

**LEASE, MAINTENANCE AND OPERATIONS AGREEMENT
(AMERICAN SPORTS CENTERS AVONDALE FACILITY)**

THIS LEASE, MAINTENANCE AND OPERATIONS AGREEMENT (this "Agreement") is entered into January 12, 2009 (the "Effective Date"), by and between THE CITY OF AVONDALE, an Arizona municipal corporation (the "City") and ASC-Avondale LLC, an Arizona limited liability company ("ASC"). The City and ASC are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City is planning to acquire a parcel of real property generally located along the Corporate Drive alignment, north of Van Buren Street and east of Avondale Boulevard, in Avondale, Arizona, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

B. After completing acquisition of the Property, the City intends to design and construct (in consultation with ASC pursuant to a separate agreement) a high quality, multi-purpose recreational sports facility on the Property with adequate parking spaces available within a reasonable distance (the "Facility"). It is the City's intent to complete the Property acquisition and begin construction of the Facility by January 2010.

C. The Facility is presently anticipated to include the following amenities for the primary benefit of the citizens of Avondale: (i) interior, fully lighted, wood-floor volleyball courts, which can be converted to basketball courts; (ii) artificial turf indoor soccer/sports area/courts; (iii) multipurpose rooms; (iv) concessions, retail and office space; (v) restrooms; and (vi) ancillary uses (the "Facility Uses").

D. The City wishes to lease the Facility to an experienced company that will, as a material requirement of this Agreement, maintain and operate the Facility Uses at the Facility. ASC, with its Affiliates, represents that it has such experience. Accordingly, the City and ASC wish to enter this Agreement to provide for the long term lease, maintenance and operations of the Facility and the improvements to the Facility completed to reasonably allow ASC and the City to provide the Facility Uses (the "Facility Improvements") by which (i) City shall construct the Facility in accordance with mutually approved plans and specifications and provide the initial FF&E (as defined below) and (ii) ASC shall (a) maintain the Facility, (b) provide program sports and recreational play on the courts and other areas to be constructed at the Facility and (c) operate the Facility, including the food and beverage concession facilities.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and ASC hereby agree as follows:

ARTICLE I DEFINITIONS

The following terms used in this Agreement shall have the meanings set forth below unless expressly provided to the contrary:

Affiliate means Norm Nowell, Mike Gallups, Don Webber or any entity controlled or at least 33% owned by Norm Nowell.

Completion Date means the first day of the first month following the earliest date upon which (i) the Facility has been substantially completed in accordance with the plans approved by the City and ASC and a certificate of occupancy issued and (ii) possession of the Facility shall have been delivered to ASC.

FF&E means all furniture, furnishings, trade fixtures, apparatus and equipment, including without limitation maintenance vehicles and equipment, cash registers, scoreboards, interior signage, sports equipment, benches, kitchen equipment, appliances, office equipment, computers, copy machines, facsimile machines, telephone systems (not including pay telephones) and other personal property used in or held in storage for use in the operation of the Facility, other than Operating Inventory. FF&E includes both (i) fixtures and related items of furniture, furnishings and equipment to be purchased and installed by the contractor selected to construct the Facility Improvements as part of the construction contract and (ii) furniture, furnishings and equipment to be purchased by the City separately from the construction contract.

Full Operating Year means any 12 month period during the Term commencing on July 1 and continuing through June 30 of the following calendar year.

Operating Inventory means consumable items used or held in storage for use in the operation of the Facility, including; retail pro shop merchandise, food and beverage inventory, kitchen supplies, paper and plastic ware, bathroom supplies, paper towels, fuel, cleaning materials, fertilizers, pesticides, seed, maintenance parts and supplies, office supplies and other similar items.

Operating Year means either a Full Operating Year or a Partial Operating Year.

Partial Operating Quarter means any calendar quarter in which the Completion Date falls on any day other than the first day of such calendar quarter.

Partial Operating Year means any calendar year in which the Completion Date falls on any day other than July 1 or any calendar year in which the Term ends on any day other than June 30.

Sound Practice means managing and operating the Facility in a manner calculated to increase Gross Revenues subject to maximizing profits, on a long-term basis and consistent with Sound Standards and safe, conservative and sound financial management and operating practices.

Sound Standards means operation and maintenance of the Facility in a manner (i) consistent with industry standards for management and operation of similar first class indoor sports complexes, including the American Sports Centers' Anaheim facility; (ii) using

commercially reasonable efforts to maximize the safety of participants and spectators using the Facility and minimize liability to the City arising from the operation and maintenance of the Facility; and (iii) intended to enhance the quality of experience for all patrons attending events at the Facility make the Facility an attractive venue to promote and book events.

ARTICLE II PROJECT DEVELOPMENT PHASE

2.1 Construction of Facility Improvements. As soon as practicable after the Effective Date, the City shall design and construct, or cause to be designed and constructed, the Facility in accordance with the plans and specifications developed by the City and reviewed by ASC (the "Plans") without undue interruption or delay, with due diligence and in a good, workmanlike manner, using first class quality construction practices and materials. If City and ASC fail to mutually reasonably agree on the Plans by December 31, 2009, or if City fails to commence construction by January 1, 2010, through no fault of ASC, then this Agreement shall automatically terminate and the Parties shall have no further obligations hereunder.

2.2 FF&E. Not later than the Completion Date, the City shall procure and install at the Facility the FF&E. The FF&E shall be of a quality standard no lesser than the "American Sports Centers" Anaheim facility. The Parties agree that ASC is providing the FF&E specifications to City and that the City's use of the ASC-provided specifications shall meet this quality standard.

2.3 Utilities and Services. In accordance with the construction schedule, the City shall install all utilities and services necessary for the operation of the Facility, including without limitation gas, electrical, water, telephone, communications, cable television lines or sources and sewer and storm drainage (including all connections necessary to enable ASC to activate the relevant service with only an activation charge (as a Facility Expense, with all development or impact fees and hook-up charges to be paid by City). In the event the City is able to generate water and/or electrical utility services from the Property or through other means available to the City in bringing such utility services to the Property, ASC shall purchase water and/or electricity from the City at a cost not to exceed market rates that shall apply at the time the City is able to provide such utility services.

2.4 Building Exterior Signage. During the term of this Agreement, the Facility shall include exterior building signage identifying the Facility as the "American Sports Centers Avondale Facility" or such other name including prominently "American Sports Centers" as determined by the City subject to ASC's reasonable approval. In addition to exterior building signage permitted pursuant to the City's Zoning Ordinance, the City shall endeavor to locate the Facility on the Property to allow for significant signage on the Facility, initially with a line-of-site to the I-10 Freeway; provided, however, that ASC agrees and understands that, as other nearby properties develop, such signage may not have a direct line-of-sight to the I-10 Freeway. The City shall also evaluate the possibility of signage to be constructed and maintained adjacent to the freeway frontage or right-of-way for advertisement related to events at the Facility.

2.5 Permits. ASC shall expeditiously, diligently and on a timely basis and using good faith efforts, seek to obtain all required or appropriate licenses or permits necessary to operate the Facility. Such good faith efforts shall include expenditure of permit application fees, fees for counsel and other representatives reasonably necessary to file and obtain such licenses and permits. City shall provide notice to ASC of the anticipated Completion Date. ASC shall report to the City Manager at least quarterly on the status of the applications. ASC shall

notify the City of any administrative or judicial hearings scheduled with respect to any such permit or license applications. ASC shall report any adverse administrative or judicial decisions or findings with respect to such permit or license applications within five days of receipt of such a decision or finding.

2.6 Liquor License. The City shall hold and maintain a liquor license for the Facility. The City and ASC shall enter into a concessionaire agreement in substantially the form attached hereto as Exhibit B and incorporated herein by reference, to allow ASC to sell beer and wine or other alcohol for on-site consumption at the Facility (the "Concessionaire Agreement").

2.7 Ownership of Assets. The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures and similar tangible property located at the Facility shall remain with the City, except for any such items purchased by ASC with its own funds and the intangible rights specified in Section 8.3, which items shall be owned by ASC unless such items are considered FF&E. The ownership of and title to all intellectual property rights of whatsoever value, held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) shall remain with ASC, and such assets may be utilized and consumed by ASC in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by ASC shall remain with ASC. ASC shall not take or use, for its own purposes, marketing materials or plans, advertisements, customer or exhibitor lists or similar materials developed by or for the City for the use of the Facility, unless prior written consent is granted by the City. Title and ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by ASC for use at and for the Facility shall automatically and immediately upon purchase or acquisition be vested in the City. ASC shall keep the assets of the City as described herein free and clear of all liens, pledges or other encumbrances resulting from the actions of ASC or the provision of the Consulting Services or the maintenance and operations services set forth in Article III below (the "Operations Services").

ARTICLE III OPERATIONS PHASE

Commencing upon the Completion Date and continuing through the Term, the City grants to ASC the exclusive right to occupy, maintain and operate the Facility pursuant to this Agreement, and ASC covenants and agrees to maintain and operate the Facility according to Sound Standards and Sound Practice and pursuant to the terms and conditions set forth in this Agreement.

3.1 Condition of Facility at Termination. At the expiration or earlier termination of this Agreement, ASC shall terminate its service and vacate the Facility, leaving all FF&E, fixtures and trade fixtures in good and broom clean condition, reasonable wear and tear excepted.

3.2 Operation Services. ASC shall have the right and responsibility to: (A) determine, establish, and implement the policies, standards, fees and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (B) hire, train, and supervise all Facility employees (as opposed to City employees working at the Facility for the City in connection with City Events or City Activities, as defined in Section 3.6 below); (C) supervise and direct advertising, sales and business promotion; and (D) establish accounting

and payroll procedures and functions. The City shall cooperate with ASC to permit and assist ASC to carry out its duties. Without in any way limiting ASC's right and responsibility to operate the Facility in accordance with the terms of this Agreement, ASC shall perform the following operations and maintenance services, or cause the same to be performed for the Facility. Unless specifically set forth otherwise in this Agreement, all expenditures of ASC and costs and expenses incurred by ASC in performing these services shall be "Facility Expenses" (as defined in Section 3.11 below):

A. **Required Operations.** ASC shall have all of the following general rights and responsibilities related to operating the F facility:

1. Program recreational sports to be offered at the Facility, which may include adult and youth sports, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all sports in any or all seasons.
2. Consummate arrangements with concessionaires, licensees, tournament promoters, contractors or other intended users of the Facility.
3. Enter contracts for the furnishing of utilities and maintenance and other services to the Facility.
4. Incur such expenses as shall reasonably be determined to be necessary for the proper operation of the Facility, including without limitation rental expenses for leased FF&E as necessary.
5. Maintain a level of Operating Inventory deemed appropriate by ASC for supplying the needs of the Facility and its customers and at a level comparable to the American Sports Centers Anaheim, California Facility.
6. Use commercially reasonable efforts to do, or cause to be done, all such acts in and about the Facility as shall be reasonably necessary to comply with all requirements of each insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Facility (the "Insurance Requirements").
7. Use commercially reasonable efforts to market the Facility and maximize Gross Revenues, consistent with Sound Practice.
8. Purchase additional FF&E as necessary to operate and maintain the Facility in a first class manner.
9. Pay initial activation charges or connection fees for utilities and services for the Facility.
10. Prepare annually, on or before the end of each calendar year, an operations budget forecasting Gross Revenues, the Lease Amount and Facility Expenses for the next Operating Year. ASC shall deliver a copy of the complete operations budget for the then-current calendar year to the City not later than January 31 of each such year.

11. Not permit any mechanic's or materialmen's liens to be asserted against the Facility for work or materials by or on behalf of ASC.

12. Conduct business in the Facility under the name "American Sports Centers Avondale" except such may be preceded by or used in association with the name of a corporate sponsor.

13. Comply with all applicable laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to ASC, the Facility or the operation of the Facility (the "Legal Requirements").

B. Permitted Operations. ASC shall have the right (but not the obligation) to do the following without the City's consent:

1. Establish a token redemption policy and charge token and admission fees to users of the Facility; provided, however, that ASC shall not charge admission for any City Event or City Activity (each as defined in subsection 3.6(C) below) without the City's prior, written consent.

2. Engage in the sale of beer and wine from the Facility, subject to the terms and conditions of the Concessionaire Agreement and complying with the Legal Requirements.

3. Prohibit customers of the Facility from bringing outside food or beverages into the Facility.

4. Use a part of the Facility for a game room, including video games, pool tables and similar entertainment equipment.

3.4 Maintenance and Repair. ASC shall furnish, maintain and repair the Facility to keep it in first class condition and in good repair (damage by casualty or condemnation and reasonable wear and tear excepted) throughout its useful life.

A. General Maintenance, Repair and Upkeep. ASC shall maintain the Facility in a clean, safe and attractive state, including, but not limited to the surrounding sidewalk and landscape areas, telephone and data lines, offices, rest rooms and open areas. A clean and attractive state includes replacing bulbs and ballasts in lamps and lighting fixtures; cleaning, repairing and replacing signs; maintaining fire alarm call boxes, fire extinguishers and hose boxes and systems in proper working condition; general facility maintenance and repairs by tradesmen as required to ensure a clean, attractive and safe environment such as maintenance and repairs of electrical equipment, plumbing fixtures; painting pedestrian areas, offices, rest rooms, etc., other repairs as necessary; supplying rest rooms with soap, towels, toilet paper and providing for their disposal.

B. Garbage Removal. ASC shall arrange for the storage, removal and disposal of all waste material in connection with the Facility. ASC shall also be responsible for all storage and disposal of all waste materials throughout the entire Facility. ASC shall comply with all applicable ordinances, statutes and regulations for storage, removal and disposal of waste materials.

C. **Pest Control.** ASC shall maintain a pest control program that minimizes the infestation of pests and vermin in accordance with all applicable ordinances, statutes and regulations.

D. **Graffiti Removal.** ASC shall remove or cause to be removed all graffiti applied to surfaces of the Facility and elsewhere in and around the Facility in a manner (chemicals and process) approved by the City.

E. **Elevator/Escalator Maintenance and Repair.** ASC shall maintain in good working order any elevators and escalators, where existing, and promptly repair the elevators and escalators when necessary. ASC shall keep elevators and escalators in compliance with applicable codes.

F. **Maintenance and Custodial Equipment.** ASC shall keep all maintenance and custodial equipment in good repair and working order.

G. **Maintenance of Electronic Security and Surveillance Equipment.** ASC shall keep all electronic security and surveillance equipment in good repair and working order.

H. **Maintenance of Score Board, Sound System and Video Boards.** ASC shall maintain the scoreboards, sound system, video boards, and video production equipment at the Facility in good repair and working order.

I. **Window Washing.** ASC shall be responsible for window washing.

3.5 **Personnel.** Except for City employees working at the Facility for the City in connection with City Events or City Activities, all employees working at the Facility shall be full or part time employees of ASC or an Affiliate. The number of employees working at the Facility, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by ASC, but minimal staffing levels shall be comparable to those established by Affiliates at American Sports Centers Recreation Facilities in other locations. ASC shall recruit, hire, train, discharge, promote and supervise the Facility staff, all of whom shall be ASC employees and ASC shall be solely responsible for paying all federal, state and local taxes and all benefits for all such employees. The compensation (including benefits) of the Facility staff and all other Facility employees shall be a Facility Expense. Subject to anti-discrimination and other Legal Requirements, ASC shall endeavor to recruit and hire residents of Avondale in preference to non-residents provided they are comparably qualified and experienced for the positions to be filled.

3.6 **Specific Operating Procedures.** In addition to the more general responsibilities of ASC for operations of the Facility as provided herein, ASC shall operate the Facility in accordance with the following operating procedures:

A. **Facility Operating Hours.** ASC shall operate the Facility on days and at hours consistent with "American Sports Centers" facilities operated by Affiliates subject to closure due to, casualty, condemnation, Force Majeure Events or major alterations or improvements. Hours of operation that exceed normal operating hours, i.e., "all night" events or games which begin after 11:59 p.m. shall be subject to the prior review and written approval of the City Manager or authorized designee.

B. **Fees and Charges.** Subject only to the limitations set forth in this subsection, ASC may charge: (1) for courts use on a per hour, day or other periodic use basis; (2) leagues a flat fee per game, or per month, season or year; and (3) a periodic membership charge to league/team members and (4) token fees. All fees, charges and prices at the Facility (including without limitation: use, admissions, token fees, services, parking, food, beverages, merchandise, advertising) shall be set by ASC in accordance with Sound Practice but generally comparable (subject to reasonable geographical market variations) to other "American Sports Centers" facilities and to other comparable facilities in Arizona. ASC may establish a token redemption policy and charge nominal token fees to users of the Facility. In order to minimize the impact on Avondale citizens, the token fees and redemption policy (1) may be implemented only during weekend play and applicable only to spectators and (2) shall not apply to any participants or spectators at City Events or City Activities.

C. **Scheduling City Activities.** While ASC's primary right and duty is to schedule use of the Facility in a manner consistent with Sound Practice, ASC shall also endeavor in good faith to accommodate the City's uses at the Facility as follows:

1. **City Events.** The City shall have the right to use the Facility for City-sponsored special events (other than sports activities, clubs and other scheduled repetitive uses, which are governed by Subsection 3.6(C)(2) below) for the benefit of citizens of the community or non-profit community organizations ("City Events"). No more than one City Event (consisting of a period of one day or less) may be held during any calendar month and no more than ten City Events may be held during any Operating Year (unless City agrees to pay for such usage at the Facility's then-published rates, which amounts shall be included in Gross Revenues). City Events shall be scheduled at mutually agreeable times that do not restrict ASC from scheduling revenue producing league or tournament games, practices or group business events. The City shall propose dates for City Events to ASC at least three months in advance, unless otherwise mutually agreed between the Parties. For City Events scheduled during weekdays between 4 pm to 9 pm and weekends and holidays between 8 am to 9 pm ("Prime Time") the City will pay the Facility's then-published rates (which amounts shall be included in Gross Revenues); provided, however, that not more than three times in any Full Operating Year (pro-rated for any Partial Operating Year) and upon six months' advance notice, the City may use the Facility for a City Event during Prime Time at no cost. During non-Prime Time the City shall reimburse ASC (at the then current hourly salary or wage) for the cost of all personnel (other than Senior Staff and food and beverage personnel) employed to service City Events and other third party out of pocket expenses ASC incurs which are directly attributable to the City Events. During City Events, the City may specify whether ASC will provide food and beverage service. If food and beverage services are provided by ACS, then such food and drink revenues will be (a) excluded from Gross Revenues if the services are provided at ASC's cost and (b) included in Gross Revenues if the services are provided at the then-published rates. City may not provide or allow its own food or drinks at the Facility during City Events; provided, however, for two City Event days per year, the City may sponsor a City Event which includes the sale or giveaway of food and beverages as part of the City Event or which permits participants to bring in their own food. No for-profit company or organization shall be entitled to use the Facility as part of a City Event for the benefit of its own employees or customers.

2. **City Activities Covenant and Preference.** In order to make the Facility available, to the greatest extent reasonably possible, to City-organized sports leagues and teams or educational, club or other non-sport programs ("City Activities"), ASC shall maintain a master schedule and make such schedule available to the City for inspection and planning purposes. The City covenants to (a) book a minimum of 40 court or multipurpose room hours per week (e.g. 1 court for 40 hours, or 2 multipurpose rooms for 20 hours) for City Activities at Facility's then published rate and (b) schedule such use sufficiently in advance to permit ASC to appropriately schedule other events or activities around the City Activities. ASC covenants to use good faith efforts consistent with Sound Standards to re-arrange other leagues and teams to accommodate City Activities. Any charges for City Activities shall be a deduction to the Lease Amount (as defined in Section 3.9 below).

3. **Scheduling Report.** ASC shall upon request, provide a scheduling report to the City identifying the group(s) and team(s) utilizing the Facility.

D. Security and Crowd Control

1. **Security.** ASC shall be responsible for the general safety, security and well being of all occupants of the Facility at all times, including providing and arranging for security and crowd control as reasonably necessary in connection with the Facility and events to be held therein. To the extent consistent with Sound Standards, ASC shall provide security by means of electronic surveillance and foot patrols.

2. **Medical Staffing.** To the extent consistent with Sound Standards, ASC shall be responsible for (a) the staffing of the medical personnel and implementing appropriate medical policies as required on an event-by-event basis or (b) ensuring the access of on-call public medical services.

3. **Safety Plans.** In conjunction with the City, ASC shall develop and implement (a) an emergency and evacuation plan and (b) a public safety and fire management plan for the Facility.

E. Interior Signs. Subject to compliance with applicable law, ASC may sell or lease interior signage rights as ASC may determine. However, ASC agrees that it will not erect or maintain, or allow to be erected and maintained, signs within the Facility which contain copy relating to (1) alcoholic beverages (other than beer, advertising related to which is permitted on such interior signs), (2) adult entertainment facilities or content sexual in nature or (3) tobacco products. ASC's authorization to lease or sell interior signage rights is expressly conditioned upon the prior, written approval by the City Manager or his authorized designee of any agreement to lease or sell such rights, which approval shall not be unreasonably withheld. The City Manager or authorized designee shall render a decision with respect to any agreement to lease or sell interior signage rights within ten business days after ASC submits the final agreement to the City Manager for review; if the City Manager or authorized designee fails to render a decision within the ten business day period, the request shall be deemed approved.

F. Landscape and Irrigation System Maintenance. ASC shall maintain, repair and upkeep the landscape and irrigation systems surrounding the Facility and located within the Facility consistent with the City's requirements.

G. **Tobacco/Chewing Gum.** ASC shall not allow the sale of tobacco products or chewing gum, either manually or through vending machines, anywhere within the Facility.

H. **Management, Operation and Maintenance Plan.** At least six months prior to the projected Completion Date, ASC shall provide the City with an operation and maintenance plan including but not limited to:

1. An organization chart showing ASC's full-time general manager for the Facility and all full-time positions planned for the operations at the Facility denoting anticipated annual salary for each Senior Staff position.

2. The experience, education and performance record in the facilities management business of the general manager and assistant manager, including the names, resumes and references of the general manager and assistant manager.

3. A repair, maintenance and cleaning plan for all of the facilities in the Facility. The repair, maintenance and cleaning plan should include a definition of the frequency (time interval) and the various repair, maintenance and cleaning functions, including refuse and waste disposal and a plan for capital repairs necessary for depreciated or obsolete items.

4. An energy management and conservation program for the management, operation and maintenance at the Facility.

5. The preliminary plan for marketing events at the Facility. This plan should detail the marketing plans independent of and in conjunction with tourism officials, convention and visitors bureaus and West Valley business leaders.

6. Any other information that the City requests or ASC feels is pertinent to the success of the management, operation and maintenance of the Facility.

3.7 **Contracts and Agreements.** All leases and financing agreements for additional FF&E beyond those initially provided by City pursuant to Section 2, and all contracts and agreements relating to the operation and maintenance of the Facility (including without limitation contracts for maintenance and repair services, pest control, supplies and landscaping services, and agreements for tournaments, banquets and other group functions), entered during the Term shall be entered by ASC as the contracting party. ASC shall not enter any contract or agreement which extends beyond the Term of this Agreement unless such contract or agreement is cancelable on 30 days' notice.

3.8 **Compliance with Environmental Laws.** Subsequent to the Completion Date, ASC shall comply with all federal, state and local laws and regulations pertaining to the storage, use and disposal of "Hazardous Materials", meaning any material, substance or matter which is flammable, explosive, corrosive, radioactive or toxic, or which contains asbestos, or is a pesticide, or is a chemical known to cause cancer or reproductive toxicity or which is defined as a hazardous substance, material or waste, or as a toxic substance, material or waste, in any federal, State of Arizona or applicable local law, regulation or order. All expenditures of ASC and costs and expenses incurred by ASC in performing the foregoing services or in remediating damage to the Property resulting from the storage, use or disposal of such Hazardous Materials by ASC subsequent to the Completion Date shall be considered Facility Expenses and shall be

paid or borne solely by ASC. City shall be responsible for all costs and expenses associated with the remediation of, and liability arising from or related to, damages to the Property from the storage, use or disposal of Hazardous Materials ("Hazmat Costs"): (A) before the Completion Date; or (B) percolating under the property whether before or after the Completion Date. ASC will be responsible for all Hazmat Costs by ASC, its employees, agents and contractors after the Completion Date.

3.9 Lease Amount. ASC shall pay the City an amount for the privilege of occupying the Facility (the "Lease Amount") according to the calculation procedure and schedule of payment set forth below:

A. Lease Amount Calculation. The Lease Amount shall be computed by taking the sum of: (1) 15% of the first \$1,200,000 of Gross Revenues for any Operating Year; (2) plus 25% of the Gross Revenues between \$1,200,000 and \$1,800,000 for any Operating Year; (3) plus 35% of the Gross Revenues in excess of \$1,800,000 for any Operating Year; (4) minus any amounts attributable to charges for City Activities as set forth in Subsection 3.6(2)(C) above. The Lease Amount shall be reduced by amounts attributable to: (1) Major Capitalized Repairs and Major Capitalized Repairs Amortization as set forth in Subsection 3.13(A)(3) below; (2) Capitalized Improvement Expenses and Capital Improvement Amortization, as set forth in Subsection 3.13(B) below; and (3) City Activity charges, as set forth in Subsection 3.6(C)(2) above; provided, however, that the Lease Amount shall not be less than \$150,000 during any Full Operating Year, subject only to the "Abatement Period" set forth in Subsection 3.9(B) below.

B. Abatement Period. The portion of the Lease Amount described in Section 3.9.A(1) is hereby waived for the first Partial Operating Year and the two Full Operating Years immediately thereafter (the "Abatement Period"); provided, however, that if during any of the aforementioned two Full Operating Years ASC has Gross Revenues in excess of \$1,200,000, ASC shall pay the full Lease Amount to the City according to the calculation set forth in Subsection 3.9(A) above for each such Full Operating Year.

C. Lease Amount Payment. The Lease Amount shall be calculated annually; however ASC shall pay the Lease Amount to the City in quarterly estimates, with an annual reconciliation amount equal to the difference between the quarterly estimates and the actual, calculated Lease Amount. ASC shall pay to the City quarterly in arrears with respect to each calendar quarter during the Term, an estimate of the Lease Amount due for that Operating Year based on Gross Revenues earned to date (each, an "Estimated Payment"), less prior Estimated Payments thereof. Each Estimated Payment shall be due within 45 days after the end of the quarter. ASC shall pay to the City annually in arrears any Lease Amount due for that Operating Year less prior Estimated Payments. Each annual payment shall be due within 90 days after the end of the Operating Year. In the event this Agreement is terminated prior to the end of the Term hereof, ASC shall pay the City, not later than 30 days after the early termination date, any portion of the Lease Amount due on the date of such early termination.

D. Liquidated Damages. If ASC fails to operate the Facility or breaches the terms of this Agreement at any time prior to the natural expiration of the Agreement, ASC hereby agrees that, upon its default hereunder and expiration of the cure period set forth in Section 4 below, it shall pay the City, as liquidated damages, within 30 days of receipt of the City's written demand therefore, 100% of the amount that would have been due to the City as Lease Amount according to the calculation set forth above as of the date of the City's written demand.

3.10 Gross Revenues.

A. **Operating Account.** Prior to the Completion Date, ASC shall establish an interest bearing account with a financial institution of its choice (the "Operating Account") to be used in the operation of the Facility. All Gross Revenues from the operations of the Facility shall be paid into the Operating Account and all Facility Expenses (as defined in Section 3.11 below) shall be paid from the Operating Account. ASC shall own the Operating Account, shall have check writing authority with respect to it and shall be entitled to all interest accruing on it. Funds in the Operating Account in excess of those necessary to pay for Facility Expenses, to pay fees and to provide adequate cash reserves may be withdrawn by ASC.

B. **Gross Revenues Defined.** "Gross Revenues" means and includes all receipts and revenues received by ASC or any Affiliate relating to or derived from the Facility, in whatever form, unless such item of revenue is specifically excepted or excluded below.

1. "Gross Revenues" expressly include all of the following:
 - a. Each line item set forth under the heading "Revenues" as shown on Exhibit C.
 - b. Commissions, fees or profit shares received by ASC (or any Affiliate) from revenues generated from sales by concessionaires at the Facility where the gross revenues from such sales are not received by or payable to ASC or any Affiliate, including, for example, vending machine commissions, ATM commissions, etc.
 - c. All finance charges to customers, in case of sales on credit, whether or not payment is actually made, at, in, on or from the Facility.
 - d. Revenues from the sale of gift certificates, when such revenues are received.
 - e. All service fees or other consideration paid to ASC as compensation for ASC's sale or distribution of any item approved by the City to be sold or distributed at the Facility.
 - f. All charges for services, alterations or repairs made at, in, on or from the Facility.
 - g. The proceeds of business interruption insurance, if applicable, received by ASC with respect to the Facility.
 - h. Lease, license or rent payments or other compensation from any lessee or tenant of all or part of the Facility (including, without limitation, compensation for interior signage), unless the revenues derived by such lessee's or tenant's operations from the Facility have already been included in the calculation of Gross Revenues.
2. Gross Revenues shall exclude (or be reduced by, as the case may be) all of the following:

a. The amount of all sales tax receipts required to be accounted for by ASC and paid to any government or governmental agency, but not the amount of any excise tax (except a consumer excise tax) or other governmental obligation in the nature of a tax on the privilege of doing business.

b. The amount of any sales initially included in Gross Revenues that are subsequently subject to refund or credit.

c. The amount of any revenues received by any licensee, contractor or concessionaire (unless such licensee, contractor or concessionaire is an Affiliate) operating in or from the Facility which are not paid or required to be paid to ASC.

d. The amount of any revenues received by non-Affiliate special, corporate or group business events or tournament promoters, impresarios, outside catering companies or similar third party independent contractors (including revenues derived from the sale of food, beverages or liquor) involved in the promotion or conduct of special, corporate or group business events or tournaments, which revenues are not paid or required to be paid to ASC; provided, however that any fees paid to ASC by such group for use of the Facility shall be included in Gross Revenues.

e. The amount of sponsorship or advertising revenues generated from the Facility which are received by ASC from sponsors or advertisers but are paid to advertising agencies or brokers as commissions.

f. Gratuities paid or given by customers to employees of ASC or food and beverage service charges billed to group business clients.

g. Proceeds of insurance other than business interruption insurance applicable to the Facility.

h. Loan proceeds, if any.

i. Credits or refunds received from vendors or other third Parties as a result of damage claims made by ASC with respect to defective goods or services previously purchased.

j. Checks or other instruments returned for insufficient funds.

k. Late charges or interest assessed and received on delinquent accounts receivable, and merchant card fees paid by ASC.

C. Special Rules regarding Gross Revenues.

1. **Hotel Commissions.** ASC or its Affiliates may seek contracts with hotels to receive commissions on room nights reserved by participants in Facility camps, clinics and tournaments; 100% of such commissions shall be included within Gross Revenues.

2. **Multi-Facility Tournaments.** ASC and its Affiliates may seek to organize jointly tournaments, camps or clinics to be held at the Facility and one or more other "American Sports Centers" facilities (the "Joined Facilities") as a sponsor. In such event, the revenues from such Jointed Facilities tournament, camp or clinic shall be allocated among the Joined Facilities on the basis of the number of court hours used in each Joined Facility (or other equitable basis, subject to City approval), and Gross Revenues will include only the revenues allocated to the Facility.

3. **Multi-Facility Sponsorships.** ASC and its Affiliates may seek "ASC Sponsorships" meaning any agreement entered by ASC and its Affiliates with any entity by which such entity is given the right to identify commercially with Joined Facilities as a sponsor, preferred company or other designation of similar import. In such case, the ASC Sponsorship revenues shall be allocated among the Joined Facilities equally (or other equitable basis, subject to City approval), and Gross Revenues will include 90% of such revenues from national or regional sponsors (such "National or Regional Sponsors" means, for the purposes of this Subsection 3.10(C), sponsors with operations in areas outside of Arizona), and 100% of such revenues from other sponsors, allocated to the Facility.

4. **Facility Only Sponsorships.** For ASC Sponsorships applicable only to the Facility, Gross Revenues will include 90% of such revenues from National or Regional Sponsors, and 100% of such revenues from other sponsors.

D. **ASC's Goals.** ASC shall use commercially reasonable efforts to maximize utilization of the Facility consistent with Sound Practice and Sound Standards. The Parties acknowledge that the goal for the first full year of this Agreement after the Completion Date is 24 events and 125,000 in total attendance at the Facility, but ASC shall have no liability if, despite its best efforts, it fails to achieve such goal.

3.11 **Net Profit and Facility Expenses.** Subject to payment of all amounts due City under this Agreement and to the payment of Facility Expenses, ASC shall be entitled to all income, revenues and profits from the Facility during the Term. After the Completion Date, ASC shall bear and pay all of the following ("Facility Expenses"): all routine and ordinary maintenance and repairs to the Facility required to preserve it in good working repair during their projected useful life, including (A) any costs incurred by or imposed on ASC in the performance of its obligations under this Agreement, (B) all fees payable to City under this Agreement, and (C) any cost expressly identified as a Facility Expense in this Agreement, but expressly excluding (1) any cost allocated to the City under this Agreement and (2) any financing cost incurred by the City.

3.12 Financials

A. **Sales Recording and Records.** ASC shall record at the time of sale, in the presence of the customer, receipts from sales or other transactions, whether cash or credit, in a cash register or registers, or a point of sale terminal or terminals, having a tape that accumulates and consecutively numbers all transactions. A receipt from any transaction showing the correct amount of purchase shall be offered to the customer at the time of any transaction, including any cash sale. Transactions not ordinarily recorded in a cash register or point of sale terminal shall be noted on and kept in a ledger format. The Annual P&L Statement and the Balance Sheet to be furnished to the City as provided herein shall be prepared in accordance with generally accepted accounting principles (either cash or accrual basis). ASC

shall keep all of the following for the purpose of audit by the City:

1. Full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits of Gross Revenues.
2. All cash register or point of sale terminal receipts with regard to the Gross Revenues, credits, refunds and other pertinent transactions made from or on the Facility.
3. Detailed original records of any exclusions or deductions from Gross Revenues.

B. Quarterly and Annual P&L Statements and Balance Sheets.

1. **Quarterly Financial Reports.** Within 45 days after the end of each calendar quarter during the Term, commencing with respect to the first calendar quarter of the first Full Operating Year, ASC shall furnish the City with a Quarterly P&L Statement and a Quarterly Balance Sheet certified as correct by an authorized member or officer of ASC.

2. **Annual Financial Reports.** Within 90 days following the end of each Operating Year commencing with respect to the first Full Operating Year, ASC shall furnish the City with an Annual P&L Statement and an Annual Balance Sheet certified as correct by an authorized member or officer of ASC.

3. **Form and Content.** Each Quarterly P&L Statement and Annual P&L Statement shall be in the form of the financial statement attached as Exhibit C. The Parties may change the form of the P&L Statements from time to time by mutual agreement. The P&L Statements and the Balance Sheets shall be prepared on a cash or accrual basis, as determined by ASC, provided the method chosen for a particular Operating Year shall be consistently used throughout such Operating Year and subject to the requirements of Section 9.1 with respect to the Annual P&L Statement and the Balance Sheet.

C. Audit and Examination Rights.

1. **Audit Procedures.** The City shall be entitled at any time and from time to time during the Term, until three years after the end of the Operating Year for which any Annual P&L Statement relates, to question the sufficiency or accuracy of the Gross Revenues and Operating Fee calculations. At any time during the Term and within one year after the end of the Term, the City may cause an audit or examination of ASC's Gross Revenues and Operating Fee calculations by City employees or an independent accountant of the City's own selection for the three most recently ended Operating Years. If Gross Revenues for such Operating Year(s) delivered by ASC to the City are found to be less than the amount of ASC's actual Gross Revenues, ASC shall immediately pay to the City earned but unpaid payments of Operating Fees due to the City. If the audit reveals an understatement of Gross Revenues for such Operating Year(s) by more than 5%, ASC shall immediately pay to the City the reasonable cost of the audit. Otherwise, the cost of the audit shall be paid by the City. If, ten days after written request therefor, ASC fails to provide to the City any Quarterly P&L Statement or

Annual P&L Statement in the manner specified in this Agreement, this failure shall constitute a default under this Agreement. In such an event, the City shall have the right in addition to any other rights or remedies it may have under this Agreement, to conduct an audit to enable the City independently to determine the Gross Revenues for the Facility. ASC shall reimburse the City for the cost of such audit within ten days of written demand by the City.

2. **Examination of Books.** ASC shall, for a period of seven years following the delivery of each Annual P&L Statement, including the seven year period following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required under this Section, and shall from time to time, upon request, make these records available to the City, the City's auditor, representative or agent for examination at any reasonable time on five days advance written notice. ASC's books and records shall be made available for inspection by the City or its representative at the Facility at Avondale, Arizona. The City shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, leases, licenses and concession agreements. In addition, on request of the City or the City's representatives, ASC shall furnish copies of ASC's state and local sales and use tax returns.

3. **City Staff Inspections.** ASC hereby waives, for the term of this Agreement any rights it may have to keep confidential any records indicating the amount of sales generated by at or related to the Facility. ASC further agrees to (a) take all steps necessary and to execute any required documents to permit the City's authorized representative to examine any such records and (b) require, as part of any contract or agreement between ASC and any person, firm or entity operating any business related to the Facility (the "Facility Occupants"), that such Facility Occupants agree to waive, for the term of this Agreement, any rights it may have to keep confidential any records indicating the amount of taxable activity relating to the Facility. City staff shall have the right, from time to time to visit and inspect the operations of the Facility to confirm compliance with this Agreement.

3.13 Capital Improvements and Repairs.

A. **Capitalized Repairs.** "Capitalized Repair" means any maintenance and repair expense required to be capitalized in accordance with sound accounting practice, including without limitation (1) major repair or reconstruction of the Facility mechanical, electrical or plumbing systems and structural items, including building roofs, slabs, foundations or walls, (2) heating, ventilation, air conditioning, plumbing, sewer, utility, irrigation and drainage systems, (3) parking lot repaving and re-slurrying, (4) perimeter lighting, (5) paved areas other than parking areas, (6) kitchen equipment and (7) safety netting and fencing. "Major Capitalized Repair" means any Capitalized Repair that individually exceeds \$2,500 or has a useful life of three (3) or more years. "Minor Capitalized Repair" means any Capitalized Repair that individually is less than \$2,500 or has a useful life of three (3) years or less.

1. **Major Capitalized Repairs and Replacements.** ASC shall be responsible for all Major Capitalized Repairs, which shall be attended to according to the procedure set forth in this subsection.

a. ASC shall notify the City Manager or authorized designee, in writing, of the nature, extent and cost of any Major Capitalized Repairs not later than

ten business days prior to undertaking any such repair. The City Manager or authorized designee shall evaluate ASC's assessment of the need for and cost of a Major Capitalized Repair and shall notify ASC of the City's approval or disapproval of the Major Capitalized Repair, in writing, within ten business days after receipt of ASC's notification, which approval shall not be unreasonably withheld.

b. Manner of Completing Repairs. Once approved by the City, ASC shall contract for and make all Major Capitalized Repairs without undue interruption or delay, with due diligence and in a good, workmanlike manner, using first class quality construction practices and materials.

c. Allocation of Costs. Except as set forth in Subsection 3.13(A)(1)(d) below, the cost of all City-approved Major Capitalized Repairs shall be a deduction against the Lease Amount as calculated in Subsection 3.9(A) above. In the event that the cost of a Major Capitalized Repair exceeds the amount of the Lease Amount due to the City, the shortfall shall be paid by ASC, the shortfall will be amortized over 5 years, and the portion amortizing in any Operating Year ("Major Capitalized Repairs Amortization") shall be credited against the Lease Amount otherwise due.

d. Alternate Repair and Cost Allocation Process. If the Major Capitalized Repair is of the nature that it may be identified and planned for in advance to allow time for the City to include the cost of such Major Capitalized Repair in its annual capital improvement projects budget, the City staff shall, after notice from ASC as set forth in this Subsection, include such Major Capitalized Repair in the City's capital improvement project budget for consideration by the City Council. If not approved by the City Council, acting in its sole discretion, the cost of such Major Capitalized Repair shall be allocated as set forth in Subsection 3.13(A)(1)(c) above. The alternate repair and cost allocation process set forth in this Subsection shall only be available for those Major Capitalized Repair items for which ASC gives notice to the City not later than March 30 of each calendar year for inclusion in the City's next annual budget.

2. Minor Capitalized Repairs and Replacements. ASC shall contract for and make all Minor Capitalized Repairs without undue interruption or delay, with due diligence and in a good, workmanlike manner, using first class quality construction practices and materials. Minor Capitalized Repairs are Facility Expenses.

B. Capital Improvements. ASC shall, on an annual basis (or more frequently if circumstances require), provide the City with a report regarding any improvements that reasonably in accordance with Sound Practice should be made to the Facility, if any, to ensure that it remains a competitive, first-class venue for the Facility Uses ("Capital Improvements"). If ASC recommends that any Capital Improvements projects should be completed within any Full Operating Year, it shall provide the City with an estimate the cost of doing so. All Capital Improvements projects shall require the City's prior authorization, which shall not be unreasonably withheld. All costs and expenses of City-approved Capital Improvement projects (1) less than \$2,500 shall be Facility Expenses and (2) greater than \$2,500 shall be a deduction against the Lease Amount as calculated in Subsection 3.9(A) above ("Capital Improvements Expense"). Notwithstanding the above, if the City unreasonably disapproves a proposed Capital Improvement project, ASC may nonetheless perform same itself, and the cost thereof shall be amortized over 5 years, and the portion amortizing in any Operating Year ("Capital Improvements Amortization") shall be credited against the Lease Amount otherwise due.

3.14 Damage or Destruction. If the Facility is damaged prior to the Completion Date, the City shall repair such damage at its expense. Thereafter, should the Facility be substantially damaged by a Force Majeure Event, either the City or ASC, by written notice to the other given within 60 days following the occurrence of such Event, shall have the right to terminate this Agreement. If either does so, neither Party shall have any further obligation to the other Party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. The Facility shall be deemed to have been "substantially damaged" if: (A) the cost of restoring the Facility to its condition immediately before such damage, after applying any insurance proceeds ("Casualty Cost"), is 50% or more of the replacement cost of the Facility Improvements or (B) the Casualty Cost is more than 25% and the Term has less than three years remaining. If this Agreement is not terminated in the event of damage to the Facility either because the damage does not amount to "substantial damage" as described above, or notwithstanding substantial damage to the Facility, neither Party elects to terminate this Agreement, then the City shall proceed, at the City's own expense (after application of any insurance proceeds), with all due diligence to commence and complete restoration of the Facility to its condition and character just prior to the occurrence of such casualty. During any repair period resulting from an event causing the Facility to be Substantially Damaged, the minimum Lease Amount required per Subsection 3.9(A) shall not apply, but only for such time until such repairs have been substantially completed in a manner that would allow for the primary uses of the Facility to be conducted.

3.15 Fidelity Bond. ASC shall provide a fidelity bond in an amount not less than \$300,000 in favor of and for the protection of the City. Said fidelity bond shall be issued by a property casualty and insurance company licensed to do business in Arizona, which company shall be subject to approval by the City. Such fidelity bond shall be maintained in full force and effect throughout the entire Term of this Agreement and shall be in effect prior to the first day ASC operates the Facility. The cost of the fidelity bond shall be a Facility Expense. Nothing in this Section shall be deemed to create an agency relationship between ASC and the City.

ARTICLE IV DEFAULT; REMEDIES

4.1 ASC's Default. The occurrence of any of the following shall constitute a default by ASC:

A. Failure to Perform. ASC's failure to perform any covenant or provision of this Agreement, including any covenant or provision in the Concessionaire Agreement, if the failure to perform is not cured within 30 days after delivery by the City to ASC of written notice of default specifying with particularity the nature of the default; provided however that if the failure to perform relates to ASC's failure to pay a Fee due and payable hereunder, ASC shall have ten days to cure the default. If the failure to perform does not involve the payment of a Fee and cannot reasonably be cured within 30 days, ASC shall not be in default of this Agreement if ASC commences to cure the failure to perform within the 30 day period and thereafter diligently and in good faith prosecutes the cure to completion; provided, however, that no such cure period shall exceed 90 days.

B. Insolvency Proceeding. An assignment by ASC for the benefit of creditors or the filing of a voluntary or involuntary petition by or against ASC under any law for the purpose of adjudicating ASC a bankruptcy; or for extending time for payment, adjustment, or satisfaction of ASC's liabilities; or for reorganization, dissolution, or arrangement on account of

or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within 60 days after the assignment, filing, or other initial event.

C. **Receiver.** The appointment of a receiver, unless such receivership is terminated within 60 days after the appointment of the receiver, to take possession of ASC's operations in the Facility for any reason, including but not limited to, assignment for the benefit of creditors or voluntary or involuntary bankruptcy.

4.2 **City's Default.** The occurrence of the following shall constitute a default by the City: the City's failure to perform any covenant or provision of this Agreement, if the failure to perform is not cured within 30 days after delivery by ASC to the City of written notice of default specifying with particularity the nature of the default. If the failure to perform cannot reasonably be cured within 30 days, the City shall not be in default of this Agreement if the City commences to cure the failure to perform within the 30 day period and thereafter diligently and in good faith prosecutes the cure to completion; provided, however, that no cure period shall exceed 90 days.

4.3 **City's Remedies.** If any default by ASC under Subsection 4.1(A) above shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, the City may, at its election, terminate this Agreement by giving ASC written notice of termination and this Agreement shall terminate effective 30 days after the date such written notice is received by ASC. Upon the occurrence of any of the events specified under Subsections 4.1(B) and (C) above, the City may, at its election, terminate this Agreement by giving ASC written notice of termination and this Agreement shall terminate immediately upon receipt of such written notice by ASC. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which the City may resort cumulatively or in the alternative.

4.4 **ASC's Remedies.** If any default by the City under Section 4.2 shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, ASC may at its election terminate this Agreement by giving the City written notice of termination and this Agreement shall terminate 30 days after the date such written notice is received by the City. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which ASC may resort cumulatively or in the alternative.

ARTICLE V INSURANCE

Commencing as of the Completion Date, ASC shall maintain the following insurance obligations, the premiums and deductibles of which are Facility Expenses.

5.1 General.

A. **Insurer Qualifications.** Without limiting any obligations or liabilities of ASC, ASC shall purchase and maintain, during the entire term of this Agreement, the hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. **No Representation of Coverage Adequacy.** By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect ASC. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve ASC from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. **Additional Insured.** All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement. The coverage required herein shall contain no special limitations on the scope of protection afforded to the City.

D. **Coverage Term.** All insurance required herein shall be maintained in full force and effect throughout the Term of this Agreement.

E. **Primary Insurance.** ASC's insurance shall be primary insurance with respect to operation of the Facility pursuant to this Agreement and in the protection of the City as an Additional Insured.

F. **Claims Made.** In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. **Waiver.** All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of ASC. ASC shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. **Policy Deductibles and/or Self-Insured Retentions.** The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts; provided, however, that, except as otherwise specifically set forth herein, no such deductible or self-insured retention shall exceed 10% of the required insurance amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. ASC shall be solely responsible for any such deductible or self-insured retention amount.

I. **Use of Subcontractors.** If any of ASC's duties under this Agreement are subcontracted in any way, ASC shall execute written agreement with subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the City and ASC. ASC shall be responsible for executing the agreement with subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. **Evidence of Insurance.** Prior to commencing any work or services under this Agreement, ASC shall furnish the City with suitable evidence of insurance in the form of certificate(s) of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by ASC's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificate(s) of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a 'claims made' basis, coverage shall extend for two years past Final Completion and the City's acceptance of the ASC's work or services and as evidenced by annual certificates of insurance. If any of the above-cited policies required by this Agreement expire during the life of this Agreement, it shall be ASC's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified with the title of this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate title. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

b. Auto Liability - Under ISO Form CA 20 48 or equivalent.

c. Excess Liability - Follow Form to underlying insurance.

2. ASC's insurance shall be primary insurance as respects performance of the Agreement.

3. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by ASC under this Agreement.

4. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. **Coverage Re-Evaluation.** Not more frequently than once every five years, if in the reasonable opinion of the City the amount or type of any insurance at that time is

not adequate to provide coverage to the City as of such future date which is comparable to the coverage afforded the City under this Agreement as of the Completion Date, ASC shall either acquire or increase the insurance coverage as required by the City provided ASC may obtain such increased coverage on commercially reasonable terms.

L. **Policy Compliance.** ASC shall not use the Facility in any manner, even if the use is for the purposes permitted herein, that will result in the cancellation of any insurance required under this Agreement. ASC shall not keep on the Facility or permit to be kept, used or sold thereon, anything prohibited by any fire or other insurance policy covering the Facility.

M. **Failure to Obtain Insurance.** If, after written notice and a ten day opportunity to cure, ASC shall fail to obtain any insurance required under this Agreement, the City may, at its election, obtain such insurance and the cost thereof shall be added to the Lease Amount payment for the applicable fiscal quarter. If ASC fails or refuses to maintain insurance as required hereunder, or fails to provide proof of insurance, the City shall, subject to the notice and cure provisions of Section 4, have the right to declare ASC in default of this Agreement, and the City shall be entitled to exercise the legal remedies set forth in this Agreement.

5.2 Required Insurance Coverage.

A. **Commercial General Liability.** ASC shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$4,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury relating to the Facility and shall include dram shop liability insurance or liquor liability insurance. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. ASC's public liability insurance shall include dram shop liability insurance or liquor liability insurance. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. **All Risk Coverage.** ASC shall maintain a policy of insurance covering loss or damage to the Facility, the Facility Improvements and all FF&E constituting fixtures in the amount of the full replacement value thereof, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils ("all risk," as that term is known in the insurance industry), but excluding damage due to flood, earthquake or terrorist activities. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$20,000 (subject to annual reasonable escalations) per occurrence. ASC shall obtain such endorsements as are recommended by the City's risk manager, including, without limitation, an endorsement for changes in building codes, provided such endorsements may be obtained on commercially reasonable terms. The City shall be the loss payee on such policy. The City shall receive and retain all insurance proceeds to the extent they are not used to rebuild the Facility

Improvements following an insured casualty. The "full replacement value" of the property to be insured under this Section shall be determined by ASC's insurance consultants, subject to approval by the City. Not more frequently than once every two years, City shall have the right to demand that the replacement value be re-determined.

C. **Vehicle Liability.** ASC shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on ASC's owned, hired and non-owned vehicles assigned to or used in connection with ASC's operation of the Facility under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

D. **Workers' Compensation Insurance.** ASC shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over ASC's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease poli cy limit.

E. **Business interruption Insurance.** ASC shall maintain business interruption insurance for up to 12 months with reasonable insurance levels consistent with Sound Practice. All proceeds thereof shall be included in Gross Revenues.

ARTICLE VI INDEMNITY

6.1 **ASC Indemnity.** Subject to the waiver of subrogation in Subsection 5.1(G), ASC shall, to the extent permitted by law, indemnify, defend (with counsel reasonably acceptable to the City), protect and hold harmless ("Indemnify") the City and its (as applicable) employees, agents, employees, council members, officers and City volunteers (collectively the "Indemnitees") for, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses, including reasonable attorneys' fees (collectively "Claims"), arising from or in connection with, or caused in whole or in part by the negligence or willful misconduct of Indemnitor or its members, employees or agents. ASC shall give the City prompt notice of any alleged Claim and shall cooperate with the City in the defense of any third party Claim against the Indemnitees. ASC, as a material part of the consideration to the City, hereby assumes, except as otherwise provided in this Agreement, all risk of damage to property or injury to person in, on or about the Facility (except to the extent covered by the indemnity in the next paragraph). These provisions are in addition to, and not in lieu of, the insurance required under Article V above.

6.2 **City Indemnity.** City shall, to the extent permitted by law, Indemnify ASC and its employees for, from and against any and all Claims, arising from or in connection with, or caused in whole or in part (A) by the negligence or willful misconduct of the City or its employees or contractors; or (B) any City Event or City Activity.

ARTICLE VII TERM

7.1 **Initial Term.** The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and expire on the 20th anniversary of the Completion Date.

7.2 **Option Term.** Provided ASC is not in default of this Agreement, ASC is hereby given the option(s) to extend the Initial Term of this Agreement for two separate option periods of five years each (each, an "Extended Term") following the expiration of the Initial Term (the Initial Term and the Extended Term(s) are collectively referred to herein as the "Term"). The City shall have the right to review and approve the extension of this Agreement into the option periods, which approval shall not be unreasonably withheld or conditioned. The option periods must be exercised successively, to run from the end of the Initial Term, and shall be exercised only by giving notice of exercise of the option ("Option Notice") to City at least four months before the expiration of the Initial Term or the first Extended Term, as applicable. If ASC, following notice and the expiration of all applicable opportunity to cure periods, is in default hereunder, it may not give an Option Notice and this Agreement shall expire at the end of the then-current Term.

7.3 **Effect of Termination.** In the event this Agreement expires or is terminated: (A) all Facility Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the Operating Account and to the extent such funds are not sufficient, ASC shall pay all such Facility Expenses and shall indemnify and hold the City harmless therefrom, (B) ASC shall promptly pay the City all Lease Amounts to the date of expiration or termination, and (C) all contracts entered into by ASC in furtherance of its duties hereunder shall be the sole responsibility of ASC. Upon the expiration of this Agreement or a termination of this Agreement, all further obligations of the Parties hereunder shall terminate except for the obligations that, by their specific terms, survive the termination of this Agreement; provided, however, that if such termination is the result of a willful default, the non defaulting Party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

7.4 **Surrender of Premises.** Upon termination of this Agreement, ASC shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all FF&E shall be returned to the City in good repair, reasonable wear and tear excepted. All reports, records, including financial records, and documents maintained by ASC relating to this Agreement other than materials containing ASC's proprietary information shall be immediately surrendered to the City by ASC upon termination.

ARTICLE VIII GENERAL PROVISIONS

8.1 **No Third Party Beneficiaries.** Nothing in this Agreement may be construed as waiving any immunity available to the City under state law. This Agreement is solely for the benefit of ASC and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person. This provision shall survive the termination of this Agreement.

8.2 **Assignment.** Provided ASC is not in default of this Agreement, ASC shall have the right to assign this Agreement to an Affiliate or an entity which shall have purchased all or substantially all of the assets of ASC. ASC shall not otherwise assign or transfer all or any

portion of its interest in this Agreement without the City's prior written consent, which shall be evidenced by the signature of the City Manager thereon.

8.3 American Sports Centers Proprietary Rights. ASC represents that it (or its Affiliates) has proprietary intellectual property rights in the name of and logo for "American Sports Centers." This Agreement does not grant to the City any rights to use such name or marks nor such other proprietary rights, except as set forth herein. By executing this Agreement, ASC shall be deemed to have granted the City a royalty-free, perpetual license to use ASC's name and logo in City materials and electronic media promoting the City and the Facility. Upon termination or expiration of this Agreement, ASC may remove all such names physical names and logos and the City shall remove any electronic appearances thereof, but the City shall have the right to continue operations at the Facility without retrofitting the Facility Improvements.

8.4 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: 623-333-0100
Attn: Charles P. McClendon, City Manager

With copy to: Gust Rosenfeld, P.L.C.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: 602-340-1538
Attn: Andrew J. McGuire, Esq.

If to ASC: ASC-Avondale LLC
26522 La Alameda, Suite 285
Mission Viejo, CA 92691
Facsimile: 949-348-3334
Attn: Norman N. Nowell

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

8.5 Independent Contractor. ASC shall at all times be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between the City and its successors and assigns, on the one part, and ASC and its successors and assigns, on the other part.

8.6 Compliance with Laws. ASC shall: (A) comply with all applicable federal, state and local laws and (B) not discriminate against any person on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in its performance under the terms of this Agreement.

8.7 Representations, Warranties and Acknowledgments. ASC makes the following representations, warranties and acknowledgments as of the date of this Agreement and agrees that such representations, warranties and acknowledgments shall survive and continue thereafter:

A. **Status.** ASC is an Arizona limited liability company duly formed and validly existing and has all power and authority to consummate the transactions contemplated hereby.

B. **Authority.** ASC has complied with all laws and regulations concerning its organization, existence and transaction of business. ASC has, or at all appropriate times shall have properly obtained, all permits, licenses and approvals necessary to occupy and operate the Facility and in so doing has, or shall have (as appropriate), substantially complied with all applicable statutes, laws, regulations and ordinances.

C. **No Litigation.** There is no litigation, action, suit, or other proceeding pending or threatened against ASC as of the Effective Date.

D. **Enforceability.** The person signing this Agreement has full right, power and authority to execute and deliver this Agreement and all instruments executed pursuant hereto, and to perform the undertakings of ASC contained in this Agreement and all agreements executed pursuant hereto. This Agreement and all agreements executed pursuant hereto constitute valid and binding obligations of ASC which are legally enforceable in accordance with their terms, subject to the laws of bankruptcy, creditor's rights exceptions, and equity.

E. **No Breach.** To the best of its knowledge, none of the undertakings of ASC contained in this Agreement and all agreements executed pursuant hereto violates any applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity, or conflicts with, or constitutes a breach or default under, any agreement by which ASC is, or the Facility and Improvements thereon are, bound or regulated.

F. **Taxes.** ASC has filed all federal and state tax returns required to have been filed, and have paid all taxes which have become due pursuant to such returns.

G. **Manner of Performance.** ASC, through its members and affiliates entities, has the qualifications, experience and ability to perform the Consulting Services and Operations Services in a professional manner without the supervision of or control by the City. ASC shall provide properly qualified and experienced personnel to perform ASC's obligations under this Agreement. ASC shall have the sole discretion and control over the manner, method, details and means of its performance of the Consulting Services and Operations Services called for under this Agreement. ASC, at such times and in such form as City reasonably may require,

shall furnish City with such periodic reports as it reasonably may request pertaining to the services undertaken pursuant to this Agreement and any other matters covered by this Agreement.

8.8 Force Majeure Events. "Force Majeure Event" means declared or undeclared war, sabotage, revolutions, riot or acts of terrorism or civil disobedience; acts or omissions of governmental agencies; accidents, fires or explosions; floods, earthquakes or other acts of God; strikes or labor disputes; shortages of materials; or any other event not within the control of ASC or the City and not caused by the negligence or intentional wrongful conduct of ASC or City. Any disruption to the operation of the Facility caused by a City Capital Improvement project or delay in the construction of the Facility Improvements shall also constitute a Force Majeure Event. Both Parties shall be excused from performance hereunder to the extent such Party is unable to perform its obligations due to a Force Majeure Event. If, as a result of the occurrence of a Force Majeure Event, the responsibilities of ASC under this Agreement are substantially changed or the revenue potential of the Facility is potentially impaired, then the Parties shall meet and reasonably agree to equitable modifications to this Agreement.

8.9 Modification and Changes. This Agreement may be amended or modified only by a writing signed by both Parties.

8.10 Understandings and Agreements. This Agreement constitutes all of the understandings and agreements of whatever nature or kind existing between the Parties with respect to (A) design and construction of the Facility and (B) ASC's maintenance and operation of the Facility. This Agreement supersedes all concurrent or prior understandings and agreements, whether written or oral, between the City and ASC.

8.11 Survival of Covenants. Any covenant, term or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

8.12 Contract Administration. The City Manager shall administer this Agreement on behalf of the City. The City Manager may designate any member or members of his or her staff to carry out such responsibilities. Except as otherwise expressly provided herein, or with respect to matters where the approval of the Avondale City Council is required by law, the City Manager has the authority to approve or consent to those matters requiring the City's approval or consent and to make all other decisions on behalf of the City. No failure by ASC or the City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument signed by both Parties. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver. Unless otherwise specifically set forth herein, to the extent this Agreement required the consent of or approval by the City as to any matter, such consent or approval shall not be unreasonably withheld, conditioned or denied.

8.13 Applicable Law. This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of Arizona. ASC expressly consents to the jurisdiction of the courts of the State of Arizona and agrees that venue for any legal action in connection with this Agreement shall be exclusively in the Arizona Superior Court in and for Maricopa County, Arizona.

8.14 No Presumption Regarding Drafter. The terms and provisions of this Agreement have been extensively negotiated and discussed between the City and ASC. This Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, neither the City nor ASC shall be deemed or construed to be the drafter of this Agreement. Therefore, no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

8.15 Enforceability of Any Provision. If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid or void, such determination shall not affect, impair, invalidate or render unenforceable any other term, condition, covenant or obligation of this Agreement.

8.16 Attorneys' Fees. In the event of a court proceeding involving the non-performance by a Party of its obligations under this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and all other expenses (including fees and costs related to discovery) reasonably incurred in connection with such dispute, in addition to all other relief to which the Party is entitled. If the successful Party recovers judgment in any legal action or proceeding, the reasonable attorneys' fees and costs of expert witnesses and other expenses of litigation shall be included in and made a part of any such judgment.

8.17 Time of the Essence. Time is of the essence of this Agreement. The time for performance of each obligation has been the subject of negotiation by the Parties.

8.18 No Entitlements. This Agreement does not constitute a waiver by the City of any development ordinances or conditions or an entitlement concerning zoning or land use, either implied or otherwise. Neither the City's execution of this Agreement nor any consent or approval given by City hereunder in its capacity as City shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body. Any requirements under this Agreement that ASC obtain consents or approvals of City or other governmental entity are in addition to and not in lieu of any requirements of law that ASC obtain approvals, licenses, or permits.

8.19 Obligations not a Debt. The City's obligations pursuant to the provisions of this Agreement that require the expenditure of funds do not constitute a general obligation or indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate the City to make any expenditure from proceeds of ad valorem taxes or obligations to which any general taxing authority is pledged unless the expenditure has been duly budgeted, if and to the extent required by law, and is within all budget and expenditure limitations of, and is not in conflict with, the Constitution or laws of the State of Arizona.

8.20 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity: (1) the City may offset from any money due to ASC any amounts ASC owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement; and (2) ASC may offset from any money due to City any amounts City owes to the ASC for damages resulting from any City default or indemnity obligation under this Agreement.

B. **Offset for Delinquent Fees or Taxes.** The City may offset from any money due to ASC any amounts ASC owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

8.21 **Cooperation with Further Financing.**

A. **Authority Opinion.** If necessary or desirable in connection with any financing of the Facility, ASC agrees that, without charge or expense to the City, within 20 business days after the request by the City, to deliver an opinion letter from independent legal counsel to ASC regarding the due execution and authority of ASC to execute this Agreement and to perform its obligations hereunder and such other matters as are reasonably requested by the City.

B. **Estoppel Certificate.** ASC shall, without charge or expense to the City, at any time and from time to time, within ten business days after written request therefore from the City, execute, acknowledge and deliver a written estoppel certificate certifying the following: (1) whether or not this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating such modifications), (2) whether or not ASC has knowledge of any then uncured default by ASC or the City under this Agreement (and if ASC has such knowledge, specifying the same in detail), (3) the address of ASC to which notices should be sent, and (4) any other factual information reasonably requested by the City.

C. **Bond Financing.** In addition, ASC agrees to modify this Agreement or any other necessary contract documents in good faith as reasonably necessary to accommodate any tax-exempt or taxable bond financing obtained by the City for the for the design and construction of the Facility; provided that any such modifications shall, to the maximum extent possible, preserve the economic benefits afforded to ASC hereunder, and shall not materially increase ASC's obligations hereunder or materially decrease the ASC's rights or economic benefits hereunder, provided, that if the foregoing modifications to preserve the rights and economic benefits and not increase the obligations of ASC are not possible, ASC shall have the right to terminate this Agreement. Without limiting the generality of the preceding sentences, ASC acknowledges and agrees that the respective cash contributions (or letters of credit or other funding devices) or receipts of the City from the activities of ASC under this Agreement may be pledged to the holders of the bonds issued or to be issued by the City to finance the design and construction of the Facility and may be held in trust by the trustee for such bonds.

8.22 **Conflict of Interest.** This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Party to the Agreement in any capacity or a Consultant to any other Party of the Agreement with respect to the subject matter of the Agreement.

8.23 **Non-Compete Area.** Except with consent of the City as specifically set forth below in this subsection 8.23, ASC, its Affiliates, successors and assigns shall not operate, cause to be operated, or consult, advise or participate in the operations of, any sports facility or venue that is similar or comparable to the Facility or at which uses similar or comparable to the Facility Uses are conducted, within a 20 mile radius (the "Competition Area") of the Facility (A)

at all times during the Term of this Agreement and (B) for a period of two years following termination of this Agreement at any time prior to the natural expiration of the Term; provided, however, that no such non-compete time period shall apply following early termination of this Agreement by the City. This provision shall survive any termination of this Agreement. At any time during the Term of this Agreement after the Completion Date ASC may request that the City consider waiving the provisions of this subsection 8.23 to permit ASC to operate a sports facility or venue that is (A) similar or comparable to the Facility and (B) within the Competition Area. The City shall only be required to consider ASC's request in the event that, at the time of such request, ASC (A) is not in default of any provision of this Agreement and (B) proves, by clear, objective evidence that the proposed new facility within the Competition Area will (1) not directly compete with, or draw revenues from, the Facility, (2) compliment the uses within the Facility to allow ASC to promote larger events involving the use of the Facility and in conjunction with the new facility and (3) not substitute for modifications to the Facility to upgrade then-existing uses or to add new uses. If, in the sole discretion of the City, the information provided by ASC as required above is sufficient to reasonably ensure the City that any new facility or venue within the Competition Area would not be detrimental to the City, the City may waive, in whole or in part (and subject to such conditions as the City deems necessary) the non-compete provisions of this subsection 8.23.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

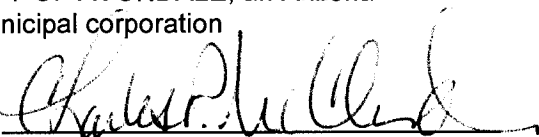
"CITY"

"ASC"


CITY OF AVONDALE, an Arizona
municipal corporation

ASC-Avondale LLC, an Arizona limited
liability company


By:


Charles P. McClendon, City Manager

By:


Norman N. Nowell, Manager

ATTEST:


Carmen Martinez, City Clerk

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

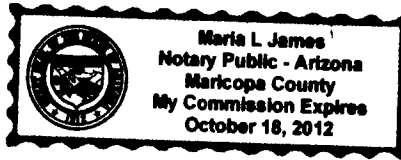
This instrument was acknowledged before me on January 13, 2009, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

Marie L. James
Notary Public in and for the State of Arizona

My Commission Expires:

October 18, 2012

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE)



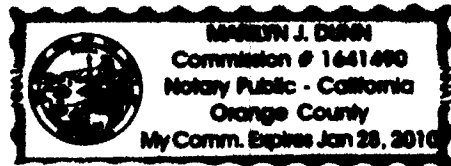
On JANUARY 8, 2009 before me, MARILYN J DUNN Notary Public, personally appeared Norman N. Nowell

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Marilyn J. Dunn



This area for official notarial seal.

EXHIBIT A
TO
LEASE, MAINTENANCE AND OPERATIONS AGREEMENT
(AMERICAN SPORTS CENTERS AVONDALE FACILITY)
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Property Description and Depiction]

See following pages

January 6, 2009

LEGAL DESCRIPTION FOR
AVONDALE CITY CENTER
MORTENSEN PROPERTY

The West 15 acres of the South 30 acres of the North half of the Southwest quarter (North half of the Southwest quarter described as Lot 6 and the Northeast quarter of the Southwest quarter) of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the West 33 feet as conveyed to Maricopa County by Deed recorded in Book 125 of Deeds, page 117, records of Maricopa County, Arizona; and also

EXCEPT the following described parcel:

Beginning at the Southwest corner of said Lot 6;

Thence North along the West line of Lot 6 a distance of 167.45 feet to the True Point of Beginning;

Thence East 217.80 feet;

Thence North 200 feet;

Thence West 217.80 feet to the West line of said Lot 6;

Thence South, along said West line, a distance of 200 feet to the True Point of Beginning; and also

EXCEPT that portion thereof lying within the following described parcel, as set forth in Judgment entered in the Superior Court, State of Arizona, Case No. CV2007-051625, recorded in Document No. 2007-1228149, records of Maricopa County, Arizona:

Beginning at a point which is 3 feet North of the Northeast corner of Lot 7 in said Section 6;

Thence South 00 degrees 29 minutes West, along the East line of said Lot 7, a distance of 971.22 feet;

Thence East 73.60 feet to a point on the West line of that certain parcel described in Deed recorded in Document No. 83-326942, records of Maricopa County, Arizona;

Thence North along said West line, a distance of 971 feet to a point which is 74.10 feet East of the Point of Beginning;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence West 74.10 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale by Deed recorded in Document No. 2003-454880, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 787.83 feet;

Thence North 89 degrees 03 minutes 12 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 03 minutes 12 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 5, a distance of 158.98 feet;

Thence South 89 degrees 57 minutes 48 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 158.82 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale in Document No. 2007-0196103, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Section 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 1145.94 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 89 degrees 57 minutes 48 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 57 minutes 48 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 6, a distance of 166.58 feet;

Thence South 89 degrees 03 minutes 12 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 166.74 feet to the Point of Beginning.

TOGETHER WITH

A portion of the Southwest quarter of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the South quarter corner of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, along the North-South Mid-Section line of said Section 6, a distance of 567.53 feet;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 748.54 feet to the Southeast corner of the North half of the Southwest quarter of said Section 6;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 528.23 feet, said point being 787.84 feet Southerly from the Center of said Section 6;

Thence South 89 degrees 44 minutes 03 seconds West, a distance of 1227.06 feet to the True Point of Beginning;

Thence South 00 degrees 24 minutes 08 seconds West, a distance of 528.34 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 84.64 feet Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence South 00 degrees 21 minutes 25 seconds West, a distance of 190.58 feet;

Thence North 64 degrees 56 minutes 50 seconds West, a distance of 11.01 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 00 degrees 21 minutes 25 seconds East, a distance of 185.99 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 74.64 feet (74.10 feet, record) Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, a distance of 528.34 feet;

Thence North 89 degrees 44 minutes 03 seconds East, a distance of 10.00 feet to the True Point of Beginning.

Containing 13.837 Acres, more or less.

This legal description is based on the legal description in a commitment for title insurance by Stewart Title Guaranty Company, Order No. 08260183, Amendment No. 2, with an effective date of December 29, 2008, and does not reflect any field work performed by Coe & Van Loo Consultants, Inc.



Expires: 9/30/10**6**

EXHIBIT B
TO
LEASE, MAINTENANCE AND OPERATIONS AGREEMENT
(AMERICAN SPORTS CENTERS AVONDALE FACILITY)
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Concessionaire Agreement]

See following pages

**CONCESSIONS AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC**

THIS CONCESSIONS AGREEMENT (this "Agreement") is entered January ___, 2009, (the "Effective Date") by and between the CITY OF AVONDALE, an Arizona municipal corporation (the "City"), and ASC-AVONDALE LLC, an Arizona limited liability company (the "Concessionaire"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Facility Lease (as defined below).

RECITALS

A. The City intends to design and construct a public facility for amateur athletics on real property the City intends to purchase generally located along the Corporate Drive alignment, north of Van Buren Street and east of Avondale Boulevard, in Avondale, Arizona, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, (the "Facility").

B. The Concessionaire, through that certain Lease, Maintenance and Operations Agreement, of equal date herewith, between the City and the Concessionaire (the "Facility Lease"), has the right to lease the Facility for the purpose of operating its business relating to hosting training and competition for various amateur athletic organizations.

C. The City has the full power and authority to hire a concessionaire to sell food, beverages and other articles to the patrons of the Facility.

D. Concessionaire desires to enter into an agreement with the City for the exclusive right to provide food, alcoholic and non-alcoholic beverages, and other products to the attendees of the Facility and has represented itself as qualified in all respects to provide such services.

E. The City desires to grant to Concessionaire the sole and exclusive right to operate the food and beverage business, including the operation of concessions at the Facility, as more particularly set forth herein.

F. The Concessionaire agrees and understands that the City intends for the entity operating the Facility pursuant to the Facility Lease shall be the same entity permitted to operate the concessions at the Facility, unless otherwise assigned as permitted according to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Concessionaire hereby agree as follows:

1. Sale of Refreshments. City hereby grants to Concessionaire the sole and exclusive right to sell food, alcoholic and non-alcoholic beverages and candy at any and all events held at the Facility. The sale of such items and the provision of such services collectively shall be referred to as the "Services." Concessionaire shall provide Services at all events at the Facility other than City Events, unless the City requests that the Concessionaire provide the Services for a City Event. The sole and exclusive right granted to Concessionaire shall extend to all designated areas inside the Facility. Concessionaire shall not sell tobacco or chewing gum products within the Facility.

2. Term. The term of this Agreement (the "Term") shall be the period commencing on the Effective Date and ending on the date that the Facility Lease terminates, whether by its natural expiration or by an early termination event pursuant to the terms and conditions set forth in the Facility Lease.

3. Concession Fee Payment. As consideration for this Agreement, Concessionaire shall include the amount of gross sales related to the Services as part of the Gross Revenues calculated in the Facility Lease to determine the lease payments due to the City. There shall be no other fee, charge, or cost charged by the City to the Concessionaire for the privilege of exclusively providing the Services at the Facility.

4. Operations.

4.1 Alcoholic Beverages.

A. The City hereby designates Concessionaire as its manager for administering the government spirituous liquor license issued to the City for the Facility. Concessionaire is authorized to purchase beer, wine and other spirituous liquor which the City may authorize from time to time for resale within the Facility pursuant to this Agreement. All spirituous liquor for sale must be purchased and consumed on the premises of the Facility.

B. Concessionaire shall reimburse the City for annual license renewal, any federal tax payments made regarding the sale of alcoholic beverages and any fines, civil penalties or other liabilities incurred because of Concessionaire's use of the license.

C. Concessionaire shall comply with all state and local laws, rules and regulations governing the purchase and sale of spirituous liquor. Concessionaire shall complete all required police incident reports that may be requested. Upon notice of any license violation or receipt of any warning, complaint or order issued by the Arizona State Liquor Board or the Director of the Arizona Department of Liquor Licenses and Control (the "Regulatory Authorities"), Concessionaire shall take immediate corrective action and, within three business days thereafter, give the City written notice of the actions taken to cure such violation and future actions to be taken to avoid the reoccurrence of such violations. The City shall have the right to revoke this designation of Concessionaire as its manager in the event that Concessionaire (1) fails to take immediate corrective action as required by this subsection, (2) has received more than three warnings, complaints or orders in any three-month period from the Regulatory Authorities or (3) has had more than three alcohol-related incidents at the Facility which caused a response from the City's police department. The City's revocation rights under this subsection

shall not be subject to the notice and cure provisions set forth in subsection 8.1 below. Upon revocation of the “manager” designation, Concessionaire shall no longer be allowed to sell spirituous liquor at the Facility, but the privilege to sell other concession items shall remain in effect unless otherwise terminated pursuant to subsection 8.2 below.

4.2 Quality of Service.

A. It is the intention of the City that the Facility concession service be of the highest quality attainable. All concession service areas shall be kept clean, orderly and sanitary at all times and in strict accordance with all applicable laws, ordinances, rules and regulations.

B. All refreshments sold or kept for sale shall be first quality, wholesome and pure and shall conform in all respects to federal, state, county and municipal food and other laws, ordinances, and regulations and shall be comparable in quality to similar items sold in other amateur sports facilities in the Phoenix metropolitan area. No imitation, adulterated or misbranded article shall be sold or kept for sale. All refreshments kept on hand shall be stored and handled with due regard for sanitation. In the event that the City notifies the Concessionaire that the quality of a food or beverage item is below the standard outlined herein, Concessionaire shall forthwith cease the sale of such item and the parties shall negotiate in good faith regarding the matter.

C. Concessionaire shall maintain a rating with the Maricopa County Health Department which will permit the continuous sale of refreshments in accordance with the Maricopa County Health Code at all times during the Term of this Agreement and shall provide the City with a copy of any inspection report within three business days after receipt thereof.

D. All Refreshments kept for sale by Concessionaire shall be subject to inspection and approval or rejection by the City and duly authorized representatives of appropriate governmental agencies in the reasonable discharge of their governmental responsibilities.

E. The City shall have the right to require that practices of Concessionaire or its employees and agents which are prohibited or unauthorized by this Agreement be discontinued or remedied. Failure of Concessionaire to take appropriate corrective action after notification from the City shall constitute a breach of this Agreement.

F. Concessionaire shall be responsible for the sanitary condition and cleaning of all food service production, storage, and service areas including equipment, floors, walls, ceilings, and shelving within the control of Concessionaire. Concessionaire shall also be responsible for the cleaning of counter tops and floors, within the Facility, and other related sanitation functions during events, and following each event within the Facility.

G. Concessionaire shall provide a complete and proper arrangement for the adequate and sanitary handling of all garbage and trash and other refuse caused as a result of the operation of the Facility and shall provide for its timely removal from the concession areas to a central point designated for removal from the Facility. Concessionaire shall provide and use

suitable covered, leak proof receptacles for all trash and barrels, or other similar items when trash is in view of the public. Concessionaire shall keep any areas for trash and garbage storage prior to removal from Facility in a clean and orderly condition so as not to attract rodents, pests, or birds and shall have all trash and refuse transferred to collection areas designated by City. In transporting garbage, trash, and refuse from the Concession Facilities, Concessionaire shall use only carts, vehicles, or conveyances that are leak proof.

4.3 General Operating Requirements.

A. Concessionaire shall be open and ready for business at the Facility within 30 days following the Completion Date.

B. The public's right to reasonably enjoy the event for which it is in attendance shall not be infringed upon by any activity of Concessionaire or any of its employees or agents. The activities of Concessionaire shall be such as to render service to the public in a dignified manner and no pressure, coercion or persuasion shall be used by Concessionaire in an attempt to influence the public to use the services or product of Concessionaire. All concession sales shall be conducted and operated in such a manner so as to not interfere with the orderly operation of any event. Neither Concessionaire nor its employees shall distribute campaign or political literature or any literature of any kind at any time in or on the Facility.

C. The City shall not be responsible for any inventory of refreshments, merchandise, supplies or concession equipment or other assets used or stored by Concessionaire in the Facility, nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes. However, the City will use all reasonable efforts to reestablish power in the event of a loss.

D. Representatives of the City shall have the reasonable right to enter upon, and inspect all spaces occupied by Concessionaire during the time events are in operation and at all other times when Concessionaire's employees are present as long as they do not interfere with the operations of Concessionaire. The City, upon reasonable notice to Concessionaire and in the company of a Concessionaire employee, shall have the right to inspect all locked areas of the Facility and storage areas used by Concessionaire.

4.4 Employees.

A. Concessionaire shall employ and supervise such personnel as shall be necessary for the efficient performance of its obligations under this Agreement. Concessionaire shall assign to the Facility only employees reasonably acceptable to City.

B. Concessionaire's non-management employees shall be neatly attired in clean, commercially-attractive uniforms.

4.5 Observance of Laws, Rules and Regulations, Permits. Concessionaire shall, at all times, observe and comply, at its own expense, with all statutes, ordinances, orders, regulations and requirements of all governmental authorities (including without limitation, the requirements of Title I of the Americans With Disabilities Act).

4.6 Payment of Impositions. Concessionaire shall pay when they become due and payable, all assessments, excises, license and permit fees, real and personal property taxes, Sales Taxes and other governmental levies of any kind whatsoever (collectively, "Impositions") which may be assessed or levied by a governmental agency against Concessionaire or grow or become due and payable by Concessionaire out of or caused by this Agreement or any activity or use of the Facility by Concessionaire, its employees, contractors, agents and invitees.

4.7 Nondiscrimination. Concessionaire shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Concessionaire will take action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Concessionaire further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

4.8 Compliance with Immigration Reform and Control Act of 1986 (IRCA). Concessionaire understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA in performing under this Agreement. Concessionaire warrants that verification checks have been put into effect by Concessionaire. Concessionaire agrees to indemnify the City against damages arising from any verification violations or violations arising from the hiring of illegal aliens.

5. Indemnification.

5.1 General Indemnity. Concessionaire shall indemnify, defend, save and hold harmless City and its officers, officials, agents, and employees from and against all claims, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation) whether at law or in equity, (hereinafter referred to as "Claims") for bodily or personal injury (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligence or willful acts or omissions of Concessionaire or any of its owners, officers, directors, agents or employees in Concessionaire's performance of this Agreement. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising from the negligent or willful acts or omissions of the City, be indemnified by Concessionaire for, from and against any and all claims. It is agreed that Concessionaire will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. City agrees to immediately notify Concessionaire of all losses or claims for which it will seek indemnity under this Agreement. City agrees to fully cooperate with Concessionaire and Concessionaire's authorized representatives in the investigation, defense and settlement of all such claims. In consideration for the terms of this Agreement, the Concessionaire agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the performance of this Agreement. The protections provided by this Section 5.1 shall survive the expiration or termination of this Agreement.

5.2 Contractual Indemnity. Concessionaire shall conduct its operations in such a way that no liens, claims, damage, or liability arising out of contractual or business arrangements shall accrue against City. Moreover, Concessionaire shall defend, indemnify, and hold harmless City and its employees, representatives, agents, successors and assigns, for, from and against any and all losses arising out of any such liens, charges, claims, damages or liability.

6. Insurance. The insurance provisions set forth in Article V of the Facility Lease are hereby incorporated herein by this reference and Concessionaire shall have the duties and obligations assigned to ASC in such provisions.

7. Limitations on Assignment of Agreement.

7.1 Prior Consent Required. Neither City nor Concessionaire shall have the right to Assign this Agreement, without having first obtained prior written consent thereto from the other party. Such consent may be based, in part, on whether the proposed purchaser, assignee or transferee (A) is capable of meeting the payment and other obligations to the party whose consent is sought; and (B) has acknowledged in a form satisfactory to the party whose consent is sought that it shall assume all obligations hereunder of the proposed seller, assignor or transferor. For purposes of this Agreement, "Assign" (or as the context may require, "Assignment") shall be defined as: (A) transferring, assigning or conveying any interest in, or transferring or delegating responsibilities under, this Agreement, (B) with respect to City, transferring, assigning, or conveying any interest in the Facility, whether leasehold, contractual, ownership, equity or otherwise, or the right to manage or operate the Facility or (C) the occurrence of a merger, change of control, or transfer of substantially all the assets of a party, whether by operation of law or otherwise.

7.2 Effect of Denial of Consent. If the party whose consent is required decides to withhold its consent, then its only remedy shall be to terminate this Agreement by giving 30 days' prior written notice thereof to the other party. Such termination shall be effective only upon the later to occur upon (A) the end of the then-current contract year or (B) the consummation of the proposed sale, assignment or transfer.

7.3 Assignment to Affiliate. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to assign, transfer or convey this Agreement to an affiliate of Concessionaire provided that Concessionaire shall guarantee thereafter the payment and performance obligations of such affiliate. Such guarantee shall be given in a form which is satisfactory to City.

7.4 Subcontracts. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to enter into subcontracts for vendors to provide any portion or all of the concession services set forth in Section 1 above; provided, however, that such subcontract shall not act as an assignment of this Agreement and Concessionaire shall remain solely responsible for the obligations, and entitled to the privileges, set forth in this Agreement.

8. Default; Termination

8.1 Default; Cure Period.

A. Failure or delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within 30 days after written notice is received from the non-breaching party, shall constitute a default under this Agreement, provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the breaching party shall have such additional time as may be necessary to perform or comply so long as the breaching Party commences performance or compliance within said 30 day period and diligently pursue such cure to completion; provided, however, that no cure period shall exceed 180 days. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The 30 day period shall not apply where an ordinance or statute requires City to perform or otherwise act in a period in excess of 30 days.

B. In the event of a default, the non-defaulting party may, in that party's sole discretion, terminate this Agreement. Upon such termination, all rights and obligations under this Agreement shall become null and void, and the defaulting party shall be liable to the non-defaulting party for any damages resulting from the breach.

8.2 Termination by City. City shall have the right to terminate this Agreement by giving 30 days' prior written notice thereof if any of the following events shall occur:

A. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

B. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders or partners, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any State thereof.

C. A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed or stayed within 30 days after the filing thereof.

D. Concessionaire shall be in default of any of its material obligations (other than the obligation to pay money) hereunder and such default shall continue beyond the Cure Period.

E. Concessionaire, without having obtained the consent of City as required in Section 7 of this Agreement, Assigns (as such term is defined in Section 7) any interest requiring the consent of City.

F. Concessionaire, as a result of Concessionaire's actions or inaction within the Concessionaire's control, fails to maintain a rating which in accordance with the Maricopa County Health Code would permit continued sale of refreshments at the Facility and after finally exhausting all of the Concessionaire's rights to appeal before the Maricopa County Health Department, Concessionaire has failed to cure such default with a time, period acceptable to the Maricopa County Health Department.

G. In the Event this Agreement is terminated pursuant to any of the provisions of this Section 8.2 and if the Facility Lease is still in effect, the City shall have the right to separately contract with a separate entity to provide the Services and Concessionaire shall have no right to any revenues therefrom.

9. General Provisions

9.1 Independent Contractor. The Concessionaire acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Concessionaire, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Concessionaire, its employees or subcontractors. The Concessionaire, and not the City, shall determine the time of its performance of the Services provided under this Agreement so long as Concessionaire meets the requirements of this Agreement. Concessionaire is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Concessionaire do not intend to nor will they combine business operations under this Agreement.

9.2 Laws and Regulations. The Concessionaire shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Concessionaire is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (A) existing and future City and County ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration ("OSHA") standards.

9.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Concessionaire.

9.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

9.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

9.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Concessionaire agrees to be fully and solely responsible for the payment of all taxes applicable to this Agreement.

9.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

9.8 Subcontracts. No subcontract shall be entered into by the Concessionaire with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Concessionaire is responsible for performance under this Agreement whether or not subcontractors are used.

9.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Concessionaire from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

9.10 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.11 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Concessionaire any amounts

Concessionaire owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Concessionaire any amounts Concessionaire owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

9.12 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Concessionaire: ASC-Avondale LLC
26522 La Alameda, Suite 285
Mission Viejo, California 92691
Facsimile: (949) 348-3334
Attn: Norman N. Nowell

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

9.13 Records and Audit Rights. Concessionaire's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting

evidence relating to this Agreement, including the papers of any Concessionaire and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Concessionaire and its subcontractors are complying with the warranty under subsection 9.14 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Concessionaire's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Concessionaire's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 9.14 below. To the extent necessary for the City to audit Records as set forth in this subsection, Concessionaire and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Concessionaire pursuant to this Agreement. Concessionaire and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Concessionaire or its subcontractors reasonable advance notice of intended audits. Concessionaire shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

9.14 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Concessionaire and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Concessionaire's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

9.15 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Concessionaire certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or and 35-393, as applicable. If the City determines that the Concessionaire submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 8.2 above.

9.16 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

“Concessionaire”

ASC-AVONDALE, LLC, an Arizona
limited liability company

By: _____

Name: _____

Its: _____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2009,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

My Commission Expires:

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____ before me, _____, Notary Public, personally
appeared Norman N. Nowell who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

This area for official notarial seal.

EXHIBIT A
TO
CONCESSIONS AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Legal description and depiction of Facility]

See following pages.

January 6, 2009

LEGAL DESCRIPTION FOR
AVONDALE CITY CENTER
MORTENSEN PROPERTY

The West 15 acres of the South 30 acres of the North half of the Southwest quarter (North half of the Southwest quarter described as Lot 6 and the Northeast quarter of the Southwest quarter) of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the West 33 feet as conveyed to Maricopa County by Deed recorded in Book 125 of Deeds, page 117, records of Maricopa County, Arizona; and also

EXCEPT the following described parcel:

Beginning at the Southwest corner of said Lot 6;

Thence North along the West line of Lot 6 a distance of 167.45 feet to the True Point of Beginning;

Thence East 217.80 feet;

Thence North 200 feet;

Thence West 217.80 feet to the West line of said Lot 6;

Thence South, along said West line, a distance of 200 feet to the True Point of Beginning; and also

EXCEPT that portion thereof lying within the following described parcel, as set forth in Judgment entered in the Superior Court, State of Arizona, Case No. CV2007-051625, recorded in Document No. 2007-1228149, records of Maricopa County, Arizona:

Beginning at a point which is 3 feet North of the Northeast corner of Lot 7 in said Section 6;

Thence South 00 degrees 29 minutes West, along the East line of said Lot 7, a distance of 971.22 feet;

Thence East 73.60 feet to a point on the West line of that certain parcel described in Deed recorded in Document No. 83-326942, records of Maricopa County, Arizona;

Thence North along said West line, a distance of 971 feet to a point which is 74.10 feet East of the Point of Beginning;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence West 74.10 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale by Deed recorded in Document No. 2003-454880, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 787.83 feet;

Thence North 89 degrees 03 minutes 12 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 03 minutes 12 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 5, a distance of 158.98 feet;

Thence South 89 degrees 57 minutes 48 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 158.82 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale in Document No. 2007-0196103, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Section 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 1145.94 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 89 degrees 57 minutes 48 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 57 minutes 48 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 6, a distance of 166.58 feet;

Thence South 89 degrees 03 minutes 12 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 166.74 feet to the Point of Beginning.

TOGETHER WITH

A portion of the Southwest quarter of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the South quarter corner of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, along the North-South Mid-Section line of said Section 6, a distance of 567.53 feet;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 748.54 feet to the Southeast corner of the North half of the Southwest quarter of said Section 6;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 528.23 feet, said point being 787.84 feet Southerly from the Center of said Section 6;

Thence South 89 degrees 44 minutes 03 seconds West, a distance of 1227.06 feet to the True Point of Beginning;

Thence South 00 degrees 24 minutes 08 seconds West, a distance of 528.34 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 84.64 feet Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence South 00 degrees 21 minutes 25 seconds West, a distance of 190.58 feet;

Thence North 64 degrees 56 minutes 50 seconds West, a distance of 11.01 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 00 degrees 21 minutes 25 seconds East, a distance of 185.99 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 74.64 feet (74.10 feet, record) Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, a distance of 528.34 feet;

Thence North 89 degrees 44 minutes 03 seconds East, a distance of 10.00 feet to the True Point of Beginning.

Containing 13.837 Acres, more or less.

This legal description is based on the legal description in a commitment for title insurance by Stewart Title Guaranty Company, Order No. 08260183, Amendment No. 2, with an effective date of December 29, 2008, and does not reflect any field work performed by Coe & Van Loo Consultants, Inc.



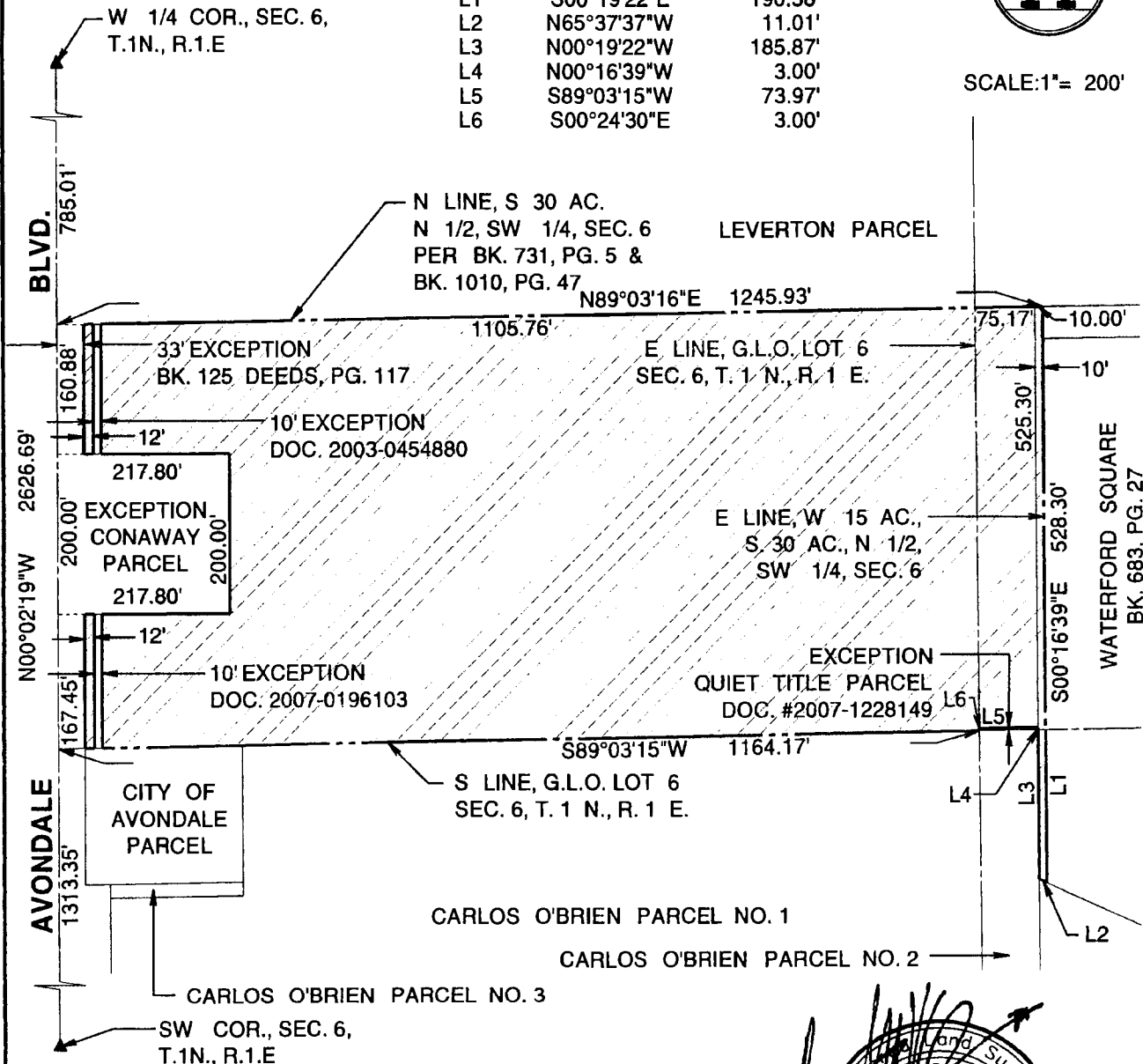
Expires: 9/30/2016

LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°19'22"E	190.58'
L2	N65°37'37"W	11.01'
L3	N00°19'22"W	185.87'
L4	N00°16'39"W	3.00'
L5	S89°03'15"W	73.97'
L6	S00°24'30"E	3.00'



SCALE: 1" = 200'



NOTE

TOTAL PARCEL AREA IS 13.747 ACRES, NET AND 13.837 ACRES, GROSS. ALL DIMENSIONS SHOWN REPRESENT CVL FIELD MEASURED DATA.



<p>EXHIBIT</p> <p>N:\070106504\CADD\EHMORTENSEN3.DGN</p>	<p>AVONDALE CITY CENTER MORTENSEN PROPERTY EXHIBIT</p>	<p>JOB NO 07 0106504 1</p>
<p>4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831</p>	<p>COE & VAN LOO PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE</p>	<p>SHEET 1 OF 1</p>

EXHIBIT C
TO
LEASE, MAINTENANCE AND OPERATIONS AGREEMENT
(AMERICAN SPORTS CENTERS AVONDALE FACILITY)
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Annual and Quarterly P&L Statement Format]

See following pages

**American Sports Center
Avondale**

**Income Statement/Variance Analysis
For period ended**

	Budget	Actual	Variance	Projected Annual
Income				
Court Revenue				
Arsenal				
Rental Revenue				
Restaurant Overage				
Parking Revenue				
Video				
Elec Reimb				
Other Misc Revenue				
Sub Total-				
Merchandise				
Less: Cost of Sales				
Gross profit Merchandise				
Total Revenue				
Operating Expense				
Net Occupancy costs				
Utilities				
Insurance				
Sub-total Occupancy Costs				
Maintenance & Repairs				
Linen Service				
Janitorial/Day Porter				
Janitorial Supplies				
Mats				
First Aid supplies				
General Repairs				
Small Equipment/parts/Tools				
Equipment Lease				
Parking Lot/Pressure Wash				
Sign Maintenance				
Roof Maintenance				
HVAC Maint				
Trash Removal				

**American Sports Center
Avondale
Income Statement/Variance Analysis
For period ended**

	Budget	Actual	Variance	Projected Annual
Sub-Total Maintenance & repairs				
Labor and Administrative				
Salary/Admin				
Court Management				
Event support				
Payroll Taxes				
Workers Comp				
Contract Services				
Security/parking control				
Sub-total Administrative Expenses				
Security/Fire & Life Safety				
Fire/evac system				
Fire Monitor/maint				
Fire Phone				
Sub-Total - Security/Life Safety				
Office Expense				
Telephone Exp				
Postage/Messenger				
Computer/Phone lease				
Occupancy Control				
Office Supplies				
Kitchen Supplies				
Dues & Subscriptions				
Misc Office expenses				
Sub-Total Office Expenses				
Marketing & Promotion				

**American Sports Center
Avondale**

**Income Statement/Variance Analysis
For period ended**

	Budget	Actual	Variance	Projected Annual
Travel & Lodging				
Marketing Stipend				
Entertainment				
Marketing				
Sub-Total Marketing & Promotions				
Legal & Other Professional				
Business Asset Management				
Legal				
Accounting				
Franchise Tax				
Political Consultant				
Architecture & Engineering				
Misc				
Sub-Total Legal & Professional				
Other (Income)/Expenses				
Sub-Total Other expenses				
Total Expenses				
Net Income before promotion/(BTDA)				
Promotional Income (Expense)				
Promotional revenue				
Net Income after Promotion				

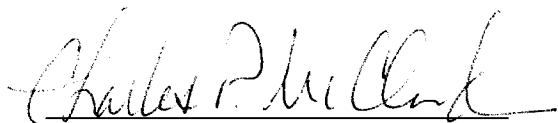
Sole Source Determination Sports Center Project

The City of Avondale, Arizona (the "City") desires to design and construct a multi-purpose indoor recreational facility (the "Facility") for the purposes of (i) providing recreational opportunities for its residents and (ii) creating a space to host amateur sporting event tournaments to attract visitors to the City and foster economic development.

The City desires to enter into a Professional Services Agreement with ASC-Avondale, LLC (the "Consultant") for design consultation and pre-construction services related to the City's planned Facility. The City also desires to enter into a lease agreement with the Consultant to operate and maintain the Facility. Because the Consultant will operate the Facility once completed, the Consultant requires the Facility to be built to particular specifications in order to operate a successful business out of the Facility. City staff does not have the requisite expertise to design the Facility for volleyball, basketball and other leagues, particularly as it relates to ensuring that the design promotes optimum financial performance. Therefore the Consultant is in a unique position to determine the design and construction of the Facility.

The City will benefit economically from successful performance of the Facility from both the design and construction of the Facility itself and the lease agreement with the Consultant. Under the terms of the lease agreement with the Consultant, as the Consultant's revenues increase so does the amount of money due to the City.

Therefore, after conducting a good faith review of available sources, I have determined that there is only one reasonable and practicable source for the design consultation and pre-construction services for the Facility.



Charles P. McClendon
City Manager

1-7-09
Date

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of January 12, 2009, between the City of Avondale, an Arizona municipal corporation (the "City") and ASC-Avondale LLC, an Arizona limited liability company (the "Consultant").

RECITALS

A. The City desires to design and construct a multi-purpose indoor recreational facility (the "Facility") for the purposes of (i) providing recreational opportunities for its residents and (ii) creating a space to host amateur sporting event tournaments to attract visitors to the City and foster economic development.

B. Pursuant to the City of Avondale City Code, Section 25-17, and because the Consultant is under contract to operate the Facility once completed, the City has determined that competition is not available and there is only one known source for professional services design consultation and pre-construction services related to the City's planned Facility (the "Services"). A copy of the sole source determination is attached hereto as Exhibit A and incorporated herein by reference.

C. The City desires to enter into an Agreement with the Consultant to provide the Services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until the final completion of the facility construction.

2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City shall pay Consultant a price not to exceed \$437,000.00 for the Services as set forth in the Fee Proposal, attached hereto as Exhibit B and incorporated herein by reference.

4. Payments. The City shall pay the Consultant based upon the milestones reached pursuant to the schedule attached as a part of Exhibit B, based upon work performed and

completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a determination of the percentage completed in each major task area in sufficient detail to justify payment.

5. Documents. All documents prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses; Materials. Consultant shall maintain in current status all applicable federal, state and local licenses and permits required for the services performed by the Consultant under this Agreement. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.

9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement, and excludes such services performed by other consultants and/or contractors in connection with the same project unless such other consultants and/or contractors are engaged by and acting at the direction of the Consultant in performance of some portion of Consultant's duties under this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

g. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

h. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

i. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Consultant's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFQ number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFQ number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing a contract number will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) Consultant's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Professional Liability. If this Agreement is the subject of any licensed professional services or work, or if the Consultant engages in any licensed professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is

legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Services, and the Consultant shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

d. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior written notice to the City.

12. Applicable Law; Venue. In the performance of this Agreement, Consultant shall abide by and conform to any and all laws of the United States, State of Arizona and City of Avondale, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

13.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or

any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

13.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

14. Miscellaneous.

14.1 Independent Contractor. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed scope of work as set forth in Section 2 above. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

14.2 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (a) existing and future City and County ordinances and regulations, (b) existing and future state and federal laws and (c) existing and future Occupational Safety and Health Administration ("OSHA") standards.

14.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

14.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

14.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the City signed by the City Manager and no delegation of any duty of Consultant shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

14.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.

14.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

14.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

14.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13 Offset.

a. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service, to the address set forth below or (d) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Consultant: ASC-Avondale LLC
26522 La Alameda, Suite 285
Mission Viejo, California 92691
Facsimile: (949) 348 3334
Attn: Norm Nowell

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (d) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above

governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or Services pursuant to the Agreement, to ensure that the Consultant and its subcontractors are complying with the warranty under subsection 14.17 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (1) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (2) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. The City shall have access, during normal working hours, to all necessary Consultant and its subcontractors' facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this subsection the term "scrutinized business

operations” shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or and 35-393, as applicable. If the City determines that the Consultant submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Agreement, the Scope of Work, the Fee Proposal, the documents shall govern in the order listed herein.

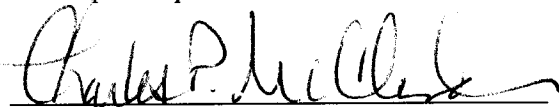
14.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

14.21 Cooperative Purchasing. This Agreement shall be for the use of the City. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Consultant. In order to participate in this Agreement, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Consultant must be in agreement with the cooperative transaction. Any orders placed to the successful Consultant will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

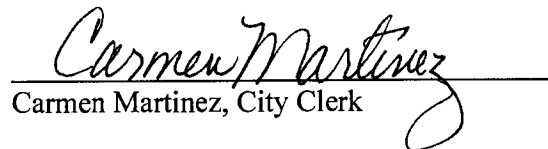
“City”

CITY OF AVONDALE, an Arizona
municipal corporation



Charles P. McClendon, City Manager

ATTEST:


Carmen Martinez, City Clerk

“Consultant”

ASC-AVONDALE LLC,
an Arizona limited liability company

By: 

Name: NORMAN NOWELL

Its: Manager

(ACKNOWLEDGEMENTS)

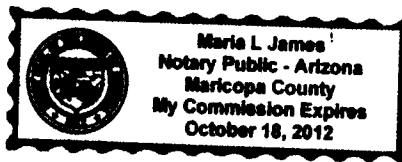
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on January 13, 2009, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

Marie L. James
Notary Public in and for the State of Arizona

My Commission Expires:

October 18, 2012



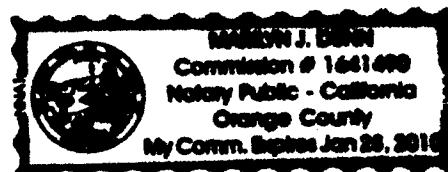
STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On January 8, 2009 before me, MARILYN J DUNN Notary Public, personally appeared Norman N. Nowell who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~) and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~) or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Marilyn J. Dunn



This area for official notarial seal.

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Sole Source Determination]

See following page.

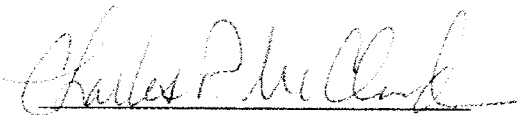
Sole Source Determination Sports Center Project

The City of Avondale, Arizona (the "City") desires to design and construct a multi-purpose indoor recreational facility (the "Facility") for the purposes of (i) providing recreational opportunities for its residents and (ii) creating a space to host amateur sporting event tournaments to attract visitors to the City and foster economic development.

The City desires to enter into a Professional Services Agreement with ASC-Avondale, LLC (the "Consultant") for design consultation and pre-construction services related to the City's planned Facility. The City also desires to enter into a lease agreement with the Consultant to operate and maintain the Facility. Because the Consultant will operate the Facility once completed, the Consultant requires the Facility to be built to particular specifications in order to operate a successful business out of the Facility. City staff does not have the requisite expertise to design the Facility for volleyball, basketball and other leagues, particularly as it relates to ensuring that the design promotes optimum financial performance. Therefore the Consultant is in a unique position to determine the design and construction of the Facility.

The City will benefit economically from successful performance of the Facility from both the design and construction of the Facility itself and the lease agreement with the Consultant. Under the terms of the lease agreement with the Consultant, as the Consultant's revenues increase so does the amount of money due to the City.

Therefore, after conducting a good faith review of available sources, I have determined that there is only one reasonable and practicable source for the design consultation and pre-construction services for the Facility.



Charles P. McClendon
City Manager

1-7-09
Date

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Scope of Work and Fee Proposal]

1. Pre Development

- a. **Site Review** – ASC will review site plans and meet with City staff and design/engineering team to provide expertise and assist in the evaluation of the subject site, site alternatives, potential challenges, parking issues/constraints, ingress/egress, view corridors, adjacent property issues, etc.
- b. **Project Orientation & Dimensions** – ASC will review site layout alternatives and meet with City staff and design/engineering team to provide expertise and assist in determining the most effective facility layout, dimensions and use of site in an effort to maximize the operational function of the facility considering the building orientation, exterior circulation, gathering areas, etc.
- c. **Cost Implications** – ASC will review the preliminary conceptual plans and meet with the City staff and design/engineering team to provide expertise and assist in analyzing the various aspects of the proposed facility design, construction techniques, materials, etc. as relates to initial construction costs, replacement cost impacts, usability/durability, ongoing maintenance, operational efficiencies, etc. in order to meet the long term needs of the City and the operations of the facility.

2. Design

- a. **Operational Considerations** - ASC will provide expertise to assist the design/engineering team in designing the facility to maximize gross operation revenue.
- b. **Flow** – ASC will review the preliminary design documents and specifications and meet with the City staff and design/engineering team to provide expertise and assist in analyzing the various aspects of the proposed facility design, to insure operation functionality with respect flow of users, equipment, multi function activities, retail and food sales, product deliveries, maintenance operations, fire ingress and egress, security, and general assembly.
- c. **Interior Space Planning** – ASC will review the preliminary design documents and specifications and meet with the City staff and design/engineering team to provide expertise and assist in analyzing the various aspects of the proposed

facility design, construction techniques, materials, etc. as relates to size, orientation, operational adjacencies, layout of offices, courts, storage, retail, and multi-purpose spaces.

- d. **Food Service** – ASC will provide expertise and a third-party food service consultant to assist the design/engineering team as relates to the best practices, materials selection, equipment selection, floor plan, view corridors, etc. in an effort to create the most efficient, cost effective and patron-friendly concessions area.
- e. **Court Layout, Circulation, and Operations** – ASC will review the preliminary design documents and specifications and meet with the City staff and design/engineering team to provide expertise and assist in analyzing the various aspects of the proposed facility design, construction techniques, materials, etc. as relates to maximum flexibility and usefulness of the court spaces.

3. Material and Equipment Selection (FF&E List)

- a. **FF&E List** – ASC will use its expertise and knowledge with respect to sports facility design, promotions, operations, maintenance and repairs to establish a list of necessary fixtures, furniture and equipment to create a high quality, cost effective, safe and attractive recreation facility. ASC will make every effort to negotiate with and coordinate the lowest possible price from various manufacturers, utilizing the buying power afforded ASC through multiple recreation facilities.

FF&E List will include, but not be limited to;

- i. Kitchen/food service
- ii. Rest room
- iii. Maintenance
- iv. Storage
- v. Office(s)
- vi. Sports equipment
- vii. Multi-purpose equipment
- viii. Lighting
- ix. Sound attenuation
- x. Flooring
- xi. Systems
 - 1. Phone
 - 2. Scheduling
 - 3. Fire safety
 - 4. Security

4. Bidding

- a. **Bid review** – ASC will review the construction bid packages and meet with the City staff and bid review team to provide expertise and assist in analyzing the

various construction bids as to completeness, responsiveness, qualifications of bidder, project budget and bid amount.

- b. **Value engineering** – ASC will review the construction bid documents and specifications and meet with the City staff, design/engineering team, contractors and consultants to evaluate the overall cost and recommend various cost saving measure while maintaining operation function and integrity of the facility.

5. Construction

- a. **Progress review** – ASC will be available and meet periodically with the City staff, construction and design/engineering team to provide expertise and input with respect to the construction progress, issues arising, challenges to overcome, change orders, design modifications, etc. arising during the construction period.

- b. **Scheduling** – ASC will review the schedule and progress with respect to:

- i. **Construction start/completion** – ASC will be available for design/construction team meetings and will provide expertise related to scheduling related to marketing, promotions, operations anticipating a successful facility opening.

- ii. **Materials delivery** – ASC will coordinate with City staff and design/construction team to provide information and expertise related to materials and equipment needs, sequencing of construction and fixturization of facility, timing delivery and installation of equipment and material to facilitate an on-time facility opening.

- iii. **Operational opening** – ASC will coordinate with City staff and design/construction team to provide expertise relating to the successful facility opening including, but not limited to; marketing and promotions, public relations, user solicitation and coordination, etc.

6. Marketing

- a. **Community support** – ASC will assist the City in educating the public and gaining support for the project through presentations and meetings as necessary and as directed by the City.

Fee for the above referenced services:

\$437,000

Payment upon reaching of Milestones:

Commencement of preliminary design phase as evidenced by initial meeting and commencement of design development with chosen design firm	10% of fee
Commencement of construction documentation of shell building including civil engineering, architectural and structural plans.	10% of fee
Completion of design development for interior space plan including operational adjacencies, office layout, court layout, ancillary uses, interior circulation,	10% of fee
50% completion of working drawings	10% of fee
Equipment list prepare FF& E list and identify suppliers	5% of fee
Completion of construction documentation and submittal to building department for plan review	10% of fee
Commence construction of site work, (grading, underground, utilities, etc)	10% of fee
Pour of slab on grade	10% of fee
Commence vertical construction	5% of fee
Commencement of installation of roof structure	5 % of fee
Installation for Flooring for court areas	5% of fee
Completion of construction	10% of fee

**CONCESSIONS AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC**

THIS CONCESSIONS AGREEMENT (this "Agreement") is entered January 12, 2009, (the "Effective Date") by and between the CITY OF AVONDALE, an Arizona municipal corporation (the "City"), and ASC-AVONDALE LLC, an Arizona limited liability company (the "Concessionaire"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Facility Lease (as defined below).

RECITALS

A. The City intends to design and construct a public facility for amateur athletics on real property the City intends to purchase generally located along the Corporate Drive alignment, north of Van Buren Street and east of Avondale Boulevard, in Avondale, Arizona, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, (the "Facility").

B. The Concessionaire, through that certain Lease, Maintenance and Operations Agreement, of equal date herewith, between the City and the Concessionaire (the "Facility Lease"), has the right to lease the Facility for the purpose of operating its business relating to hosting training and competition for various amateur athletic organizations.

C. The City has the full power and authority to hire a concessionaire to sell food, beverages and other articles to the patrons of the Facility.

D. Concessionaire desires to enter into an agreement with the City for the exclusive right to provide food, alcoholic and non-alcoholic beverages, and other products to the attendees of the Facility and has represented itself as qualified in all respects to provide such services.

E. The City desires to grant to Concessionaire the sole and exclusive right to operate the food and beverage business, including the operation of concessions at the Facility, as more particularly set forth herein.

F. The Concessionaire agrees and understands that the City intends for the entity operating the Facility pursuant to the Facility Lease shall be the same entity permitted to operate the concessions at the Facility, unless otherwise assigned as permitted according to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Concessionaire hereby agree as follows:

1. Sale of Refreshments. City hereby grants to Concessionaire the sole and exclusive right to sell food, alcoholic and non-alcoholic beverages and candy at any and all events held at the Facility. The sale of such items and the provision of such services collectively shall be referred to as the "Services." Concessionaire shall provide Services at all events at the Facility other than City Events, unless the City requests that the Concessionaire provide the Services for a City Event. The sole and exclusive right granted to Concessionaire shall extend to all designated areas inside the Facility. Concessionaire shall not sell tobacco or chewing gum products within the Facility.

2. Term. The term of this Agreement (the "Term") shall be the period commencing on the Effective Date and ending on the date that the Facility Lease terminates, whether by its natural expiration or by an early termination event pursuant to the terms and conditions set forth in the Facility Lease.

3. Concession Fee Payment. As consideration for this Agreement, Concessionaire shall include the amount of gross sales related to the Services as part of the Gross Revenues calculated in the Facility Lease to determine the lease payments due to the City. There shall be no other fee, charge, or cost charged by the City to the Concessionaire for the privilege of exclusively providing the Services at the Facility.

4. Operations.

4.1 Alcoholic Beverages.

A. The City hereby designates Concessionaire as its manager for administering the government spirituous liquor license issued to the City for the Facility. Concessionaire is authorized to purchase beer, wine and other spirituous liquor which the City may authorize from time to time for resale within the Facility pursuant to this Agreement. All spirituous liquor for sale must be purchased and consumed on the premises of the Facility.

B. Concessionaire shall reimburse the City for annual license renewal, any federal tax payments made regarding the sale of alcoholic beverages and any fines, civil penalties or other liabilities incurred because of Concessionaire's use of the license.

C. Concessionaire shall comply with all state and local laws, rules and regulations governing the purchase and sale of spirituous liquor. Concessionaire shall complete all required police incident reports that may be requested. Upon notice of any license violation or receipt of any warning, complaint or order issued by the Arizona State Liquor Board or the Director of the Arizona Department of Liquor Licenses and Control (the "Regulatory Authorities"), Concessionaire shall take immediate corrective action and, within three business days thereafter, give the City written notice of the actions taken to cure such violation and future actions to be taken to avoid the reoccurrence of such violations. The City shall have the right to revoke this designation of Concessionaire as its manager in the event that Concessionaire (1) fails to take immediate corrective action as required by this subsection, (2) has received more than three warnings, complaints or orders in any three-month period from the Regulatory Authorities or (3) has had more than three alcohol-related incidents at the Facility which caused a response from the City's police department. The City's revocation rights under this subsection

shall not be subject to the notice and cure provisions set forth in subsection 8.1 below. Upon revocation of the “manager” designation, Concessionaire shall no longer be allowed to sell spirituous liquor at the Facility, but the privilege to sell other concession items shall remain in effect unless otherwise terminated pursuant to subsection 8.2 below.

4.2 Quality of Service.

A. It is the intention of the City that the Facility concession service be of the highest quality attainable. All concession service areas shall be kept clean, orderly and sanitary at all times and in strict accordance with all applicable laws, ordinances, rules and regulations.

B. All refreshments sold or kept for sale shall be first quality, wholesome and pure and shall conform in all respects to federal, state, county and municipal food and other laws, ordinances, and regulations and shall be comparable in quality to similar items sold in other amateur sports facilities in the Phoenix metropolitan area. No imitation, adulterated or misbranded article shall be sold or kept for sale. All refreshments kept on hand shall be stored and handled with due regard for sanitation. In the event that the City notifies the Concessionaire that the quality of a food or beverage item is below the standard outlined herein, Concessionaire shall forthwith cease the sale of such item and the parties shall negotiate in good faith regarding the matter.

C. Concessionaire shall maintain a rating with the Maricopa County Health Department which will permit the continuous sale of refreshments in accordance with the Maricopa County Health Code at all times during the Term of this Agreement and shall provide the City with a copy of any inspection report within three business days after receipt thereof.

D. All Refreshments kept for sale by Concessionaire shall be subject to inspection and approval or rejection by the City and duly authorized representatives of appropriate governmental agencies in the reasonable discharge of their governmental responsibilities.

E. The City shall have the right to require that practices of Concessionaire or its employees and agents which are prohibited or unauthorized by this Agreement be discontinued or remedied. Failure of Concessionaire to take appropriate corrective action after notification from the City shall constitute a breach of this Agreement.

F. Concessionaire shall be responsible for the sanitary condition and cleaning of all food service production, storage, and service areas including equipment, floors, walls, ceilings, and shelving within the control of Concessionaire. Concessionaire shall also be responsible for the cleaning of counter tops and floors, within the Facility, and other related sanitation functions during events, and following each event within the Facility.

G. Concessionaire shall provide a complete and proper arrangement for the adequate and sanitary handling of all garbage and trash and other refuse caused as a result of the operation of the Facility and shall provide for its timely removal from the concession areas to a central point designated for removal from the Facility. Concessionaire shall provide and use

suitable covered, leak proof receptacles for all trash and barrels, or other similar items when trash is in view of the public. Concessionaire shall keep any areas for trash and garbage storage prior to removal from Facility in a clean and orderly condition so as not to attract rodents, pests, or birds and shall have all trash and refuse transferred to collection areas designated by City. In transporting garbage, trash, and refuse from the Concession Facilities, Concessionaire shall use only carts, vehicles, or conveyances that are leak proof.

4.3 General Operating Requirements.

A. Concessionaire shall be open and ready for business at the Facility within 30 days following the Completion Date.

B. The public's right to reasonably enjoy the event for which it is in attendance shall not be infringed upon by any activity of Concessionaire or any of its employees or agents. The activities of Concessionaire shall be such as to render service to the public in a dignified manner and no pressure, coercion or persuasion shall be used by Concessionaire in an attempt to influence the public to use the services or product of Concessionaire. All concession sales shall be conducted and operated in such a manner so as to not interfere with the orderly operation of any event. Neither Concessionaire nor its employees shall distribute campaign or political literature or any literature of any kind at any time in or on the Facility.

C. The City shall not be responsible for any inventory of refreshments, merchandise, supplies or concession equipment or other assets used or stored by Concessionaire in the Facility, nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes. However, the City will use all reasonable efforts to reestablish power in the event of a loss.

D. Representatives of the City shall have the reasonable right to enter upon, and inspect all spaces occupied by Concessionaire during the time events are in operation and at all other times when Concessionaire's employees are present as long as they do not interfere with the operations of Concessionaire. The City, upon reasonable notice to Concessionaire and in the company of a Concessionaire employee, shall have the right to inspect all locked areas of the Facility and storage areas used by Concessionaire.

4.4 Employees.

A. Concessionaire shall employ and supervise such personnel as shall be necessary for the efficient performance of its obligations under this Agreement. Concessionaire shall assign to the Facility only employees reasonably acceptable to City.

B. Concessionaire's non-management employees shall be neatly attired in clean, commercially-attractive uniforms.

4.5 Observance of Laws, Rules and Regulations, Permits. Concessionaire shall, at all times, observe and comply, at its own expense, with all statutes, ordinances, orders, regulations and requirements of all governmental authorities (including without limitation, the requirements of Title I of the Americans With Disabilities Act).

4.6 Payment of Impositions. Concessionaire shall pay when they become due and payable, all assessments, excises, license and permit fees, real and personal property taxes, Sales Taxes and other governmental levies of any kind whatsoever (collectively, "Impositions") which may be assessed or levied by a governmental agency against Concessionaire or grow or become due and payable by Concessionaire out of or caused by this Agreement or any activity or use of the Facility by Concessionaire, its employees, contractors, agents and invitees.

4.7 Nondiscrimination. Concessionaire shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Concessionaire will take action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Concessionaire further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

4.8 Compliance with Immigration Reform and Control Act of 1986 (IRCA). Concessionaire understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA in performing under this Agreement. Concessionaire warrants that verification checks have been put into effect by Concessionaire. Concessionaire agrees to indemnify the City against damages arising from any verification violations or violations arising from the hiring of illegal aliens.

5. Indemnification.

5.1 General Indemnity. Concessionaire shall indemnify, defend, save and hold harmless City and its officers, officials, agents, and employees from and against all claims, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation) whether at law or in equity, (hereinafter referred to as "Claims") for bodily or personal injury (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligence or willful acts or omissions of Concessionaire or any of its owners, officers, directors, agents or employees in Concessionaire's performance of this Agreement. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising from the negligent or willful acts or omissions of the City, be indemnified by Concessionaire for, from and against any and all claims. It is agreed that Concessionaire will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. City agrees to immediately notify Concessionaire of all losses or claims for which it will seek indemnity under this Agreement. City agrees to fully cooperate with Concessionaire and Concessionaire's authorized representatives in the investigation, defense and settlement of all such claims. In consideration for the terms of this Agreement, the Concessionaire agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the performance of this Agreement. The protections provided by this Section 5.1 shall survive the expiration or termination of this Agreement.

5.2 Contractual Indemnity. Concessionaire shall conduct its operations in such a way that no liens, claims, damage, or liability arising out of contractual or business arrangements shall accrue against City. Moreover, Concessionaire shall defend, indemnify, and hold harmless City and its employees, representatives, agents, successors and assigns, for, from and against any and all losses arising out of any such liens, charges, claims, damages or liability.

6. Insurance. The insurance provisions set forth in Article V of the Facility Lease are hereby incorporated herein by this reference and Concessionaire shall have the duties and obligations assigned to ASC in such provisions.

7. Limitations on Assignment of Agreement.

7.1 Prior Consent Required. Neither City nor Concessionaire shall have the right to Assign this Agreement, without having first obtained prior written consent thereto from the other party. Such consent may be based, in part, on whether the proposed purchaser, assignee or transferee (A) is capable of meeting the payment and other obligations to the party whose consent is sought; and (B) has acknowledged in a form satisfactory to the party whose consent is sought that it shall assume all obligations hereunder of the proposed seller, assignor or transferor. For purposes of this Agreement, "Assign" (or as the context may require, "Assignment") shall be defined as: (A) transferring, assigning or conveying any interest in, or transferring or delegating responsibilities under, this Agreement, (B) with respect to City, transferring, assigning, or conveying any interest in the Facility, whether leasehold, contractual, ownership, equity or otherwise, or the right to manage or operate the Facility or (C) the occurrence of a merger, change of control, or transfer of substantially all the assets of a party, whether by operation of law or otherwise.

7.2 Effect of Denial of Consent. If the party whose consent is required decides to withhold its consent, then its only remedy shall be to terminate this Agreement by giving 30 days' prior written notice thereof to the other party. Such termination shall be effective only upon the later to occur upon (A) the end of the then-current contract year or (B) the consummation of the proposed sale, assignment or transfer.

7.3 Assignment to Affiliate. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to assign, transfer or convey this Agreement to an affiliate of Concessionaire provided that Concessionaire shall guarantee thereafter the payment and performance obligations of such affiliate. Such guarantee shall be given in a form which is satisfactory to City.

7.4 Subcontracts. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to enter into subcontracts for vendors to provide any portion or all of the concession services set forth in Section 1 above; provided, however, that such subcontract shall not act as an assignment of this Agreement and Concessionaire shall remain solely responsible for the obligations, and entitled to the privileges, set forth in this Agreement.

8. Default; Termination

8.1 Default; Cure Period.

A. Failure or delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within 30 days after written notice is received from the non-breaching party, shall constitute a default under this Agreement, provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the breaching party shall have such additional time as may be necessary to perform or comply so long as the breaching Party commences performance or compliance within said 30 day period and diligently pursue such cure to completion; provided, however, that no cure period shall exceed 180 days. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The 30 day period shall not apply where an ordinance or statute requires City to perform or otherwise act in a period in excess of 30 days.

B. In the event of a default, the non-defaulting party may, in that party's sole discretion, terminate this Agreement. Upon such termination, all rights and obligations under this Agreement shall become null and void, and the defaulting party shall be liable to the non-defaulting party for any damages resulting from the breach.

8.2 Termination by City. City shall have the right to terminate this Agreement by giving 30 days' prior written notice thereof if any of the following events shall occur:

A. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

B. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders or partners, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any State thereof.

C. A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed or stayed within 30 days after the filing thereof.

D. Concessionaire shall be in default of any of its material obligations (other than the obligation to pay money) hereunder and such default shall continue beyond the Cure Period.

E. Concessionaire, without having obtained the consent of City as required in Section 7 of this Agreement, Assigns (as such term is defined in Section 7) any interest requiring the consent of City.

F. Concessionaire, as a result of Concessionaire's actions or inaction within the Concessionaire's control, fails to maintain a rating which in accordance with the Maricopa County Health Code would permit continued sale of refreshments at the Facility and after finally exhausting all of the Concessionaire's rights to appeal before the Maricopa County Health Department, Concessionaire has failed to cure such default with a time, period acceptable to the Maricopa County Health Department.

G. In the Event this Agreement is terminated pursuant to any of the provisions of this Section 8.2 and if the Facility Lease is still in effect, the City shall have the right to separately contract with a separate entity to provide the Services and Concessionaire shall have no right to any revenues therefrom.

9. General Provisions

9.1 Independent Contractor. The Concessionaire acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Concessionaire, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Concessionaire, its employees or subcontractors. The Concessionaire, and not the City, shall determine the time of its performance of the Services provided under this Agreement so long as Concessionaire meets the requirements of this Agreement. Concessionaire is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Concessionaire do not intend to nor will they combine business operations under this Agreement.

9.2 Laws and Regulations. The Concessionaire shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Concessionaire is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (A) existing and future City and County ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration ("OSHA") standards.

9.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Concessionaire.

9.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

9.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

9.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Concessionaire agrees to be fully and solely responsible for the payment of all taxes applicable to this Agreement.

9.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

9.8 Subcontracts. No subcontract shall be entered into by the Concessionaire with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Concessionaire is responsible for performance under this Agreement whether or not subcontractors are used.

9.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Concessionaire from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

9.10 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.11 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Concessionaire any amounts

Concessionaire owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Concessionaire any amounts Concessionaire owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

9.12 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Concessionaire: ASC-Avondale LLC
26522 La Alameda, Suite 285
Mission Viejo, California 92691
Facsimile: (949) 348-3334
Attn: Norman N. Nowell

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

9.13 Records and Audit Rights. Concessionaire's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting

evidence relating to this Agreement, including the papers of any Concessionaire and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Concessionaire and its subcontractors are complying with the warranty under subsection 9.14 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Concessionaire's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Concessionaire's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 9.14 below. To the extent necessary for the City to audit Records as set forth in this subsection, Concessionaire and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Concessionaire pursuant to this Agreement. Concessionaire and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Concessionaire or its subcontractors reasonable advance notice of intended audits. Concessionaire shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

9.14 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Concessionaire and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Concessionaire's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

9.15 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Concessionaire certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or and 35-393, as applicable. If the City determines that the Concessionaire submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 8.2 above.

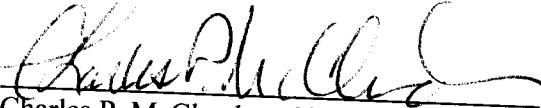
9.16 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

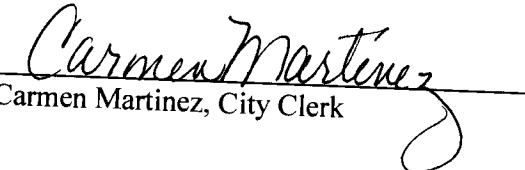
“City”

CITY OF AVONDALE, an Arizona
municipal corporation



Charles P. McClendon, City Manager

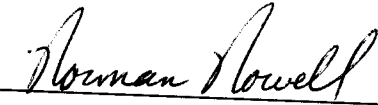
ATTEST:



Carmen Martinez, City Clerk

“Concessionaire”

ASC-AVONDALE, LLC, an Arizona
limited liability company

By: 

Name: NORMAN HOWELL

Its: Manager

(ACKNOWLEDGEMENTS)

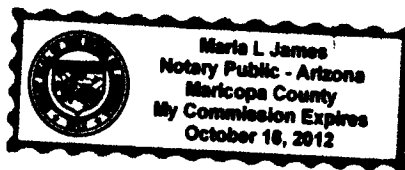
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on January 13, 2009, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

Marie L. James
Notary Public in and for the State of Arizona

My Commission Expires:

October 18, 2012



STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

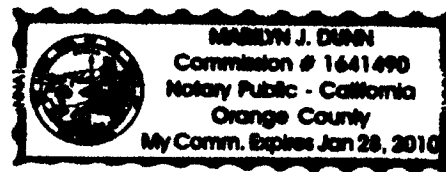
On January 8, 2009 before me, MARILYN J. DUNN Notary Public, personally appeared Norman M. Nowell who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Marie L. James



This area for official notarial seal.

EXHIBIT A
TO
CONCESSIONS AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ASC-AVONDALE LLC

[Legal description and depiction of Facility]

See following pages.

January 6, 2009

LEGAL DESCRIPTION FOR
AVONDALE CITY CENTER
MORTENSEN PROPERTY

The West 15 acres of the South 30 acres of the North half of the Southwest quarter (North half of the Southwest quarter described as Lot 6 and the Northeast quarter of the Southwest quarter) of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the West 33 feet as conveyed to Maricopa County by Deed recorded in Book 125 of Deeds, page 117, records of Maricopa County, Arizona; and also

EXCEPT the following described parcel:

Beginning at the Southwest corner of said Lot 6;

Thence North along the West line of Lot 6 a distance of 167.45 feet to the True Point of Beginning;

Thence East 217.80 feet;

Thence North 200 feet;

Thence West 217.80 feet to the West line of said Lot 6;

Thence South, along said West line, a distance of 200 feet to the True Point of Beginning; and also

EXCEPT that portion thereof lying within the following described parcel, as set forth in Judgment entered in the Superior Court, State of Arizona, Case No. CV2007-051625, recorded in Document No. 2007-1228149, records of Maricopa County, Arizona:

Beginning at a point which is 3 feet North of the Northeast corner of Lot 7 in said Section 6;

Thence South 00 degrees 29 minutes West, along the East line of said Lot 7, a distance of 971.22 feet;

Thence East 73.60 feet to a point on the West line of that certain parcel described in Deed recorded in Document No. 83-326942, records of Maricopa County, Arizona;

Thence North along said West line, a distance of 971 feet to a point which is 74.10 feet East of the Point of Beginning;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence West 74.10 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale by Deed recorded in Document No. 2003-454880, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 787.83 feet;

Thence North 89 degrees 03 minutes 12 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 03 minutes 12 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 5, a distance of 158.98 feet;

Thence South 89 degrees 57 minutes 48 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 158.82 feet to the Point of Beginning; and also

EXCEPT that portion conveyed to the City of Avondale in Document No. 2007-0196103, records of Maricopa County, Arizona, described as follows:

That portion of land lying within the property described as recorded in Doc. 95-0038175 being a portion of Lot 6, Section 6, Township 1 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the West quarter corner of said Section 6;

Thence South 00 degrees 02 minutes 12 seconds East along the West line of said Lot 6, a distance of 1145.94 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 89 degrees 57 minutes 48 seconds East a distance of 45.00 feet to the existing Easterly Right-of-Way line of 115th Avenue and the Point of Beginning;

Thence continuing North 89 degrees 57 minutes 48 seconds East, a distance of 10.00 feet to a point 55.00 feet Easterly of the West line of said Lot 6;

Thence South 00 degrees 02 minutes 12 seconds East parallel with and 55.00 feet Easterly of the West line of said Lot 6, a distance of 166.58 feet;

Thence South 89 degrees 03 minutes 12 seconds West, a distance of 10.00 feet to a point 45.00 feet Easterly of the West line of said Lot 6;

Thence North 00 degrees 02 minutes 12 seconds West parallel with and 45.00 feet Easterly of the West line of said Lot 6, a distance of 166.74 feet to the Point of Beginning.

TOGETHER WITH

A portion of the Southwest quarter of Section 6, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the South quarter corner of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, along the North-South Mid-Section line of said Section 6, a distance of 567.53 feet;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 748.54 feet to the Southeast corner of the North half of the Southwest quarter of said Section 6;

Thence continuing North 00 degrees 24 minutes 08 seconds East, a distance of 528.23 feet, said point being 787.84 feet Southerly from the Center of said Section 6;

Thence South 89 degrees 44 minutes 03 seconds West, a distance of 1227.06 feet to the True Point of Beginning;

Thence South 00 degrees 24 minutes 08 seconds West, a distance of 528.34 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 84.64 feet Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence South 00 degrees 21 minutes 25 seconds West, a distance of 190.58 feet;
Thence North 64 degrees 56 minutes 50 seconds West, a distance of 11.01 feet;



Legal Description for
Avondale City center
Mortensen Property
January 6, 2009

Thence North 00 degrees 21 minutes 25 seconds East, a distance of 185.99 feet to a point on the North line of the South half of the Southwest quarter of said Section 6, said point also being 74.64 feet (74.10 feet, record) Easterly from the East line of Lots 6 and 7 of said Section 6;

Thence North 00 degrees 24 minutes 08 seconds East, a distance of 528.34 feet;

Thence North 89 degrees 44 minutes 03 seconds East, a distance of 10.00 feet to the True Point of Beginning.

Containing 13.837 Acres, more or less.

This legal description is based on the legal description in a commitment for title insurance by Stewart Title Guaranty Company, Order No. 08260183, Amendment No. 2, with an effective date of December 29, 2008, and does not reflect any field work performed by Coe & Van Loo Consultants, Inc.



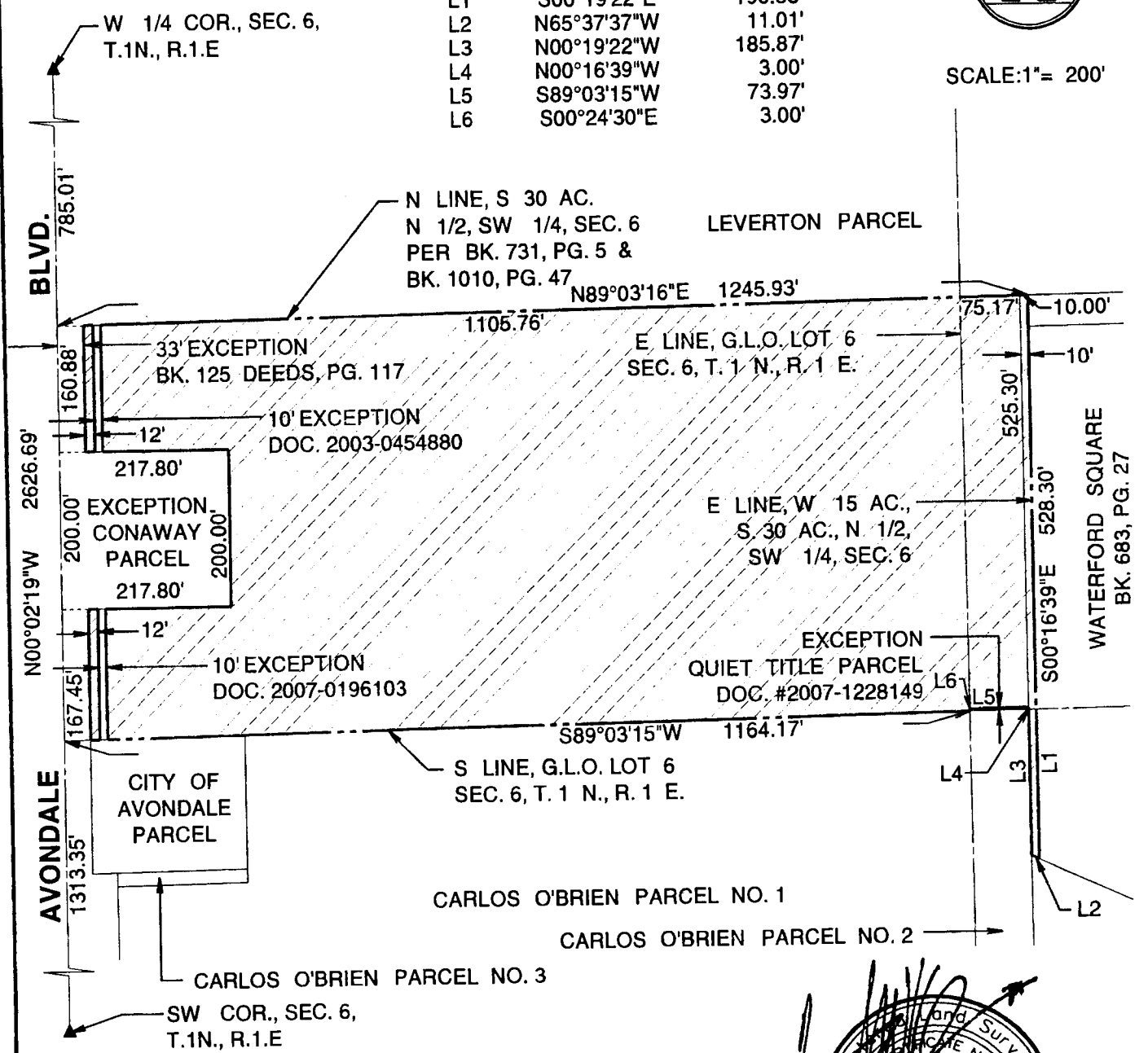
Expires: 9/30/2016

LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°19'22"E	190.58'
L2	N65°37'37"W	11.01'
L3	N00°19'22"W	185.87'
L4	N00°16'39"W	3.00'
L5	S89°03'15"W	73.97'
L6	S00°24'30"E	3.00'



SCALE: 1" = 200'



NOTE

TOTAL PARCEL AREA IS 13.747 ACRES, NET AND 13.837 ACRES, GROSS. ALL DIMENSIONS SHOWN REPRESENT CVL FIELD MEASURED DATA.

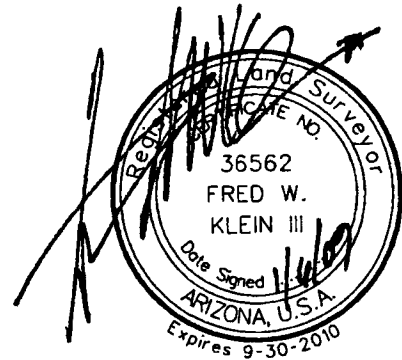


EXHIBIT N:\070106504\CAD\DHMORTENSEN3.DGN 4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831	AVONDALE CITY CENTER MORTENSEN PROPERTY EXHIBIT	JOB NO 07 0106504 1
		SHEET 1 OF 1
COE & VAN LOO PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE		