

## **SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT ("Lease") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date"), by and between the **CITY OF WESTFIELD, INDIANA** ("Landlord") and **BYRD ENTERPRISES, INC.**, an Indiana corporation ("Tenant"). Landlord is the lessee under that certain Lease Agreement, dated November 5, 2014, from Holladay Properties Grand Park Sports I LLC ("Master Lease") for the entire facility and real property located at 19000 Grand Park Boulevard, Westfield, Indiana.

### **WITNESSETH:**

## **ARTICLE I** **LEASED PREMISES AND COMMON AREAS**

**Section 1.01. Leased Premises.** Landlord hereby subleases to Tenant, and Tenant hereby subleases from Landlord, a portion of the integrated indoor soccer facility located at 19000 Grand Park Boulevard, Westfield, Indiana, on the real estate described on Exhibit A attached hereto and incorporated herein by reference (the "Facility"). The portion of the Facility hereby leased to Tenant is depicted and designated as the "Food Service" area on the mezzanine level, the "Lounge" on the second floor, and the dedicated restrooms on the second floor, all as shown on the attached Exhibit B (the "Leased Premises"), containing approximately Seventeen Thousand Forty (17,040) rentable square feet in the areas listed on Exhibit C attached hereto ("Rentable Area"). Landlord shall be entitled to change or modify the building, Common Areas (as hereinafter defined) or other improvements and facilities in the Facility, provided that neither the Leased Premises nor the general character of the Facility shall be materially changed.

**Section 1.02. Use of Common Areas.** Landlord grants to Tenant, its agents, employees, invitees, licensees and concessionaires the non-exclusive right during the Lease Term (as hereinafter defined) to use the parking areas and ingress, egress and access roads and the Common Areas as shall be made available by Landlord in its sole discretion and subject to the Rules and Regulations of the Facility. Tenant's use of the Common Areas shall be in common with others entitled to the use thereof and subject to the provisions of this Lease.

**Section 1.03. Master Lease.** Landlord is the tenant under the Master Lease (the "Master Lease") with the Prime Landlord identified above. Landlord represents and warrants to Tenant that (a) Landlord has delivered to Tenant a full and complete copy of the Master Lease and all other agreements between Prime Landlord and Landlord relating to the leasing, use, and occupancy of the Premises, (b) the Master Lease is, as of the date hereof, in full force and effect, and (c) no event of default has occurred under the Master Lease and, to Landlord's knowledge, no event has occurred and is continuing which would constitute an event of default but for the requirement of the giving of notice and/or the expiration of the period of time to cure

## **ARTICLE II** **LEASE TERM**

**Section 2.01. Term.** The term of this Lease shall be for the period commencing on the "Commencement Date" (as hereinafter defined) and continuing for one hundred twenty (120) months from the Commencement Date ("Term"). The "Commencement Date" shall be November \_\_, 2014. The "Rent Commencement Date" shall be the date on which the Leased Premises are available for occupancy by Tenant. The parties shall execute a confirmation of the Lease Term reflecting the actual Commencement Date and Rent Commencement Date. As used in this Lease, the term "Lease Year" shall mean a calendar year, the first Lease Year commencing on the first day of January following the Rent

Commencement Date, and each succeeding Lease Year commencing on the anniversary of the first Lease Year. A "Fractional Lease Year" is defined to mean the period from the Rent Commencement Date to December 31 of such year and the period of the Lease Term following the last full calendar Lease Year, whether the Lease expires by its terms or otherwise.

Section 2.02. Renewal. If Tenant is not in default of any of the terms and conditions of this Lease and there is not any fact or circumstance which, with the passage of time or the giving of notice or both, could constitute a default hereunder, then Tenant shall have the option to renew this Lease for two (2) additional terms of five (5) years each (each a "Renewal Term"), the first of which shall commence upon the expiration of the Term and the second of which shall commence upon the expiration of the first Renewal Term. All of the terms, provisions, conditions, covenants, and obligations of this Lease shall apply during the Renewal Terms, except that the Minimum Rent shall be as set forth in Section 4.06 herein. The renewal option shall be exercised by Tenant providing written notice to Landlord of Tenant's intent to exercise its renewal option not less than one hundred eighty (180) days prior to the expiration of the Original Term or the first Renewal Term, as applicable. If notice is not given in the manner provided herein within the time specified, this option to renew shall expire. The Original Term and any Renewal Terms are referred to herein collectively as the "Lease Term".

Section 2.03. Holding Over. If Tenant holds over and remains in possession of the Leased Premises after the expiration or earlier termination of this Lease with the consent of Landlord and without the execution of a new lease, such holding over and continued possession shall, if rent is paid by Tenant and accepted by Landlord, constitute a month to month lease upon the terms (other than length of Term) herein specified, except with rental at the rate of one hundred fifty percent (150%) of the last month's rent, which holdover may at any time be terminated by either party upon thirty (30) days written notice given to the other party. If Tenant remains in possession of the Leased Premises after the expiration or earlier termination of this Lease without the consent of Landlord, Tenant shall be deemed to be occupying the Leased Premises as a tenant at sufferance with rent of two hundred percent (200%) of the last month's rent and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as they are applicable to a tenancy at sufferance.

### **ARTICLE III** **CONSTRUCTION OF IMPROVEMENTS**

Section 3.01. Landlord's Work. Landlord shall substantially complete construction and furnishing all appliances, fixtures, and equipment to the Facility and the Leased Premises, subject to minor punch list items, on or before the Rent Commencement Date.

Section 3.02. Fixtures. All of Tenant's trade fixtures and equipment installed in or at the Leased Premises may be removed by Tenant upon the expiration or earlier termination of this Lease, provided that (i) Tenant shall repair any damage to the Leased Premises or the Facility caused by such removal, and (ii) there is no default nor any fact or circumstance which, with the passage of time or the giving of notice or both, could become a default hereunder by Tenant at such time. After the expiration or earlier termination of this Lease, Landlord shall have the right to remove Tenant's leasehold improvements, trade fixtures and equipment and to have any damage from such removal repaired at Tenant's sole cost and expense. Tenant's obligation to pay such expenses to Landlord shall survive the expiration or earlier termination of this Lease.

Section 3.03. Period Prior to Commencement Date. Landlord shall have no responsibility or liability whatsoever for any loss or damage to any of Tenant's leasehold improvements, fixtures, equipment or inventory installed or left in the Leased Premises prior to the Rent Commencement Date. Tenant's entry upon and occupancy of the Leased Premises prior to the Rent Commencement Date shall

be governed by and subject to the provisions, covenants and conditions of this Lease with respect to use, insurance, indemnity, remedies and mechanic's liens.

Section 3.04. Build Out Obligations. Landlord shall undertake completion of the Leased Premises at its sole cost and expense, including painting and signage, subject to the following conditions: (a) the alterations and/or improvements shall be made in accordance with plans and specifications approved in advance in writing by Landlord and Tenant, which approval Tenant will not unreasonably withhold; (b) the alterations and/or improvements may be supervised by Landlord or its agents or representatives which may charge reasonable inspection fees; (c) the alterations and/or improvements shall be made pursuant to a valid building permit and in accordance with all applicable laws, rules, regulations, orders and requirements of public authorities. All alterations and improvements to the Leased Premises shall become a part of the Leased Premises and shall be the property of Landlord and shall be surrendered by Tenant with the remainder of the Leased Premises upon termination of this Lease. Landlord agrees to submit to Tenant, within thirty (30) days from the Effective Date, complete plans and specifications, including engineering, mechanical and electrical work plans, in compliance with all applicable statutes, ordinances, regulations and codes. Such plans and specifications shall be paid for by Landlord.

#### **ARTICLE IV** **RENT**

Section 4.01. Minimum Rent. Tenant shall pay to Landlord as minimum rent for the Leased Premises the following sums per year ("Minimum Annual Rent") in advance in equal monthly installments ("Minimum Monthly Rent"):

<u>Period Following Commencement Date</u>	<u>Minimum Annual Rent</u>	<u>Minimum Monthly Rent</u>
Commencement Date – Rent Commencement Date*	N/A	N/A
Rent Commencement Date – End of Lease Year 2	\$352,676	\$29,389.66
Lease Year 3	\$359,729.52	\$29,977.46
Lease Year 4	\$366,924.11	\$30,577.01
Lease Year 5	\$385,270.31	\$32,105.86
Lease Year 6	\$404,533.82	\$33,711.15
Lease Year 7	\$424,760.51	\$35,396.71
Lease Year 8	\$445,998.53	\$37,166.54
Lease Year 9	\$468,298.45	\$39,024.87
Lease Year 10	\$491,713.37	\$40,976.11

\* Notwithstanding any contrary terms or provisions contained in this Lease, the Minimum Rent due between the Commencement Date and the Rent Commencement Date during the Original Term of this Lease shall be abated; provided, however, that upon the occurrence of a default hereunder by Tenant, then in addition to the remedies available to Landlord provided under this Lease or under applicable law, Landlord shall be entitled to recover, and Tenant shall immediately pay to Landlord, any previously abated Minimum Rent otherwise due and payable under this Lease.

The Minimum Monthly Rent shall be payable in advance commencing on the Rent Commencement Date and thereafter on the first day of every calendar month during the Lease Term,

without relief from valuation or appraisal laws. If the Rent Commencement Date is not the first day of a calendar month, Tenant shall pay on the Rent Commencement Date a prorated portion of the Minimum Monthly Rent for the first partial calendar month of the Lease Term. Hereinafter, the term "Minimum Rent" shall refer to either Minimum Annual Rent or Minimum Monthly Rent, as appropriate. All rent obligations shall be independent obligations of Tenant and Tenant shall not have any right to set off any claim of whatever nature which it may have against Landlord against Tenant's Minimum Annual or Monthly Rent or other obligations under this Lease.

Section 4.02. Revenue Sharing. In addition to the Minimum Monthly Rent provided herein, Tenant shall also pay to Landlord as Additional Rent Twelve Percent (12%) of any and all net revenue earned by Tenant from any and all non-restaurant operations conducted at the Facility or at Grand Park in Westfield, Indiana, including, but not limited to, catering for special events ("Non-Restaurant Operations"). "Non-Restaurant Operations" shall not include restaurant delivery to the fields or the grounds on the Grand Park facility nor events held off the grounds of Grand Park. Tenant shall be responsible for the payment of all expenses incurred in the performance of any Non-Restaurant Operations. Within fifteen (15) days of the end of each month during the Original Term and any Renewal Term, Tenant shall provide to Landlord a detailed listing of all Non-Restaurant Operations and the revenues derived therefrom. Such monthly report shall be provided whether or not any Non-Restaurant Operations were conducted by Tenant. Tenant shall make any payment required pursuant to such monthly reports within three (3) days of the affirmative acceptance by Landlord of such monthly report. The receipt or acceptance by Landlord of any monthly report or payment under this Section shall not prevent Landlord from subsequently challenging the validity or accuracy of or auditing such monthly report or payment provided that such challenge is made with sixty (60) days after the payment is received by Landlord pursuant to this Section.

Section 4.03. Reimbursement of Expenses. In addition to the payment of Minimum Rent as provided in this Article IV, Tenant shall pay to Landlord all other sums of money and charges required to be paid by Tenant to Landlord under this Lease. If any such sum or charge is not paid at the time provided in this Lease, it shall nevertheless be collectible with the next installment of Minimum Monthly Rent, provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge or to limit any remedy of Landlord with respect to Tenant's nonpayment.

Section 4.04. Place of Payments. All payments required to be paid and all statements or notices required to be rendered by Tenant or Landlord shall be delivered to the other party at its address set forth in Section 17.14 or to such other address as Landlord or Tenant shall specify in accordance with such Section.

Section 4.05. Late Charges. In the event Tenant fails to pay within ten (10) days after the same is due and payable any installment of Minimum Monthly Rent or any other sum or charge required to be paid by Tenant to Landlord under this Lease, Tenant shall pay a late charge of five percent (5%) of the unpaid amount, and such unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of the prime rate as set forth in the "Money Rates" section of the Wall Street Journal or such similar publication plus eight percent (8%) per annum until paid. In the event such delinquency service charge is due to Landlord, Tenant shall pay such charge to Landlord along with and in addition to the next monthly payment of Minimum Monthly Rent.

Section 4.06. Renewal Minimum Rent. On each anniversary of the Rent Commencement Date, the Minimum Annual Rent shall be increased to an amount equal to One Hundred and Two percent (102%) of the Minimum Annual Rent payable for the immediately preceding Lease Year for the first four years of the Lease, and One Hundred Five Percent (105%) for all remaining periods thereafter, payable in

advance in equal monthly installments as provided in Section 4.01 hereof. Tenant shall continue to pay any and all Additional Rent due to Landlord hereunder.

## **ARTICLE V** **COMMON AREAS**

**Section 5.01. Definition.** As used in this Lease, “Common Areas” is defined to mean all real estate shown in and/or comprising the Facility and other facilities located thereon or appurtenant thereto designed for use in common by tenants of the Facility and their agents, employees, servants, customers, invitees and licensees, with such facilities and improvements, including parking areas, ingress, egress and access roads, sanitary sewers and utility lines, walkways and sidewalks, corridors, stairwells, foyer, public restrooms, landscaped and planted areas and related facilities.

**Section 5.02. Management of Common Areas.** Landlord shall operate, manage, equip, light, heat, cool, repair, clean, maintain, and replace the Common Areas for their intended purposes in such manner as Landlord in its reasonable discretion shall determine, and the Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord may at any time temporarily close all or any part of the Common Areas to make repairs or changes and to perform such other acts in or to the Common Areas as Landlord in its reasonable discretion shall deem appropriate. Except as otherwise provided herein, if the amount or configuration of the Common Areas and any other facilities not within the Leased Premises are changed or diminished, Landlord shall not be subject to any liability therefore, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

**Section 5.03. Charges for Common Areas.** Tenant shall pay monthly to Landlord Tenant’s share of all costs and expenses incurred by Landlord during the Lease Term in operating and maintaining the Common Areas (“Common Areas Costs”), which shall be in addition to Minimum Rent. The Common Areas Costs shall include, but not be limited to, costs and expenses paid or incurred for repairing, maintaining, and operating improvements in the Common Areas, such as paving, curbs, walkways, pole signs and directional signs, storm and sanitary sewers and lighting facilities, association dues or assessments for offsite improvements, including roadway and drainage facilities connected to or related to the Facility, trash collection, utilities, security, snow and ice removal, gardening and landscaping, striping of parking areas, all charges payable by Landlord to provide utility services to the Common Areas (as defined below); licenses, permits and inspection fees; legal, accounting, inspection and consulting fees; costs of capital improvements to the Common Areas, other than the initial construction of the Facility, amortized over their expected useful life based upon and including a market rate of interest; a management fee not greater than that generally charged in the Indianapolis, Indiana area for properties comparable to the Facility; workmen’s compensation, unemployment taxes and Social Security taxes and administrative fees of up to ten percent (10%) of all other Common Areas Costs. Consistent with the foregoing, the following specific items shall not be included in Common Areas Costs: (i) the cost of improvements, alterations, maintenance or repairs to space in the Facility leased to others; (ii) debt service payments; (iii) federal, state and city income taxes on income from rents, if any; (iv) any cost or expenditure for which Landlord is reimbursed from insurance proceeds; (v) any cost or expenditure for which Landlord is reimbursed from condemnation proceeds; (vi) expenses which are billed directly to any tenant of the Facility (other than as a tenant’s share of the Common Areas Costs); (vii) costs which are covered by warranty to Landlord by contractors who have warranty obligations; and (viii) leasing commissions, attorneys’ fees and collection costs related to negotiation and enforcement of tenant leases.

**Section 5.04. Estimate of Annual Common Area Costs.** The estimate for the Common Area Costs for the first year of the Term is set forth herein, which is not a “capped” annual amount but rather

the estimate for of the Common Area Costs for the first year only. Tenant shall pay its proportionate share of the actual Common Area Costs during the Term.

Year 1                      \$58,618

Any expenses above or greater than the above listed Common Area Costs incurred in the generation of revenues by Landlord shall be the responsibility of Landlord.

Section 5.05. Employee Parking. If Landlord so designates, Tenant and Tenant's employees shall park their cars only in those portions of the parking areas designated for that purpose by Landlord. Upon five (5) days prior written request from Landlord, Tenant shall provide Landlord with the automobile license numbers of Tenant's employees.

## **ARTICLE VI** **TAXES**

Section 6.01. Taxes. Landlord will pay all Real Property Taxes (as hereinafter defined) which may be levied or assessed by any lawful authority against the land and improvements of the Facility. Tenant agrees to reimburse Landlord for its proportionate share of such Real Property Taxes as provided in Article XIV of this Lease. A tax bill submitted by Landlord to Tenant shall be sufficient evidence of the amount of taxes assessed or levied against the land and improvements of the Facility. For purposes of this Article, the term "Real Property Taxes" shall include (i) the usual real property taxes or ad valorem taxes; (ii) any taxes which shall be levied in lieu of any such usual real property taxes or ad valorem taxes; (iii) any special assessments levied upon the Facility; and (iv) the expense of contesting the amount or validity of any such taxes, charges or assessments, such expense to be applicable to the period of when paid. Taxes for any period shall be taxes which are due for payment in that period, rather than taxes which are assessed or become a lien during such period. Taxes in any period shall be reduced by the net amount of any tax refund received by Landlord during such period.

Section 6.02. Taxes on Tenant's Business and Property. Tenant shall pay and discharge when due all taxes and charges imposed upon the conduct of its business in the Leased Premises and all property taxes imposed upon its fixtures, equipment, merchandise, and other personal property on or at the Leased Premises.

## **ARTICLE VII** **USE OF LEASED PREMISES**

Section 7.01. Permissible Use and Restrictions. The Leased Premises shall be continuously occupied and used solely for the purpose of operating a full-service restaurant, sports bar and catering business and for no other purpose without Landlord's prior written consent. During the Lease Term, as long as Tenant operates a full-service restaurant, sports bar and catering business in the Leased Premises, Landlord shall not enter into any lease of space in the Facility that would permit any other space to be used for any similar uses.

Section 7.02. Opening for Business. Tenant shall proceed with due diligence to open for business at the Leased Premises on or prior to the Rent Commencement Date but in no event later than thirty (30) days following the Rent Commencement Date, and shall thereafter continuously, actively, and diligently operate its business on the whole of the Leased Premises in a reputable manner, maintaining in the Leased Premises a full staff of employees and a full appropriate stock of inventory during Regular Business Hours (as hereinafter defined) throughout the Lease Term, unless prevented from so doing by fire, strikes, or other contingencies beyond Tenant's control.

Section 7.03. Rules and Regulations; Sign Criteria. Tenant shall comply with the rules and regulations of the Facility adopted by Landlord which are set forth in Exhibit D attached hereto and made a part hereof. Landlord shall have the right at all times to change and amend the rules and regulations in any reasonable manner as it may deem advisable for safety, care, cleanliness, preservation of good order and operation or use of the Facility. All changes and amendments to the rules and regulations of the Facility will be forwarded by Landlord to Tenant in writing and shall thereafter be carried out and observed by Tenant. Tenant shall not place or permit to be placed or maintained in or on any portion of the Facility outside the Leased Premises, including, but not limited to, any exterior doors, walls, roof, or windows of the Facility, any sign, awning, or canopy or other advertising matter and shall not place or permit to be placed or maintained any decoration, lettering, or advertising matter on the glass or any window or door of the Leased Premises, without Landlord's prior written approval.

Section 7.04. Hazardous Substances. Tenant shall place no underground storage tanks of any kind in, on, at or under the Leased Premises and shall not place or use tanks, drums or other containers of any kind in, on, at or under the Leased Premises, the contents of which are unknown to Landlord. Tenant shall not engage in any activities involving the use, treatment, transportation, generation, storage or disposal of any Hazardous Substances (as hereinafter defined) in hazardous quantities and no Hazardous Substances in hazardous quantities shall be released on, at or from the Leased Premises. Tenant shall notify Landlord in the event that it files any Material Safety Data Sheets ("MSDS") or any forms or reports on an annual basis to any federal, state or local government entity pursuant to Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (the "MSDS Filings"), including Tier II filings and any MSDS Filings for Extremely Hazardous Substances over the Threshold Planning Quantity. The Term "Hazardous Substances" means any hazardous or toxic substance regulated by any federal, state or local statute or regulation, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA) and the Toxic Substance Control Act, or by any federal, state or local governmental agencies having jurisdiction over the control of any such substance, including, but not limited to, the United States Environmental Protection Agency (EPA). Tenant shall indemnify, defend, and hold harmless Landlord from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by, or incurred by, Landlord or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state or local law, rule, regulation or order, or by any governmental agency, authority, or political subdivision having jurisdiction over the Leased Premises as a result of or arising from the use or occupancy by Tenant or its agents, employees, or invitees of the Leased Premises, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Substances on, under, in, above, to or from the Leased Premises as a result of or arising from the use or occupancy by Tenant or its agents, employees, or invitees of the Leased Premises.

Section 7.05. Hold Harmless. Landlord shall not be liable to Tenant or to Tenant's customers, employees, agents, guests or invitees, or to any other person, for any injury to person or damage to property on or about the Leased Premises or the Facility, including, but not limited to, consequential damage, (1) caused by any act or omission of Tenant, its employees, subtenants, licensees and concessionaires or of any other person entering the Facility or the Leased Premises by express or implied invitation of Tenant, or (2) arising out of the use of the Leased Premises or the Facility by Tenant, its employees, subtenants, licensees, concessionaires or invitees, or (3) caused by the improvements located in or at the Leased Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or by broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Leased Premises or Facility, or (4) arising out of the failure or cessation of any service provided by Landlord. Tenant hereby agrees to indemnify and hold Landlord

harmless from any liability, loss, expense or claim (including, but not limited to, attorneys' fees) arising out of any such damage or injury. Landlord shall not be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Facility or of any other persons whomsoever. Further, Tenant specifically agrees to be responsible for and indemnify and hold Landlord harmless from any and all damages or expenses of whatever kind arising out of or caused by a burglary, theft, vandalism, malicious mischief or other illegal acts performed in, at or from the Leased Premises. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## **ARTICLE VIII**

### **UTILITIES, HEATING, AND COOLING**

**Section 8.01.** **Utilities.** Utilities for the Leased Premises shall be installed, maintained, and paid for as follows:

- (a) No later than the Rent Commencement Date, Landlord shall have utilities connected by the applicable utility company and shall pay the usual and customary activation fees for such utilities which shall be separately metered to Tenant. Any utilities that can be separately metered shall be separately metered through the Original Term and any Renewal Term. Further, if Landlord determines that Tenant is a substantial user of any utilities which are not separately metered, Landlord may require Tenant to install submeters for such utilities at its sole cost and expense.
- (b) Landlord shall maintain all utility conduits, piping, conductor, and the like, both which serve the Leased Premises and which are located off the Leased Premises. Tenant shall pay to Landlord Tenant's Pro Rata Share (as hereinafter defined) of all costs and expenses, except for the cost of installation, paid or incurred by Landlord in maintaining such utilities off the Leased Premises, as provided in Article XIV of this Lease.
- (c) Commencing on the Commencement Date, Landlord shall maintain all utility conduits, piping, conductors, and the like located in the Leased Premises and shall pay for utilities as follows:
  - (i) All utilities which are metered or submetered at Leased Premises shall be put in Tenant's name and paid by Tenant on a usage basis as metered, and
  - (ii) Utilities which are not metered or submetered at the Leased Premises shall be paid by Tenant on a pro rata basis as specified in Article XIV of this Lease.

**Section 8.02.** **Discontinuance of Services.** Landlord reserves, and shall at all times have, the right to cut off and discontinue, without notice to Tenant, water, electricity, heating and air conditioning, or other utilities and services whenever Tenant has failed to pay any rental or other charges due under this Lease. Landlord shall under no circumstances be liable to Tenant in damages or otherwise for any interruption in service of water, electricity, heating, air conditioning, or other utilities and services caused by an unavoidable delay, by the making of any necessary repairs or improvements, by any cause beyond Landlord's control, or by discontinuance as provided in the preceding sentence of this Section.



**ARTICLE IX**  
**MAINTENANCE AND ALTERATIONS**

Section 9.01. Landlord's Obligations. Landlord shall keep in good repair, operate and maintain the Common Areas, the Leased Premises and the Facility. Landlord shall keep in good repair the foundation, structural parts, outer walls (except the interior faces thereof), downspouts, gutters, and roof of the Facility as part of the Common Areas Costs.

Section 9.02. Tenant's Obligations. Tenant shall not suffer or permit any injury to the Leased Premises. Tenant shall immediately notify Landlord of any damage, injury, or disrepair of any part of the Leased Premises caused by or known to Tenant.

Section 9.03. Alterations and Additions. Tenant shall make no alterations or additions to any part of the Leased Premises without the prior written consent of Landlord, except the leasehold improvements which Tenant is expressly entitled to make in accordance with Section 3.04 herein. All such alterations and additions to the Leased Premises shall be made in accordance with all applicable laws and shall remain for the benefit of Landlord; provided, however, that Landlord may elect by written notice to Tenant to require that Tenant, at its expense, remove at the expiration or earlier termination of this Lease all or a portion of the alterations or additions made by Tenant and repair any damage to the Leased Premises caused by such removal. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Section 9.04. Mechanic's Liens. Tenant shall not suffer or give cause for the filing of any mechanic's lien against the Leased Premises. In the event any mechanic's lien is filed against the Leased Premises or any part thereof for work claimed to have been done for, or material claimed to have been furnished to the Tenant, Tenant shall cause such mechanic's lien to be discharged of record within thirty (30) days after filing or, alternatively, Tenant shall furnish to Landlord (or any other entity designated by Landlord) within such thirty (30) day period a bond or other assurances reasonably acceptable to Landlord that such claimed indebtedness as finally determined will be paid by Tenant. Tenant shall indemnify and save harmless Landlord from all costs, losses, expenses, and attorneys' fees in connection with any such mechanic's lien.

**ARTICLE X**  
**INDEMNIFICATION AND INSURANCE**

Section 10.01. Indemnification. On and after the date that is three (3) months prior to the Rent Commencement Date, Tenant assumes all risks and responsibilities for accidents, injuries, or damages to persons or property (other than as provided in Section 10.02 below with respect to damage by fire and casualty), and agrees to indemnify and hold harmless Landlord from any and all claims, liabilities, losses, costs, and expenses (including attorneys' fees) arising from or in connection with the condition, use, or control of the Leased Premises and any improvements thereon during the Lease Term.

Section 10.02. Landlord's Insurance. Landlord shall maintain public liability insurance against damage to persons and property in the Common Areas in reasonable amounts and shall agree to hold Tenant harmless for all liabilities covered by such insurance. Landlord shall carry during the Lease Term fire and extended coverage insurance on the Facility for at least its full insurable value. Landlord shall also maintain business interruption insurance and/or loss of "rental value" insurance in such amounts as Landlord shall reasonably deem necessary. Tenant agrees to reimburse Landlord for its proportionate share of the Insurance Premiums for all such insurance and the deductibles incurred by Landlord, as provided in Article XIV hereof.

Section 10.03. Increase in Insurance Rates. If Tenant uses or permits the use of the Leased Premises or any part thereof in any manner so as to increase the cost of insurance to Landlord over and above the normal rates from time to time applicable to the Leased Premises for the use permitted under this Lease, Tenant shall pay to Landlord upon demand any such increase in the premiums for such insurance whether or not Landlord has consented to such use.

Section 10.04. Insurance - Tenant. Tenant shall, commencing three (3) months prior to the Rent Commencement Date and thereafter during the Lease Term, keep in full force and effect policies of public liability insurance (with contractual liability endorsement covering the matters set forth in Section 10.01 above), in companies and in a form acceptable to Landlord, with respect to the Leased Premises and the business operated by Tenant and/or any subtenants of Tenant in or at the Leased Premises, in which both Landlord and Tenant shall be named as parties covered thereby (covering Tenant as the named insured and identifying Landlord as an “additional insured”), providing for comprehensive general liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence, or commercial general liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate per location endorsement, including in both instances, personal and advertising injury coverages and umbrella or excess liability coverage with a limit of not less than Five Million Dollars (\$5,000,000) per occurrence and fire legal liability coverage. Tenant shall, at its own expense, also keep in full force and effect policies of plate glass insurance, if plate glass is a part of Leased Premises, and fire and extended coverage, vandalism, malicious mischief and special extended coverage insurance in any amount adequate to cover the cost or replacement of all alterations, changes, decorations, additions, fixtures, and other improvements in the Leased Premises in the event of a loss, in companies and in form acceptable to Landlord. In addition, at all times during the Original Term and any Renewal Term, Tenant shall procure and maintain workers’ compensation insurance and employers liability insurance with a limit not less than One Millions Dollars (\$1,000,000) bodily injury each accident; One Million Dollars (\$1,000,000) bodily injury by disease – each person; and One Million Dollars (\$1,000,000) bodily injury to disease – policy limit. The insurance which Tenant is required to carry pursuant to this Section shall insure the full insurable value of all such improvements installed in and at the Leased Premises, on a reproduction cost basis, whether the same have been paid for entirely or partially by Tenant. Landlord and other tenants and occupants shall not be liable for any damage by fire or other casualty with respect to such improvements, no matter how caused, it being understood that Tenant will look solely to its insurers for reimbursement. All insurance maintained by Tenant as required pursuant to this Section 10.04 shall be carried in favor of Landlord and Tenant, as their respective interests may appear. Tenant shall, upon request, furnish Landlord with certificates of insurance, and all such insurance shall carry a provision providing that it will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Landlord. If Tenant fails to comply with the above requirements, Landlord may obtain such insurance and keep same in effect, and Tenant shall pay Landlord all premium costs thereof upon demand.

Section 10.05. Tenant’s Property. All property of Tenant shall be kept or stored in, upon, or about the Leased Premises at the sole risk of Tenant and Tenant shall hold Landlord harmless from and against any claims, costs, or expenses, including attorneys’ fees, arising out of loss or damage thereof.

Section 10.06. Waiver of Subrogation. All insurance policies maintained by Landlord or Tenant as provided in this Article X shall contain an agreement by the insurer waiving the insurer’s right of subrogation against the other party to this Lease or agreeing not to acquire any rights of recovery which the insured has expressly waived prior to loss. Each of the parties hereto agrees that if the provision waiving subrogation in any of such policies of insurance requires that notice of such waiver be served upon the insurer, such notice shall be promptly served by the party obtaining such insurance.

**ARTICLE XI**  
**FIRE AND CASUALTY**

If the Leased Premises become partially or totally destroyed by fire or other casualty insurable under full standard extended risk insurance, so as to become partially or totally untenable, the same shall be repaired or replaced at the expense of Landlord to the extent of available insurance proceeds. However, if more than fifty percent (50%) of the total rentable area of the Facility shall be destroyed or so damaged by fire or other casualty as to become wholly untenable, or if Landlord determines that the Facility cannot be restored within one hundred eighty (180) days, then Landlord may rebuild or put the Facility in good condition and fit for occupancy within a reasonable time after such destruction or damage, or it may give notice in writing to Tenant terminating the Lease. Within sixty (60) days after such casualty, Landlord shall either give Tenant notice of its intention to repair or rebuild or shall give Tenant notice of its intention to terminate the Lease. Any proceeds from the fire and extended coverage insurance not utilized by Landlord in restoring the Leased Premises shall be and remain the sole property of Landlord. Minimum Rent shall proportionately abate during the time that the Leased Premises are totally unusable by reason of any such damage thereto.

**ARTICLE XII**  
**EMINENT DOMAIN**

In the event that all or a part of the Leased Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain, or that, in lieu thereof, all or a part of the Leased Premises is sold to a public or quasi-public body under threat of condemnation, and such taking, condemnation, or sale renders the Leased Premises totally unsuitable for operation of the Tenant's business therein, this Lease shall terminate on the date possession of all or such part of the Leased Premises is transferred to the condemning authority. All rent shall be paid up to the date of transfer of possession to the condemning authority, and all compensation awarded or paid for taking or sale in lieu thereof shall belong to and be the sole property of Landlord, and Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term; provided, however, that Tenant shall be entitled to any separate award for personal property or moving costs, so long as such award shall not reduce the compensation paid or awarded to Landlord. In the event that only a portion of the Leased Premises is taken or condemned and such taking does not materially affect the business of Tenant, Tenant shall be entitled to a proportionate abatement of Minimum Rent but shall not be entitled to any award or payment made for such taking.

**ARTICLE XIII**  
**DEFAULT AND REMEDIES**

Section 13.01. Events of Default. Each of the following shall be deemed a default by Tenant:

- (a) Tenant's failure to pay rent (including Minimum Rent and Additional Rent) as herein provided within ten (10) days of when due;
- (b) Tenant's failure to perform or observe any other terms, conditions, or covenants of this Lease to be performed or observed by Tenant;
- (c) Any change or modification in the use of the Leased Premises as set forth in Section 7.01 herein or any substantial change in the quality or character of such use if such change adversely affects the Facility, as solely determined by Landlord;

- (d) Tenant's vacation or abandonment of the Leased Premises or any failure to keep the Leased Premises open for business as provided in Section 7.02 herein (without limiting the meaning of the terms "vacation or abandonment", the transfer of a substantial part of the operations, business, and personnel of Tenant to some other location shall be deemed to be a breach of this subsection, notwithstanding the fact that Tenant shall thereafter continue to pay the rent due under this Lease);
- (e) The sale of Tenant's leasehold interest hereunder pursuant to execution;
- (f) The adjudication of Tenant as a bankrupt;
- (g) The making by Tenant of a general assignment for the benefit of creditors;
- (h) The appointment of a receiver in equity for Tenant's property if such appointment is not vacated or otherwise terminated within sixty (60) days from the date of such appointment;
- (i) The appointment of a trustee, custodian, or receiver for Tenant's property in a reorganization, arrangement, or other bankruptcy proceeding if such appointment is not vacated or set aside within sixty (60) days from the date of such appointment;
- (j) Tenant's filing of a voluntary petition in bankruptcy or for reorganization or arrangement;
- (k) Tenant's filing of an answer admitting bankruptcy or agreeing to reorganization or arrangement;
- (l) Dissolution or other termination of Tenant's corporate charter; or
- (m) Issuance of a criminal charge or indictment or a conviction for a crime against the Tenant.

Landlord shall provide written notice to Tenant of a default under subsections (b) or (c) herein.

Section 13.02. Landlord's Rights Upon Tenant's Default. In the event of any default provided in the foregoing Section 13.01, without any demand or notice Landlord, in addition to pursuing any other rights or remedies available at law or in equity, may:

- (a) Elect to terminate this Lease;
- (b) In the event that Tenant has failed to perform any of its covenants under this Lease other than a covenant to pay rent, perform the covenant or covenants of Tenant which are in default at Tenant's cost and expense (entering upon the Leased Premises for such purpose, if necessary); and Landlord's performance of any such covenant shall neither subject Landlord to liability for any loss, inconvenience, or damage to

Tenant nor be constructed as a waiver of Tenant's default or of any other right or remedy of Landlord in respect of such default, or as waiver of any covenant, term, or condition of this Lease; or

- (c) immediately re-enter upon the Leased Premises, remove all persons and property therefrom, and store such property in a public warehouse or elsewhere at the sole cost and for the account of Tenant, all without service of notice or resort to legal process, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and without such re-entry being deemed to terminate this Lease.

Section 13.03. Re-Letting. In the event Landlord re-enters upon the Leased Premises as provided in the foregoing Section 13.02 or takes possession of the Leased Premises, Landlord may either terminate this Lease or, from time to time without terminating this Lease make alternations and repairs reasonably necessary for the purpose of re-letting the Leased Premises and re-let the Leased Premises or any part thereof for such term or terms (which may extend beyond the Lease Term) at such rental and upon such other terms and conditions as Landlord in its reasonable discretion deems advisable. Upon each re-letting, all rentals received from such re-letting shall be applied first to payment of costs of such alterations and repairs; second, to the payment of rent and any other indebtedness due and unpaid hereunder; and the remainder, if any, shall be applied in payment of future rent. Tenant shall be liable to Landlord for the difference between Tenant's Rent and other charges herein provided and the rental and other charges received from such re-letting. Any such difference (or the entire rental in the event the Leased Premises is not relet) owing by Tenant for the entire remainder of the Lease Term shall be due and may be recovered at once, at the option of the Landlord, without awaiting the expiration of the Lease Term; in which case, recovery shall be based upon the best estimates of the amounts thereof available at that time without releasing Tenant from liability for payment of all amounts due under this Lease. No re-entry or taking of possessions by Landlord of the Leased Premises shall be construed as an election to terminate this Lease unless a written notice of termination is given to Tenant. Notwithstanding any re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for Tenant's previous default. Landlord shall take commercially reasonable steps to re-let the Leased Premises to mitigate Landlord's Damages which result from Tenant's Default.

Section 13.04. Damages Upon Termination. In the event that Landlord at any time terminates this Lease for any default by Tenant, in addition to any other remedies Landlord may have, Landlord may recover from Tenant all damages Landlord may incur by reason of such default, including, but not limited to, costs of recovering the Leased Premises, attorneys' fees, and the value at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value determined by Landlord of the Leased Premises for the remainder of the Lease Term. All such amounts shall be immediately due and payable by Tenant to Landlord.

Section 13.05. Indemnification Upon Default. Upon any default by Landlord or Tenant hereunder, the defaulting party shall be liable for and hereby agrees to apply any and all liabilities, losses, costs and expenses, including attorneys' fees, incurred by the non-defaulting party as a result of such default and in exercising the non-defaulting party's rights and remedies in connection with such default. Notwithstanding the foregoing, Landlord shall not be considered in default until it has received from Tenant written notice of such default and has not cured such default (i) within thirty (30) days with respect to any default which is curable within said time period, or (ii) for any default which is not capable

of being cured until after thirty (30) days, Landlord has commenced cure within thirty (30) days and thereafter diligently prosecutes curing the default. In addition, prior to Landlord being in default, Tenant shall provide Landlord's mortgage lender with the same foregoing cure period, provided that Tenant has received written notice from Landlord as to the identity and address of such mortgage lender. Notwithstanding the foregoing, Tenant shall not be considered in default under Section 13.01 (b), (c), or (d) until it has received from Landlord written notice of such default and fails to cure such default (i) within thirty (30) days with respect to any default which is curable within said time period, or (ii) for any default which is not capable of being cured until after thirty (30) days, Tenant has commenced cure within thirty (30) days and thereafter diligently prosecutes curing the default within an agreed upon schedule with Landlord.

Section 13.06. Remedies Cumulative. The remedies of Landlord hereunder shall be cumulative, and no one of them shall be construed as exclusive of any other or of any remedy provided by law or in equity. The exercise of any one such right or remedy by Landlord shall not impair its standing to exercise any other such right or remedy.

Section 13.07. Landlord's Default. It shall be a default under and breach of this Lease by Landlord if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that the same shall not be deemed a default if it cannot be cured within the thirty day time period and Landlord promptly commences and thereafter diligently prosecutes to completion the cure thereof. Upon the occurrence of an event of default by Landlord, Tenant may terminate this Lease and seek Tenant's Damages if proof of damages are established or available at the time of the default. Notwithstanding any provision contained herein to the contrary, Tenant shall take commercially reasonable steps to mitigate Tenant's Damages which result from Landlord's Default.

#### **ARTICLE XIV** **TENANT'S PAYMENT OF PRO RATA SHARE**

Section 14.01. Tenant's Pro Rata Share. Beginning on the Rent Commencement Date, Tenant shall pay as additional rent ("Additional Rent") to Landlord, in the manner provided in Section 14.02 herein, Tenant's Pro Rata Share of all charges, liabilities, costs, and expenses of every kind and nature paid or incurred (including appropriate reserves) by Landlord during the Lease Term for each Lease Year or Fractional Lease Year which are attributable to or relate to the Facility for the following:

- (a) Common Areas Costs, as described in Section 5.03;
- (b) Real Property Taxes, as described in Article VI;
- (c) Utilities, as described in Section 8.01;
- (d) Insurance Premiums and deductibles, as described in Section 10.02; and
- (e) Maintenance and Repairs, as described in Section 9.01.

(items (a) through (e) above are hereinafter referred to in the aggregate as "Operating Costs").

Section 14.02. Calculation and Payment. "Tenant's Pro Rata Share" of the Operating Costs shall be Three and 50/100 Dollars (\$3.50) per square foot of the Leased Premises during the first Lease

Year, and shall be subject to annual increases as determined in Landlord's sole and reasonable discretion. Tenant shall pay on a monthly basis, in advance, Tenant's Pro Rata Share of 4.51% the Operating Costs for each Lease Year or Fractional Lease Year, in any amount estimated by Landlord as provided in this Section. Landlord's estimate shall be made on the basis of the most recent Annual Operating Cost Statement, if available, adjusted to reflect reasonably anticipated increases or decreases of Operating Costs.

Section 14.03. Reconciliation. An Annual Operation Cost Statement prepared by Landlord shall be provided to Tenant not later than April 1 of each calendar year setting forth in reasonable detail the actual Operating Costs paid or incurred by Landlord for the Facility and the Leased Premises in the preceding Lease Year or Fractional Lease Year. The dates of any such statements, at the option of the Landlord, are subject to change. Upon the furnishing of the Annual Operation Cost Statement, the installments of Additional Rent paid by Tenant for the subject calendar year shall be reconciled with the Additional Rent for such calendar year as set forth in the Annual Operation Cost Statement. If the Additional Rent for the calendar year as set forth in the Annual Operation Cost Statement exceeds the total of the installments of Additional Rent paid by Tenant for such calendar year, then Tenant shall pay the amount of such excess to Landlord within thirty (30) days after Landlord delivers to Tenant the Annual Operation Cost Statement. If the total of the installments of Additional Rent paid by Tenant for the calendar year exceeds the Additional Rent for the calendar year as set forth in the Annual Operation Cost Statement, then Tenant shall receive a credit against the monthly installments of Additional Rent subsequently accruing until such excess is exhausted or, if this Lease has been terminated, such excess shall be refunded to Tenant promptly upon determination of the proper amount thereof. In no event shall the Minimum Rent be decreased.

#### **ARTICLE XV** **ACCESS TO LEASED PREMISES**

Tenant shall permit Landlord and its agents and employees to enter in and upon the Leased Premises at all reasonable times to inspect and examine the Leased Premises, to show the Leased Premises to prospective purchasers, mortgagees, or tenants, or to make such repairs that Landlord may deem necessary or desirable, provided Landlord shall have access to the Leased Premises without advanced notice and without interfering with Tenant's quiet enjoyment should an emergency situation occur at the Leased Premises.

#### **ARTICLE XVI** **LIMITATION OF LANDLORD'S LIABILITY**

Tenant agrees that Tenant shall look solely to Landlord's interest in and to the Facility, subject to prior rights of any lessor or mortgagee of the Facility, for satisfaction of any judgment (or other judicial process) requiring payment of money by Landlord in the event of default or breach by Landlord of any of the covenants, terms or conditions of this Lease to be observed or performed by Landlord, and that no other assets of Landlord shall be subject to levy, execution, or of the process for satisfaction of Tenant's remedies. The term "Landlord", as used in this Lease in relation to covenants, agreements, and conditions to be observed and performed by Landlord, shall be limited to mean and include only the owner or owners from time to time of Landlord's interest in this Lease. In the event of any transfer or transfers of such interest (except a transfer for security), Landlord named herein (or the transferor, in the case of a subsequent transfer) shall, after the date of such transfer, be released from all liability for the performance of any covenant, agreement, and conditions under this Lease. This Lease shall bind Landlord, its successors and assigns only during and in respect of their respective successive periods of ownership of the Facility.

**ARTICLE XVII**  
**MISCELLANEOUS**

Section 17.01. Sublease. This Sublease and all the rights of parties hereunder are subject and subordinate to the Master Lease. Each party agrees that it will not, by its act or omission to act, cause a default under the Master Lease. In furtherance of the foregoing, the parties hereby confirm, each to the other, that it is not practical in this Sublease agreement to enumerate all of the rights and obligations of the various parties under the Master Lease and specifically to allocate those rights and obligations in this Sublease. Accordingly, in order to afford to Tenant the benefits of this Sublease and of those provisions of the Master Lease which by their nature are intended to benefit the party in possession of the Premises, and in order to protect Landlord against a default by Tenant which might cause a default or event of default by Landlord under the Master Lease:

A. Provided Tenant shall timely pay all Rent when and as due under this Sublease, Landlord shall pay, when and as due, all base rent, additional rent and other charges payable by Landlord to Prime Landlord under the Master Lease;

B. Except as otherwise expressly provided herein, Landlord shall perform its covenants and obligations under the Master Lease which do not require for their performance possession of the Premises and which are not otherwise to be performed hereunder by Tenant on behalf of Landlord. For example, Landlord shall at all times keep in full force and effect all insurance required of Landlord as tenant under the Master Lease.

C. Except as otherwise expressly provided herein, Tenant shall perform all affirmative covenants and shall refrain from performing any act which is prohibited by the negative covenants of the Master Lease, where the obligation to perform or refrain from performing is by its nature imposed upon the party in possession of the Premises. If practicable, Tenant shall perform affirmative covenants which are also covenants of Landlord under the Master Lease at least five (5) days prior to the date when Landlord's performance is required under the Master Lease. Landlord shall have the right to enter the Premises to cure any default by Tenant under this Section.

D. Landlord shall not agree to an amendment to the Master Lease which might have an adverse effect on Tenant's occupancy of the Premises or its use of the Premises for their intended purpose, unless Landlord shall first obtain Tenant's prior written approval thereof.

E. Landlord hereby grants to Tenant the right to receive all of the services and benefits with respect to the Premises which are to be provided by Prime Landlord under the Master Lease. Landlord shall have no duty to perform any obligations of Prime Landlord which are, by their nature, the obligation of an owner or manager of real property. For example, Landlord shall not be required to provide the services or repairs which the Prime Landlord is required to provide under the Master Lease. Landlord shall have no responsibility for or be liable to Tenant for any default, failure or delay on the part of Prime Landlord in the performance or observance by Prime Landlord of any of its obligations under the Master Lease, nor shall such default by Prime Landlord affect this Sublease or waive or defer the performance of any of Tenant's obligations hereunder except to the extent that such default by Prime Landlord excuses performance by Landlord, under the Master Lease. Notwithstanding the foregoing, the parties contemplate that Prime Landlord shall, in fact, perform its obligations under the Master Lease and in the event of any default or failure of such performance by Prime Landlord, Landlord agrees that it will, upon notice from Tenant, make demand upon Prime Landlord to perform its obligations under the Master Lease and, provided that Tenant specifically agrees to pay all costs



and expenses of Landlord and provides Landlord with security reasonably satisfactory to Landlord to pay such costs and expenses, Landlord will take appropriate legal action to enforce the Master Lease.

Section 17.02. Assignment and Subletting. Tenant shall not assign this Lease or sublet the whole or any part of the Leased Premises, or permit any other persons, including concessionaires or licensees, to occupy the same without the prior written consent of Landlord. Such consent shall not be implied from references in this Lease to assignees, sublessees, concessionaires, or licensees. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the requirement for such consent to any subsequent assignment or subletting. Any such assignment or subletting, even with the consent of Landlord, shall not relieve Tenant from liability for payment of rent or other sums herein provided or from the performance of any other obligations under this Lease until the later of the second lease year or one (1) year after the assignment or sublease with the consent of Landlord. The acceptance of rent from any other person shall not be deemed to be a waiver of any other provisions of this Lease or a consent to the assignment of this Lease or the subletting of the Leased Premises. Any transfer of this Lease by operation of law (including, but not limited to, a transfer as a result of a merger, consolidation, or liquidation of Tenant if Tenant is not an individual) shall constitute an assignment for purposes of this Lease.

An assignment shall include any sale or transfer, whether by operation of law or otherwise, of fifty percent (50%) or more of the ownership of an entity, or in the event the present owner(s) shall, singly or collectively, cease to own, directly or indirectly, the controlling interest in the voting ownership of Tenant and shall include, in the case of limited liability companies and partnerships, any change in the Manager or General Partner.

Without in any way limiting Landlord's right to refuse to give consent to any assignment or subletting of this Lease, Landlord reserves the right to refuse to give such consent if in Landlord's discretion and opinion the proposed use of the Leased Premises or quality of merchandising operation in the Leased Premises or the Facility is or may be in any way adversely affected, if the financial worth of the proposed assignee or subtenant is less than that of Tenant or if the value of the Leased Premises has changed or will change in such a manner that the proposed assignment or sublease is contrary to the interests of or unacceptable to Landlord. Tenant agrees to reimburse Landlord for reasonable accounting and attorneys' fees incurred in conjunction with the processing and documentation of any such requested transfer, assignment, subletting, licensing or concession agreement, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Leased Premises.

Section 17.03. Estoppel Certificates. Prior to opening the Leased Premises for business, Tenant shall deliver to Landlord a written statement in recordable form certifying (if such is the case) that Landlord has completed construction of the improvements constitution part of the Leased Premises in accordance with its obligations contained herein, that Tenant has accepted possession of the Leased Premises, that this Lease is in full force and effect and has not been assigned, modified, supplemented, or amended, and indicating the Commencement Date and the dates to which the Minimum Rent and other charges have been paid in advance, if any. At any time and from time to time, Tenant agrees, within ten (10) days of any request in writing from Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying, if this be the fact, that this lease is unmodified, in full force and effect, and there are no defenses or offsets thereto (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the Minimum Rent and any other additional rentals have been paid.

Section 17.04. Subordination and Attornment. Tenant shall, upon Landlord's request, subordinate this Lease to the lien of any mortgage now or hereafter placed upon Landlord's interest in the

Leased Premises or upon any buildings hereafter placed upon the land of which the Leased Premises form a part. In addition, upon the request of Landlord, Tenant shall subordinate its rights hereunder to the lien of any mortgage or mortgages or the lien or security interest from any other method of financing or refinancing (hereafter collectively referred to as "Mortgage") now or hereafter against the Facility and the land upon which it is situated, Landlord's interest therein, or the Leased Premises and the buildings now or thereafter built or to be built in the Facility, and to all renewals, modifications, replacements, consolidations, and extensions thereof. Tenant shall execute and deliver, upon demand, such further instrument or instruments subordinating this Lease to the lien of any such Mortgage, provided any subordination shall be upon the express condition that this Lease and any extension or renewal hereof shall remain in full force and effect during the Lease Term, notwithstanding any default in the payment and performance of such Mortgage and notwithstanding any foreclosure proceedings with respect thereto; provided, however, that Tenant shall perform all of the terms, covenants, and conditions of this Lease by it undertaken to be performed. Tenant shall, in the event that any proceedings are brought for the foreclosure of any Mortgage made by Landlord covering that Leased Premises, attend to the purchaser upon such foreclosure and recognize such purchaser as Landlord under this Lease.

Section 17.05. Covenant of Quiet Enjoyment. Landlord agrees that if Tenant performs all the covenants and agreements herein provided to be performed by Tenant, Tenant shall, at all times during the Lease Term, have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of hindrance from Landlord or any persons claiming under Landlord. This Lease does not guarantee a continuance of light and air over the Leased Premises or any property adjoining the Leased Premises.

Section 17.06. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on the check or letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy provided in this Lease.

Section 17.07. No Option. The submission of this Lease for examination by Tenant shall not constitute a reservation of or option for the Leased Premises. This Lease shall become effective only upon execution and delivery thereof by Landlord and Tenant.

Section 17.08. Memorandum of Lease. The parties hereto shall not record this Lease, but each party shall execute upon request of the other a "Memorandum of Lease" suitable for recording. The party requesting the Memorandum shall pay all recording costs in connection therewith.

Section 17.09. Relationship of Parties. Nothing contained herein, including, but not limited to, the method of computing rent, shall be deemed or construed by the parties hereto, or by any third party, as creating between the parties hereto the relationship of principal and agent, partnership, joint venture, or any relationship other than the relationship of landlord and tenant.

Section 17.10. Waiver. The parties hereto may, by a writing signed by both of the parties, waive the performance by any party of any of the provisions to be performed by such party under this Lease. The failure of any party hereto at any time to insist upon the strict performance of any provision of this Lease shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provision at a future time. The waiver by either party hereto of a breach of or noncompliance with any provision of this Lease shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

Section 17.11. Severability. The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions, and this Lease shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

Section 17.12. Binding Effect This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon, the respective heirs, executors, administrators, successors and assigns of Landlord and Tenant except as otherwise expressly provided herein. Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations, or liabilities under or by reason of this Lease.

Section 17.13. Construction. This Lease shall be construed and governed in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions. Whenever in this Lease a singular word is used, it shall also include the plural wherever required by the contract and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days. The captions in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease. The Exhibits hereto are incorporated by reference and made a part hereof with the same effect as if set out in fully herein.

Section 17.14. Entire Agreement; Amendments. This instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such parties are merged into and expressed in this instrument, and any and all prior agreements between such parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 17.15. Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or by a reputable courier service (with all expenses of delivery being prepaid) or sent by registered or certified mail, postage prepaid, as follows:

Landlord:	City of Westfield, Indiana 2728 E. 171st Street Westfield, Indiana 46074 Attn: Todd Burtron, Chief of Staff
With a copy to: (Which shall not constitute notice)	Krieg DeVault LLP 12800 N. Meridian Street, Suite 300 Carmel, Indiana 46032 Attn: Brian J. Zaiger, Esq.
Tenant:	Byrd Enterprises, Inc. P. O. Box 413 Greenwood, IN 46142 Attn: Kevin Manship

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the earlier of actual receipt or two (2) business days after being so delivered or mailed.

Section 17.16. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute one and the same instrument.

Section 17.17. Brokers. Tenant and Landlord covenants, warrants and represents to each other that no broker was involved in bringing about or consummating this Lease, and that neither had any conversations or negotiations with any broker concerning the leasing of the Leased Premises. Each party agrees to indemnify and hold harmless the other against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith including, but not limited to, attorneys' fees and expenses arising out of any claimed commission from any conversations or negotiations had by the other with any broker.

*[signature page follows]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease Agreement as of the day and year first above written.

LANDLORD:

**CITY OF WESTFIELD, INDIANA**

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

Printed: \_\_\_\_\_

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

TENANT:

**BYRD ENTERPRISES, INC.**

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

Printed: \_\_\_\_\_

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

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### **List of Exhibits**

Exhibit A	Legal Description
Exhibit B	Depiction of the Facility and Leased Premises
Exhibit C	Building Square Footage
Exhibit D	Rules and Regulations

## EXHIBIT A

### Legal Description of Facility

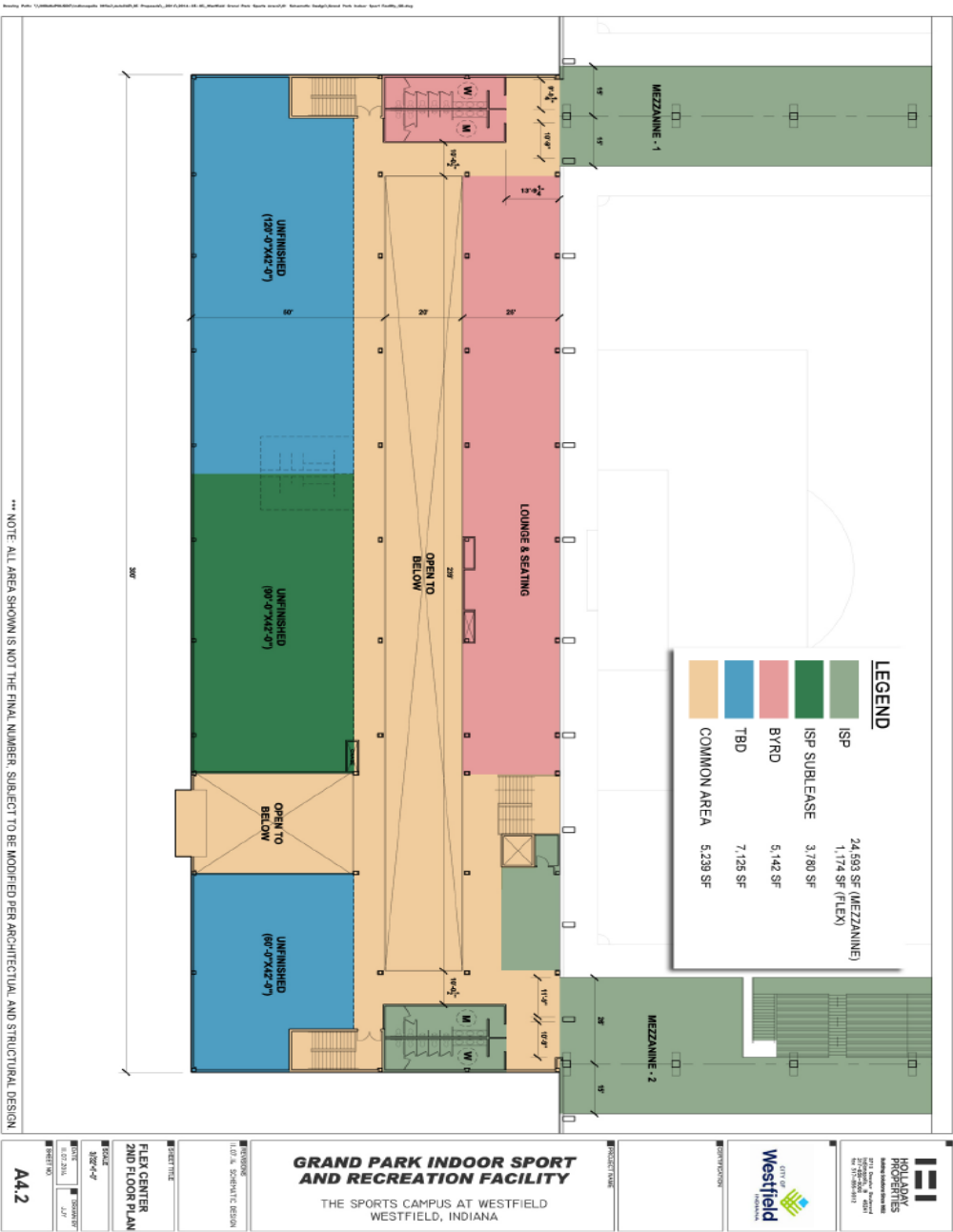
INDOOR SOCCER FACILITY  
GRAND PARK  
WESTFIELD, INDIANA  
7.15.2014

A PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 19 NORTH, RANGE 3 EAST, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION;  
THENCE SOUTH 89 DEGREES 54 MINUTES 07 SECONDS WEST 1,196.82 FEET ALONG THE NORTH LINE OF SAID QUARTER SECTION; THENCE SOUTH 00 DEGREES 00 MINUTES 07 SECONDS EAST 40.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 00 DEGREES 00 MINUTES 07 SECONDS EAST 131.49 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 639.08 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 380.00 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 101.94 FEET; THENCE SOUTHWESTERLY 221.77 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 336.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 30 DEGREES 53 MINUTES 39 SECONDS WEST AND A LENGTH OF 217.77 FEET; THENCE SOUTH 45 DEGREES 36 MINUTES 00 SECONDS EAST 28.62 FEET; THENCE SOUTHWESTERLY 149.81 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 364.50 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 61 DEGREES 09 MINUTES 11 SECONDS WEST AND A LENGTH OF 148.75 FEET; THENCE NORTH 17 DEGREES 04 MINUTES 23 SECONDS WEST 20.00 FEET; THENCE WESTERLY 96.13 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 348.57 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 80 DEGREES 52 MINUTES 39 SECONDS WEST AND A LENGTH OF 95.82 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 40 SECONDS WEST 539.70 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 20 SECONDS WEST 20.00 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 40 SECONDS WEST 42.79 FEET; THENCE NORTHWESTERLY 132.02 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 80.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 47 DEGREES 16 MINUTES 39 SECONDS WEST AND A LENGTH OF 117.54 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 122.52 FEET; THENCE NORTHWESTERLY 172.79 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 110.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 45 DEGREES 00 MINUTES 00 SECONDS WEST AND A LENGTH OF 155.56 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 5.92 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 41.56 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 115.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 451.06 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 07 SECONDS EAST 250.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 14.501 ACRES, MORE OR LESS.

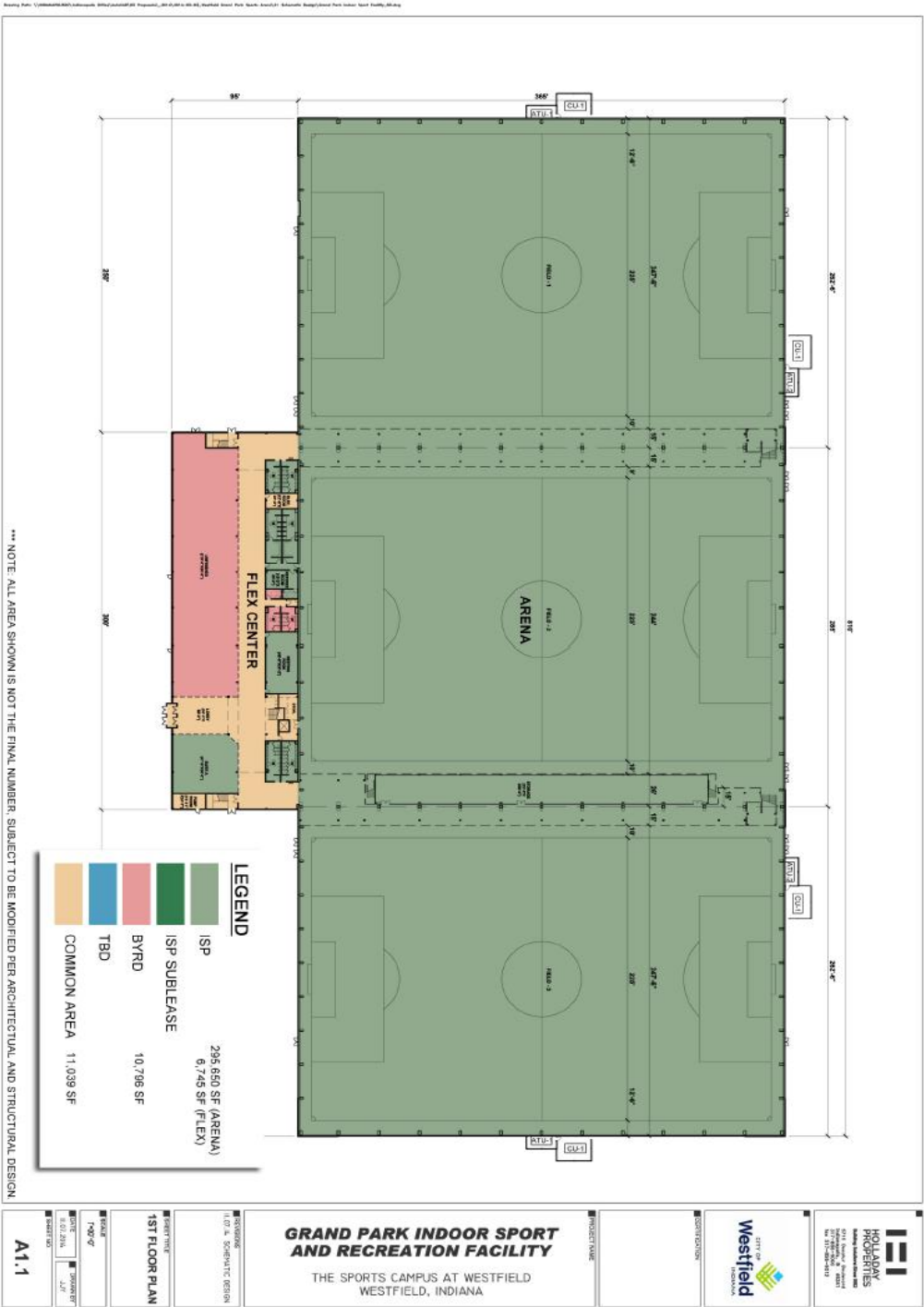
EXHIBIT B

Depiction of the Facility and Leased Premises

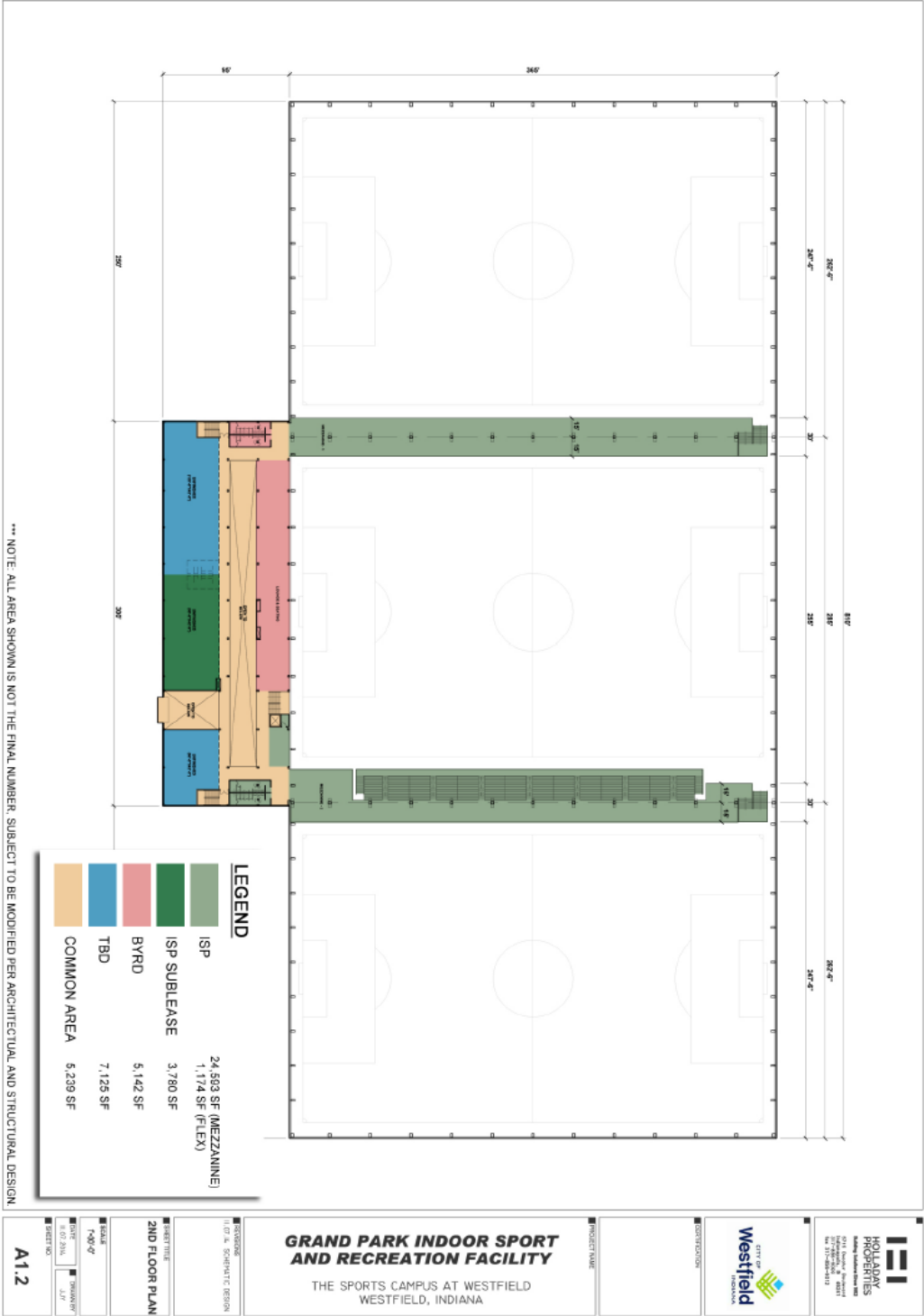
The Leased Premises as provided for in this Lease includes the areas designated “Byrd” in the depiction below.







Working File: C:\Users\jmc\Documents\Projects\Westfield\Grand Park Indoor Sport and Recreation Facility\2015\2015-01-15\Grand Park Indoor Sport and Recreation Facility\2015\2015-01-15\Grand Park Indoor Sport and Recreation Facility.dwg





## EXHIBIT C

### Building Square Footage

Building Square Footage	Byrd
Fields	0 sf
Flex Center	
1st Floor – Restaurant	10,200 sf
1st Floor - Restaurant Restroom	663 sf
1st Floor – Office	0 sf
1st Floor - Storage / Staging	0 sf
1st Floor - Referee Room	0 sf
1st Floor – Field Restrooms/Shower	0 sf
2nd Floor - Seating & Bar	4,500 sf
2nd Floor - Seating & Bar Restroom	660 sf
2nd Floor – Office	0 sf
2nd Floor - Multi-purpose- A	0 sf
2nd Floor - Multi-purpose- B	0 sf
2nd Floor - Office Restroom	0 sf
2nd Floor - Mezzanine Viewing Area	0 sf
2nd Floor - Mezzanine Restroom	0 sf
2nd Floor – Mezzanine	0 sf
1st Floor - Common Area	508 sf
2nd Floor - Common Area	232 sf
2nd Floor - Atrium (Common Area)	277 sf
<b>Total Rentable Square Feet</b>	<b>17,040 sf</b>
	<b>4.51%</b>

## **EXHIBIT D**

### **Rules and Regulations**

Tenant agrees for itself, its employees, agents, clients, customers, invitees and guests, to comply with the following rules and regulations. Tenant agrees that Landlord may amend, modify or delete any of the following rules and regulations or add new and additional reasonable rules and regulations for the use and care of the Leased Premises, the parking and other Common Areas and all of the Facility. Tenant agrees to comply with all rules and regulations and upon notice to Tenant from Landlord any modifications thereto. The breach by Tenant of any of these rules and regulations or any subsequent modifications, amendments or additions shall constitute a default by Tenant under the terms of this Lease.

Tenant covenants and agrees with Landlord that:

[Insert any rules or regulations of the Facility]