Lease shall survive the expiration or termination of this Lease with respect to all rights and remedies that have accrued prior to or that accrue on the expiration or termination of this Lease.

**Section 17.7. Exhibits.** All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes.

**Section 17.8. Use of Language.** Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

**Section 17.9. Captions.** The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

**Section 17.10. Successors.** The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective permitted successors and assigns. All rights, powers, privileges, immunities and duties of either party under this Lease, including, but not limited to, any notices required or permitted to be delivered by either party hereunder, may, at such party's option, be exercised or performed by such party's agent or attorney.

**Section 17.11. Severability.** If any provision herein is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

**Section 17.12. Notices.** All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or UPS) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

**LANDLORD'S ADDRESS:** City of McKinney  
Attention: City Manager  
222 N. Tennessee Street  
McKinney, Texas 75070  
Fax:

With a copy to: Brown & Hofmeister, LLP  
Attention: Mark Houser  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
Fax: 214-747-6111

**TENANT'S ADDRESS:** DSE Hockey Centers, L.P.  
Attention: Damon Boettcher  
2601 Avenue of the Stars  
Frisco, Texas 75032  
Fax: 214-387-5503

With a copy to: Attention: Alana C. Newhook, General Counsel

**Section 17.13. Fees or Commissions.** Each party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, or taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated by this Agreement. To the extent permitted by applicable law, each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party from a breach of the representation made by the indemnifying party in this Section 17.13.

**Section 17.14. Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

**Section 17.15. Actions for Nonpayment of Rent and Other Charges.** Tenant shall not for any reason withhold or reduce Tenant's required payments of rentals and other charges provided in this Lease, it being agreed that the obligations of Landlord hereunder are independent of Tenant's obligations, except as may be otherwise expressly provided.

**Section 17.16. Limitation of Landlord's Liability.** Landlord's elected officials and employees shall not be personally liable for any judgments.

**Section 17.17. Delays.** The time for the performance of either Landlord's or Tenant's obligations, as the case may be, relative to the construction, restoration, repair, operation and maintenance of the Improvements as provided for in this Lease shall be extended for the period that such performance is prevented by Unavoidable Delay (as hereinafter defined); provided, however, that the Rent Adjustment Date shall not be extended due to any Unavoidable Delay. "**Unavoidable Delay**" shall mean all failures or delays in a party's performance of its obligations hereunder not within such party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, lawful acts of any governmental agency, save and except the City of McKinney, or authority restricting or curtailing the construction of the Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, provided, that such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay.

**Section 17.18. Short Form Lease.** The parties agree not to place this Lease of record, but each party shall, at the request of the other, execute and acknowledge so that the same may be recorded a short form lease or memorandum of lease, stating that Tenant has accepted possession of the Leased Premises, indicating the Primary Lease Term, but omitting rent and other terms, and an agreement specifying the date of commencement and termination of the Primary Lease Term; provided, however, that the failure to record said short form lease, memorandum of lease or agreement shall not affect or impair the validity and effectiveness of this Lease. The party requesting such recording shall pay all costs, taxes, fees and other expenses in connection with or prerequisite to recording.

**Section 17.19. Governing Law; Provisions Severable.** The laws of the State in which the Leased Premises are situated shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. Venue for any action under this Lease shall be in Collin County, Texas.

**Section 17.20. Interest on Late Payments.** In the event any installment of Base Annual Rental, Adjusted Base Annual Rental or any other sum payable by Tenant to Landlord under the provisions of this Lease is not received by Landlord from Tenant within ten (10) days of the date it is due and payable, Tenant shall pay to Landlord an additional sum equal to five percent (5%) of the amount due. Furthermore, in the event any installment of Base Annual Rental, Adjusted Base Rental or any other sum payable by Tenant to Landlord under the provisions of this Lease is not received within ten (10) days after its due date for any reason whatsoever, it is agreed that the amount thus due shall bear interest at the maximum contractual rate which legally could be charged under the laws of the State in which the Leased Premises are situated in the event of a loan of such rental or other sum to Tenant (but in no event to exceed 1-1/2% per month), such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the aforesaid due date and terminating with the date on which Tenant makes full payment of such amounts to Landlord. Any such interest shall be payable as additional rent hereunder and shall be payable immediately on demand. In addition to any other charges permitted herein, if Tenant makes a payment to Landlord by check and said check is returned to Landlord by Tenant's bank marked NSF (Not Sufficient Funds), "Account Closed," or is dishonored for some similar reason, then an additional charge of \$25.00 per check shall be paid by Tenant to Landlord.

**Section 17.21. No Warranties; Covenants of Performance.** Tenant acknowledges that its decision to lease the Leased Premises is based solely upon Tenant's comprehensive inspection of the

Leased Premises and not upon any warranty or representation of Landlord, or of Landlord's employees, agents, or representatives, with regard thereto. It is expressly stipulated and agreed that none of the obligations to be undertaken hereunder by Landlord shall constitute any form of a warranty, express or implied, all such obligations being contractual covenants of performance. Without limiting the generality of the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE. The parties agree that the herein provision disclaiming warranties, express and implied, are provisions bargained for by the parties in entering into this Lease. The parties further agree that had warranties been undertaken by the Landlord hereunder or were the Landlord to undertake to perform repairs beyond that contemplated hereunder, the economics of this Lease would have been affected and would have required an increase in rent from that payable hereunder.

**Section 17.22. Entire Agreement and Amendments.** This Lease embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**Section 17.23. Bankruptcy or Insolvency.** Landlord and Tenant agree that if Tenant ever becomes the subject of a bankruptcy proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then "adequate protection" of Landlord's interest in the Leased Premises pursuant to the provisions of Sections 361 and 363 or their successor sections of the United States Bankruptcy Code, 11 U.S.C. §101, et seq. (the "**Bankruptcy Code**") prior to the assumption and/or assignment of the Lease by Tenant shall include, but not be limited to all (or any part) of the following:

- (a) The continued payment by Tenant of all rent and other sums due and owing under this Lease; the performance of all other covenants and obligations under this Lease by Tenant;
- (b) The hiring of security guards to protect the Leased Premises if Tenant abandons and/or ceases operations; such obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Leased Premises to the exclusion of Landlord; and
- (c) The furnishing of a security deposit by Tenant in the amount of three times the then-current monthly Base Annual Rental or Adjusted Base Annual Rental payable hereunder.

Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "rent," shall constitute "rent" for the purposes of §502(b)(6) of the Bankruptcy Code. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid and delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust by Tenant for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

**Section 17.24. Landlord's Right to Perform Tenant's Covenants.** If Tenant shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, other than the obligation to pay Base Annual Rental and Adjusted Base Annual Rental, and such failure shall continue without Tenant curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Landlord may, after ten (10) days additional written notice to Tenant specifying such failure (or shorter notice if imminent danger to the safety of persons or of substantial damage to property exists), perform the same for the account and at the expense of Tenant, but Landlord will not be obligated to perform same, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Landlord for curing such default), with interest thereon at the highest rate then allowed by law, shall be payable by Tenant to Landlord on demand, or, if not so paid, shall be treated at Landlord's option as a monetary default hereunder pursuant to and subject to all of the provisions of Section 14.1(a) hereof.

**Section 17.25. Limitations on Landlord's Rights.** For a period of five (5) years after the Rent Adjustment Date, neither Landlord nor any entity related to Landlord shall, without the prior written consent of Tenant, design, develop, construct or otherwise fund, provide economic or tax benefits to, or participate in the design, development, construction or financing of, any new recreational ice skating facility located within a five (5) mile radius of the Leased Premises. Landlord acknowledges that Tenant would suffer irreparable injury as a result of a breach of this Section 17.25 and that Tenant would not have an adequate remedy at law in the event of such breach. Landlord agrees that Tenant may obtain an injunction to enforce this Section 17.25, without the necessity of proving irreparable injury or inadequate remedy at law.

**Section 17.26. Time is of the Essence.** Time is of the essence with respect to each and every provision of this Lease.

**Section 17.27. Exhibits.** As of the date of execution of this Lease, the parties have not agreed upon nor attached Exhibit "A" (Description of Land), Exhibit "A-1" (Description of Expansion Parcel Land), Exhibit "B" (Project Scope Criteria), Exhibit B-1 Construction Contract, Exhibit "C" (Personal Property List), Exhibit "C-1" (Facility Expansion Personal Property List) or Exhibit "D" (Approved Facility Expansion Budget); Exhibit "E" (Parking Agreement); Exhibit "F" (Development). The parties' obligations under this Lease are subject to and conditioned upon reaching an agreement on these exhibits within sixty (60) days after the Expansion Effective Date (the "**Exhibit Deadline**"). Promptly after execution of this Lease, Landlord and Tenant shall use good faith efforts to negotiate and reach mutual agreement of these exhibits, and upon agreement of these exhibits, will execute an amendment to this Lease attaching Exhibits "A", "A-1", "B", "B-1", "C", "C-1", "D", "E" and "F" (the "**Exhibit Amendment**"). If the Exhibit Amendment is not executed and delivered by both Landlord and Tenant on or before the Exhibit Deadline, then either party hereto may terminate this Lease by written notice to the other party, in which event this Lease shall thereafter be of no further force or effect and neither Landlord nor Tenant shall have any further rights or obligations hereunder. If a party hereto has not delivered written notice of termination to the other party within thirty (30) days after the Exhibit Deadline, then the other party hereto may deliver written notice to such party stating exactly the following: "This letter requires your immediate attention. It is the [Landlord's/Tenant's] understanding that the contingency set forth in Section 17.27 of the Lease has either been satisfied or waived, since [Tenant/Landlord] has not exercised the right to terminate the Lease in accordance with such section. Unless [Tenant/Landlord] affirmatively responds to this letter by delivering written notice to [Landlord/Tenant] within five (5) business days after your receipt hereof stating that [Tenant/Landlord] is exercising the termination right set forth in Section 17.27 of the Lease, the contingency will be deemed waived by you and you will have no further right to terminate under Section 17.27." If the party to whom such notice is sent does not respond within such 5-business-day period, then the

contingency will be deemed waived by such party to whom the notice is sent and thereafter neither party will have the right to terminate this Lease in accordance with this Section 17.27.

EXECUTED as of the day, month and year first above written.

**LANDLORD:**

**CITY OF MCKINNEY, TEXAS**

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

Name: Paul G. Grimes

Title: City Manager

**TENANT:**

**DSE HOCKEY CENTERS, L.P.,**

a Delaware limited partnership

By: DSE Hockey Centers GP, Inc.

its general partner

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

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

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



**Exhibit "A"**

Description of Land

The Land is approximately 6.277 acres of land described as Lot 7, Block A of the North Texas Athletic Center Addition in the development known as "Craig Ranch" in McKinney, Collin County, Texas, and as depicted in more detail on the drawing attached hereto.

**[Attach drawing and metes and bounds description.]**

Description of Expansion Parcel Exhibit "A-1" Add

**Exhibit "B"**

Project Scope Criteria

**[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]**

Exhibit "B-1" - Construction Contract - Add

**Exhibit "C"**

Personal Property List

**[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]**

Exhibit "C-1" Facility Expansion Personal Property List - Add

**Exhibit "D"**

Approved Budget

**[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]**

Exhibit D or E- Approved Facility Expansion Budget - Add

**Exhibit "E"**

Parking Agreement

**[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]**

**Exhibit "F"**

The Development

[Attach drawing at Lease execution]