

RECEIVED

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LEGAL SERVICES

Fill in this information to identify the case:

Debtor 1 Legacy Cares, Inc.

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

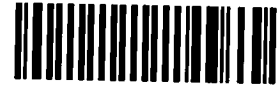
United States Bankruptcy Court for the: District of Arizona

Case number 2:23-bk-02832-DPC

Filed: USBC - District of Arizona  
Legacy Cares, Inc.  
23-02832 (DPC)

(CLM)

LCA



0000000019

Official Form 410

**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?	<u>Pacific Proving, LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Alan A. Meda, Burch &amp; Cracchiolo, PA</u> Name <u>1850 N. Central Ave., Suite 1700</u> Number Street <u>Phoenix</u> <u>AZ</u> <u>85004</u> City State ZIP Code Contact phone <u>602-234-8797</u> Contact email <u>ameda@bcattorneys.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? Estimated \$39,660,641.88 Does this amount include interest or other charges?  
☐ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).  
☒ Unknown

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached Ground Lease and Exhibit A

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate (when case was filed)** \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☐ No  
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ See Exhibit A

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- ☐ Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06 21 2023

MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Alan A. Meda

First name

Middle name

Last name

Title \_\_\_\_\_

Company Burch & Cracchiolo, P.A.

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1850 N. Central Ave., Suite 1700

Number Street

Phoenix

AZ

85202

City

State

ZIP Code

Contact phone 602-234-8797

Email ameda@bcattorneys.com

### **Exhibit A**

This Proof of Claim is for damages, claims, and sums due arising from, in connection with, and/or related to that Ground Lease ("Ground Lease") dated as of May 20, 2020 between Pacific Proving, LLC, as landlord ("Landlord"), and Debtor, Legacy Cares, Inc., as tenant ("Debtor"). A copy of the Ground Lease is attached to this Proof of Claim.

Sums claimed include (i) indemnification claims arising out of any work, construction or activity by Debtor or on behalf of Debtor in connection with the leased premises including any mechanics', vendors', laborers', or materialmens' statutory or similar liens ("Mechanics' Liens") filed or asserted against the fee title of the leased premises or against Debtor's leasehold interest in the leased premises, by reason of work, labor, services or materials supplied or claimed to have been supplied (A) to Debtor or (B) to anyone holding any interest in the leased premises and/or any improvements or any part thereof through or under Debtor as set forth in the Ground Lease including but not limited to Articles 12 and 16 thereof; (ii) any amounts necessary to cure any defaults under the Ground Lease, (iii) any amounts including rent, interest, late fees, property taxes, insurance, attorneys' fees and other sums accrued and accruing under the Ground Lease; (iv) any attorneys' fees and costs incurred by Landlord to enforce the provisions of the Ground Lease and in connection with any assumption and assignment of the Ground Lease.

Potential indemnification claims are estimated to equal \$39,660,641.88 but such claims and the filing of this Proof of Claim are not an acknowledgment by Landlord (y) that any underlying Mechanics' Liens are valid or enforceable against the fee title of the leased premises or otherwise or (z) with respect to the priority of such liens.

Landlord reserves the right to amend this Proof of Claim to assert additional damages, claims, and other sums due under the Ground Lease including rejection damages, if any, as such sums are determined.

**GROUND LEASE**

**BETWEEN**

**PACIFIC PROVING, LLC**

**as "Landlord"**

**and**

**LEGACY CARES, INC.**

**as "Tenant"**

**For**

---

**the "Premises"**

## GROUND LEASE

This "Lease", is made and entered into as of this 20th day of May, 2020 (the "Effective Date"), by and between PACIFIC PROVING, LLC, a Delaware limited liability company ("Landlord") and LEGACY CARES, INC., an Arizona nonprofit corporation ("Tenant"). Landlord and Tenant may be referred to, each, as a "Party" and, together, as the "Parties".

### RECITALS

A. Landlord is the owner of certain real property, situated in the County of Maricopa, State of Arizona, more particularly described on attached Exhibit "A" (the "Property") together with all rights appurtenant thereto and any Improvements now or hereafter constructed on the Property (the "Premises").

B. Tenant desires to lease the Premises from Landlord, and Landlord desires to lease the Premises to Tenant upon the terms and conditions herein.

NOW, THEREFORE, for and in consideration of the rent, covenants and agreements contained in this Lease and subject to the terms hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord (subject to Landlord's retention of the exclusive right to develop and retain all benefits of outdoor billboards in the areas described on Exhibit "A-1"), and Landlord and Tenant hereby covenant and agree as follows:

### ARTICLE 1

#### TERM; CONTINGENCY

Section 1.01 Lease Term. The "Term" of this Lease shall commence on the Commencement Date and unless sooner terminated pursuant to another provision of this Lease, shall expire and terminate at 11:59 p.m., on the fortieth (40<sup>th</sup>) anniversary of the Commencement Date; where the "Commencement Date" shall be January 1, 2021. After the Commencement Date, either Party may request that the other Party countersign a written statement memorializing the Commencement Date and the non-requesting Party shall execute and return the same without unreasonable delay or condition.

Section 1.02 Option to Extend. Subject to the terms of this Lease, Tenant is hereby granted two (2) options ("Option") to extend the term of this Lease for five (5) years each (each an "Option Period"), on all of the same terms and conditions contained herein including but not limited to the annual two percent (2%) Base Rent increases; provided that Tenant gives Landlord written notice of Tenant's election to exercise the Option at least three hundred sixty five (365) days prior to the scheduled expiration of the initial Term (or the expiration of the first Option Period, as the case may be), but no more than eighteen (18) months prior to the then scheduled expiration of the initial Term (or the expiration of the first Option Period, as the case may be). If Tenant fails to give Landlord such written notice within the time and in the manner provided herein of the exercise of the Option, said Option shall expire and be of no further force and effect. Time is of the essence in the exercise of the Option. So long as at the time of such exercise and at the commencement of the Option Period this Lease is in full force and effect and Tenant is not in default in any of its obligations

hereunder beyond any applicable cure period, the Term of this Lease shall be automatically extended for such Option Term, without the execution of an amendment to extend or renew the Lease, and during such Option Period, Landlord and Tenant shall be bound by all of the terms, covenants and conditions of this Lease (subject to Base Rent provision adjustments provided herein) as if such Option Term were part of the initial Term. If Tenant gives notice to Landlord of its election to exercise the Option within the time and in the manner prescribed herein, the Base Rent payable during the first year of the Option Period shall be increased by two percent (2%) over the prior year. On each anniversary of the first day of the Option Period, the Base Rent shall be increased by two percent (2%) over the prior year's Base Rent.

**Section 1.03 Due Diligence; Initial Project Entitlements.**

(a) Due Diligence. Prior to the Effective Date, Landlord provided Tenant with reasonable access to the Property and copies of the following Property documents to the extent they are in Landlord's possession and control and without representation or warranty: (i) all leases and service contracts (ii) soil/engineering tests; (ii) ALTA title commitment issued by Chicago Title Insurance Company, together with all underlying documents; (iii) Landlord's existing ALTA survey (iv) most recent real estate tax and utility bills; (v) building plans; (vi) environmental studies; (vii) existing zoning and entitlements; and (viii) concept plan from the City of Mesa (the "City"); and (ix) such other materials as reasonably requested by Tenant, and Tenant acknowledges that it has sufficiently examined the Property, is familiar with the physical condition, zoning, status of title and use that may be made of the Property and every other matter or thing affecting or related to the Property, and is leasing the same in its "AS IS" condition existing on the Effective Date.

(b) Project Entitlements. Upon the Effective Date, Tenant shall use its reasonable and diligent efforts, at its sole cost and expense, to obtain all necessary and desirable approvals from the City and all other applicable governmental authorities, quasi-governmental authorities, and/or utility providers and regulators (collectively, "Governmental Authorities") in form and with stipulations reasonably acceptable to Tenant and approved by Landlord, which may include rezoning, site plan approval, improvement plans for infrastructure improvements, utility services agreement, and, development agreements (collectively, the "Project Entitlements") for the Initial Improvements (the "Initial Project Entitlements"). Tenant shall obtain the Initial Project Entitlements no later than August 15, 2020 (the "Entitlement Outside Date"). If Tenant fails to do so, Landlord shall have the right upon sixty (60) days prior written notice to Tenant to terminate this Lease unless Tenant obtains the Initial Project Entitlement prior to the expiration of the sixty (60) day period. Following such termination (and assuming that the Landlord is not otherwise entitled to apply the Security Deposit as set forth herein) the Security Deposit less \$100,000.00 shall be returned to the Tenant. Additionally, in connection with obtaining the Initial Project Entitlements Tenant shall meet the hurdle deadlines (unless otherwise expressly waived or modified in writing by mutual agreement of Landlord and Tenant) as set forth on Exhibit B ("Hurdle Schedule"). If Tenant fails to meet any of the deadlines on the Hurdle Schedule, Landlord shall have the right upon sixty (60) days prior written notice to Tenant to terminate this Lease upon written notice to Tenant, and the Lease shall terminate unless Tenant satisfies the hurdle dates set forth in Exhibit B prior to expiration of such 60-day period. Following termination (and assuming that the Landlord is not otherwise entitled to apply the Security Deposit as set forth herein) the Security Deposit less \$125,000.00 shall be returned to the Tenant. "Initial Improvements" means the Improvements to be constructed by Tenant on the Premises promptly following the Commencement Date as generally

depicted, in the conceptual plan attached hereto as Exhibit "C" (the "Conceptual Plan") and shall include, without limitation, a sports and entertainment park of quality consistent with other national sports and entertainment parks/complexes, together with parking improvements for not less than the number of cars required by Governmental Authorities having jurisdiction thereof, and such other facilities, utilities, improvements and appurtenances necessary or desired by Tenant in connection with such a development. The Conceptual Plan shall not be materially amended or modified by Tenant without Landlord's prior written consent; where a material amendment or modification shall mean a change to the plan that results in a reduction of leasable square footage by ten percent (10%) or more.

(c) Landlord's Approval and Cooperation. Landlord shall reasonably cooperate with Tenant, at Tenant's sole expense, in Tenant's efforts to obtain the Initial Project Entitlements, if necessary, subject to the following:

(i) Tenant shall promptly provide Landlord with written notice of and secure Landlord's prior written approval of any written application or formal submittal to Governmental Authorities for Initial Project Entitlements, including, but not limited to, (A) any zoning change, site plan or plat approval before the same is submitted to or filed with the City and to any material changes thereto, (B) any conditions and stipulations imposed in connection with the Initial Project Entitlements and (C) any development or other similar agreement before execution. Landlord's approval shall not be unreasonably withheld, conditioned or delayed. If Landlord fails to respond to any request for approval of any Initial Project Entitlements within fifteen (15) business days following receipt of Tenant's written request and a copy of the relevant Initial Project Entitlements, Landlord shall be deemed to have approved the same. If Landlord disapproves any proposed Initial Project Entitlements, it shall notify Tenant in writing (with e mail being deemed a writing) specifying the reason for such disapproval.

(ii) Following Landlord's approval of any proposed Initial Project Entitlements, Landlord shall execute any and all applications, consents, and other documents reasonably and timely requested by Tenant in connection with such proposed Initial Project Entitlements. Landlord, if necessary, shall be the applicant with respect to the Initial Project Entitlements, but Tenant shall be solely responsible for all application fees and expenses associated with the proposed Initial Project Entitlements.

(iii) Landlord shall approve the creation of easements and all zoning-related stipulations on the Premises and the grant of other property interests in the Premises, including without limitation, public utility easements, sidewalk and landscaping easements and utility easements (collectively, "Easement Interests"), reasonably necessary to Tenant's development of and use of the Initial Improvements as permitted in this Lease, or required by the Initial Project Entitlements. Except as expressly provided otherwise in this Lease, without Landlord's prior written approval, which may be given or withheld in Landlord's reasonable discretion, no lien, charge or encumbrance shall be asserted against or imposed upon the Premises as a result of any Initial Project Entitlements. Following Landlord's approval of any Easement Interests, Landlord shall timely execute any and all easements, consents, and other documents, reasonably requested by Tenant in connection with such Easement Interests.



(iv) Tenant will be responsible for payment of any cost, charge, expense or liability whatsoever in connection with the Initial Project Entitlements and Tenant's financial obligations with respect to the Initial Project Entitlements shall survive expiration or sooner termination of this Lease.

(v) Tenant shall promptly furnish to Landlord copies of all applications and materials submitted, filed or received in connection with the Initial Project Entitlements, all notices of public hearings and continuances thereof, all staff reports and recommendations (including conditions and stipulations), and all written opposition to the Initial Project Entitlements, to or received from any Governmental Authorities in connection with the Initial Project Entitlements.

(vi) Tenant shall inform Landlord of all commission, council and other meetings or hearings with respect to the Initial Project Entitlements and Landlord shall be permitted to attend the same.

(vii) Tenant acknowledges that the City may impose certain stipulations or conditions on the Initial Project Entitlements, and that during the term of the Lease, Landlord will not be responsible for satisfying such stipulations except to the extent provided in this Lease.

(viii) Tenant agrees to indemnify, defend and hold harmless Landlord for, from, and against any and all out-of-pocket losses, costs, liabilities, causes of action, damages or expenses arising out of or in connection with any breach by Tenant of the agreements made by Tenant in this Section 1.03(c), and this indemnity shall survive expiration or sooner termination of this Lease.

(d) Future Project Entitlements. Following completion of the Initial Improvements and from time to time during this Lease, Tenant may desire additional Project Entitlements for the Premises, in which event, such additional Project Entitlements shall be allowed subject to the same limitations as applicable to alterations as set forth in this Section 1.03(c) and in Section 10.02 below.

## ARTICLE 2

### RENT

#### Section 2.01 Rent.

(a) Base Rent and Annual Rent Adjustment. Beginning on the Commencement Date, Tenant shall pay to Landlord as annual rent, without deduction, set-off, prior notice or demand, twenty-five cents (\$0.25) per square foot comprising the Premises. The parties agree that the total square feet of the Premises is thirteen million, nine hundred and thirty nine thousand, two hundred (13,939,200) square feet, which shall be conclusive. Base Rent shall increase on the anniversary of the Commencement Date and on each anniversary thereafter in the amount of 2% over the prior year.

(b) Payment of Base Rent. Base Rent shall be paid in advance in equal monthly installments on the first day of each calendar month, beginning on the Commencement

Date and continuing during the Lease Term. Base Rent for any partial month shall be prorated per diem. Rent shall be paid to Landlord at the address to which notices to Landlord are given, or to such other person or such other place as directed from time to time by written notice to Tenant from Landlord.

**Section 2.02 Other Tenant Costs and Charges.** Except as expressly provided otherwise herein, the Rent payable under this Article 2 shall be absolutely net to Landlord free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off whatsoever. Unless otherwise expressly provided herein, Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever relating to the Premises, which may arise or become due or payable prior to, during or after (but attributable to a period falling within) the Lease Term, whether now existing or hereafter arising, or whether beyond the present contemplation of the Parties. However, nothing in this Lease shall require, or be construed to require, Tenant to pay any interest or principal payments or other payments on or required under any mortgage or trust deed on the fee of the Premises. Except as specifically set forth herein, the obligations of Tenant (including but not limited to the obligation to pay Rent) hereunder shall not be affected by reason of: any damage to or destruction of the Premises or any part thereof, any taking of the Premises or any part thereof or interest therein by condemnation or otherwise, any prohibition, limitation, restriction or prevention of or interference with Tenant's use, occupancy or enjoyment of the Premises or any part thereof any action of any governmental authority.

**Section 2.03 Rent Taxes.** Tenant shall pay, when due, all federal, state and local privilege taxes, sales taxes, gross proceeds or value added taxes or similar taxes ("Rent Taxes"), now or hereafter levied or assessed upon Landlord's receipt of the monies constituting the Rent. Tenant shall pay, when due, all Rent Taxes now or hereafter levied or assessed upon Landlord's receipt of monies collected by Tenant from space tenants.

**Section 2.04 Security Deposit.** Tenant shall deposit with Landlord a security deposit in the amount of One Million and 00/100 Dollars (\$1,000,000.00) (\$250,000 upon the full execution of this Lease; \$250,000 upon obtaining the Project Entitlements; \$500,000 upon the earlier of (i) the Commencement Date, or (ii) groundbreaking in connection with the use described in section 13.01 below or (iii) annexation of the Property by the City to be held by Landlord for the initial five (5) years of the Term. So long as Tenant is not in default at any time during the initial five (5) year period, the security deposit shall be refunded to Tenant by Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) at the end of each subsequent year for the next three (3) years with the final \$250,000.00 to remain with Landlord for the duration of the Term. The security deposit shall be provided to Landlord as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant breaches any provision of this Lease, including but not limited to the payment of the Base Rent or any additional rental obligations following the expiration of any applicable grace period, Landlord may use all or any part of this security deposit for the payment of any rent or any other sums in default, or to compensate Landlord for any other loss or damage that Landlord may suffer by reason of Tenant's default. Except as otherwise provided herein, if any portion of said deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount. Tenant agrees that Landlord shall not be required to keep the security deposit in trust, segregate it

or keep it separate from Landlord's general funds, but Landlord may commingle the security deposit with its general funds, and Tenant shall not be entitled to interest on such deposit. Within thirty (30) days after the expiration of the Lease Term, and provided there exists no default by Tenant hereunder, the security deposit, or any balance thereof shall be returned to Tenant (or, at Landlord's option, to Tenant's assignee), provided that subsequent to the expiration of this Lease, Landlord may retain from said security deposit (i) any and all amounts reasonably estimated by Landlord to cover the anticipated costs to be incurred by Landlord to remove any signage if Tenant fails to remove any such signage and to repair any damage caused by such removal (in which case any excess amount so retained by Landlord shall be returned to Tenant within thirty (30) days after such removal and repair).

### ARTICLE 3

#### PAYMENT OF IMPOSITIONS

Section 3.01 Payment of Impositions. Tenant shall directly pay, when due and payable, subject to the terms and conditions of this Article 3, all real property taxes, assessments, water and sewer rates and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, together with any interest or penalties imposed upon the late payment thereof as a result of Tenant's breach of its obligations in this Article 3 (all of the foregoing are hereinafter referred to collectively as "Impositions"), that are assessed, levied, imposed or become a lien upon the Premises and the sidewalks or streets in front of or adjoining the Premises (and are the obligation of Landlord), or become payable, during the Term of this Lease; provided, however, that if, by law, any such Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and shall pay only such installments as may become due during the Term of this Lease as the same respectively become due; and provided, further, that any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time after the expiration or sooner termination of this Lease, other than a termination of this Lease pursuant to Article 15 below, shall (whether or not such Imposition shall be assessed, levied, imposed or become a lien upon the Premises, or shall become payable, during the Term of this Lease) be adjusted between Landlord and Tenant as of the expiration of the Term of this Lease, so that Landlord shall pay that portion of such Imposition that relates to that part of the fiscal period after the expiration or sooner termination of this Lease, and Tenant shall pay that portion of which relates to the period prior to the expiration or sooner termination of the Lease.

Section 3.02 Personal Taxes. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate, inheritance, succession, capital levy, stamp tax or transfer tax of Landlord, or any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon the Rent payable by Tenant under this Lease, nor shall any tax, assessment, charge or levy of the character hereinabove in this Section described be deemed to be included within the term "Imposition" as defined in Section 3.01 above.

Section 3.03 Notice of Impositions. Landlord shall deliver to Tenant, within reasonable time after Landlord's receipt, but in any event, at least thirty (30) days prior to due date

(or with sufficient time to challenge in the case of property tax valuation notices), notice of any and all Impositions delivered to Landlord and not to Tenant. If Landlord does not provide Tenant notice of Impositions as required in this Section 3.03, Landlord shall pay such Impositions as and when due and Tenant shall reimburse Landlord the actual cost of such imposition (less any late charge, interest or similar charge incurred as a result of Landlord's failure to timely deliver such notice to Tenant and/or late payment of the same Imposition) within thirty (30) days of Landlord's request for reimbursement. Tenant shall, upon written request of Landlord, furnish to Landlord for inspection by it within sixty (60) days after the date when any Imposition is payable, official receipts of the appropriate taxing authority, or other evidence satisfactory to Landlord, evidencing the payment of such Imposition.

**Section 3.04 Contest of Impositions.** Tenant, at its sole cost and expense, shall have the right to contest the amount or validity, or to seek a refund, in whole or in part, of any Imposition by appropriate proceedings, provided that (a) nonpayment will not subject the Premises or any part thereof to any lien, sale or other liability by reason of such nonpayment, (b) such contest shall not subject Landlord to the risk of any criminal or civil liability, and (c) if such Imposition must be paid pursuant to any applicable statute, ordinance, regulation or rule as a condition to such contest, Tenant shall timely pay such Imposition. Notwithstanding the provisions of Section 3.01 above, such contest shall not be deemed or construed in any way as relieving, modifying or extending Tenant's covenants to pay any such Imposition at the time and in the manner as provided in this Article 3 unless Tenant shall have either paid such Impositions, if payment is a condition to such contest, or deposited with Landlord or a bank or trust company designated by Landlord, as security for the payment of such Imposition, money or a corporate surety bond or other security acceptable to Landlord in the amount so contested and unpaid, together with the estimated amount of all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises and/or Improvements or any part thereof in the proceedings, whereupon Tenant may postpone or defer payment of such Imposition. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and, if applicable, upon such payment Landlord shall return, or cause such bank or trust company to return, the amount above referred to without interest. Landlord agrees to join in any property tax related challenge, if requested by Tenant, and, Landlord agrees not to unreasonably withhold its consent to joining in any other such proceedings or permitting the same to be brought in its name. Landlord shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceeding, and Tenant agrees to indemnify, defend, save and hold harmless Landlord from any such costs or expenses. Tenant shall be entitled promptly to any refund of any such Imposition and penalties or interest thereon that have been paid by Tenant, or that have been paid by Landlord and for which Landlord has been fully reimbursed. Notwithstanding anything contained here in to the contrary, during any Event of Default, Tenant shall not commence any proceeding pursuant to this Section without Landlord's prior written consent.

**Section 3.05 Proof of Payment of Impositions.** The certificate, advice or bill of the appropriate official designated by law to make or issue or to receive payment of any Imposition, of

non-payment thereof, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

#### **ARTICLE 4**

##### **INSURANCE**

**Section 4.01 Tenant's Insurance Obligations.** At all times during the Lease Term, at its sole cost and expense, Tenant shall keep the Improvements insured against:

(a) Actual replacement cost coverage for loss or damage by fire, and such other risks including, without limitation, boiler and machinery, building ordinance and demolition with a retention limit of not greater than \$100,000, and vandalism and malicious mischief coverage, in an amount not less than the then full insurable value of the Improvements;

(b) claims for bodily injury or property damage, under a policy of commercial general liability insurance, with such limits to be not less than One Million Dollars (\$1,000,000.00) for any one (1) person and Two Million Dollars (\$2,000,000.00) for any one (1) occurrence in respect of bodily injury or death, Two Million Dollars (\$2,000,000.00) for property damage, Two Million Dollars (\$2,000,000.00) for products and completed operations aggregate and Two Million Dollars (\$2,000,000.00) general aggregate, \$2,000,000.00 for alcohol/dramshop liability. Tenant shall further keep in place an umbrella commercial general liability insurance policy in a form reasonably approved by Landlord with a coverage amount of not less than Ten Million Dollars (\$10,000,000.00). Tenant shall provide either full rental replacement bond covering a period of not less than thirty six (36) months or a reserve fund equal to not less than thirty-six (36) months of Rent. Landlord may from time to time during the Lease Term (but not more often than once each five years) request by written notice that Tenant review and adjust the amounts of such coverages (but not below the minimums herein specified), as may be necessary, in Tenant's reasonable discretion, to reflect changes in the use of the Premises and to maintain a commercially reasonable level of coverage; and

(c) actual replacement cost of the Improvements (excluding foundation and excavation costs) and the actual replacement cost shall be determined by an architect, appraiser, appraisal company or one of the insurers selected by Tenant and approved by Landlord, which determination shall be made no less frequently than once every five (5) years or upon completion of any commercially significant remodeling or redevelopment of the Premises.

**Section 4.02 Builder's Risk Coverage.** During any construction on or about the Premises, Tenant shall maintain in force until completion of the work. Builder's Risk insurance, including vandalism and malicious mischief, covering Improvements in place and all material and equipment at the job site, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractors' or subcontractors' employees.

**Section 4.03 Insurers and Certificates.** All insurance contemplated in this Article 4 (the "Insurance") shall be issued by insurers rated at least "A-" by A.M. Best Insurance Service and licensed to do business in the State of Arizona. All Insurance policies shall be nonassessable and shall contain language that (a) any loss shall be payable notwithstanding any act or negligence of



Landlord (excluding Landlord's gross negligence or willful misconduct) that might otherwise result in a forfeiture of the Insurance, (b) the insurer waives the right of recovery and/or subrogation against Landlord, (c) the policies are primary and noncontributing with any insurance that may be carried by Landlord. Prior to the Commencement Date and before the expiration or other termination of the existing policy, the original Insurance policies shall be delivered to Landlord. Tenant shall endeavor to deliver to the holder of the expiring original policy, at least ten (10) days prior to the expiration date of any policy, but in any event prior to expiration, the original renewal policy, and certificates thereof shall be delivered as aforesaid. All Insurance policies shall contain a non-cancellation clause except upon ten (10) days prior written notice to each named insured and loss payee.

**Section 4.04 Other Insurance Provisions.**

(a) The Insurance required under Sections 4.01(b) and 4.02 shall name Landlord as an additional insured. The Insurance required under Sections 4.01(a) shall name Landlord and Tenant as loss payees as their respective interests may appear. The loss, if any, under the policies referred to in Section 4.01 above, shall be adjusted with the insurance companies by Tenant. Tenant may also name its lender as an additional insured if required under the applicable loan and financing documents.

(b) The loss, if any, under all Insurance policies shall be payable to Tenant except rental replacement proceeds which shall be paid to Landlord and in the case of casualty proceeds to be used to restore the Improvements under Section 8.01 below, which proceeds shall be held in a joint account with Landlord and disbursed for the purposes set forth in Section 8.01.

(c) Except as otherwise set forth herein, any loss paid under any Insurance policy to Tenant shall, subject to an escrow and disbursement agreement approved by Landlord, be held in trust for application to the cost of restoring, repairing, replacing or rebuilding the Improvements, if the same is necessary; any excess following the completion and full payment of all such restoring, repairing, replacing or rebuilding the Improvements shall be disbursed to and be the sole property of Tenant.

**Section 4.05 Blanket Policy.** Nothing in this Article shall prevent Tenant from providing the Insurance required under Sections 4.01 pursuant to a blanket insurance policy or policies that can cover other properties owned or operated by Tenant, as well as the Premises and the Improvements; provided, however, that any blanket policy shall specify therein or Tenant shall furnish Landlord with a written statement from the insurers specifying the amount of the total insurance allocated to the Improvements, which amount shall be not be less than the amount required to be carried pursuant to Section 4.01 above.

**Section 4.06 Waiver of Subrogation.** Tenant hereby waives any and all rights of recovery against Landlord or against its officers, directors, partners, members, trustees, employees and shareholders, on account of loss or damage occasioned by Tenant or its property or any property of others under its control to the extent that such loss or damage is insured under any Insurance required to be maintained pursuant to this Lease, except to the extent such loss or damage is caused by the gross negligence or willful misconduct of Landlord. Tenant will, upon

obtaining the respective policies of Insurance required under this Lease, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease and obtain from the respective carriers an endorsement waiving any right of subrogation in favor of the insurer.

## **ARTICLE 5**

### **LANDLORD'S RIGHT TO PERFORM CERTAIN TENANT'S COVENANTS**

Tenant hereby agrees that if, after expiration of the notice and grace periods set forth in Section 15.02 below (except in the case of maintaining the Insurance policies provided in Article 4 above for which such time limitation shall not apply for purposes of this Article 5), it shall fail (i) to pay any Imposition in accordance with the provisions of Article 3, or (ii) to take out, pay for, maintain or deliver any of the Insurance policies provided for in Article 4, (iii) fail to cause any lien of the character referred to in Article 12 to be discharged as provided therein, then Landlord may (but shall not be obligated to) and without further notice or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant contained in this Lease, (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3, or (b) take out, pay for and maintain any of its Insurance policies provided for in Article 4, or (c) discharge any lien of the character referred to in Article 12 as provided therein. All reasonable out-of-pocket sums so paid by Landlord, together with interest thereon at the Default Rate from the date of making of such expenditure by Landlord, shall be payable to Landlord on demand or, at the option of Landlord, may be added to any Base Rent then due or thereafter becoming due under this Lease, and Tenant covenants to pay any such sum or sums payable by Tenant for Impositions pursuant to Article 3, insurance premiums pursuant to Article 4 and all other charges and expenses of whatsoever nature that Tenant assumes or agrees to pay pursuant to this Lease, shall be deemed additional Rent under this Lease and payable as provided in this Lease, and Landlord shall have (in addition to any other right or remedy of Landlord provided in this Lease) the same rights and remedies in the event of the non-payment of any such sums by Tenant as in the case of default by Tenant in the payment of Rent.

## **ARTICLE 6**

### **COVENANTS TO MAINTAIN**

Throughout the Term, Tenant, at its sole cost and expense, shall keep the Improvements, the Premises and the adjoining sidewalks and curbs, to the extent the same are the responsibility of the Property owner, clean and in good condition, subject to reasonable wear and tear, free of accumulations of dirt and rubbish, and shall make all repairs (including interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen) and replacements necessary to maintain the Premises and the Improvements in first class condition appropriate for sports and entertainment parks located in the greater Phoenix area, provided, that, in any event, Tenant shall make all repairs necessary to avoid any structural damage or injury to the Improvements. All repairs shall be performed in a good and workmanlike manner in compliance with all Applicable Laws, Permits, and all requirements of applicable Governmental Authorities, any national or local board of fire underwriters or any other body hereafter exercising functions similar to those of any of the foregoing. Landlord shall not be required to furnish any services or facilities

or to make any repairs or alterations to the Premises or the Improvements and Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises and the Improvements. Tenant hereby waives and releases all rights now or hereinafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 6.

## **ARTICLE 7**

### **COMPLIANCE WITH APPLICABLE LAWS**

Section 7.01 Applicable Laws. Tenant shall comply with all laws and ordinances and the orders, rules, regulations and requirements of all federal, state, and municipal governments that may be applicable to the occupancy and the use of the Premises and the Improvements (collectively, the "Applicable Laws"), regardless of whether such compliance is foreseen or unforeseen, ordinary or extraordinary, and regardless of whether presently within the contemplation of the Parties or involving any change of governmental policy or requiring structural or extraordinary repairs, alterations or additions. Tenant shall likewise observe and comply with the requirements of all policies of public liability, fire, and all other policies of Insurance at any time in force with respect to the Improvements.

Section 7.02 Contest of Applicable Laws. Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity or application of any Applicable Law. If by the terms of any such Applicable Law, compliance therewith may legally be held in abeyance pending the prosecution of any such proceeding without the incurrance of a lien, charge or liability of any kind against the Premises or the Improvements or Tenant's leasehold interest therein and without subjecting Tenant or Landlord to any criminal liability or civil penalty of any nature for failure so to comply therewith, Tenant may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch, and if any lien, charge or civil liability is incurred by reason of non-compliance, Tenant may nevertheless make such contest and delay compliance as provided above, provided that Tenant furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such non-compliance or delay therein and prosecutes the contest with due diligence. Landlord shall reasonably cooperate with Tenant in the prosecution of any such proceeding provided that (a) such contest will not subject the Landlord to the risk of criminal or civil penalty, (b) such contest will not subject the Premises or any part thereof to any Lien, sale or other liability as a result of such contest, and (c) Landlord shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceeding, and Tenant agrees to indemnify, defend, save and hold harmless Landlord from any such costs or expenses.

## **ARTICLE 8**

### **DAMAGE TO OR DESTRUCTION OF THE IMPROVEMENTS**

Section 8.01 Casualty Repair. Tenant covenants that in case of damage to or destruction of the Improvements by fire or any other cause, similar or dissimilar, insured or uninsured, it will promptly, at its sole cost and expense, restore, repair, replace or rebuild the Improvements as nearly as possible to the condition, quality and class it was in immediately prior



to such damage or destruction, or with such changes or alterations as Tenant shall elect to make in conformity with Article 10 below. Such restoration, repairs, replacement or rebuilding shall be commenced reasonably promptly and prosecuted with reasonable diligence.

**Section 8.02 Insufficient Proceeds.** If insurance proceeds, if any, recovered in respect of any insured damage or destruction, less any cost of recovery, shall be insufficient to pay the entire cost of such restoration, repairs, replacement or rebuilding, Tenant shall pay such costs or obtain financing for the deficiency.

**Section 8.03 No Abatement.** Tenant's obligation to make payment of the Rent and to perform all of its other covenants and agreements herein shall not be affected by any such damage to or destruction of the Improvements.

## **ARTICLE 9**

### **CONDEMNATION**

**Section 9.01 Total Taking.** If, at any time during the Term of this Lease, there shall be a total "Taking" or "a constructive total Taking" (as those terms are defined below) of the fee title to the Premises, this Lease shall terminate on the date of such Taking and the Rent and other charges payable by Tenant under this Lease shall be apportioned and paid to the date of such Taking. For the purposes of this Article, the term "a constructive total Taking" shall mean a Taking of such scope that the portion of the Premises not taken is insufficient, in Tenant's and Landlord's reasonable judgment, to permit the restoration of the existing Improvements so as to constitute a complete, economical project. For purposes of this Lease, "Taking" means the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The Taking shall be considered to take place as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrue under Applicable Law. If a Taking does not constitute a total taking or "a constructive total Taking," the provisions of Sections 9.03 through 9.08 shall apply. The transfer of title may be either a transfer resulting from recording a final order in condemnation or a voluntary transfer or conveyance to the condemnor.

**Section 9.02 Condemnation Proceeds.** In the event of a total Taking or constructive total Taking and the termination of this Lease, the award or awards for such taking, less the costs of the determination and collection of the amount of the award or awards ("Condemnation Proceeds"), shall be distributed as follows:

(a) first, to payment of the costs (or reimbursement to Tenant, to the extent Tenant has already paid such costs) of removal of the damaged or destroyed Improvements;

(b) second, Tenant shall receive from the Condemnation Proceeds an amount equal to the lesser of (i) the then fair market value of Tenant's leasehold interest in the Premises, and (ii) the remaining Condemnation Proceeds; and

(c) third, Landlord shall receive the remainder, if any, of the Condemnation Proceeds.

Nothing herein shall prohibit the Landlord from seeking amounts from the applicable governmental entity for just compensation resulting from any taking of the Property which proceeds shall be payable directly to the Landlord and shall not be subject to Section 9.02 (a, b and c) above.

**Section 9.03 Partial Taking.** In the event of a taking that is less than a total Taking or constructive total Taking (a "Partial Taking"), this Lease shall not terminate or be affected in any way, except as provided in Section 9.04 below, and the Condemnation Proceeds from a Partial Taking shall be applied and distributed in the following order of priority: (a) to Tenant a sum equal to the cost of restoring any Improvements in accordance with Section 9.04 below; and (b) the residue, if any, shall be paid to Landlord. Notwithstanding the foregoing, Landlord shall retain all Condemnation Proceeds related to the taking of fee title or an easement (perpetual and temporary) by Salt River Project or the State of Arizona in the areas marked on Exhibit A. Promptly after a Partial Taking, at its expense, Tenant shall reconstruct the Premises according to Plans approved by Landlord.

Nothing herein shall prohibit the Landlord from seeking amounts from the applicable governmental entity for just compensation resulting from any taking of the Property which proceeds shall be payable directly to the Landlord and shall not be the subject of this Section 9.03.

**Section 9.04 Repair After Taking.** In the event of a Partial Taking, Tenant, at its sole cost and expense, and whether or not the Condemnation Proceeds shall be sufficient for the purpose, shall proceed with due diligence to restore, repair, replace or rebuild the remaining part of the Improvements to substantially its former condition or with such changes or alterations as Tenant may elect to make in conformity with Article 10 below so as to constitute a complete, rentable project.

**Section 9.05 Rent Reduction.** In the event of a Partial Taking, this Lease shall terminate as to the portion of the Premises so taken and the percentage used to calculate the Base Rent payable for the balance of the Term of this Lease shall be reduced by a sum equivalent to the portion of the Premises taken vs the original size of the Premises, such reduction to be effective as of the date of Taking. Until the amount of the reduction of the Base Rent shall have been determined, Tenant shall continue to pay to Landlord the Base Rent provided for in Article 2 above; provided that upon determination of the reduction in Base Rent, any overpayment by Tenant shall be applied immediately to the net due Base Rent until such overpayment is exhausted.

**Section 9.06 Temporary Taking.** If, at any time during the Lease Term, the whole or any part of the Premises, Tenant's leasehold estate, or the Improvements shall be Taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy (a "Temporary Taking") Sections 9.02 through 9.05 shall not apply and Tenant shall continue to pay,

in the manner at the times specified in this Lease, the full amounts of the Rent and other charges payable by Tenant under this Lease, and, except only to the extent that Tenant may be prevented from reasonably doing so as a result of the Temporary Taking, Tenant shall perform and observe all of the other terms of this Lease. In the event of any such Temporary Taking, Tenant shall be entitled to receive the entire amount of the Condemnation Proceeds made for such taking and reasonably apportioned to the Term of this Lease, whether paid by way of damages, rent or otherwise. Tenant covenants that, upon the expiration of any such period of temporary use or occupancy, if during the Lease Term, it will, at its sole cost and expense, restore the Improvements, as nearly as may be reasonably possible, to the condition in which the same was immediately prior to such taking, wear and tear during such temporary use or occupancy excepted. To the extent that Landlord receives any portion of the Condemnation Proceeds as compensation for the cost of restoration or repair of the Improvements, Landlord shall, pay all such sums to Tenant as and when the Improvements are restored. Any portion of the Condemnation Proceeds received by Tenant as compensation for the cost of restoration of the Improvements shall, if such period of temporary use or occupancy shall extend beyond the Term of this Lease and the Improvements shall not actually be restored with Condemnation Proceeds, be paid to Landlord on the date of termination of this Lease.

**Section 9.07 Allocation of Award.** If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to Landlord and the amount to be awarded to Tenant under the provisions of Section 9.02 or 9.03, above, or the amount of the compensation for the restoration of the Improvements under Section 9.05, above, and Landlord and Tenant fail to agree on such allocation within sixty (60) days after the final award or awards have been fixed and determined, Landlord and Tenant agree that such allocation shall be determined by appraisers as follows:

(a) Landlord and Tenant shall each appoint an appraiser within ninety (90) days of the date of the final condemnation order. The two appraisers so appointed shall promptly appoint a third appraiser within one hundred twenty (120) days following the date of the final condemnation order. If a Party fails to timely appoint an appraiser, no third appraiser shall be appointed, and the appraiser selected by the other Party shall determine the apportionment within one hundred eighty (180) days of the date of the final condemnation order.

(b) Within forty-five (45) days after the appointment of the third appraiser (if applicable), the two appraisers appointed by Landlord and Tenant shall each determine and report to the third appraiser the appropriate apportionment. Within ten (10) days thereafter, the third appraiser shall determine which of the two apportionments determined by the appraisers appointed by Landlord and Tenant is the more appropriate apportionment and the apportionment chosen by the third appraiser shall be final and binding upon the Parties and enforceable by any court of competent jurisdiction.

(c) All appraisers shall be members of the Appraisal Institute (M.A.I.) or, if such Institute shall not then exist, members of its successor organization or an organization of substantially equivalent stature. The fees of the appraisers shall be borne equally by Landlord and Tenant.



Section 9.08 Right to Participate. Each of Landlord and Tenant shall have the right, at its own expense, to appear in any condemnation proceeding and participate in any and all hearings, trials and appeals therein for the purpose of protecting its rights under this Lease and for Tenant to introduce evidence independently of Landlord to establish the value of or damage to the Improvements.

## ARTICLE 10

### CONSTRUCTION OF IMPROVEMENTS

#### Section 10.01 Construction of Initial Improvements.

(a) Within a reasonable time following the date it obtains all Initial Project Entitlements, Tenant shall commence and diligently pursue completion of the Initial Improvements in a sound workmanlike manner in accordance with this Lease and all Initial Project Entitlements, Applicable Laws and Permits. If Tenant has not commenced construction of the Initial Improvements within one hundred and twenty (120) days after the date Tenant obtains all Initial Project Entitlements and issuance of the Permits for the Initial Improvements (the "Construction Start Date"), Landlord shall have the right upon ninety (90) days prior written notice to Tenant given at any time prior to the Commencement of Construction, to terminate this Lease upon written notice to Tenant, and the Lease shall terminate unless Tenant commences construction of the Initial Improvements prior to expiration of such 90-day period. Landlord shall retain the Security Deposit upon such termination. The Construction Start Date and 90-day cure period in this Section 10.01(a) shall be extended for delays beyond the reasonable control of Tenant ("Unavoidable Delays"), including, without limitation, lender feasibility measures and force majeure events; where "force majeure events" means acts of God; strikes; lockouts; labor troubles; inability to procure materials; acts of war; terrorist actions; inclement weather; governmental laws or regulations; Casualty; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond the reasonable control of the party charged with or affected by such events. Landlord shall have no obligation to construct all or any Improvements (whether on-site or off-site) or to make any changes or improvements or modifications to the Property. For purposes of this Lease, "Commencement of Construction" (or equivalent) means the date when all of the following have occurred: (a) Tenant has entered into a binding construction contract to construct the Initial Improvements and (b) Tenant's contractors have established a presence on the Property and commenced physical alteration of the same in more than a negligible manner.

(b) Tenant shall proceed diligently to obtain, and Landlord shall assist and cooperate with Tenant, without cost or expense to Landlord, in obtaining, all permits, authorizations and approvals required by Governmental Authorities, including without limitation, approval of the Conceptual Plan and building permits required for construction of any Improvements (the "Permits").

(c) Tenant shall require the general contractor to secure, pay for, and maintain during the continuance of construction, commercial general liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00), Builder's Risk insurance, and worker's

compensation insurance. All such insurance shall be with a company or companies of recognized responsibility, and certificates evidencing such policies and, upon Landlord's written request, true copies thereof, issued by the respective insurers shall be delivered to Landlord prior to Commencement of Construction with evidence of the payment of the premiums therefor stamped thereon or other evidence of payment satisfactory to Landlord. Landlord shall be endorsed as an additional insured under the commercial general liability insurance policy and builder's risk policy. All such policies shall provide that Landlord and Tenant shall be given ten (10) days' prior written notice of any alteration or termination of coverage. Additionally, Tenant shall require its architect to maintain "errors and omissions" professional liability insurance in at least the amount of Two Million and No/100 Dollars (\$2,000,000), containing a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000).

(d) Within ten (10) days of the Commencement of Construction, Tenant shall: (i) provide Landlord a copy of a payment and performance bond(s) on which Tenant shall be the principal, which shall be issued by a surety company of recognized responsibility and sufficient financial strength, and which is authorized to do, and doing, business in the State of Arizona, on which Landlord shall be named the obligee (the "Bond"), and shall be in a commercially reasonable form and in the estimated amount of the cost of the Initial Improvements, or, (ii) deposit with Landlord an irrevocable letter of credit substantially in a commercially reasonable form; provided further, that such bond or letter of credit shall be in an amount equal to the construction budget for the Initial Improvements prepared by Tenant's general contractor and having an expiration date no later than twelve (12) months after the estimated completion date of the Initial Improvements as estimated by Tenant's general contractor in its reasonable discretion (the "Outside Completion Date"). The Outside Completion Date and other dates in this Section shall be determined within sixty (60) days of the approval of the Initial Project Entitlements and issuance of Permits.

(e) On or before Commencement of Construction, Tenant shall deliver to Landlord a construction "Milestone" schedule which shall be incorporated into this Lease as Exhibit "E" (the "Milestone Schedule"). If Tenant has not accomplished a Milestone by the date provided on the Milestone Schedule, Landlord shall have, as its sole right and remedy for such failure, the right upon ninety (90) days prior written notice to Tenant given at any time after the missed Milestone, but prior to the substantial completion of such Milestone, to draw upon the Bond or Letter of Credit upon written notice to Tenant, unless Tenant accomplishes such Milestone prior to expiration of such 90-day period. Each Milestone date on Exhibit "E," including the Outside Completion Date, shall be extended by a day for each day of Unavoidable Delay. Subject to extensions of time for Unavoidable Delays, Landlord, at its option and without limiting its other remedies, shall have the right upon thirty (30) days prior written notice to Tenant given at any time after the Outside Completion Date, but prior to the substantial Completion of Construction, to draw upon the Bond or Letter of Credit upon written notice to Tenant, unless Tenant resumes construction of the Initial Improvements prior to expiration of such 30-day period and diligently pursues the same to completion. If Landlord draws on the Bond or Letter of Credit pursuant to this Section 10.01(e), Landlord shall use the proceeds to Complete Construction of the Initial Improvements, including retaining a construction manager and/or any other third parties to oversee completion of construction. If the amount of the proceeds from the Bond or Letter of Credit exceed the reasonable cost to Complete Construction of the Initial improvements, Landlord shall

remit the balance of the proceeds to Tenant. If the cost to Complete Construction of the Initial improvements exceeds the proceeds from the Bond or Letter of Credit, Tenant shall pay to Landlord the balance of such reasonable costs within thirty (30) days following one or more written requests from Landlord accompanied by receipt of invoices therefor given no more frequently than monthly. For purposes of this Lease, "Completion of Construction" (or equivalent) means the date when all of the Initial Improvements are substantially complete and a certificate of occupancy (or equivalent) allowing such Initial Improvements to be occupied has been issued by the applicable Governmental Authorities and all costs associated therewith have been paid in full and lien waivers have been received from all contractors and materialmen.

**Section 10.02 Alterations.** After completion of the Initial Improvements, Tenant shall have the right, at any time and from time to time during the Lease Term, to make any and all Improvements and Alterations to the Premises as Tenant shall deem necessary or desirable, and without the consent of Landlord, including, without limiting the foregoing, the right to increase or reduce the height of any of the Improvements, construction new Improvements or demolition any of the Improvements or any part thereof, provided that such changes and alterations do not: (a) decrease the fair market value of the Premises, and (b) do not reduce the leasable square footage on the Premises. If either of subsections (a) and (b) in the foregoing are not satisfied, Tenant may make Improvements and Alterations to the Premises, with Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Notwithstanding the foregoing sentence, if Tenant assigns its right under this Lease to a non-affiliate (as defined in Section 14.01), Tenant shall not allow to be made any Major Alterations to the Premises or any part thereof, without obtaining Landlord's prior written consent (which will not be unreasonably withheld or delayed), regardless of whether such Major Alterations arises from or relates to Tenant's obligations to make repairs hereunder, and the following conditions shall apply: (i) As a condition to granting its approval, Landlord may impose such conditions as it deems reasonably necessary, including without limitation prior approval of the plans therefor; and, (ii) if the aggregate cost of such Major Alteration is expected to exceed \$1,000,000, then Landlord may also require Tenant, to provide to Landlord a completion bond in form and amount reasonably satisfactory to Landlord guaranteeing the payment and performance of the Alteration, free of mechanic's Liens, or such other form of security reasonably acceptable to Landlord as assurance of Tenant's financial ability to complete and fully pay for the Alteration. For purposes of this Lease, (A) "Improvements" means any buildings, structures, parking areas, paved areas, loading areas, driveways, roadways, medians, sidewalks, walkways, curbs, gutters, storage areas, canopies, fences, gates, screening devices, walls, poles, signs, exterior lighting and lighting standards, trash enclosures, exterior air conditioning equipment, antennae, landscaping, water features, utility lines, pipes and conduits, or similar improvements and any replacements, additions, repairs or alterations thereto of any kind whatsoever, (B) "Alterations" means any construction, reconstruction, replacement, expansion, repair or alteration of the Premises, including maintenance and repair which is capitalized rather than expensed pursuant to generally accepted accounting principles, (C) "Major Alteration" means any Alteration (x) structural in nature, (y) that materially changes the exterior appearance of any building or other structure, or (iii) the cost of which exceeds the Major Alteration Limit, and (z) "Major Alteration Limit" means \$500,000.00 in the aggregate.



**Section 10.03 As-Built Plans.** Upon completion of any Improvements, Tenant shall provide to Landlord one electronic and one paper copy of As-Built drawings and As-Built specifications.

**Section 10.04 Waste.** Tenant shall not commit or suffer any waste or damage to the Premises.

**Section 10.05 Ownership.** The Improvements and any Alterations or other additions thereto as permitted by this Lease shall be owned by and title thereto shall be vested in Tenant at all times during the Term until the expiration or sooner termination of this Lease.

**Section 10.06 Additional Approvals.** Landlord hereby authorizes, subject to Landlord's prior approval, Tenant to apply for and obtain all necessary and desirable Project Entitlements from Governmental Authorities in connection with any Alterations permitted by this Lease. Landlord shall reasonably cooperate with Tenant, at Tenant's sole expense, in Tenant's efforts to obtain the Project Entitlements and shall, within five (5) days of Tenant's written request, or sooner if required by a Governmental Authority, execute any and all applications, consents, and other documents reasonably and timely requested by Tenant in connection with the Project Entitlements. Landlord, if necessary, shall be the applicant with respect to the Project Entitlements, but Tenant shall be solely responsible for all application fees, expenses associated with the Project Entitlements. If additional Easement Interests are required in connection with the Alterations, Landlord shall not unreasonably withhold, condition or delay its consent thereto, and upon consent, Landlord shall, within five (5) days of Tenant's written request, or sooner if required by a Governmental Authority, execute any and all applications, consents, and other documents reasonably and timely requested by Tenant in connection with approved Easement Interests. Any development or jobs incentive (up to a total value of One Million Five Hundred Thousand Dollars (\$1,500,000.00) obtained by or on behalf of Tenant from a Governmental Authority including, but not limited to, a sales tax overlay or bed tax rebate shall be the property of and inure to the benefit of Tenant.

## **ARTICLE 11**

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT**

**Section 11.01 Subordination.** This Lease may be subject and subordinate to the lien of any mortgage, deed of trust, or other financing or security instrument or encumbrance recognized in the State of Arizona as a lien on real property ("Mortgage") which may now or hereafter encumber the Premises or any portion thereof except as to Landlord Financing as set forth herein. **Landlord Financing.** Tenant shall, within ten (10) days after the written request by Landlord or a mortgagee of a mortgage, beneficiary of a deed of trust, or other obligee of any indebtedness secured by a Mortgage in which the Landlord is the borrower (a "Lender"), execute promptly any appropriate certificate or instrument evidencing such subordination of its leasehold interest in a form acceptable to Tenant in its reasonable discretion, and failure to deliver such certificate within such 10-day period shall constitute an Event of Default hereunder. Tenant's obligation to subordinate its interests under the Lease to the lien of any Mortgage shall be conditioned upon Landlord providing Tenant with a non-disturbance agreement from the Lender, which, in substance, agrees that so long as Tenant is not in default under the terms of this Lease, its tenancy will not be



disturbed by the Lender so long as Tenant is not in default beyond the expiration of any applicable grace period. In the event of the enforcement of any remedy by any Lender of the remedies provided for by law, or under any Mortgage, Tenant will, at the option of and upon written request of any successor to Landlord, attorn to the successor in interest of Landlord and automatically become the Tenant of such successor in interest without any change in the terms or any other provision of this Lease. Tenant shall give written notice of each and every default by Landlord hereunder to any Lender for which an address has been furnished to Tenant, and Tenant shall not exercise any of its remedies under this Lease unless the Lender shall have failed to cure such default within ninety (90) days.

**Section 11.02 Landlord Limited Consent Not to Encumber.** As of the Effective Date, Landlord's fee interest in the Property is free and clear of financing liens and encumbrances. During such period of time that Tenant's leasehold interest is subject to a Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing to UMB Bank, NA, its successor or assignee, Landlord will not pledge Tenant's leasehold interest in the Property as collateral for any Landlord financing absent Landlord's lender executing a commercially reasonable form of subordination and non-disturbance agreement.

**Section 11.03 Tenant Financing.** Landlord consents to the imposition, filing and recording of a leasehold mortgage and Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing ("Tenant Leasehold Mortgage") in favor of Tenant's lender, trustee or beneficiary of deed of trust (collectively, and with its successors and assigns, the "Tenant's Lender") encumbering and secured by Tenant's leasehold interest in the Premises. Without limiting the generality of the foregoing, Landlord shall, within ten (10) days after the written request by Tenant or Tenant's Lender, execute promptly a commercially reasonable certificate or instrument, consistent with the terms of this Lease, evidencing Landlord's consent and Landlord's lender's consent to the extent necessary, to the filing of the Tenant Leasehold Mortgage and obtain and provide to Tenant or Tenant's Lender consent from Landlord's lender. Regardless of whether any such certificate is executed, Landlord shall give written notice of each and every default by Tenant hereunder to any Tenant Lender for which an address has been furnished to Landlord, and Landlord shall not exercise any of its remedies under this Lease unless the Tenant's Lender shall have failed to cure such default within thirty (30) days following the date that Tenant was otherwise required to cure said default which time period shall be subject to further extension (but not for a total period of more than 120 days inclusive of the initial 30 day period following the date that Tenant's cure period expired) so long as Tenant's Lender is taking reasonably diligent steps to cure said default. If Tenant is in default pursuant to the terms of the agreements with Tenant's Lender, Landlord consents to the exercise of those rights and remedies available to Tenant's Lender, including foreclosure on Tenant's leasehold interest hereunder and will attorn to Tenant's Lender or, subject to Lender's first right of purchase as described in Section 11.04 hereof having been waived or deemed waived by Landlord, Lender's assignee. Tenant's Lender shall be for all purposes a third party beneficiary of this Section 11.03 and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

**Section 11.04 First Right of Purchase.** Landlord shall have a first right of purchase to purchase the outstanding Bonds in connection with any direct or indirect sale or transfer of Tenant's leasehold interest in the Premises by Tenant's Lender. The purchase price of the Bonds shall be the value of the Bonds determined by Bloomberg Valuation Services as of the date of the initial notice of foreclosure by Tenant's Lender (the "Purchase Price"). Within ten (10) business days from receipt of the notice of





foreclosure, Landlord shall notify Tenant's Lender, in writing, of its intention to purchase the Bonds for the Purchase Price. Failure to notify Tenant's Lender in a timely manner shall constitute a waiver by Landlord of its rights under this Section 11.04. In the event Landlord elects to purchase the Bonds, Landlord shall have a period of thirty (30) days from the date it notifies Tenant's Lender of its intention to exercise its right hereunder, to tender the Purchase Price to Lender's Tenant. Failure to tender the Purchase Price in a timely manner shall constitute a waiver of its right under this Section 11.04. Upon Landlord's waiver as set forth herein, Tenant's Lender may proceed to exercise any and all remedies provided to it in the Tenant Leasehold Mortgage without claim or interference from Landlord.

## **ARTICLE 12**

### **MECHANICS' LIENS**

Tenant shall pay or cause to be paid the total cost and expenses of the construction of the Initial Improvements, any Alterations thereto, and other Improvements, made during the term of the Lease. Tenant shall not suffer or permit any mechanics', vendors', laborers', or materialmen's statutory or similar liens (collectively "mechanics' liens") to be filed against the Premises, nor against Tenant's leasehold interest in the Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding any interest in the Premises and/or the Improvements or any part thereof through or under Tenant. If any such mechanics' lien shall be filed, Tenant shall, within twenty (20) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided, however, that Tenant shall have the right to contest, with due diligence, the validity or amount of any such lien or claimed lien. Subject to the foregoing provisions, if Tenant shall fail to cause such mechanics' lien to be discharged within such 20-day period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such mechanics' lien by deposit or by bonding proceedings. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvements, alteration to or repair of the Premises or any part thereof, nor as giving Tenant a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' liens against the Premises. Tenant shall indemnify, defend and hold Landlord harmless for, from and against all liability or loss of any type to the extent arising out of any work, construction or other activity by Tenant or on behalf of Tenant in connection with the Premises, except to the extent caused by the gross negligence or willful misconduct of, or misrepresentation by Landlord.

## **ARTICLE 13**

### **USE; SURRENDER; INSPECTION**

Section 13.01 Use of the Premises. Tenant shall not use or allow the Improvements or any part thereof, or the Premises, to be used or occupied for (i) any unlawful purpose or (ii) any of the uses described on Exhibit "D" (the "Prohibited Uses"). The Premises shall, unless Landlord otherwise gives prior approval in writing, only be used for a national quality family oriented

sports/entertainment park which will provide a variety of premier playing fields, indoor team sports facilities, eSports venues, concerts, family dining, locally based retail store(s) and other family entertainment venues. Tenant shall have the right to develop retail amenities within the Premises that are directly related to and complimentary to the onsite activities conducted by Tenant including, but not limited to, banks (limited to ATM's and/or kiosks vs a branch location), restaurants, coffee shops, a hotel (subject to the restrictions set forth below) and apparel stores, in each case as a secondary use (vs a primary, stand-alone use) subject to the primary use of the Premises as a sports/entertainment park. The Parties acknowledge that it is the intent of Tenant to develop a hotel (not to exceed 150 rooms absent Landlord's prior written consent) on the Premises to accommodate the patrons of the sports/entertainment park. The uses described in the immediately preceding three sentences are collectively referred to as the "Permitted Uses." At no time during the term of this Lease as the same may be extended shall the Tenant, any affiliate (as defined in Section 14.01 of this Lease) of the Tenant or any successor of the Tenant or any affiliate thereof engage in all or any one or more of the Permitted Uses within thirty (30) miles of the perimeter of any portion of the Premises. This provision shall be specifically enforceable, and the subject of equitable relief given the unique nature of the real property interests and development thereof as set forth in this Lease. Landlord shall have first right to refusal to develop any hotel on the Premises in accordance with commercially reasonable terms agreed upon by the Parties. If Landlord elects not to proceed with the hotel development, Tenant shall be permitted to develop a hotel on the Premises subject to the restrictions set forth above. Tenant shall also have the rights of access and use to and of any well and well water, if any located on a parcel of land adjacent to the Premises known as tax parcel \_\_\_\_\_.

**Section 13.02 Surrender.** Upon expiration or sooner termination of this Lease, (a) the Improvements and any Alterations shall (unless requested by Landlord to be removed in whole or part which Tenant shall complete prior to expiration or earlier termination of this Lease) become Landlord's property free and clear of all mechanics' liens and claims thereto by Tenant or through Tenant (but excluding, however, Tenant's Personal Property) and Tenant shall, if requested by Landlord, promptly execute a quit claim deed, bill of sale or other instruments reasonably requested by Landlord to confirm ownership in and possession of the Improvements by Landlord; (b) surrender the Improvements in good order and repair, reasonable wear and tear excepted. Upon such expiration or sooner termination, Tenant shall also deliver to Landlord all non-confidential leases, lease files, plans, records, registers and all other papers and documents that may be necessary or appropriate for the proper operation and management of the Premises and the Improvements. Notwithstanding anything to the contrary herein, Tenant may remove from the Premises any and all of Tenant's Personal Property at any time prior to the expiration or sooner termination of this Lease. For purposes of this Lease, "Tenant's Personal Property" means any trade fixtures, inventory, equipment, furniture, vehicles, or other personal property of any type or kind located at or about the Premises which is owned or leased by Tenant or its tenants, agents, employees, contractors, or invitees. Tenant shall restore any damage to the Premises resulting from the removal of Tenant's Personal Property.

**Section 13.03 Inspection.** Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Premises at all reasonable times (except in the case of an emergency) during usual business hours for the purpose of inspecting the same or, during the last

one (1) year of the Lease Term, exhibiting the same to prospective purchasers or lessees of the Premises.

## ARTICLE 14

### **ASSIGNMENT, SUBLETTING AND MORTGAGING**

**Section 14.01 Assignment.** Prior to the Completion of Construction of the Initial Improvements, this Lease and the interest of Tenant under this Lease may not, directly or indirectly, be assigned, sold or otherwise transferred or subleased in its entirety ("assigned" including any variation thereof such as "assign" or "assignment") without the prior written consent of Landlord in each instance, which consent may be given or withheld in Landlord's sole discretion. Following Completion of Construction of the Initial Improvements, and without the prior consent of Landlord, this Lease and the interest of Tenant under this Lease may be assigned on one or more occasions to any affiliate; provided, that Tenant shall have no right to assign its interest under this Lease at any time when an Event of Default is pending or when an event has occurred which, with the passage of time or the giving of notice or both, will constitute an Event of Default. Following Completion of Construction of the Initial Improvements, this Lease and the interest of Tenant under this Lease may be assigned on one or more occasions to a third party nonaffiliate upon written consent of Landlord which consent will not be unreasonably withheld, conditioned or delayed. No such assignment shall be effective for any purpose unless and until (i) the assignor's interest in the Improvements shall be transferred to the assignee of this Lease and (ii) there shall be delivered to Landlord (A) a duplicate original of the instrument or instruments of transfer of this Lease and of the assignor's interest in the Improvements in recordable form, containing the name and address of the transferee and (B) an instrument of assumption by the transferee of all of Tenant's obligations under this Lease. Tenant acknowledges that Landlord's decision to lease the Premises to Tenant is based, in part, on a review of the individuals and entities comprising Tenant (and the individuals comprising any entities having an ownership interest in Tenant); therefore, if Tenant is a corporation which is not publicly traded or a partnership, limited liability company, trust or other entity, the issuance of any additional stock and/or the transfer, assignment or hypothecation of any stock or interest in any corporation, partnership, limited liability company or other entity, directly or indirectly, to any individual or entity resulting in a change in 50% or more ownership interest or the designation of any additional trustees or beneficiaries in any trust shall be deemed an assignment within the meaning of this Article 14. As used in this Lease, an "affiliate" of Tenant means, with respect to any person or entity, any other person or entity that, directly or indirectly, controls, is controlled by or is under common control with such person or entity. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management and policies of the entity.

**Section 14.02 Subletting.** Without the consent of Landlord, Tenant shall have the right, at any time during the Term of this Lease, to sublet or license any portion of the Premises (such sublease being hereinafter in this Section called a "space lease"), provided that (i) the term of any such space lease (including any options to extend the same as therein provided) shall not extend beyond the then remaining Term of this Lease without the prior written consent of Landlord, and (ii) any space lease shall be subject to the terms and conditions of this Lease.

No assignment or sublease of all or any portion of the Premises shall release the Tenant from its obligations under this Lease absent Landlord's express written release thereof.

Landlord shall have the right to assign this Lease at any time to its successor in interest as and to title to the Premises.

## ARTICLE 15

### **DEFAULT; BANKRUPTCY**

Section 15.01 Bankruptcy. Tenant agrees that in the event (a) all or substantially all of Tenant's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of six (6) months, or (b) Tenant make an assignment for the benefit of creditors, or (c) Tenant institutes any proceeding under the Federal Bankruptcy Code as the same now exists or under any amendment thereof that may hereafter be enacted, or under any other act relating to the subject of bankruptcy, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization which has not been approved by the Landlord and creditors and submitted for confirmation within six (6) months of filing, or (d) any involuntary proceeding be filed against Tenant under any such bankruptcy laws and such proceeding is not dismissed within six (6) months thereafter, then this Lease or any interest of Tenant in and to the Property shall not become an asset in any of such proceedings and, in any such events and in addition to any and all rights or remedies of Landlord under this Lease or as otherwise provided by law, it shall be lawful for Landlord to declare the Lease Term ended and to reenter the Property and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder.

Section 15.02 Tenant Default. The occurrence of any of the following, and subject to any applicable Additional Cure Periods (defined in Section 15.06 below), shall constitute a default by Tenant under this Lease: (an "Event of Default"):

(a) If Tenant fails to timely pay the Rent or other charges payable by Tenant under this Lease, and if such default continues for a period of five (5) days after written notice from Landlord to Tenant, or

(b) If Tenant be in default or breach in the prompt and full performance of any other of its material promises, covenants or agreements contained in this Lease and should such default or breach of performance continue for more than thirty (30) days, after written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance and passage of any applicable cure period provided herein.

(c) Tenant Default Remedies. Upon the occurrence of an Event of Default, Landlord may, subject to the provisions in Article 11 herein, in addition to all remedies at law and in equity, exercise any one (1) or more of the following remedies concurrently or in succession.

(d) Terminate Tenant's right to possession of the Premises by legal process or otherwise, and retake exclusive possession of the Premises with or without termination of this Lease;

(e) Waive the Event of Default, in which case this Lease shall continue in full force and effect; provided, however, that no such waiver shall be deemed to be a permanent waiver of such default or similar default unless agreed otherwise in writing (nonetheless, Landlord shall be required to provide Tenant written notice of any continued or subsequent default pursuant to this Article 15 prior to exercising its rights and remedies in this Section in connection therewith);

(f) Negotiate in good faith with Tenant to amend this Lease or enter into a separate written accord to satisfy Landlord in lieu of Tenant curing the Event of Default; if the negotiations are unsuccessful, Landlord shall not be deemed to have waived its rights under Subsection (d) below;

(g) From time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of this Lease;

(h) Recover all costs, expenses and attorneys' fees (including without limitation litigation expenses, expert witness fees, and service of process fees) incurred by Landlord in connection with enforcing this Lease, recovering possession, or collecting amounts owed;

(i) Perform any obligation on Tenant's behalf in accordance with Article 5; or,

(j) Seek injunctive relief, including, if applicable, a mandatory injunction and/or specific performance; and/or

(k) Pursue any other remedies expressly provided to Landlord in this Lease.

Notwithstanding the foregoing, if Landlord elects any one or more remedies granted above, Landlord shall have the right to elect one or more other remedies at any time or times thereafter. No action of Landlord shall be construed as an election to terminate this Lease unless written notice of such intention is given by Landlord to Tenant.

**Section 15.03 Interest on Unpaid Rent.** Rent and other sums payable by Tenant under this Lease which are not paid when due shall bear interest from the date due until paid at the Default Rate.

**Section 15.04 Waiver.** No failure by Tenant or Landlord to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy, and no acceptance of partial payment during the continuance of any default, shall constitute a waiver of any such default or of such provision. No provision of this Lease to be performed or observed by Landlord or Tenant, and no Event of Default thereof shall be waived, altered or modified except by written instrument

executed by Landlord and Tenant. No waiver of any default shall affect or alter this Lease but each and every provision of this Lease shall remain and continue in full force and effect with respect to any other existing or subsequent Event of Default.

Section 15.05 Additional Cure Periods. Notwithstanding any other provisions of this Article 15, Landlord agrees to the following "Additional Cure Periods":

(a) if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) day period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant within such period of thirty (30) days shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so diligently complete the same within sixty (60) days of receipt of the notice required under Section 15.02(b) above; and

(b) after a default described in Section 15.02(b), Tenant shall have an additional ninety (90) days to cure the underlying default, provided that, notwithstanding Section 26.01, any corresponding overdue and unpaid sums shall bear interest at the Default Rate during the Additional Cure Period until paid in full.

Section 15.06 Landlord's Default. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it under this Lease until it has (a) failed to timely pay any amount due and payable by Landlord under this Lease, and if such default continues for a period of ten (10) business days after written notice from Tenant to Landlord, or (b) failed to perform any other obligation within thirty (30) days after written notice by Tenant to Landlord specifying the nature of Landlord's default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion. If any default by Landlord continues beyond the applicable cure period set forth in this Section 15.06, Tenant may pursue all rights and remedies in equity, including an action for injunctive relief and/or specific performance, subject, however, to Article 17 below. Notwithstanding anything to the contrary herein and in addition to all other rights and remedies of Tenant in this Lease, if Landlord's default threatens the safety of persons or imminent damage to property (including title thereto), Tenant may, but shall not be obligated, to cure such default on Landlord's behalf, and Tenant shall have the right to offset reasonable amounts incurred by Tenant in curing such default against all payments of all Rent until such amount plus annual interest at the Default Rate is recovered in full, subject, however, to Article 17 below.

## ARTICLE 16

### INDEMNIFICATION

Tenant agrees to indemnify, hold harmless and defend Landlord for, from and against any and all Claims, damages, losses and expenses, including but not limited to attorneys' fees, in connection with, arising out of, or resulting from Tenant's development, use or occupancy of the Premises, access or use of parking lots, walkways or common areas and any alterations or work

done in or about the Premises by the Tenant or on the Tenant's behalf arising from any act or negligence of Tenant caused to any person or property occurring during the Term of this Lease in or about the Premises, or upon or under the sidewalks and the land adjacent thereto provided that such claim, damage, loss or expense is related to bodily injury sickness, disease or death or to injury to or destruction of tangible property. For purposes of this Lease, "Claims" means all claims, actions, demands, liabilities, damages, costs, and reasonable attorneys' fees. If any demand, action or proceeding is brought against Landlord by reason of any such Claims, Tenant, upon notice from Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord. This indemnity shall survive the expiration or sooner termination of this Lease. Landlord agrees to indemnify, hold harmless and defend Tenant for, from and against any and all Claims, damages, losses and expenses, including but not limited to attorneys' fees, in connection with, arising out of or resulting from Landlord's ownership of the Premises, arising from any grossly negligent act of Landlord or those acting on the Landlord's behalf caused to any person or property occurring during the Term of this Lease in or about the Premises, or upon or under the sidewalks and the land adjacent thereto provided that such claim, damage, loss or expense is related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property.

## ARTICLE 17

### **LIMITATIONS ON LANDLORD'S LIABILITY**

**Section 17.01 Landlord's Transfer.** The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the fee of the Premises and in the event of any transfer or transfers of the title to such fee Landlord herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance from all obligations on the part of Landlord contained in this Lease to be performed thereafter, provided that any prepaid rent or security deposit or other Tenant funds held by such Landlord or the then grantor at the time of such transfer, shall be transferred to the grantee or transferee, who shall expressly assume, subject to the limitations of this Article 17, all of the terms, covenants and conditions in this Lease contained on the part of Landlord thereafter to be performed, it being intended by this Article that the covenants and obligations contained in this Lease on the part of Landlord shall, subject to the provisions of this Article 17, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

**Section 17.02 Landlord's Liability.** Notwithstanding anything to the contrary in this Lease, neither Landlord nor Landlord's general or limited partners, members, directors, officers, shareholders, members employees, agents, constituent partners, beneficiaries, trustees, representatives, successors or assigns (collectively, "Landlord's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking or agreement contained in the Lease, and the sole right and remedy of the Tenant or any subsequent assignee shall be against Landlord's interest in the Premises. Neither Tenant nor any subsequent assignee shall seek to obtain any judgment imposing personal liability against Landlord, Landlord's Affiliates, or their successors or assigns nor execute upon any judgment or place any lien against any property other than Landlord's interest in the Premises.

## **ARTICLE 18**

### **INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **ARTICLE 19**

### **CERTIFICATES OF LANDLORD AND TENANT**

Tenant agrees at any time and from time to time upon not less than fifteen (15) days prior notice by Landlord to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the Base Rent has been paid, and stating whether or not to the best knowledge of the signer of such statement Tenant or Landlord is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by Landlord or any prospective purchaser of the fee but reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge.

## **ARTICLE 20**

### **NOTICES**

All Notices must be in writing and must be sent by personal delivery, by United States registered or certified mail (postage prepaid), or by an independent overnight courier service, fully prepaid and addressed to the Party as follows:

Landlord:	Pacific Proving, LLC 2801 E. Camelback Rd., #450 Phoenix, Arizona 85016 Attention: Andrew Cohn E mail: andrew@levineinvestments.com
with a copy to:	Burch & Cracchiolo, PA 702 E. Osborn Rd., #200 Phoenix, Arizona 85014 Attention: Andrew Abraham E mail: aabraham@bcattorneys.com



**Tenant:** Legacy Cares, Inc.  
1900 W. Chandler Blvd., Ste. 15-315  
Chandler, Arizona 85224  
Attention: Douglas G. Moss  
E mail: DMoss@legacycares.com

**with a copy to:** McCann, Garland, Ridall & Burke  
11 Stanwix St., Ste. 1030  
Pittsburgh, Pennsylvania 15222  
Attention: J. Michael Baggett, Esquire  
E mail: jmbaggett@mgrblaw.com

Notices given by personal delivery are deemed delivered when actually received or when the receiving Party refuses delivery. Notices given by mail are deemed delivered within three business days after the Party sending the notice deposits the notice with the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the day the Party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery. Any notice given by an attorney or agent acting on behalf of a Party shall be effective as notice from such Party. Either Party may designate by notice in writing given in the manner specified above a new or other address to which such notice or demand shall thereafter be so given or made. Courtesy copies of notices shall also be provided by email.

## **ARTICLE 21**

### **HAZARDOUS MATERIALS**

**Section 21.01 Compliance with Hazardous Materials Laws.** Tenant will not cause any Hazardous Materials to be brought upon, kept or used on the Premises in a manner or for any purpose that violates any Hazardous Materials Laws. Tenant, at its sole cost and expense, will comply with, and require all others using the Premises during the term to comply with, all Hazardous Materials Laws related to the use of the Premises. On or before the expiration or sooner termination of this Lease, Tenant will completely remove from the Premises (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws and at Tenant's sole cost and expense, all Hazardous Materials Tenant causes to be present in, on, under or about the Premises.

**Section 21.02 Notice of Actions.** Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Premises that result from or in any way relate to Tenant's use of the Premises, immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claims made or threatened relating to any Hazardous Material; (c) any reports, records, letters of inquiry and responses, manifests or other documents made by any person, including Tenant, to or from any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations, and (d) any change in the operations on the Premises that will change Tenant's or Landlord's obligations or liabilities under Hazardous Materials Law. Tenant will not take any remedial action in response to the

presence of any Hazardous Materials in, on, under or about the Premises, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Premises, without first notifying Landlord of Tenant's intention to do so and (i) affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord's interest in the Premises and (ii) obtaining Landlord's prior written consent thereto, which shall not be unreasonably withheld, conditioned or delayed.

**Section 21.03 Hazardous Materials Indemnifications and Representation.** To the fullest extent allowable under Hazardous Materials Laws, Tenant releases and will indemnify, protect, defend (with counsel reasonably acceptable to Tenant's insurance provider) and hold harmless Landlord for, from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, about or from the Premises (including water tables and atmosphere), but only to the extent arising from Tenant's use or occupancy of the Premises and subject to the limitations below. Tenant's obligations under this Section include, without limitation and whether foreseeable or unforeseeable, (i) the costs of any required or necessary repair, compliance, investigations, clean-up, monitoring, response, detoxification or decontamination of the Premises; (ii) the costs of implementing any closure, remediation or other required action in connection therewith; (iii) the value of any loss of use and any diminution in value of the Premises, including groundwater; and (iv) consultants' fees, experts' fees and response costs (collectively, "Environmental Costs"). If any action or proceeding is brought against Landlord by reason of any such Claims, Tenant, upon notice from Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord. The obligations of Tenant under this Article survive the expiration or sooner termination of this Lease. Notwithstanding anything to contrary herein, Tenant's indemnification and other obligations in this Section 21.03 shall not include Claims or Environmental Costs to the extent caused by Landlord's negligence or willful misconduct.

**Section 21.04 Environmental Definitions.** "Hazardous Materials" means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos in any form, PCBs; (b) any radioactive substance, transformers or other equipment containing dielectric fluid; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," "medical waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) oil or any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) radioactive materials and waste, and (viii) infectious waste. "Hazardous Materials Laws" means any federal, state or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority, existing now or in the

future, which classify, regulate, list or define Hazardous Materials or which deal with the regulation or protection of human health, industrial hygiene or the environment, including the soil, subsurface soil, ambient air, groundwater, surface water, and land use, including, but not limited to the following: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.); the Resource Conservation Act and Recovery Act as amended (42 U.S.C. §§ 6901 et seq.); the Safe Drinking Water Act as amended (42 U.S.C. §§ 300f et seq.); the Clean Water Act as amended (33 U.S.C. §§ 1251 et seq.); the Clean Air Act as amended (42 U.S.C. §§ 7401 et seq.); the Toxic Substances Control Act as amended (15 U.S.C. §§ 135 et seq.); the Solid Waste Disposal Act as amended (42 U.S.C. §§ 3251 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.); the provisions of Title 49 of Arizona Revised Statutes; the regulations promulgated under any of the foregoing.

## **ARTICLE 22**

### **REMEDIES; NO WAIVER; NO ORAL CHANGE**

Section 22.01 ~~Remedies Exclusive; No Waiver~~. The failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained in this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressly in writing and signed by Landlord.

Section 22.02 ~~Amendment~~. This Lease cannot be changed orally, but only by an agreement in writing signed by Landlord and Tenant.

## **ARTICLE 23**

### **QUIET ENJOYMENT**

Landlord covenants and agrees that Tenant, upon paying the rent provided for in this Lease and upon observing and keeping all of the covenants, agreements and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease, without hindrance by or from anyone claiming by, through or under Landlord.

## **ARTICLE 24**

### **REAL ESTATE BROKERS**

Tenant hereby represents and warrants that it has dealt with no real estate broker, agent or Party who may be entitled to a commission or fee on account of this Lease except JLL (Steve Larsen). Landlord shall be responsible for the brokerage commission to JLL, which shall be paid through Landlord's agent, Nathan and Associates. Tenant hereby indemnifies and agrees to indemnify, protect, defend (with counsel reasonably acceptable to Tenant's insurance provider and Landlord) and hold harmless Landlord for, from and against any and all Claims that may be incurred

in the event the foregoing representation and warranty proves incorrect. If any action or proceeding is brought against Landlord by reason of any such Claims, Tenant, upon notice from Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord. The obligations of Tenant under this Article survive the expiration or sooner termination of this Lease.

## ARTICLE 25

### REPRESENTATIONS

Section 25.01 Landlord's Representations. Landlord represents and warrants to and agrees with Tenant that as of the Effective Date:

(a) Due Organization. Landlord is a limited partnership duly organized and existing in good standing under the laws of the state of Arizona.

(b) Landlord's Authority; Validity of Agreements. Landlord has full right, power and authority to lease the Premises to Tenant as provided in this Lease and to carry out its obligations hereunder. The individual(s) executing this Lease and the instruments referenced herein on behalf of Landlord have the legal power, right and actual authority to bind Landlord to the terms hereof and thereof. This Lease is, and all other instruments, documents and agreements to be executed and delivered by Landlord in connection with this Lease shall be, duly authorized, executed and delivered by Landlord and shall be valid, binding and enforceable obligations of Landlord and do not violate any provisions of any agreement or judicial order to which Landlord is a Party or to which Landlord or the Property is subject.

(c) Sole Owner. Landlord is the sole owner of fee simple interest to the Premises as of the Effective Date. Except as expressly permitted herein, Landlord shall not take any action to effect title or permit or consent to any change to title to the Premises while this Lease is in effect (including, by the recordation of any restriction, encumbrance or other covenant against the Premises), and the sole and exclusive possession of the Property shall be delivered to Tenant on the Effective Date.

(d) No Third-Party Rights. Except as expressly permitted herein or created hereby, there are and shall be no leases, occupancy agreements, easements, licenses or other agreements which grant third-parties any possessory or usage rights to all or any part of the Premises.

(e) Litigation. To the actual knowledge of Landlord (a) there are no actions, investigations, suits or proceedings (other than tax appeals or protests) pending or threatened that affect the Premises, or the ownership or operation thereof, and (b) there are no judgments, orders, awards or decrees currently in effect against Landlord with respect to the ownership or operation of the Premises which have not been fully discharged prior to the Effective Date.

(f) Survival. All of the representations, warranties and agreements of Landlord set forth in this Lease shall be true upon the Effective Date, shall be deemed

to be repeated at and as of the Commencement Date (except as otherwise set forth in writing to Tenant) and shall survive for the Term of this Lease.

(g) Knowledge. Landlord's "knowledge" or "actual knowledge" or words to that effect shall mean the present actual knowledge of Andrew Cohn with no duty to inquire or investigate. Andrew Cohn shall have no personal liability for any of the Landlord representations made herein.

Section 25.02 Tenant acknowledges that it has examined the Property, is familiar with the physical condition, zoning, status of title and use that may be made of the Property and every other matter or thing affecting or related to the Property, and is leasing the same in its "AS IS" condition existing on the Effective Date. Except as specifically set forth in this Lease, Landlord has not made and does not make any representations or warranties whatsoever with respect to the Property or otherwise with respect to this Lease. Except as otherwise expressly provided in this Lease, Tenant assumes all risks resulting from any defects (patent or latent) in the Property or from any failure of the same to comply with any Applicable Law or the uses or purposes for which the same may be used or occupied.

Section 25.03 Tenant's Representations. Tenant represents and warrants to and agrees with Landlord that as of the Effective Date:

(a) Due Organization. Tenant is a nonprofit corporation duly organized and existing in good standing under the laws of the State of Arizona.

(b) Tenant's Authority; Validity of Agreements. Tenant has full right, power and authority to lease the Premises from Landlord as provided in this Lease and to carry out its obligations hereunder. The individual(s) executing this Lease and the instruments referenced herein on behalf of Tenant have the legal power, right and actual authority to bind Tenant to the terms hereof and thereof. This Lease is, and all other instruments, documents and agreements to be executed and delivered by Tenant in connection with this Lease shall be, duly authorized, executed and delivered by Tenant and shall be valid, binding and enforceable obligations of Tenant (except as enforcement may be limited by bankruptcy, insolvency or similar laws) and do not, and as of the Effective Date will not, violate any provisions of any agreement or judicial order to which Tenant is a party.

## ARTICLE 26

### MISCELLANEOUS

Section 26.01 Interest Rate. All Rent and other sums that may from time to time become due and payable by Tenant to Landlord under any of the provisions of this Lease shall bear interest from and after the due date thereof at the rate of twelve percent (12%) per annum (the "Default Rate").

Section 26.02 Construction. In all cases the language in all parts of this Lease shall be construed simply, according to its fair meaning and not strictly for or against Landlord or Tenant.

This Lease shall not be construed more strictly against one Party hereto than against any other Party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the Parties.

**Section 26.03 Headings.** The word titles underlying the article and section designations contained in this Lease are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

**Section 26.04 Successors and Assigns.** Subject to the other provisions of this Lease, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns, and wherever a reference in this Lease is made to either Landlord or Tenant, such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such Party, as if in every case so expressed.

**Section 26.05 Memorandum of Lease.** At the request of either Landlord or Tenant, a Memorandum of Lease (in the form attached hereto as Exhibit "F") shall be executed by Landlord and Tenant and recorded in the Office of the County Recorder of Maricopa County, Arizona. In no event shall this Lease be recorded.

**Section 26.06 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Arizona. Any suit against Landlord or Tenant relating to this Lease must be brought in Maricopa County or, if the suit is brought in federal court, in any federal court appropriate for suits arising in Maricopa County; Landlord and Tenant waive the right to bring suit against each other elsewhere.

**Section 26.07 Entire Agreement.** This Lease, together with any written modifications or amendments hereafter entered into shall constitute the entire agreement between the Parties relative to the subject matter of this Lease, and shall supersede any prior agreement or understanding, if any, whether written or oral, that Tenant may have had with Landlord relating to the subject matter of this Lease.

**Section 26.08 Counterparts.** This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**Section 26.09 Attorneys' Fees.** In the event of any litigation or formal dispute resolution between Landlord and Tenant with respect to the subject matter of this Lease, the unsuccessful Party to such litigation or formal dispute resolution shall pay to the prevailing Party all costs and expenses, including reasonably attorneys' fees, incurred therein by the prevailing Party, all of which shall be included in and as a part of the judgment rendered in such litigation or formal dispute resolution.

**Section 26.10 Consent.** Whenever and wherever a Party's consent is to be granted or obtained pursuant to this Lease, unless expressly provided otherwise, such consent shall not be unreasonably withheld, conditioned or delayed.

**Section 26.11 Inavoidable Delays.** If either Party is delayed in or prevented from performing any obligation under this Lease (excluding, however, the payment of money) by reason

of Unavoidable Delay, such Party's performance of such obligation will be excused for a period equal to the period of delay actually caused by the Unavoidable Delay. "Unavoidable Delay" shall mean delay due to strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualties or similar causes beyond the control of the performing Party.

**Section 26.12 Expenses.** Subject to express provisions otherwise in this Lease, all fees and expenses incurred by any Party hereto in connection with this Lease shall be borne by such Party.

**Section 26.13 Further Assurances.** In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Landlord and Tenant, Landlord and Tenant agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further reasonable acts, instruments, deeds and assurances as may be reasonably required to consummate the transactions expressly contemplated herein.

**Section 26.14 Number and Gender.** Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders.

**Section 26.15 Holding Over.** No holding over by Tenant after the Term of this Lease shall operate to extend the Lease. In the event of any unauthorized holding over, Tenant shall indemnify, defend and hold harmless Landlord against all Claims by any other lessee to whom Landlord may have leased all or any part of the Premises effective upon the expiration or sooner termination of this Lease, and this indemnity shall survive the expiration or sooner termination of this Lease. Any holding over without the consent of Landlord in writing shall thereafter constitute this Lease a lease from month to month with a Base Rent equal to one hundred fifty percent (150%) of the most recent Base Rent then in effect.

**Section 26.16 Nondisclosure of Lease Terms.** The terms and conditions of this Lease constitute proprietary information that Landlord and Tenant will keep confidential. Accordingly, neither Landlord nor Tenant will directly or indirectly, disclose the terms and conditions of this Lease other than to such Party's advisors, employees and agents who have a legitimate need to know such information (and who will also keep the same in confidence) unless, and only to the extent, any such disclosure is required by law or appropriate judicial order.

**Section 26.17 No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided to be paid shall be deemed to be other than on account of the earliest Rent due and payable under this Lease, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, unless expressly agreed to, in writing, by Landlord. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this lease.

**Section 26.18 Relationship of Parties.** This Lease does not create, between the Parties to this Lease, the relationship of principal and agent, or of partnership or joint venture, or any other association or relationship, other than that of landlord and tenant.



**Section 26.19 Time of Essence.** Time is of the essence of this Lease and each and all of its provisions.

**Section 26.20 Defined Term.** For purposes of this Lease, "upon expiration or sooner termination of this Lease" and variations thereof shall be limited to expiration of the Lease or termination as permitted by the express terms of this Lease.

**Section 26.21 Completion Guaranty.** Not less than thirty (30) days prior to the commencement of any construction activities on the Premises, Tenant will require its General Contractor to procure a Performance Bond in a form reasonably approved by Landlord in an amount sufficient to ensure that construction of the Initial Improvements is completed. Not less than thirty (30) days prior to the commencement of any construction activities on the Premises, Tenant will also require its General Contractor to procure a Payment Bond in a form reasonably approved by Landlord to ensure that all design professionals, contractors, subcontractors and materialmen are fully paid for the services, labor and materials rendered at the Project.

[Signatures on following page]





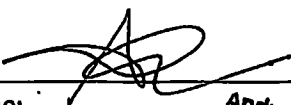
Landlord and Tenant have each caused this Lease to be executed and delivered by their duly authorized representatives.

**Landlord:**

Pacific Proving, LLC, a Delaware limited liability company,

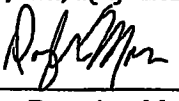
By its member, Levine Investments Limited Partnership, an Arizona limited partnership

By Keim, Inc., an Arizona corporation, its general partner

By   
Name: Andrew M. Cohn  
Title: Authorized Rep.  
Dated: 5/2/2020, 2020

**Tenant:**

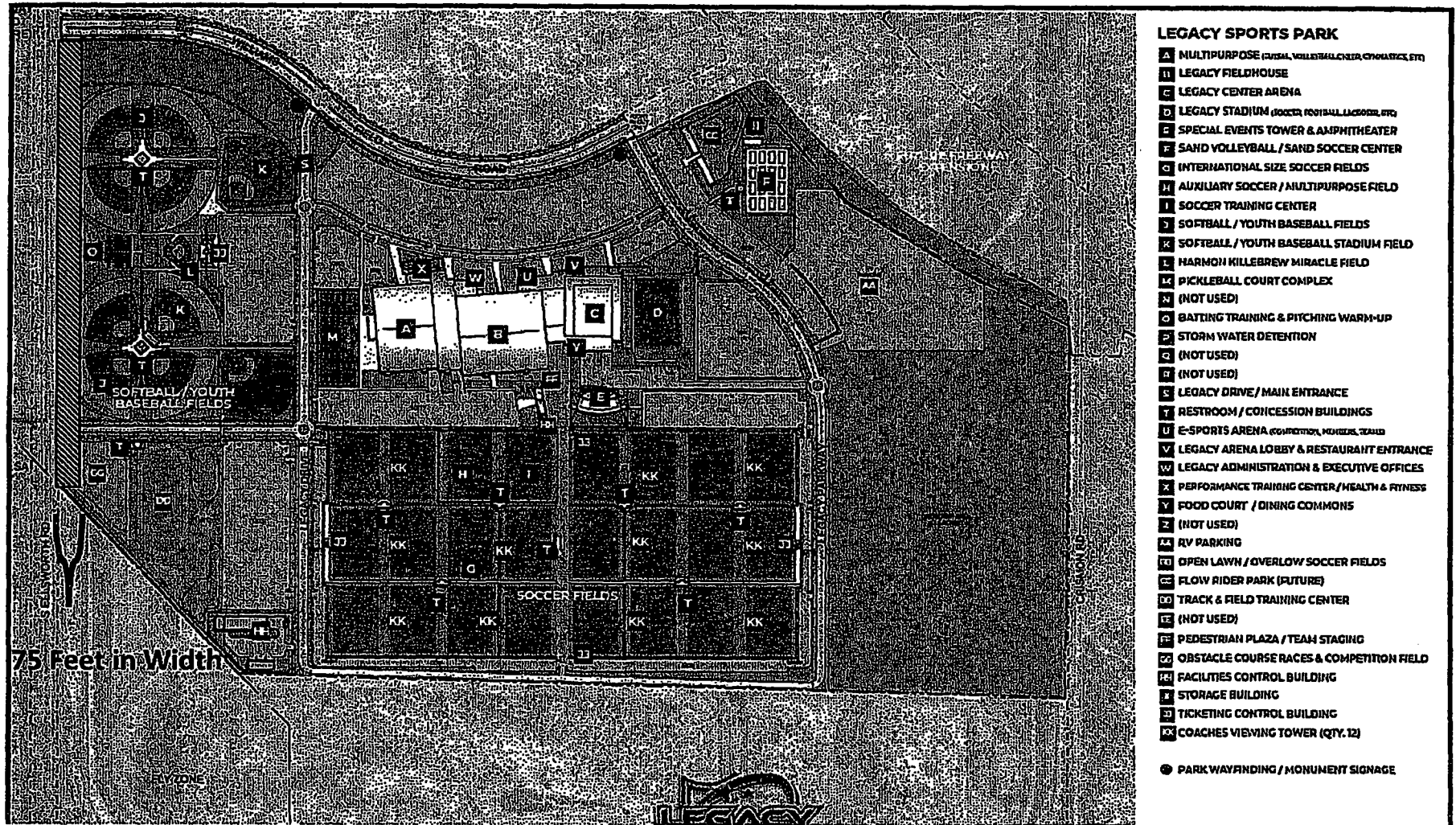
Legacy Cares, Inc., a(n) Arizona Nonprofit corporation

By   
Name: Douglas Moss  
Title: President

Dated: May 20th, 2020

**EXHIBIT "A-1"**

# Exhibit "A-1" - Billboard Easement Area



The above 75-foot wide cross hatched area represents Landlord's retained billboard easement area. Included in the 75-foot easement shall be Landlord/Assignee rights to locate a billboard pole with billboard head, apron, imprint, lighting, utilities, along with view corridor protection so there is no impairment of the billboard easement area or copy of the billboard located within the easement area. There will also be designated parking areas for service trucks and access to install, maintain and service said billboards within the easement area. Tenant with Landlord's approval may install way-finding signs in the easement area, provided in Landlord's sole discretion they are not an impairment to all Landlord's rights and uses of the cross hatched easement area.

Landlord  Tenant 

**LEGACY SPORTS BOUNDARY  
LEGAL DESCRIPTION**

A portion of land being situated within Section 34, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

**COMMENCING** at 3" Maricopa County DOT brass cap in hand hole accepted as the northwest corner of said Section 34, from which a 3" Maricopa County DOT brass cap flush accepted as the west quarter corner thereof bears South 01°09'59" East, 2640.78 feet;

Thence South 01°09'59" East, 546.96 feet along the west line of the Northwest Quarter of said Section 34;

Thence leaving said west line, North 88°50'01" East, 65.00 feet to the **POINT OF BEGINNING**;

Thence North 88°39'03" East, 466.01 feet to the beginning of a tangent curve concave southwesterly, having a radius of 1090.00 feet;

Thence southeasterly along said curve, through a central angle of 40°37'40", an arc length of 772.91 feet to a tangent line;

Thence South 50°43'16" East, 283.00 feet to the beginning of a tangent curve concave northerly, having a radius of 1220.00 feet;

Thence westerly along said curve, through a central angle of 68°30'25", an arc length of 1458.72 feet to a tangent line;

Thence North 60°46'19" East, 201.64 feet to the southerly right of way line of State Route 24 as described within the Order of Immediate Possession filed as Document No. 2019-0309832, Maricopa County Records;

Thence South 28°54'47" East, 7.83 feet along said southerly right of way line;

Thence North 62°24'04" East, 333.41 feet along said southerly right of way line;

Thence North 67°38'39" East, 120.37 feet along said southerly right of way line;

Thence North 62°24'04" East, 168.55 feet along said southerly right of way line to the southwesterly line of a proposed electrical easement;

Thence leaving said southerly right of way line, South 42°18'10" East, 793.39 feet along said southwesterly line;

Thence South 60°22'57" East, 824.06 feet along said southwesterly line;

Thence South 64°14'29" East, 489.96 feet along said southwesterly line to said southerly right of way line;

Thence leaving said southwesterly line, South 06°41'37" East, 32.63 feet along said southerly right of way line to the west line of the east 33.00 feet of said section 34;

Thence leaving said southerly right of way line, South 00°41'42" East, 727.75 feet along said west line to an angle point therein;

Thence South 00°33'21" East, 1191.82 feet along said west line;

Thence leaving said west line North 89°34'13" West, 4225.03 feet to the easterly line of the Restricted Use Easement described within Docket 12949, Page 199, Maricopa County Records;

Thence North 44°34'12" West, 1351.14 feet along said easterly line to the east line of the west 65.00 feet of said Section 34;

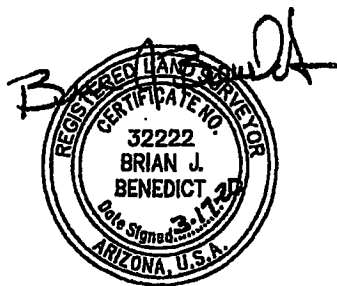
Thence North 01°10'02" West, 235.80 feet along said east line to an angle point therein;

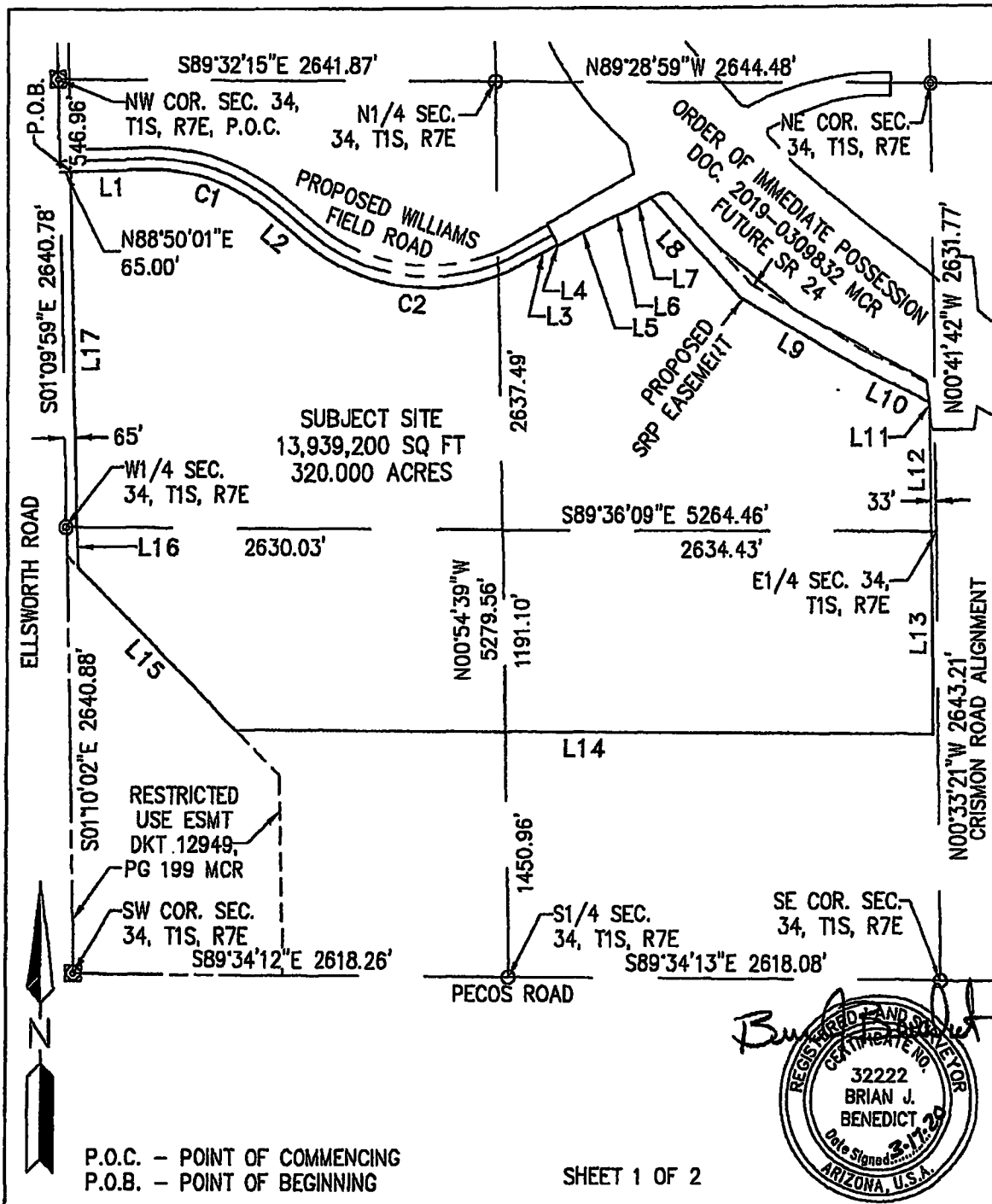
Thence North 01°09'59" West, 2093.82 feet along said east line to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 13939200 sq. ft. (320 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC  
2141 E. Highland Avenue, Suite 250  
Phoenix, AZ 85016  
Project No. 2063  
Date March 2020



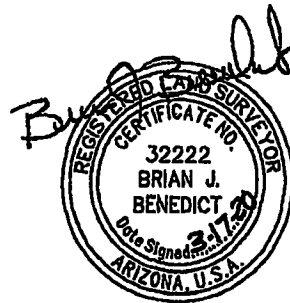


PROJ.NO.: 2063	LEGACY SPORTS BOUNDARY	 <b>HILGARTWILSON</b> 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: MAR 2020	ELLSWORTH RD & PECOS RD	
SCALE: NTS	MESA, ARIZONA	
DRAWN BY: DSP	<b>EXHIBIT</b>	
CHECKED BY: BJB		


©2020, HILGARTWILSON, LLC

\\Server01\project\2000\2053\SURVEY\DDCS\LEGAL\2053-LEGACY SPORTS BOUNDARY.dwg 3/17/2020 3:11 PM

LINE TABLE			CURVE TABLE			
LINE NO.	DIRECTION	LENGTH	CURVE NO.	RADIUS	DELTA	LENGTH
L1	N88°39'03"E	466.01'	C1	1090.00'	40°37'40"	772.91'
L2	S50°43'16"E	283.00'	C2	1220.00'	68°30'25"	1458.72'
L3	N60°46'19"E	201.64'				
L4	S28°54'47"E	7.83'				
L5	N62°24'04"E	333.41'				
L6	N67°38'39"E	120.37'				
L7	N62°24'04"E	168.55'				
L8	S42°18'10"E	793.39'				
L9	S60°22'57"E	824.06'				
L10	S64°14'29"E	489.96'				
L11	S06°41'37"E	32.63'				
L12	S00°41'42"E	727.75'				
L13	S00°33'21"E	1191.82'				
L14	N89°34'13"W	4225.03'				
L15	N44°34'12"W	1351.14'				
L16	N01°10'02"W	235.80'				
L17	N01°09'59"W	2093.82'				



SHEET 2 OF 2

PROJ.NO.: 2063	LEGACY SPORTS BOUNDARY ELLSWORTH RD & PECOS RD MESA, ARIZONA	 <b>HILGARTWILSON</b> 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436	
DATE: MAR 2020			
SCALE: NTS	EXHIBIT		
DRAWN BY: DSP			
CHECKED BY: BJB			

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**EXHIBIT "B"**

**HURDLE SCHEDULE**

-August 15, 2020 - Procurement of Initial Entitlements incident to Annexation.

- January 17, 2022 - Certificate of Occupancy/Opening



**EXHIBIT "C"**  
**CONCEPTUAL PLAN**



## **EXHIBIT "D"**

### **PROHIBITED USES**

Environmental remediation facility; exterminating service; butane distribution; exterminating and fumigating warehouse; bulk storage of gasoline or fuel oil tanks; bulk; petroleum products packaging and storage; adult book store or adult novelty store (meaning a store primarily engaged in the sale, rental, distribution or display of pornographic, lewd, sexually explicit or so called adult material; adult theater or so-called "gentlemen's club" featuring nude, topless or scantily clad men or women); day labor hiring hall; pawn shop; religious mission, including a charity dining hall; commercial loading of small arms or manufacture of ammunition; rock quarrying, sand and gravel or other mineral extraction; transit terminal; propane sales; tattoo establishment; body piercing establishment; concrete or cement products manufacturing; plating or polishing shop; plating works or electric plating; farm devoted to hatching, raising, breeding and marketing of chickens, turkeys or other fowl, rabbits, fur-bearing animals or fish; feeder lot for horses, cattle, goats or sheep; dairy farm; bail bond company; body and fender shop; cannery, slaughter house or meat processing or packaging plant; cesspool service; flour or grain elevator; motor vehicle fuel distribution facility gas station, service station and/or car wash; outdoor storage; massage establishment (except for massage services offered by doctor, nurse, chiropractor or other medical or healthcare provider); repair and rewinding of transformers or generators; outdoor paving materials storage; welding shop; wrecking yard or junkyard; traveling carnival; bingo parlor or any establishment conducting games of chance (other than lawful and permitted esports-related gaming and subject to Landlord's prior approval); dumping or disposing of garbage or refuse (except as may be incidental to an otherwise permitted use); flea market; booths for the sale of fireworks; a cemetery, crematorium, funeral home or facility for the sale of caskets; outdoor advertising/billboards; hotels except as otherwise expressly set forth in the Lease to which this Exhibit D is attached; big box retail; any other uses not typically found in a national sports/entertainment park. Notwithstanding the prohibitions against outdoor advertising/billboards, Tenant shall, ancillary to the primary use of the Premises as a sports/entertainment park, be permitted to erect video scoreboards as well as signage within the sports/entertainment park related to branding partners and sponsorships.

**EXHIBIT "E"**

**MILESTONE SCHEDULE**

<b>August 16, 2020</b>	<b>Construction Phase - begin construction of Athletic Fields and Vertical Amenities</b>
<b>September 10, 2020</b>	<b>Construction Phase - begin construction of Main Building</b>
<b>October 22, 2020</b>	<b>Construction Phase - begin construction of Track &amp; Field/Soccer Stadium</b>
<b>June 6, 2021</b>	<b>Construction Phase - begin construction of Auxiliary Sports/Special Events Area</b>
<b>October 19, 2021</b>	<b>Begin Project Closeout</b>
<b>November 11, 2021</b>	<b>Certificate of Occupancy for Athletic Fields and Soccer Stadium</b>
<b>January 17, 2022</b>	<b>Main Building Final Inspection and Temporary Certificate of Occupancy</b>
<b>April 13, 2022</b>	<b>Main Building Final Certificate of Occupancy</b>



**EXHIBIT "F"**

**MEMORANDUM OF GROUND LEASE**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF LEASE (the "Memorandum") is by and between Pacific Proving, LLC ("Landlord"), and Legacy Cares, Inc. ("Tenant"). Notice is hereby given that Landlord and Tenant have entered into that certain Ground Lease dated May 20th, 2020 (the "Lease") which contains the following terms:

1. Pursuant to the Lease, Landlord has leased to Tenant the Property described on Exhibit "A" attached hereto.
2. The Term of the Lease is 40 years.
3. Tenant has two (2) options to extend the Term of the Lease for five (5) years each.

The purpose of this Memorandum is to give record notice of the existence of the Lease. In the event of any conflict or inconsistency between this Memorandum and the Lease, the Lease will govern and control. This Memorandum will automatically terminate (without the necessity of recording any termination hereof) on the date of the expiration or earlier termination of the Lease.

[Signatures on following page]

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10/4/2017




Landlord and Tenant have each caused this Memorandum to be executed and delivered by their duly authorized representatives.

**Landlord:**

Pacific Proving, LLC, a Delaware limited liability company,

By its member, Levine Investments Limited Partnership, an Arizona limited partnership


By Keim, Inc., an Arizona corporation, its general partner

By  \_\_\_\_\_  
Name: Andrew M. Cohn  
Title: Authorized Rep.

Dated: May 21, 2020

**Tenant:**

Legacy Cares, Inc., a(n) Arizona nonprofit corporation

By  \_\_\_\_\_  
Name: Douglas Moss  
Title: President

Dated: May 20th, 2020