

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as “Lease”) is entered into on this the 5th day of February 2014, by and between **PLANO SPORTS AUTHORITY, INC.**, a duly authorized Texas nonprofit corporation, (hereinafter referred to as “LESSEE” or “PSA”), and the **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation located in Collin County, Texas, (hereinafter referred to as “LESSOR” or “City”) acting by and through its City Manager or his designee.

**I.
GRANT AND TERM**

Section 1.01 GRANT. LESSOR does lease and demise unto LESSEE, and LESSEE leases from LESSOR, a certain area and improvements thereon, either currently existing or to be constructed; however expressly excluding the Improvements defined hereinafter, located within Gabe Nesbit Community Park, McKinney, Collin County, Texas (hereinafter referred to as the “**Leased Premises**”), being more particularly described in the description attached hereto as **Exhibit “A”**. Exhibit A is incorporated by reference herein. LESSEE shall provide LESSOR an “as-built” survey and supplement Exhibit A with the survey upon completion. Survey costs will be split between the parties.

Section 1.02 EFFECTIVE DATE. This Lease shall be and become effective on the date first entered above (the “**Effective Date**”),

Section 1.03 TERM. The Initial Term of this Lease shall be for thirty (30) years, beginning on the Effective Date as described in Section 1.02 above. At the end of the thirty year initial term (hereinafter referred to as the “**Initial Term**”), LESSEE shall have the option to extend this Lease for two (2) additional ten (10) year terms upon the written request of the LESSEE presented to LESSOR not later than sixty (60) days prior to the date of termination of the Initial Term or extended term and, subject to the prior written consent of the LESSOR, which consent shall not be unreasonably withheld or denied so long as (a) LESSEE, during the last five (5) years of the Initial Term of the Lease or any extension thereof, continues to operate the improvements in a manner consistent with the purposes set forth below and so long as the services offered by LESSEE continue to be attractive to the citizens of the City and in the best interest of the citizens of the City, and (b) LESSEE is not in material default of this Lease. The rental rate and balance of the terms of this Lease shall remain the same for the extended term(s), except as provided herein or to reflect changes in the law.

Section 1.04 CONDITION OF LEASED PREMISES. Except as otherwise provided in this Lease, LESSOR has not made and does not make and specifically disclaims any representations, guarantees, promises, covenants, agreements or warranties of any kind or character whatsoever unless otherwise provided for herein, whether express or implied,

concerning or with respect to the nature, quality or condition of the Leased Premises, the suitability of the Leased Premises for uses allowed under this Lease, or merchantability or fitness for a particular purpose. LESSEE acknowledges it will examine the Leased Premises when constructed and accepts such premises in the "AS IS" condition upon issuance of a certificate of occupancy. LESSOR shall not be required to maintain or to make any improvements, repairs or restorations to the Improvements (as defined in Section 3.01). LESSOR's obligation to repair, maintain and restore shall be limited to the improvements (including the parking spaces as provided in Section 6.01(f), and landscaping) on the Leased Premises; but, LESSOR shall never have any obligation for security, safety or to repair, maintain or restore, during the term(s) of this Lease, the Improvements on the Leased Premises, except when LESSOR, its departments or designees are using the Improvements. Except for cleaning and restriping the paved parking spots, which is LESSEE'S sole responsibility, LESSOR shall repair and maintain the paved parking spots as provided in Section 5.01, but LESSEE shall pay half the cost of such repair and maintenance.

Section 1.05 EARLY TERMINATION. Either party shall have the right to terminate this Lease in the event that LESSEE has not commenced construction of the Improvements (defined in Section 3.01) on or prior to the ninth (9th) month following the Effective Date of this Lease. In such regard, LESSEE represents it has secured funding for construction of the Improvements in amounts up to nine million seven hundred thousand and no/100 dollars (\$9,700,000) and up to one million eight hundred ten thousand and no/100 dollars for the construction of the Infrastructure (defined in Section 6.). At such time as LESSEE commences construction of the Improvements it shall thereafter proceed with uninterrupted diligence and reasonable efforts to cause construction to be completed within a reasonable time thereafter, subject to a force majeure event as described in Article XV.

II. CONSIDERATION

Section 2.01 CONSIDERATION DURING THE TERM. Consideration for the term of this Lease shall be **TEN DOLLARS (\$10.00)** per year and other good and valuable consideration, including but not limited to services to McKinney citizens, and citizens of surrounding municipalities by LESSEE, and the use of the facilities by the LESSOR as set forth in Section 3.03 below. All monetary amounts due shall be payable to the City of McKinney, Attention: City Manager's Office, 222 N. Tennessee, McKinney, Collin County, Texas 75069 and shall be due on the Effective Date of this Lease and annually each year thereafter on the anniversary of the Effective Date.

III. USAGE OF THE LEASED PREMISES

Section 3.01 USE OF LEASED PREMISES. It is the intent of the parties that this Lease shall be to allow LESSEE to construct, own, maintain and operate a multi-purpose indoor athletic facility, including offices, and other multi-use indoor spaces (referred to herein as the "**Improvements**"). The Leased Premises and the Improvements shall be used only for the following purposes:

- (a) To provide year round, supervised recreational, competitive, educational and instructional athletic activities and tournaments for all interested children and adults who voluntarily elect to participate in the programs offered by LESSEE, and
- (b) To promote charitable and educational athletic activities and to promote community awareness for all participants regardless of race, age, color, religion, sex, disability, ancestry, national origin or place of birth by sponsorship of various programs adopted or offered by LESSEE, and
- (c) To provide administrative support for the organizations utilizing the facility to conduct activities.

In addition, because the Leased Premises are located on designated park property, LESSEE agrees to use the Leased Premises solely for uses consistent with or in furtherance of public use and enjoyment of the park and in a manner which will not interfere with the use of the park for park purposes. The Leased Premises shall also be used in accordance with the City of McKinney Code of Ordinances, as amended.

LESSOR and LESSEE shall have an annual planning meeting (hereinafter referred to as the "Annual Planning Meeting") to review programs and activities such as events, tournaments and leagues conducted in, or in the immediate vicinity of, the Leased Premises. This shall include, but not be limited to, Gabe Nesbit Community Park and the Improvements. LESSOR and LESSEE, through the respective offices of the City Manager or his designee and PSA's General Manager (the "**General Manager**"), shall coordinate uses to minimize conflict in the area, however LESSOR shall have sole discretion regarding the use, maintenance and control of Gabe Nesbit Community Park.

LESSEE shall operate the Improvements within the hours set forth in the City of McKinney ordinance governing park sites (which hours are currently from ____ to ____), as amended (hereinafter referred to as the "**Park Ordinance**"). Hours of operation may be extended by permit by the City Manager or his designee. PSA may not start any new games after park closing hours but may complete any games started.

Section 3.02 STATEMENT OF PUBLIC BENEFIT AND PARK PURPOSES. A primary purpose of this Lease is to provide athletic services to the McKinney community. LESSEE agrees at LESSOR's request to provide to LESSOR during the term of this lease, and during any and all of its subsequent extensions, periodic documentary evidence of the public benefit and park purposes of its services or other activities. It is mutually agreed by both LESSEE and LESSOR that the required documentation of public benefit and park purposes will be in the form of an annual written report prepared by LESSEE, if requested by LESSOR, and submitted to the City Manager's Office to be made available for public record. LESSEE agrees to submit said report, if requested by LESSOR, annually to LESSOR in person or by U.S. mail on or before the anniversary of the initial Effective Date of the Lease. LESSEE's annual reports will contain qualitative and/or quantitative information about the programs, services, or other activities of the organization on the Leased Premises; non-confidential information about the clients, customers, members or other users of the LESSEE'S services (or other activities) on the

Leased Premises; and a statement of the revenues and support generated and expenses incurred by the LESSEE during its most recently completed fiscal year on the Leased Premises, including LESSEE's most recent non-profit IRS filing and tax return.

Section 3.03 LIMITED USE OF THE IMPROVEMENTS BY THE LESSOR.

LESSEE will provide meeting room space to all LESSOR's boards or departments, appointed and ad hoc committees, commissions, departmental training programs (fire, police, etc.), and special events planning sessions. The Improvements will be available for the foregoing purposes, subject to availability and prior approval from the General Manager of the LESSEE, on a year-round basis (excluding major holidays) during LESSEE's normal operating hours, or as otherwise scheduled by mutual agreement during non-operating hours, on a rent-free basis.

Subject to the other provisions of this Section 3.03, the "McKinney Parks Recreation and Open Space Department" ("PROS") shall have first priority of surplus space in the Improvements for programs on a rent free basis, subject to availability and prior approval from the General Manager of the LESSEE, or his designee. It is the intent of this section for the LESSOR and/or LESSEE to provide appropriate sports and leisure programs for the community without conflict or competition between programs and in accordance with the needs and best interest of the community. Youth activities shall continue to be a priority; however, programs needed to serve adults for the community shall also be the coordinated interest and concern of both LESSOR and LESSEE.

Reasonable storage space, to the extent available and not used for LESSEE's ongoing programs and activities, will be provided for the above programs to the LESSOR at no cost to the LESSOR. To the extent that LESSEE is able to offer additional storage space to satisfy LESSOR's program storage needs, the terms of such arrangement will be negotiated between LESSOR and LESSEE and coordinated through the respective offices of the City Manager and PSA's General Manager.

All arrangements for LESSOR's use of space in the Improvements as contemplated above will be coordinated through LESSOR's appropriate City staff members and the General Manager of LESSEE. Space for meeting purposes, court space, and any other public space in the Improvements may be reserved by LESSOR, PROS, or other parties unaffiliated with LESSOR on a space available basis, with the LESSEE's functions to take priority over all usage by PROS, LESSOR or its designees. To the extent that PROS, LESSOR or its designees desire to use space in the Improvements as aforesaid, the parties shall agree to the usage. LESSOR shall notify LESSEE in writing of its desired usage no later than thirty (30) days prior to the date of the intended usage.

All usage of LESSEE's Improvements by LESSOR or its departments shall be subject to reasonable restrictions and requirements dealing with adequate registration of the programs and its participants, including the execution of liability waivers, certificates of insurance or risk pool coverage with Endorsement EL217, and the completion of required information forms.

In no event shall LESSEE be obligated to provide any personnel or incur any additional material cost or expense with respect to usage of the Improvements by LESSOR, LESSOR's

designee or departments. LESSOR shall provide any additional personnel required for LESSOR's use of the Improvements.

Section 3.04 CONDUCT OF ACTIVITIES. LESSEE shall conduct its services and activities in a substantial, business-like, and good faith manner for the benefit of the public, and shall not take any actions to unreasonably annoy, disturb, endanger or be offensive to others, including programs held outside of the Improvements.

Section 3.05 INGRESS AND EGRESS. LESSEE shall have the right to obtain ingress and egress by means of all existing public or internal park roadways, to be used in common with others that have rights of passage thereon. LESSOR shall provide any additional roadway(s) for access to the Improvements which are shown on Exhibit B. Except as otherwise provided in this LEASE, LESSEE and LESSOR hereby agree that LESSOR is under no obligation to construct any roadways or driveways, to provide ingress or egress to LESSEE.

Section 3.06 CONCESSION RIGHTS. LESSEE shall have the right to provide or to contract with third parties for all concessions, goods and services, subject to approval by the City Manager's Office, which approval shall not be unreasonably withheld or delayed. Food and beverage concessions sold inside the facility shall not require City Manager approval; however any such service shall meet all applicable laws and ordinances applicable to food and beverage sales, including the prohibition of alcohol sales in public parks. Any goods and services, including a pro shop, provided or operated by third party vendors must be offered at prices reasonable and comparable to prices being paid in the Dallas Metroplex and shall only be provided during LESSEE sponsored activities and during normal business hours.

Section 3.07 SIGNAGE. LESSEE shall comply with all requirements of the City of McKinney sign ordinance, as amended. The name of the improvement shall be "PSA McKinney". Unless otherwise agreed in writing by the parties, any permanent improvement to be located on the exterior of the Leased Premises may only bear the name and/or logo of PSA, along with "McKinney". The advertising of major corporate sponsors located on the exterior of the Leased Premises is prohibited without the prior written approval of the LESSOR. Improvements shall not have any advertising with a name or word containing, depicting or related to any alcohol, tobacco or sexual related products. The identification of corporate sponsors is permitted inside on the interior walls of the Improvements, but ten percent (10%) of the sponsorship wall space must be reserved by LESSEE to sell to McKinney businesses. All revenue from sale of corporate sponsors belongs to the LESSEE.

IV. UTILITIES

Section 4.01 UTILITIES. Except as otherwise provided in this Lease, LESSEE agrees to secure and maintain and timely pay for all utilities required for the operation of the Improvements, including but not limited to the telephone, gas (if desired), electricity, and water used in or on the Improvements and for the removal of trash or debris there from. Except as otherwise provided in this Lease, LESSOR shall in no way be responsible for utilities or payment of utilities for the Improvements. LESSOR, through reimbursement to LESSEE of its contractor, shall be responsible for providing within 9 months after the Effective Date for electricity,

telephone, gas, sewer, drainage and water connections to within five (5) feet of the Improvements; said connections shall in all respects conform to the regulations and ordinances of the City of McKinney and the State of Texas, as amended. All the utilities to the Leased Premises and Improvements shall be installed underground. LESSOR agrees to provide and pay for the costs of all utilities to the Leased Premises (other than to the Improvements, except as herein provided), including electricity for lighting the parking lots on the Leased Premises and for the costs of water to irrigate the landscaping on the Leased Premises and parking lots.

V.
INSPECTIONS, REPAIRS AND ALTERATIONS

Section 5.01 REPAIRS BY LESSEE. LESSEE agrees, at its own expense, to timely maintain the Improvements in a sanitary, safe and clean condition during the Initial Term of this Lease and any extension thereof. LESSEE shall be solely responsible for, and shall provide at its own expense, janitorial services for the Improvements and maintain in a good operating condition and repair the Improvements, including, but not limited to, the roof, outer walls, all electrical, plumbing and mechanical systems, and the interior finish of any permanent improvements to the Improvements. LESSEE agrees that it will be responsible for cleaning and restriping all parking spaces on the Leased Premises, and LESSOR shall be responsible for purchasing and installing parking lot lighting posts, fixtures and bulbs. Resurfacing or repair of the parking spaces shall be a cost borne equally between the parties. Upon the expiration of the Initial Term of the Lease, or any extension thereof, the Leased Premises and Improvements, and any other improvements on the Leased Premises, shall be surrendered by LESSEE to LESSOR in good condition, normal wear and tear excepted and free and clear of any liens or encumbrances.

Section 5.02 LESSOR'S RIGHT TO INSPECT AND OPTION TO MAKE REPAIRS. LESSEE agrees that LESSOR may enter upon the Leased Premises and Improvements at any time during the Initial Term of this Lease including any extension thereof during business hours and upon reasonable prior notice for the purpose of inspection. LESSOR shall have the right and privilege, through its representative, agents and officials, to make inspections of the Leased Premises and Improvements and thereafter to make recommendations to LESSEE of any repairs that must be made in accordance with the provisions of Section 5.01 above. However, LESSOR has no duty or obligation to inspect the Improvements. LESSEE shall report to LESSOR on a monthly basis repairs to be made and when such repairs are scheduled to be made. LESSEE agrees and covenants that, unless unreasonable due to ongoing use of the relevant portion of Improvements, it shall attempt to commence repairs within fifteen (15) days from the date that such recommendations are made and shall commence repairs no later than forty-five (45) days from the date that such recommendations are made, unless LESSEE disputes, in good faith, whether or not repairs are required, or the repair work would require that the Improvements be shut down in its entirety, then such repairs will be made as soon as reasonably possible, but not later than at the next Repair Window. A "Repair Window" is (i) end of May, (ii) last half of November or (iii) the March break. Any safety problems will be neutralized and/or abated so as not to pose a health or safety issue for use of the Improvements until the repair can be made, subject to applicable code provisions as to occupancy during such periods. Such repairs shall be made in an expeditious and conscientious manner. Upon LESSOR'S recommendation of repair, LESSEE shall notify LESSOR within

fifteen (15) days providing when repairs will be commenced. In the event that LESSEE shall fail to commence such recommended and undisputed repairs within the time provided, it is understood and agreed that LESSOR may, within its discretion, make such repairs as it deems necessary for and on behalf of LESSEE; and in such event, the cost of such repairs shall be paid by LESSEE to LESSOR within thirty (30) days following its receipt of the billing for said repairs. LESSOR has no duty or obligation to make repairs to the Improvements.

Section 5.03 DAMAGES. Should LESSOR undertake any repairs described in Section 5.02, LESSEE hereby waives any claim for damages, consequential or otherwise, as a result there from, except for claims and damages arising from the LESSOR's sole negligence. The foregoing shall in no way affect or alter the primary obligations of the LESSEE as set forth in this Lease, and shall not impose or be construed to impose upon LESSOR any additional obligations to maintain the Leased Premises, unless specifically stated otherwise herein.

Section 5.04 ALTERATION AND REMODELING. LESSEE shall have the right to make such decorating and non-structural changes as it desires on the interior of any Improvements to the Leased Premises, including changes to walls, floors, or ceilings without the prior written consent of LESSOR, so long as the design of such changes to any Improvements is compatible with the allowed uses described in this Agreement. Any exterior or structural changes shall require the prior written consent of LESSOR. LESSEE may remove, at its own expense, any non-permanent fixtures or furniture placed in the Leased Premises by LESSEE, but LESSEE agrees that it will, at its own expense, promptly repair any and all damage done by the removal of any non-permanent fixtures or furniture from the Leased Premises. If any alterations and/or additions to the Improvements are mandated by legal requirements related to accessibility by persons with disabilities, LESSEE is responsible for making them at its sole cost and expense.

Section 5.05 COMPLIANCE WITH GOVERNMENTAL REGULATIONS. LESSEE shall fully comply with all of the ordinances of the City of McKinney applicable to the Leased Premises and any Improvements on the Leased Premises, and in connection therewith promptly fulfill all orders and requirements applicable to LESSEE's occupation of and operation upon the Leased Premises and Improvements as imposed by the Code Enforcement, Health, Police, Fire and other departments for the correction, prevention and abatement of health and safety code violations, nuisances or hazards which may exist by reason of the condition of the Leased Premises and Improvements. LESSEE covenants also that it will fully comply with all city, state and federal laws and regulations in its use and occupation of the Leased Premises and Improvements. LESSEE shall not be required to pay to LESSOR any impact, permit or similar fees for the Improvements.

Section 5.06 DISPUTE RESOLUTION. In the event of a dispute under Section 5.02 above, the LESSOR and LESSEE will, within thirty (30) days of written request by either party, appoint a mutually agreeable licensed architect to make a non-binding determination as to the issue in dispute. In the event the LESSOR and LESSEE cannot mutually agree on a licensed architect, each will select a licensed architect who will together agree upon a third licensed architect. This panel of three architects will, by at least two-thirds (2/3) vote, make a non-binding decision as to the dispute. None of the architects shall be agents, officers or employees of either the LESSOR or LESSEE. Any costs or fees incurred under this section shall be shared equally by both parties.

VI.
IMPROVEMENTS AND INFRASTRUCTURE

Section 6.01 CONSTRUCTION OF IMPROVEMENTS AND INFRASTRUCTURE. LESSEE shall commence construction of the Improvements on the Leased Premises and the Infrastructure, as generally described on **Exhibit “B”** and **“B-1”** within the nine (9) months following the Effective Date of this Lease, subject to early termination as provided in Section 1.05. The **“Infrastructure”** shall include those items described below which are generally perimeter to the Improvements and which are required to support the Improvements and which are to be funded as a reimbursement to Lessee, and which are fully listed on Exhibit B-1. The Improvements and Infrastructure shall be designed, constructed and completed at LESSEE’s expense, subject to the reimbursement of Infrastructure costs as described above, within the following parameters within a reasonable period of time thereafter, subject to a force majeure event as described in Article XV:

- (a) Plans and specifications for the Improvements and Infrastructure shall be prepared by Glenn Engineering and Kimley-Horn & Associates or such other architects or engineers approved by LESSOR, such approval not to be unreasonably withheld or delayed, and shall comply with all applicable federal, state and municipal laws, ordinances, rules, regulations and requirements, as amended;
- (b) Plans and specifications for the Improvements and Infrastructure shall be submitted within 20 days of the Effective Date to the LESSOR, through the City Manager’s Office (hereinafter referred to as the **“City Manager”**) or his designee, and no construction shall begin on the Improvements until said plans and specifications are approved by the appropriate City department or the governing body, as applicable, and such approval shall not be unreasonably withheld or delayed so long as the design and appearance of the Improvements are compliant with the architectural standards of the City and are otherwise compatible with the park and surrounding environment in which the Leased Premises are located and Exhibit B, and comply with all applicable federal, state and municipal laws, ordinances, rules, regulations and requirements, as amended;
- (c) Prior to commencement of construction, LESSEE shall furnish to LESSOR evidence that it has secured funding of a portion of the budgeted construction costs for the Improvements and Infrastructure. Such funding of the construction costs shall be provided by a loan from MCDC to LESSEE in the amount of \$3.2 million at 0% interest for the first three years of a five-year term. Interest in the fourth and fifth years shall accrue at the same rate charged by LegacyTexas Bank on its long term loan to Lessee for up to \$6.5 million for construction of the Improvements. LegacyTexas Bank shall also provide an interim construction loan facility whereby the Infrastructure costs can be funded prior to reimbursement by the Lessor. All principal and accrued interest on the MCDC loan shall be payable at the end of the fifth year, but Lessee may prepay any time without penalty. The balance of the funding requirements may be provided by bank financing from LegacyTexas Bank encumbering LESSEE’S leasehold estate and to the extent received, commitments for future funding of contributions by third parties in

respect to the funding of the construction costs. MCDC agrees to fund its loan of up to \$3.2 million only after LegacyTexas Bank funds its loan in the full amount of \$6.5 million. LESSEE agrees that its budget for the Improvements will be approximately \$9.5 million and that its budget for the Infrastructure will be approximately \$1.81MM, and agrees to provide to LESSOR a preliminary budget setting forth estimated construction costs for the Improvements, the Infrastructure and the Leased Premises, no later than sixty (60) days after the Effective Date of this Lease, which will be a supplement to, and attach hereto as **Exhibit “C”** and be made a part hereof for all purposes. The amounts set forth therein are preliminary in nature; however, LESSEE does not anticipate that the amounts allocated on a line item basis for grounds, building and equipment will be reduced by more than five percent (5%) of the amount shown.

- (d) LESSEE shall, prior to issuance of a certificate of occupancy of the Improvements, construct approximately 330 parking spaces on the Leased Premises. Attached hereto as **Exhibit “D”** and made a part hereof for all purposes is a site plan depicting the parking spaces. All parking surfaces on the Leased Premises shall be constructed of reinforced concrete and shall be constructed in accordance with the McKinney Code of Ordinances.
- (e) LESSOR shall construct additional parking spaces during the construction phase of the Natatorium, which spaces shall supplement those provided by LESSEE, and install the parking lot lighting poles, fixtures and bulbs in all parking lots, and thereafter maintain the lighting poles, fixtures and bulbs.
- (f) LESSOR shall, install prior to issuance of a certificate of occupancy of the Improvements, and then irrigate and maintain, at its cost and expense, landscaping around the Improvements, parking lots and Leased Premises.
- (g) Any other parking, circulation, and related site Improvements shall be constructed by LESSEE according to City of McKinney codes and standards.
- (h) LESSEE will design and construct area lighting for the Improvements so that the external lighting does not shine toward homes.
- (i) LESSEE shall, at its expense, make arrangements for the connection of whatever necessary utilities it may desire or need in connection with the use of Improvements or additions made by the LESSEE to the Improvements. LESSEE acknowledges that LESSOR is not responsible for paying for utility service to Improvements. Any construction performed by LESSEE within any utility easement area must be with permission and in accordance with City of McKinney criteria for design and construction in such easement area. Any and all connections to electricity, telephone, gas, water and sewer lines, and the providing for storm drainage, must occur at the utility connection points to be provided by LESSOR, through reimbursement to LESSEE after LESSEE’s contractor has completed construction, within five (5) feet of the Improvements, unless otherwise agreed to in writing by LESSEE. LESSOR will grant new easements as

required for the Improvements contemplated by this Lease, subject to any local, state, and federal requirements to grant such easements. All costs incurred with any extension and/or relocation of existing utility lines or facilities or installation of additional utility lines or facilities as part of the Infrastructure shall be entirely at LESSOR's expense and paid as a reimbursement to Lessee whether on or off the Leased Premises.

- (j) Prior to commencement of construction of the Improvements and Infrastructure, LESSEE shall require its general contractor to furnish a performance bond and a payment bond, each in a form acceptable to the LESSOR, through corporate surety companies authorized to do business in the State of Texas and approved by the LESSOR, which bonds shall be equal to one hundred percent (100%) of the costs to construct the Project, both Improvements and Infrastructure, as provided in the construction contract. LESSEE shall require a rider for each bond so that LESSOR shall be named as an additional obligee as LESSOR'S interests may appear pursuant to the Lease. These bonds shall remain in effect until the Improvements have been fully completed and accepted in accordance with the terms of the construction contract. The purpose of such bonds is to insure that construction of the Improvements is completed and that all bills for material and labor are paid in full upon completion of construction with no cost to the LESSOR and shall contain the form as is customarily required by LESSOR. If the Improvements are not constructed in accordance with any construction plans or contract, LESSOR may, with LESSEE'S consent, in addition to other available remedies, at its option take such action to enforce any breach, warranty or representation, and LESSEE shall provide any necessary conditional assignment of the construction contract incident thereto.

- (k) LESSOR shall reimburse LESSEE for Infrastructure costs in accordance with the provisions of this paragraph. Prior to commencement of construction of the Infrastructure, LESSEE shall submit to LESSOR a schedule of values for all components and line items listed on Exhibit B-1. Upon LESSOR's approval of such schedule and its satisfaction of any additional requirements of any subsection of Section 6.01, LESSEE's professional consultants and contractors may commence work and construction of the Infrastructure. LESSEE's contractors and professional consultants shall simultaneously submit all initial draw requests or invoices to LESSEE and LESSOR for any completed construction of the Infrastructure. LESSOR shall have ten (10) days to review the request and consult with LESSEE's professional consultants regarding the work completed, and thereafter LESSOR shall have five (5) days to make payment for only those amounts LESSOR determines, in its sole discretion, is completed for Infrastructure shown on Exhibit B-1. LESSEE shall not be relieved from any payments to contractors or professional consultants based on any dispute or disagreement in the amount of payment which LESSOR will reimburse. LESSOR and LESSEE will continuously work to resolve any disagreements over the amount of Infrastructure which is subject of any reimbursement, and the parties shall reconcile any disputes on the subsequent draw request received. LESSOR shall only be obligated to pay LESSEE, or any entity to which payment is

directed, included LegacyTexas Bank, it being understood that LESSOR has no obligation to LESSEE's contractors or professional consultants. LESSOR's obligation for reimbursement of Infrastructure shall be expressly limited to \$1.81MM, as further described in Section 6.02 below.

- (1) LESSEE shall require the following language in all construction contracts for any improvements:

“INDEMNIFICATION: CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF MCKINNEY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY “THE CITY OF MCKINNEY”), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT AND CONSTRUCTION OF THE IMPROVEMENTS, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF MCKINNEY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY OF MCKINNEY FROM THE CONSEQUENCES OF THE CITY OF MCKINNEY'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS. IT IS EXPRESSLY AGREED AND STIPULATED THAT THIS INDEMNIFICATION CLAUSE IS BINDING, FULLY ENFORCEABLE, AND MEETS ALL REQUIREMENTS OF TEXAS

LAW INCLUDING EXPRESS NEGLIGENCE AND CONSPICUOUSNESS ISSUES.”

(m) LESSEE shall require the contractors who are to construct the Improvements and Infrastructure to furnish insurance in such amounts as specified below and include in all construction contracts for the Improvements and Infrastructure the following language:

(1) Prior to commencement of any activity permitted on City of McKinney’s property, each contractor shall purchase and maintain during the term of this Lease, at its own expense, hereinafter stipulated minimum insurance satisfactory to the City of McKinney. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Lease shall be written on an “occurrence” basis.

Workers’ Compensation, statutory, as required by law and Employer’s Liability Insurance of not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for each accident, **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for disease for each employee, **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for disease as policy limit.

(2) Commercial General Liability Insurance, including Independent Contractor’s Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Lease, fully insuring contractor’s liability for injury to or death of employees of the City of McKinney and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of **ONE MILLION DOLLARS (\$1,000,000.00)**.

(3) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of **ONE MILLION DOLLARS (\$1,000,000.00)**.

(4) “Umbrella” Excess Liability Insurance, insuring the contractor for an amount not less than **FOUR MILLION DOLLARS (\$4,000,000.00)** combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein above.

(5) Builder’s Risk. The LESSEE shall purchase a completed value builder’s risk policy for the duration of this project.

(6) It is agreed by all parties to this Lease that the LESSEE shall require the contractors who obtain and provide insurance required under this Lease to endorse each policy as follows:

- (a) Be written with the City of McKinney as an additional insured on all applicable policies.
- (b) Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of McKinney, its officials, officers, agents and employees, in both their public and private capacities, and provide that each policy is primary and non-contributory with the LESSORS' insurance, it being the intention that the required insurance policies shall protect all parties to the Lease and be the primary coverage for all losses covered by the policies.
- (c) Provide a Certificate of Insurance evidencing the required coverages to:

City of McKinney
Attention: City Manager
222 N. Tennessee
McKinney, Texas 75069

The Certificate of Insurance required under this provision shall be provided to the LESSOR before commencement of any construction by LESSEE's contractors and subcontractors and proof of the required insurance under this section shall be a condition of any issuance of building permits by the City of McKinney. Any permits erroneously issued without proof of insurance will be immediately revoked.

Section 6.02 COST OF IMPROVEMENTS AND INFRASTRUCTURE. The complete cost of developing all necessary plans and specification and the cost of the construction and maintenance of the Improvements and the Leased Premises shall be borne solely by LESSEE and shall be at no expense to LESSOR whatsoever. The complete cost of developing all necessary plans and specification and the cost of the construction and maintenance of the Infrastructure shall be borne by LESSOR up to a maximum reimbursed cost of \$1.81MM, and any additional cost or expense for Infrastructure over \$1.81MM shall be borne by LESSEE.

Section 6.03 OWNERSHIP OF IMPROVEMENTS DURING LEASE TERM. It is expressly agreed and understood that the Improvements constructed upon the Leased Premises during the Initial Term, or those identified Improvements, constructed by mutual agreement of the parties during any subsequent term, are owned by LESSEE until the expiration or sooner termination of this Lease. After any termination, the Improvements shall be owned by the LESSOR; however the Leased Premises shall be continuously owned by the LESSOR throughout the term and any renewal term.

Section 6.04 LIENS and INDEMNIFICATION. LESSEE shall timely discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of LESSEE as such obligations

mature. LESSEE expressly agrees that it will neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the Leased Premises, Improvements, LESSOR's property or upon any improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the Leased Premises, Improvements, Infrastructure, LESSOR's property or improvements thereon, and LESSEE will discharge any such lien within thirty (30) days after notice of filing thereof, LESSEE SHALL RELEASE, DEFEND AND HOLD HARMLESS THE LESSOR FROM ANY AND ALL SUITS, ACTIONS, LOSSES AND DAMAGES ARISING FROM ANY LIEN FILED AGAINST THE LEASED PREMISES, OR ANY IMPROVEMENTS THEREON AS A RESULT OF LESSEE'S ACTIONS AND/OR INACTIONS. IT IS EXPRESSLY AGREED AND STIPULATED THAT THIS INDEMNIFICATION CLAUSE IS BINDING, FULLY ENFORCEABLE, AND MEETS ALL REQUIREMENTS OF TEXAS LAW INCLUDING CONSPICUOUSNESS ISSUES.

Section 6.05 MISCELLANEOUS.

- (a) LESSEE agrees that all work to be performed by it or its contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, as amended, and such work shall be subject to LESSOR'S inspection during the performance thereof and after it is completed. However, the LESSOR has no duty to inspect.
- (b) LESSEE shall timely repair any damage to any offsite improvements and/or LESSOR'S property caused by or resulting from any activities or construction by LESSEE, or LESSEE's agents, employees, contractors and subcontractors.

Section 6.06 ADDITIONAL IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS. LESSEE shall have the right to construct additional or replacement improvements on the Leased Premises only with the prior written consent of LESSOR, which consent shall not be unreasonably withheld by LESSOR so long as the additional or replacement improvements are constructed in accordance with the requirements of and the process described in this Article VI for the construction of the like kind and nature as the Improvements. Subject to Article V above, LESSEE shall have the right to alter the Improvements in connection with the repair and maintenance thereof, without the prior written consent of LESSOR, so long as such alterations do not involve structural modifications to the roof, foundation or exterior of the Improvements.

**VII.
INSURANCE AND INDEMNITY**

Section 7.01 INDEMNITY.

- (a) LESSEE DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS LESSOR AND ALL OF ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY,

CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEY'S FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE LEASED PREMISES OR IMPROVEMENTS EVEN IF ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY THE LESSEE TO INDEMNIFY AND PROTECT THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM THE CONSEQUENCES OF THE CITY OF MCKINNEY'S AND ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES SOLE NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE, IN ANY AND ALL CLAIMS. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY SHALL NOT APPLY TO CLAIMS ARISING OUT OF (1) TIMES WHEN THE LESSOR, ITS DEPARTMENTS OR DESIGNEES ARE USING THE IMPROVEMENTS (INDOOR FACILITY), (2) THE PARKING LOT LIGHTING, (3) THE HIKE AND BIKE TRAIL, (4) THE LANDSCAPING, AND (5) THE PARKING LOT AS TO CLAIMS OF PERSONS NOT PARTICIPATING IN LESSEE'S PROGRAMS AT THE TIME OF SUCH CLAIM (ITEMS (1) THROUGH (5) ARE TOGETHER CALLED THE "LESSOR'S RESPONSIBILITIES").

- (b) IN ADDITION, LESSEE DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND ALL OF ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEY'S FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY LESSEE EMPLOYEE OR VOLUNTEER OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OF ANY LESSEE EMPLOYEE OR VOLUNTEER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS LEASE. THIS INDEMNIFICATION BY LESSEE SHALL INCLUDE, BUT NOT BE LIMITED TO, LIABILITY ARISING FROM WORKER'S COMPENSATION AND GENERAL LIABILITY CLAIMS.
- (c) LESSEE EXPRESSLY AGREES TO DEFEND LESSOR AGAINST ANY AND ALL CLAIMS DESCRIBED IN SECTION 7.01(a) or (b) ARISING OUT OF THIS LEASE, IMPROVEMENTS, OR LEASED PREMISES. IN THE EVENT THE CITY, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES ARE A NAMED PARTY TO A SUIT ARISING OUT OF THE SUBJECT MATTER OF THIS LEASE, THE CITY SHALL HAVE THE RIGHT OF THE SELECTION

OF DEFENSE COUNSEL TO BE RETAINED BY LESSEE IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF LESSEE'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF LESSEE'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. LESSEE SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF LESSEE FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND LESSEE SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. IT IS EXPRESSLY AGREED AND STIPULATED THAT THE INDEMNIFICATION CLAUSES IN THIS LEASE ARE BINDING, FULLY ENFORCEABLE, AND MEET ALL REQUIREMENTS OF TEXAS LAW INCLUDING EXPRESS NEGLIGENCE AND CONSPICUOUSNESS ISSUES.

- (d) ONLY TO THE EXTENT PERMITTED BY LAW, LESSOR DOES HEREBY AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS LESSEE AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEY'S FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE LESSOR'S RESPONSIBILITIES, EVEN IF ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE LESSEE, ITS OFFICERS, AGENTS AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY THE LESSOR TO INDEMNIFY AND PROTECT THE LESSEE, ITS OFFICERS, AGENTS AND EMPLOYEES FROM THE CONSEQUENCES OF THE LESSEE'S AND ITS OFFICERS, AGENTS AND EMPLOYEES OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE, IN ANY AND ALL CLAIMS INVOLVING LESSOR'S RESPONSIBILITIES. NEITHER LESSOR NOR LESSOR'S COUNSEL GIVE ANY OPINION AS TO THE ENFORCEABILITY OF THIS INDEMNITY.

Section 7.02 LESSEE'S INSURANCE. Prior to the commencement of any activity permitted on the Leased Premises, LESSEE shall purchase and maintain during the term of this Lease and any extensions thereof, at its own expense, the hereinafter stipulated additional minimum insurance satisfactory to the LESSOR.

- (a) Workers' Compensation: Statutory, as required by law, and Employer's Liability Insurance of not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for each accident, **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for disease for each employee **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for disease as policy limit.
- (b) General Liability: **FIVE MILLION DOLLARS (\$5,000,000.00)** per occurrence for bodily injury, including death, personal injury and property damage, and fully insuring and covering the indemnification provisions of this Lease. The policy shall have no standard coverages removed by exclusion. The policy shall include coverage for premises operation, independent contractors, products/completed operations, personal and advertising injury, contractual liability, fire legal liability and medical payments expense. A **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** limit for fire legal liability is required.
- (c) Property, Fire and Extended Coverage Insurance covering the Improvements presently existing on, or hereafter constructed on the Leased Premises or off the Leased Premises in accordance with this Lease, against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightning, rain, sleet, snow, sprinkler leakage, riots, civil commotion, vandalism, malicious mischief and aircraft/vehicle damage. This type of insurance shall be carried with a company or companies satisfactory to LESSOR and in an amount of coverage not less than replacement cost of the Improvements and the policy or policies of insurance shall be issued to the LESSEE and LESSOR, as their interests may appear.
- (d) The City of McKinney shall be named as an additional insured on all policies.
- (e) The insurance policies shall be written on an "occurrence" basis.
- (f) The insurance policies shall waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against LESSOR, its officials, officers, agents and employees, in both their public and private capacities, and provide that each policy is primary and non-contributory with the LESSOR'S insurance, except as to the LESSOR'S Responsibilities, it being the intention that the required insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies.
- (g) Certificates of Insurance and endorsements effecting coverage required by this clause shall be forwarded to:

City of McKinney
Attention: City Manager
222 N. Tennessee
McKinney, Texas 75069

- (h) LESSEE shall be responsible for the contents of the Improvements (other than items stored by LESSOR) and shall procure insurance for such in an amount of coverage not less than replacement cost of such contents.
- (i) LESSOR reserves the right to review the insurance requirements of this section during the Initial Term of the Lease, and any extensions thereof, and to adjust insurance coverages and their limits when deemed necessary by LESSOR based upon changes in statutory law, court decisions or the claims history of the industry as well as of LESSEE. LESSOR agrees that in the event such adjustment is required, LESSEE shall be given sixty (60) days to obtain such coverage.

Section 7.03 LESSOR'S INSURANCE. LESSOR shall have primary responsibility for, and LESSEE shall have no responsibility for, security, safety and maintenance of the LESSOR's Responsibilities.

Prior to the commencement of any activity permitted on the Leased Premises, LESSOR shall purchase and maintain during the term of this Lease and any extensions thereof, at its own expense, the hereinafter stipulated minimum coverage or insurance satisfactory to the LESSEE insuring for claims arising from any of the LESSOR's Responsibilities.

- (a) General Liability: **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence for bodily injury, including death, personal injury and property damage. The policy shall have no standard coverages removed by exclusion. The policy shall include coverage for premises operation, independent contractors, products/completed operations, personal and advertising injury, contractual liability, fire legal liability and medical payments expense. A **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** limit for fire legal liability is required.
- (b) LESSOR shall procure endorsement EL217, naming LESSEE in the endorsement.
- (c) The coverage or insurance policies shall be written on an "occurrence" basis.
- (d) The coverage or insurance policies shall waive subrogation rights for loss or damage so that risk pools or insurers have no right to recovery or subrogation against LESSEE, its officials, officers, agents and employees, in both their public and private capacities, and provide that each policy is primary and non-contributory with the LESSEE's insurance as to the LESSOR's Responsibilities, it being the intention that the required coverage or insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies for LESSOR's Responsibilities.
- (e) Certificates of coverage or insurance and endorsement EL217 affecting coverage required by this clause shall be forwarded to:

Plano Sports Authority
Attn: Chief Administrative Officer
6500 Preston Meadow Dr.
Plano, TX 75024

VIII.
DESTRUCTION OF LEASED PREMISES

Section 8.01 DAMAGE TO BUILDING. In the event of damage to the Improvements, LESSEE will immediately notify LESSOR of the nature and extent of such damage. In the event of damage or destruction to the Improvements, LESSOR shall have no obligation or duty to repair, rebuild or reconstruct the Improvements or any fixtures, equipment or other personal property installed by LESSEE.

Section 8.02 INSURANCE PROCEEDS. All proceeds of the insurance contemplated by the provisions of this Lease payable by reason of any loss or damage to the Leased Premises, or any portion thereof shall be paid to LESSEE and utilized by LESSEE solely for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Premises or any portion thereof. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Premises shall be paid to LESSEE. If LESSEE elects not to repair and restore, and the Lease is terminated as described in Section 8.03, all such insurance proceeds shall be allocated to LESSOR.

Section 8.03 RECONSTRUCTION OF THE LEASED PREMISES.

- (a) If during the Initial Term of this Lease, or any extension thereof, the Leased Premises is totally or partially destroyed by a risk covered by the insurance described in this Lease (herein called “**An Insured Risk**”) and the Leased Premises thereby is rendered unsuitable in LESSEE’S reasonable opinion for its intended use, this Lease shall terminate as of the date of the casualty and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen prior to or which survive such termination, and all insurance proceeds shall be allocated to LESSOR, except as described below. If LESSEE elects to terminate this Lease because of partial or total destruction of the Leased Premises, LESSEE will clean up and scrape Improvements, including removal of slab if required by LESSOR. LESSOR shall pay LESSEE for any reasonable costs to clean up and scrape the improvements but only to the extent it receives insurance proceeds for the loss. Any excess insurance proceeds remaining after such cleanup costs shall remain the property of LESSEE.
- (b) If during the Term of this Lease, or any extension thereof, the Leased Premises is partially destroyed by An Insured Risk, but the Leased Premises is not thereby rendered unsuitable for LESSEE’s use, or is totally destroyed by An Insured Risk, but LESSEE desires to reconstruct the Leased Premises, LESSEE shall, to the extent of available insurance proceeds, restore the Leased Premises to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the Lease, and this Lease shall not terminate as a result of such damage or destruction. LESSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration shall be allocated to LESSEE.

- (c) If the Leased Premises are to be restored in accordance with the provisions of Section 8.03(b) and if the cost of the repair or restoration exceeds the amount of proceeds received by LESSEE from the insurance required under this Lease, or in the event the Leased Premises is totally or materially damaged or destroyed by a risk not covered by the insurance described in this Lease, LESSEE at its option shall either, (a) at LESSEE's sole cost and expense, restore the Leased Premises to substantially the same condition it was in immediately before such damage or destruction and this Lease shall not terminate as a result of such damage or destruction, or (b) terminate the Lease and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this Lease. If the Leased Premises are restored, LESSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration or any available proceeds which are not used by LESSEE shall be allocated to LESSEE. If the Lease is terminated, the insurance proceeds shall be payable to the LESSOR. If LESSEE elects to terminate this Lease under this section, LESSEE will clean up and scrape Improvements, including removal of the slab if required by LESSOR and return the Leased Premises in a good and clean condition, normal wear and tear excepted, within a reasonable time after termination of the Lease. LESSOR shall pay LESSEE for any reasonable costs to clean up and scrape the improvements but only to the extent it receives insurance proceeds for the loss. Any excess insurance proceeds remaining after such cleanup costs shall remain the property of LESSEE.

Section 8.04 RELEASE. LESSEE covenants and agrees that it will not hold LESSOR or any of its officers, officials, agents or employees responsible for any loss occasioned by fire, theft, rain, windstorm, hail or any other cause whatsoever, whether said cause be the direct, indirect or merely a contributing factor in producing the loss, including to any personal property that may be stored on the Leased Premises, whether caused in whole or in part by the negligence of LESSOR or its officials, officers, agents or employees; and LESSEE agrees all personal property is to be stored at LESSEE'S risk.

IX. CONDEMNATION

Section 9.01 TOTAL TAKING. If, after the commencement date, the Leased Premises shall be taken in its entirety by right of eminent domain for any public or quasipublic use, then, when possession shall be taken thereunder by the condemner, or LESSEE is deprived of its practical use of the Leased Premises and other improvements, whichever date is earlier, this Lease and all rights of LESSOR and LESSEE hereunder shall terminate and any rental and all other payments required of LESSEE shall be immediately paid by LESSEE to LESSOR through the date of taking.

Section 9.02 PARTIAL TAKING. In the event of a partial taking of any part of the Leased Premises as a result of which the remaining portion of the Leased Premises cannot be restored to an economically operable facility of a comparable kind and quality to the facility

existing prior to the taking, then this Lease, at LESSEE's option, shall terminate as of the time when possession of the Leased Premises shall be taken by the condemner or LESSEE is deprived of its practical use thereof, whichever date is earlier. If the Leased Premises can be restored to an economically operable facility of comparable kind and quality to the facility existing prior to the taking, then this Lease shall not be affected and LESSEE shall retain the remaining portion thereof; provided, however, that the rent shall be reduced on an equitable basis.

Section 9.03 EMINENT DOMAIN AWARD. If there is a taking by right of eminent domain, the rights and obligations of LESSOR and LESSEE with reference to the award and the distribution thereof shall be allocated between LESSOR and LESSEE on the following basis:

- (a) All proceeds, whether attributable to the Leased Premises or LESSEE's Leasehold Estate shall be allocated first to the expenses incurred by LESSOR or LESSEE in connection with defending the proceedings, then to costs of repair, alteration, renovation or improvement to the Leased Premises, with the balance to be allocated pursuant to subparagraph (b) below.
- (b) The balance of any award for partial taking and the award for a taking of the Leased Premises in its entirety shall be first allocated to LESSEE in an amount equal to costs incurred in connection with the construction of the Improvements contemplated hereby.
- (c) The balance of any award shall be paid to and retained by LESSOR.

X. DEFAULT

Section 10.01 EVENTS OF DEFAULT. The following events shall be deemed to be events of default by LESSEE under this Lease:

- (a) LESSEE shall fail to pay any monetary consideration when due, and such failure shall continue for a period of fifteen (15) days after notice of such delinquency is delivered to LESSEE.
- (b) LESSEE shall fail to maintain its non-profit status under applicable IRS rules and federal law.
- (c) LESSEE shall default under any provision of the Loan from MCDC to LESSEE.
- (d) LESSEE shall fail to comply with any term, provision, clause, sentence, covenant or any other item of this Lease, other than the payment of consideration as described above, and shall not cure such failure within forty-five (45) days after written notice thereof to LESSEE.
- (e) LESSEE shall cease using the Leased Premises for the purposes intended by this Lease for a period of ninety (90) days or more,

- (f) It is recognized that if LESSEE is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate LESSEE's performance of this Lease. Accordingly, it is agreed that upon the occurrence of any such event, LESSOR shall be entitled to request of LESSEE or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle LESSOR to terminate this Lease and to the accompanying rights set forth below.

Section 10.02 REMEDIES. Upon the occurrence of any event of default specified above, and in addition to any other remedies LESSOR may be entitled to at law or in equity, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- (a) Terminate this Lease in which event LESSEE shall immediately surrender the Leased Premises and Improvements to LESSOR, including LESSEE's ownership interest in the Improvements which shall immediately transfer to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE and any other person who may be occupying said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damages which LESSOR may suffer by reason of such termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.
- (b) Enter upon and take possession of the Leased Premises and Improvements and expel or remove LESSEE and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and if LESSOR so elects, relet the Improvements and Leased Premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.
- (c) Enter upon the Leased Premises and Improvements without being liable for prosecution or any claim of damages therefore and do whatever LESSEE is obligated to do under the terms of this Lease; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur for performing, this effecting compliance with LESSEE's obligations under this Lease; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

Section 10.03 ELECTION TO TERMINATE. No reentry or taking possession of the Leased Premises by LESSOR shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention shall be given to LESSEE. Notwithstanding any such

re-letting or re-entry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any payments due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of payments following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR or any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following repossession. Should LESSOR at any time terminate this Lease for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the Leased Premises and reasonable attorney's fees expended by reason of default.

XI. SURRENDER

Section 11.01 SURRENDER. In the event that this Lease is terminated in accordance with its terms, upon such termination, LESSEE shall vacate the property no later than the date of termination and shall leave the property in substantially the same condition it was in on the date this Lease became effective, normal wear and tear excepted.

XII. TAXES AND IMPOSITIONS

Section 12.01 PAYMENTS OF IMPOSITIONS. The parties recognize that the Leased Premises and Improvements and LESSEE's leasehold estate created pursuant to the provisions of this Lease are tax exempt, as of the date hereof. To the extent that the tax exempt status for the Leased Premises, improvements or leasehold estate created hereby are hereafter withdrawn or changed, LESSOR and LESSEE shall be responsible for payment of applicable taxes as follows:

- (a) LESSOR will be responsible for all taxes attributable to the Leased Premises exclusive of the LESSEE's Improvements; and
- (b) LESSEE will be responsible for taxes attributable to the Improvements owned by LESSEE and for LESSEE's leasehold estate.

Section 12.02 PAYMENT BEFORE DELINQUENCY. Any and all impositions and installments of impositions required to be paid by LESSEE under this Lease shall be paid by LESSEE at least ten (10) days before each such imposition, or installment thereof becomes delinquent, and the official and original receipt for the payment of such imposition or installment thereof shall immediately be given to LESSOR.

Section 12.03 INDEMNIFICATION. LESSEE shall indemnify and defend LESSOR and the Leased Premises and any improvements now or hereafter located on the Leased Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this Article XII to be paid by LESSEE, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition. Only to the extent allowed by law, LESSOR shall indemnify and defend LESSEE and the Leased Premises and any improvements owned by LESSOR now or hereafter located on the Leased Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this Article XII to be paid by LESSOR, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition.

XIII. HOLDING OVER

Section 13.01 HOLDING OVER WITH CONSENT. In the event that LESSEE holds over and remains in possession of the Leased Premises with the written consent of the LESSOR, that holding over shall be deemed to be from month to month only, and upon all of the same rents, terms, covenants and conditions as contained in this Lease; however LESSEE shall pay LESSOR market rent for the use of the Improvements during any such holdover period.

Section 13.02 HOLDING OVER WITHOUT CONSENT. In the event that this LESSEE holds over and remains in possession of the Leased Premises without written consent of the LESSOR, that holding over shall constitute LESSEE a trespasser.

XIV. NONDISCRIMINATION

Section 14.01 NONDISCRIMINATION. The LESSOR and LESSEE, for themselves and their representative do hereby agree that no persons on the grounds of race, age, color, religion, sex, disability, ancestry, national origin, or place of birth shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Improvements and the Leased Premises.

XV. FORCE MAJEURE

Section 15.01 FORCE MAJEURE EVENT. Neither party shall be considered to be in default in performance of any obligation hereunder if failure of performance shall be due to a Force Majeure Event. For the purposes of this Lease, the term "Force Majeure Event" shall mean any cause beyond the control of the party affected, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance (except as excluded herein), sabotage, other "Acts of God," and restraint by court order or public authority, which by exercise of due foresight such party could not reasonably have been expected to avoid, and which by exercise of due diligence it is unable to overcome. Notwithstanding anything to the contrary, the term Force Majeure Event shall not be deemed to include (a) any

labor disturbance affecting the LESSEE to the extent that such labor disturbance involves direct employees of the LESSEE who are performing work on the Improvements, except for a national strike in the United States, (b) the climate for the geographic area of the Leased Premises, (c) the occurrence of any manpower or material shortages or (d) any delay, default or failure (direct or indirect) in obtaining materials, or any contractor, subcontractor or worker performing any work on the Improvements or any other delay, default or failure (financial or otherwise) of a contractor, subcontractor, vendor or supplier. Neither party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own acts, omissions or negligence or to removable or remediable causes that it fails to remove or remedy with reasonable dispatch.

Section 15.02 Burden of Proof. In the event that the parties are unable in good faith to agree that a Force Majeure Event has occurred, such dispute shall be resolved in accordance with the procedures set forth in Section 16.14 and, in any proceeding to resolve the dispute, the burden of proof as to whether a Force Majeure Event has occurred shall be upon the party claiming a Force Majeure Event.

Section 15.03 Excused Performance. If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, except for the obligation to pay money, that party will be excused from whatever performance is affected by the Force Majeure Event to the extent so affected; provided that:

- (i) The nonperforming party gives the other party prompt notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such party's obligations hereunder, and continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;
- (ii) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (iii) The nonperforming party shall exercise all reasonable efforts to mitigate or limit damages to the other party;
- (iv) The nonperforming party shall exercise all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and
- (v) When the nonperforming party is able to resume performance of its obligations under this Agreement, that party shall give the other party written notice to that effect and shall promptly resume performance hereunder.

Section 15.04 Termination for Force Majeure. Notwithstanding anything contained in this section to the contrary, if either party is rendered unable to perform its obligations hereunder, in whole or in substantial part, because of a Force Majeure Event lasting for a period of ninety (90) consecutive days or one hundred fifty (150) days in the aggregate, either party shall have the option of terminating this Lease, exercisable by giving thirty (30) days written notice to the other party, at any time after such Force Majeure Event has continued for a period

of ninety (90) consecutive days or one hundred fifty (150) days in the aggregate and prior to the performance or resumption of performance by the party claiming a Force Majeure Event. In the event of any termination under this section by the LESSOR or LESSEE, LESSEE shall, at the election of LESSOR, vacate the Leased Premises and either (a) leave all Improvements in place or (b) raze all Improvements from the Property, or those designated to be razed by LESSOR, and otherwise leave the Leased Premises in substantially the same condition it was in on the date this Lease became effective, normal wear and tear excepted.

XVI.
MISCELLANEOUS

Section 16.01 NOTICES. Any notice provided for herein shall be given by written instrument, personally delivered or sent by U.S. mail, postage prepaid, to:

LESSOR: City of McKinney
 Attention: City Manager's Office
 222 N. Tennessee
 McKinney, Texas 75069

With copy to: City Attorney
 Mark S. Houser
 Brown & Hofmeister, LLP
 740 E. Campbell, Suite 800
 Richardson, TX 75081

LESSEE: Plano Sports Authority, Inc.
 Attention: General Manager
 6500 Preston Meadow Drive
 Plano, Texas 75024

or such address that LESSOR or LESSEE designates in writing to the other party.

Section 16.02 ENTIRE AGREEMENT. This Lease embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

Section 16.03 APPLICABLE LAWS. This Lease is entered into subject to the charter and ordinances of LESSOR as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal, state and local laws. LESSEE also agrees to obtain, from all governmental authorities having jurisdiction, all licenses, certificates and permits necessary for the conduct of its operations and to keep them current.

Section 16.04 SEVERABILITY. If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Lease are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of

this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 16.05 SUCCESSORS AND ASSIGNS. LESSOR and LESSEE shall bind themselves, their successors, executors, administrators and assigns to the other party to this Lease. Neither LESSOR nor LESSEE will assign, sublet, subcontract or transfer any interest in this Lease without the written consent of the other party. No assignment, delegation of duties or subcontract under this Lease will be effective without the written consent of LESSOR, such consent to be in the complete discretion of LESSOR.

Section 16.06 REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy by law of equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Lease may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Lease.

Section 16.07 INDEPENDENT CONTRACTOR. LESSEE covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of LESSOR and that LESSEE shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between LESSOR and LESSEE, their officers, agent, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership between LESSOR and LESSEE.

Section 16.08 NON-WAIVER. It is further agreed that one (I) or more instances of forbearance by LESSOR in the exercise of its rights herein shall in no way constitute a waiver thereof.

Section 16.09 VENUE. The parties to this Lease agree and covenant that this Lease will be enforceable in McKinney, Texas; and that if legal action is necessary to enforce this Lease, exclusive venue will lie only in Collin County, Texas.

Section 16.10 LESSOR'S GOVERNMENTAL POWERS AND IMMUNITIES. It is understood and agreed that LESSOR, through the execution of this Lease, does not waive or surrender any of its governmental powers or immunities.

Section 16.11 HEADINGS. The headings of this Lease are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section 16.12 ATTORNEY'S FEES. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease as a consequence of any breach by the other party of its obligations under this Lease, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees and out-of-pocket expenditures paid by the losing party. All such fees shall be deemed to have accrued upon the commencement of such action.

Section 16.13 DISPUTE RESOLUTION. Save and except an application for injunctive relief, if any claim, dispute or controversy arises with regard to the interpretation

and/or performance of this Lease or any of its provisions, the parties agree to attend non-binding mediation before seeking judicial intervention. It shall be the obligation and responsibility of all parties to equally share the cost for such mediation. The mediator shall be mutually agreed to by the parties, and if agreement cannot be reached, the mediator shall be chosen by the Chief district judge of Collin County, Texas. The parties to this Agreement expressly agree that the dispute resolution provisions specified herein shall be a condition precedent before filing of any suit. If any party initiates any legal action or proceeding to enforce or interpret any of the terms or provisions of this Agreement without first following the express provisions of this Section, that party expressly waives its right to recover attorney's fees and costs against the other party.

Section 16.14 AMENDMENTS IN WRITING. This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the parties.

Section 16.15 MUTUAL ASSISTANCE; GOOD FAITH. During the term of this Lease, to the extent practicable, the parties agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Lease. In this connection, the parties shall, from time to time, meet upon the reasonable request of each other and shall confer in good faith, amicably and in a businesslike manner, with respect to the current and future operation of the Leased Premises and Improvements and with a view toward resolving any problems which may arise. Except as otherwise provided herein or by law, a party shall not unreasonably withhold its approval of any act or request of the other as to which its approval is necessary or desirable.

Section 16.16 VOLUNTARY LIENS AGAINST LEASED PROPERTY.

- (a) LESSEE shall at all times and from time to time have the right to encumber by mortgage, deed of trust or security agreement (herein referred to as the "**Mortgage**") LESSEE's leasehold estate in the leased property created by this Lease, to secure such loans from time to time made by a person, firm or corporation (herein called "**Mortgagee**") to LESSEE; provided, however, that (i) such Mortgage shall in no event encumber LESSOR'S fee title and interest in the Leased Premises and (ii) such loan or loans shall mature no later than thirty (30) years after the Effective Date of this Agreement of this Lease. Mortgagee shall provide the LESSOR with a copy of any Mortgage loan documentation, including, without limitation, any promissory note or security agreement containing the terms of the loan, i.e., payment schedule, maturity date, etc., on any loan(s) encumbering the leasehold estate. Mortgagee shall also provide LESSOR with any notice of default by the LESSEE under the terms of any such Mortgage of LESSEE'S leasehold estate and shall not amend the terms of any such Mortgage, including the extension of the maturity date of the loan(s) without the prior written consent of LESSOR.
- (b) LESSOR shall serve notice of any default by LESSEE hereunder upon the Mortgagee provided the Mortgagee shall notify LESSOR in writing of the existence of the Mortgage encumbering LESSEE's interest hereunder and the address to which notices should be delivered, and no notice of default shall be deemed effective against Mortgagee who has notified LESSOR of the existence

of its encumbrance until it is so served. The Mortgagee shall have the right to correct or cure any such default within the same period of time after receipt of such notice as is given to LESSEE under this Lease to correct or cure defaults. LESSOR will accept performance by the Mortgagee of any covenant, condition or agreement on LESSEE's part to be performed hereunder with the same force and effect as though performed by LESSEE, if, at the time of such performance, LESSOR shall be furnished with evidence of ability to perform under the Lease and evidence reasonably satisfactory to LESSOR of the interest in this Lease claimed by the person tendering such performance. Subject to the LESSOR'S rights under paragraph (e) below, if this Lease should terminate by reason of the happening of any event of default, or by reason of a disaffirmance of this Lease by a receiver, liquidator or trustee for the property of LESSEE, or by any department of the City, state or federal government which had taken possession of the business or property of LESSEE by reason of the insolvency or alleged insolvency of LESSEE and if at the time of such termination, the Mortgagee constitutes a first lien upon the leasehold estate of LESSEE, LESSOR shall give notice thereof to the Mortgagee and upon request of the Mortgagee made within sixty (60) days after the giving of notice by LESSOR to the Mortgagee, and, upon payment to LESSOR of all Rent and all other monies due and payable by LESSEE hereunder immediately prior to the termination of this Lease, as well as all sums which would have become payable hereunder by LESSEE to LESSOR to the date of execution and delivery of the new lease hereinafter mentioned, had this Lease not been terminated, together with reasonable attorneys' fees and expenses in connection therewith and in connection with the removal of LESSEE from the Leased Premises, and the curing of all defaults hereunder, and the performance of all of the covenants and provisions hereunder up to the date of the execution and delivery of the new lease hereinafter mentioned, giving credit, however, for any net income actually collected by LESSOR from the Leased Premises, other than payments made by LESSEE hereunder, LESSOR shall enter into a new lease of the Leased Premises with the Mortgagee for the remainder of the Initial Term, or any extension thereof, at the same Rent and on the same terms and conditions as contained in this Lease and dated as of the date of termination of this Lease. The estate of the Mortgagee, as LESSEE under the new lease, shall have priority equal to the estate of LESSEE hereunder (that is, there shall be no charge, lien or burden upon the Leased Premises prior to or superior to the estate granted by such new lease which was not prior to or superior to the estate of LESSEE under this Lease as of the date immediately preceding the date this Lease went into default, except, however, any charge, lien or burden which should not have been permitted and/or should have been discharged by LESSEE under the terms of this Lease). Nothing herein contained shall be deemed to impose any obligation upon LESSOR to deliver physical possession of the Leased Premises to the Mortgagee. The Mortgagee shall pay all expenses, including reasonable attorneys' fees, incident to the execution and delivery of such new lease.

- (c) The Mortgagee or any purchaser in foreclosure proceedings, including any corporation formed by the Mortgagee or the holder of the note or other obligations secured by the Mortgage, may become the holder of this Lease,

including any rights thereunder to the Improvements, by foreclosure of the Mortgage or as a result of the assignment or conveyance in lieu of foreclosure, but subject to the terms, conditions and obligations of this Lease and Mortgagees interests herein shall never be greater than that of the LESSEE herein. Title to the Leased Premises shall at all times remain in the LESSOR.

(d) LESSEE shall, promptly upon, receipt of any notice of default under or acceleration of the maturity of the Mortgage, deliver a true copy thereof to LESSOR.

(e) Notwithstanding Mortgagee's rights under this section, in the event of termination of this Lease by LESSOR, Mortgagee and LESSEE shall give LESSOR the right of first refusal to either pay off the remaining balance of the Mortgage and/or assume payment of the Mortgage under the terms of the Mortgage and operate the Improvements for the remaining term of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year written above:

**PLANO SPORTS AUTHORITY,
INC., a Texas nonprofit corporation**

Date: _____

BY: _____
(Signature)

(Print Name)

(Title)

**THE CITY OF MCKINNEY, a Texas,
home-rule municipal corporation**

Date: _____

BY: _____

CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

COUNTY OF COLLIN §
 §

This instrument was acknowledged before me on the ___ day of _____, 2014 by _____, of **PLANO SPORTS AUTHORITY, INC.**, a Texas nonprofit corporation, on behalf of such corporation.

Notary Public, State of Texas

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2014 by _____, City Manager of the **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public, State of Texas