CITY CLERK
ORIGINAL

C-10194
08/13/2015

TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement (this "**Agreement**") is made as of this 13 day of August, 2015, by and between **THE NEW WESTGATE LLC**, a Delaware limited liability company ("**Licensor**"), and **CITY OF GLENDALE,** an Arizona municipal corporation ("**Licensee**"), related to that certain shopping center known as Westgate Entertainment District located in Glendale, Arizona (the "**Center**").

RECITALS

Licensor and Licensee desire to enter into a license agreement whereby Licensee will license from Licensor space within the Center on a temporary basis, under the following terms and conditions.

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, the parties hereby agree as follows:

1. **License Areas**. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee an exclusive license during the License Term to use a portion of Parking Lot 1 of the Center, as depicted on the attached Exhibit A and incorporated by reference (the "**License Area**"). Such License Area includes the parking spaces within such lots, and excludes on-street parking surrounding such lots. The License Area contains 259 parking spaces. In addition to and together with the License Areas, Licensor grants to Licensee a non-exclusive right of access to and from the License Area. This license is non-transferable and is revocable by Licensor under the Agreement terms. Licensee accepts the License Area "AS IS, WHERE IS" with no express or implied representation or warranty by Licensor as to the condition of the License Areas or the improvements therein, or its suitability for the Permitted Use (as defined below) or any other matter.

2. **License Term and Minimum Hours**. The term of this Agreement shall be for 10 dates, with hours as specified herein, namely **the two home pre-season game dates and eight regular season home game dates for the Arizona Cardinals football club at the University of Phoenix Stadium for the 2015 season: 8/15/15; 8/22/15; 9/13/15; 9/27/15; 10/4/15; 10/26/15; 11/22/15; 12/10/15; 12/27/15; 1/3/16** (the "**License Term**"). For each game, the License Area shall be controlled as follows: (i) general public parking will be allowed, for free, with entrance to the License Area permitted up until six (6) hours before the kick-off time for the game; (ii) Licensee may tow cars parked in the License Area beginning four and one-half hours (4.5) hours before the kick-off time for the game; (iii) only Licensee approved cars will be allowed to park in the License Area, commencing four (4) hours before the kick-off time for the game and such parking will be available only to those holding a pass for such lot, i.e., there will be no day-of-game cash sales for spaces in the License Area. Licensee is required to prominently display signage to this effect, at Licensee's cost and coordination, and such signage shall be approved by Licensor. Any such towing shall be handled by Licensee, at Licensee's cost and coordination. Beginning one (1) hour after kick-off time, the License Area will be open to general public free parking for the remainder of the day. Licensee shall not have any right to access or use the License Area, and shall not place any property, equipment or other items in the License Area at any time other than during the License Term. The License Term shall be automatically extended for each date that there is a home Arizona Cardinals playoff game in the month of January 2016, under the same provisions as above with respect to hours of use.

3. **Intentionally Omitted**.

4. **Use**. Licensee shall use the License Area for the sole purpose of **assigning control of the License Area to the Arizona Cardinals Football Club ("ACFC") for ACFC's use to park ACFC ticket holders via designated permit parking pass which shall be distributed to ticket holders prior to game-day (and explicitly not via day-of-game admission charge)** (the "**Permitted Use**") but for no other use without Licensor's prior written consent. Licensee and/or ACFC must provide all requisite personnel in the License Area during the License Term to control such parking operation; Licensor will provide no services within the License Area regarding parking. Licensee must cone or rope off the License Area in a manner acceptable to Licensor, including access and signage as provided in Section 1. Licensee's use of the License Area for any purpose other than for the use identified above shall be

deemed a material default under this Agreement. Licensee shall at all times use the License Area for the purpose of performing the Permitted Use in a proper manner acceptable to Licensor and in a lawful, honest, conscientious and business-like manner.

5. **Signs/Advertising.** Licensor shall obtain Licensee's written approval before publishing any advertising or promotional material referring to Licensee's Permitted Use of the License Areas. Licensee shall not have rights to any media towers or additional signage and graphics around, above and adjacent to the License Areas.

6. **License Fee**. In consideration of Licensee's use of the License Area pursuant to this Agreement, on or before the **August 13, 2015**, Licensee shall pay to Licensor a rental fee (the "**Fee**") equal to **Thirty Eight Thousand Eight Hundred Fifty Dollars and Zero Cents ($38,850.00), plus applicable rental tax of three and four-tenths percent (3.4%) for a total amount due of Forty Thousand One Hundred Seventy Dollars and 90/100 Cents ($40,170.90)**. If the License Term is extended for home playoff games, as provided in Section 2, then on or before the Friday preceding the date of such playoff game, then Licensor shall pay to Licensee the sum of Six Thousand Four Hundred Seventy Five Dollars and 00/100 Cents ($6,475.00), plus applicable rental tax of three and four-tenths percent (3.4%) for a total amount due of Six Thousand Six Hundred Ninety-Five Dollars and 15/100 Cents ($6,695.15), for each such each playoff game. In addition to the foregoing, Licensee shall reimburse Licensor for Licensor's cost to provide temporary lighting towers in the dirt lots controlled by Licensee, such dirt lots to be utilized by Licensor as additional parking during the License Term; Licensee to provide Licensor payment for such reimbursement within thirty (30) days of a request from Licensor, accompanied by copies of applicable receipts evidencing such costs. All payments due under this Agreement are to be made payable in lawful money of the United States of America. In addition to and together with the Fee and any other payments to be made by Licensee to Licensor pursuant to the terms of this Agreement, Licensee shall pay to Licensor an amount equal to any state, county or municipal sales, rent, occupancy, excise or use taxes assessed or levied upon Licensor with respect to the amounts paid by Licensee to Licensor pursuant to this Agreement. Such taxes shall not, however, include any franchise, gift, estate, inheritance, conveyance, transfer, or net income tax assessed against Licensor. All amounts payable by Licensee to Licensor shall be paid to Licensor at the address designated by Licensor. No termination or expiration of this Agreement shall terminate or affect Licensee's obligation to pay all Fees and all other amounts due under this Agreement accruing, or relating to the period, prior to the termination or expiration of this Agreement. The provisions of this Section 6 shall survive any termination or expiration of this Agreement.

7. **Late Payments**. If Licensee shall fail to make any payment to Licensor when due, Licensee shall pay Licensor a late charge of ten percent (10%) of the overdue amount for each five (5) days or portion thereof that any said amounts remain outstanding, which late fee shall become immediately due and payable. The payment of such late fee shall not, however, excuse or cure any default by Licensee under this Agreement. The Late Fee is not a penalty, but rather is liquidated damages to defray costs and compensate Licensor for damages resulting from such late payment by Licensee. Licensor and Licensee acknowledge the difficulty of determining the damages resulting from late payment by Licensee and therefore have agreed to the Late Fee as an economical alternative to the costly and lengthy litigation that would otherwise result over the damages resulting from Licensee's failure to timely pay any amounts due under this Agreement. The provisions of this Section 7 shall survive any termination or expiration of this Agreement.

8. **Maintenance of the License Area**. Notwithstanding anything in this Agreement to the contrary, Licensee shall be solely responsible (a) for securing all permits and licenses necessary to use the License Area for the Permitted Use, including without limitation any business licenses required by the City of Glendale and/or County of Maricopa, Arizona, (b) for maintaining the License Area in a neat and clean condition, (c) for complying with all applicable laws, rules, fire and safety codes and regulations, including such minimum safety standards as may be established by Licensor, with respect to the use of the License Area, (d) for repair of all damage to the License Area caused by Licensee, its agents, employees, representatives, contractors or invitees, (e) for complying with the Center's rules and regulations established from time to time by Licensor and delivered to Licensee, (f) for all costs and expenses related to cleaning, security, repair and maintenance of the License Area, and (g) for restoring

the License Area to its original condition, customary wear and tear excepted, at the end of the License Term.

9. **Insurance**. During the License Term, Licensee shall maintain, at its sole cost and expense, insurance as reasonably required by Licensor, including, without limitation, insurance meeting the requirements set forth on the attached Exhibit B. Before the License Term begins, Licensee shall provide Licensor a Certificate of Insurance which meets Licensor's requirements, including, without limitation, the requirements set forth on attached Exhibit B.

10. **Indemnity**. Licensee shall indemnify, defend and hold harmless Licensor and Licensor's parent, subsidiaries and affiliated companies, and their respective officers, directors, shareholders, agents, employees and affiliates (collectively, with Licensor, the "**Licensor Parties**"), against all loss, damage, expense and liability resulting from injury to or death of persons, including but not limited to employees of Licensee or Licensor, or injury to property, including but not limited to property of Licensee or Licensor, arising out of or in any way connected with Licensee's access to or use of the Center, however caused, except for such injury or death as may be caused by the gross negligence or willful misconduct of Licensor. Licensee shall, upon request by Licensor, defend any suit exerting a claim covered by this obligation to indemnify. Licensee shall pay costs that may be incurred by Licensor in enforcing this obligation to indemnify, including reasonable attorneys' fees. The provisions of this Section 10 shall survive any termination or expiration of this Agreement.

11. **Mutual Waiver of Subrogation**. Licensor and Licensee each hereby waive any rights one may have against the other on account of any loss or damage occasioned to Licensor or Licensee, as the case may be, or their respective property, the License Area, its contents or to other portions of the Center, arising from any risk generally covered by a policy or causes of loss special form insurance and from any risk covered by insurance then in effect. In addition, Licensor and Licensee, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any such insurance company may have against Licensor or Licensee, as the case may be. The foregoing waivers of subrogation shall be operative only so long as available in the State of Arizona and provided further that no policy of insurance is invalidated thereby.

12. **Risk of Loss or Damage**. Without limiting any other provision of this Agreement, Licensor shall not be liable for, except to the extent, subject to this Agreement, directly caused by the sole gross negligence or willful misconduct of Licensor, and Licensee hereby waives, all claims for loss or damage to Licensee's business or damage to person or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the License Areas, including, without limitation, claims for loss, theft or damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) injury done or occasioned by wind or weather; (iii) any defect in Licensor's failure to operate, for whatever reason, any sprinkler, heating or air-conditioning equipment, electric wiring or the installation thereof, gas, water or steam pipe, drain or other pipe; (vii) the escape of steam or water; (viii) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, doorways, windows, walks or any other place upon or near the Center; (ix) the failure of any fixture, plaster, tile, stucco or other material or (x) any act, omission or negligence of other licensees or any other persons or occupants of the Center or of adjoining or contiguous buildings, or owners of adjacent or contiguous property or the public, or by operations in the construction of any private, public or quasi-public project. Licensee agrees to use and occupy the License Areas, and to use such other portions of the Center as Licensee is herein given the right to use, at Licensee's own risk, and Licensee hereby assumes the full risk and responsibility for loss, destruction or damage occurring to the personal property of Licensee in the License Areas. The provisions of this Section 12 shall survive any termination or expiration of this Agreement.

13. **Center Security**. Licensor may provide security for the common area of the Center as Licensor shall determine from time to time in its sole discretion. Licensee acknowledges that any security service provided by Licensor shall be at such intervals and with such manpower as Licensor may determine in its sole discretion. Licensee shall at all times comply, and shall cause its employees, representatives and invitees to comply, with the directions of such Center security with respect to the use of the License Areas. Licensee further acknowledges that any such security services are intended to be deterrent in nature and Licensor does not undertake to insure that damage to persons or property will

thereby be prevented upon the License Areas or the Center. Licensee acknowledges that this Agreement and Licensee's and Licensor's rights and obligations hereunder do not impose upon Licensor a duty to guard against criminal acts of a third party. Licensor shall have no obligation to provide security service to Licensee with respect to the License Areas.

14. **Taxes and Fees**. Any and all taxes, fees, and assessments, including but not limited to, license fees, fees for permits, profits, sales or use taxes, transaction privilege license taxes, personal property taxes, or any other taxes which may be levied or assessed on the assets, business or capital of Licensee or on Licensee's income or sales therefrom by any duly constituted government authority shall be borne and paid for entirely by Licensee. Licensee shall indemnify, defend and hold harmless the Licensor Parties for any and all claims, losses, liabilities, damages, amounts, penalties, costs and expenses arising or resulting from Licensee's failure to timely pay any amounts required to be paid by Licensee under this Section 14. The provisions of this Section 14 shall survive any termination or expiration of this Agreement.

15. **Assignment**. It is expressly agreed that Licensee shall not assign or sublease its rights or delegate its duties under this Agreement. Any assignment of rights, sublease or delegation of duties by Licensee without the prior written consent of Licensor shall be void and shall, at Licensor's option, result in the immediate termination of this Agreement.

16. **Removal of Property**. Upon the expiration of each License day (for activities outside of the Gallery Licensed Area) or the License Term, as applicable, Licensee shall quietly and peaceably surrender the License Areas and shall remove all other equipment and other things placed by Licensee on the License Areas hereunder, and if Licensee shall fail to do so, Licensor shall have the right to make such removal at Licensee's expense, and Licensor may dispose of said property in any manner and retain any and all proceeds arising out of such disposition.

17. **Default**. Each of the following shall constitute a default by Licensee hereunder: the failure by Licensee to observe or perform any covenant, obligation or condition required to be performed or observed by Licensee hereunder and the continuation of such failure for a period of two (2) days after notice thereof from Licensor. In the event of any such default by Licensee, Licensor shall have the right to terminate this Agreement, to recover immediate possession of the License Areas, and to remove all personal property of Licensee from the License Areas at Licensee's cost and expense. In addition, in the event of any default by Licensee hereunder, Licensor shall be entitled to recover all damages permitted by law (including, without limitation, attorneys' fees, costs and expenses) and to enforce all remedies available to Licensor at law or in equity. All rights, powers and remedies of Licensor shall be cumulative and the exercise of one or more of its rights or remedies shall not impair Licensor's right to exercise any other right or remedy, either concurrently or at any later time.

18. **Utilities**. Licensor shall have no obligation to make available to Licensee electricity or other utilities in connection with Licensee's use of the License Area.

19. **Waiver or Consent Limitation**. No term, covenant or condition of this Agreement shall be deemed to have been waived by Licensor or Licensee unless such waiver is in writing and signed by the party to be charged with the waiver. A waiver of any given breach or default shall not be a waiver of any other breach or default. All consents and approvals under this Agreement must be in writing and signed by the party granting such consent or approval. Consent to or approval of any act by one party requiring the other party's consent or approval shall not be deemed to waive or render unnecessary such other party's consent to or approval of any subsequent similar act.

20. **Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or if any claim, action or cause of action otherwise arises out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

21. **Notices**. All notices, demands, or other writings to be given, made or sent by either party hereto to the other pursuant to this Agreement shall be in writing and shall be deemed to have been fully given, made or sent (i) when actually delivered, if delivered by overnight or other courier or delivery

service which confirms delivery in writing, or (ii) within two (2) business days after deposit in the U.S. Mail, if sent by certified mail, postage prepaid, return receipt requested. Such notices shall be addressed to the parties at the addresses set forth on the signature page hereof. Each party may, from time to time by notice to the other, designate another place for receipt of future notices.

22. **Relationship of the Parties**. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship between Licensor and any other person or entity (including, without limitation, Licensee) or as causing Licensor to be responsible in any way for the debts or obligations of such other person or entity.

23. **Authority**. The persons executing this Agreement on behalf of Licensee hereby covenant and warrant to Licensor that Licensee is a validly existing entity in good standing under the laws of the State of Arizona or is a natural person, and the transaction set forth in this Agreement, the performance of Licensee's obligations hereunder and the execution and delivery of this Agreement by Licensee, in each case, has been duly authorized.

24. **Licensor Liability**. In the event of any transfer of the Center by Licensor or assignment by Licensor of this Agreement, the transferor shall be and is hereby entirely freed and relieved of all liability under any and all covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Center or this Agreement occurring after the consummation of such transfer. Notwithstanding anything to the contrary set forth in this Agreement, it is expressly understood and agreed that any money judgment against Licensor resulting from any default or other claim arising under this Agreement (whether in contract, tort or for breach of any covenant contained in this Agreement) shall be satisfied only out of the rents, issues, profits and other income actually received from the operation of the Center, and no other real, personal or mixed property of Licensor or any of its owners or affiliated entities, wherever situated, shall be subject to levy on any judgment obtained against Licensor and if such amounts are insufficient for the payment of such judgment, Licensee shall not institute any further action, suit, claim or demand, in law or in equity, against Licensor for or on account of such deficiency. Licensee hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Licensor except from the income received from the operation of the Center.

25. **Miscellaneous**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Under this Agreement, if Licensor exercises any right given to it to approve or disapprove, or when any arrangement or term must be satisfactory to Licensor, the decision of Licensor to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall be in the sole and absolute discretion of Licensor. Time is of the essence of this Agreement and of every term, covenant and condition herein. The making, execution and delivery of this Agreement by Licensee has been induced by no representation other than as may be expressly set forth herein. This Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and there are no further or other agreements, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement shall not be construed either for or against Licensor or Licensee, but this Agreement shall be interpreted in accordance with the plain meaning of the language contained in this Agreement, This Agreement may be amended or modified only by a written agreement signed by the respective parties. No oral statement shall in any manner modify or otherwise affect the terms and conditions set forth herein. If two (2) or more persons or entities execute this Agreement as Licensee, then and in such event the word "Licensee" as used in this Agreement shall refer to all such persons or entities, and the liability of such persons or entities for compliance with the performance of all the terms, covenants and conditions of this Agreement shall be joint and several, and notice given to one of them shall be deemed notice to all. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona. The parties hereto hereby consent to the jurisdiction of any state or federal court located within Maricopa County, Arizona in any suit, action or proceeding based hereon or arising out of, under or in connection with this Agreement (and further agree not to assert or claim that such venue is inconvenient or otherwise inappropriate or unsuitable) LICENSOR AND LICENSEE EACH WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER LICENSOR OR LICENSEE AGAINST THE

OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE USE OR OCCUPANCY OF THE LICENSE AREAS.

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement on the day and year first above-written.

LICENSEE:

City Of Glendale,
an Arizona municipal corporation

for Richard A. Bowers

By: Richard A. Bowers, Acting City Manager

ATTEST:

City Clerk **(Seal)**

APPROVED AS TO FORM:

By: Michael Bailey, City Attorney

Address for notices:

City Manager's Office
5850 W. Glendale Avenue
Glendale, Arizona 85301

With a copy to:

City Attorney's Office
5850 W. Glendale Avenue
Glendale, Arizona 85301

LICENSOR:

THE NEW WESTGATE LLC,
a Delaware limited liability company

By: SFI Westgate City Center - Glendale LLC
a Delaware limited liability company
Its Manager

By: _____
Name: David Sotolov
Its: Senior Vice President

[NOTICE PROVISION CONTINUED ON FOLLOWING PAGE]

Address for notices:

The New Westgate LLC
c/o *i*Star Financial Inc.
1114 Avenue of the Americas
New York, NY 10036
Attn: Nina Matis

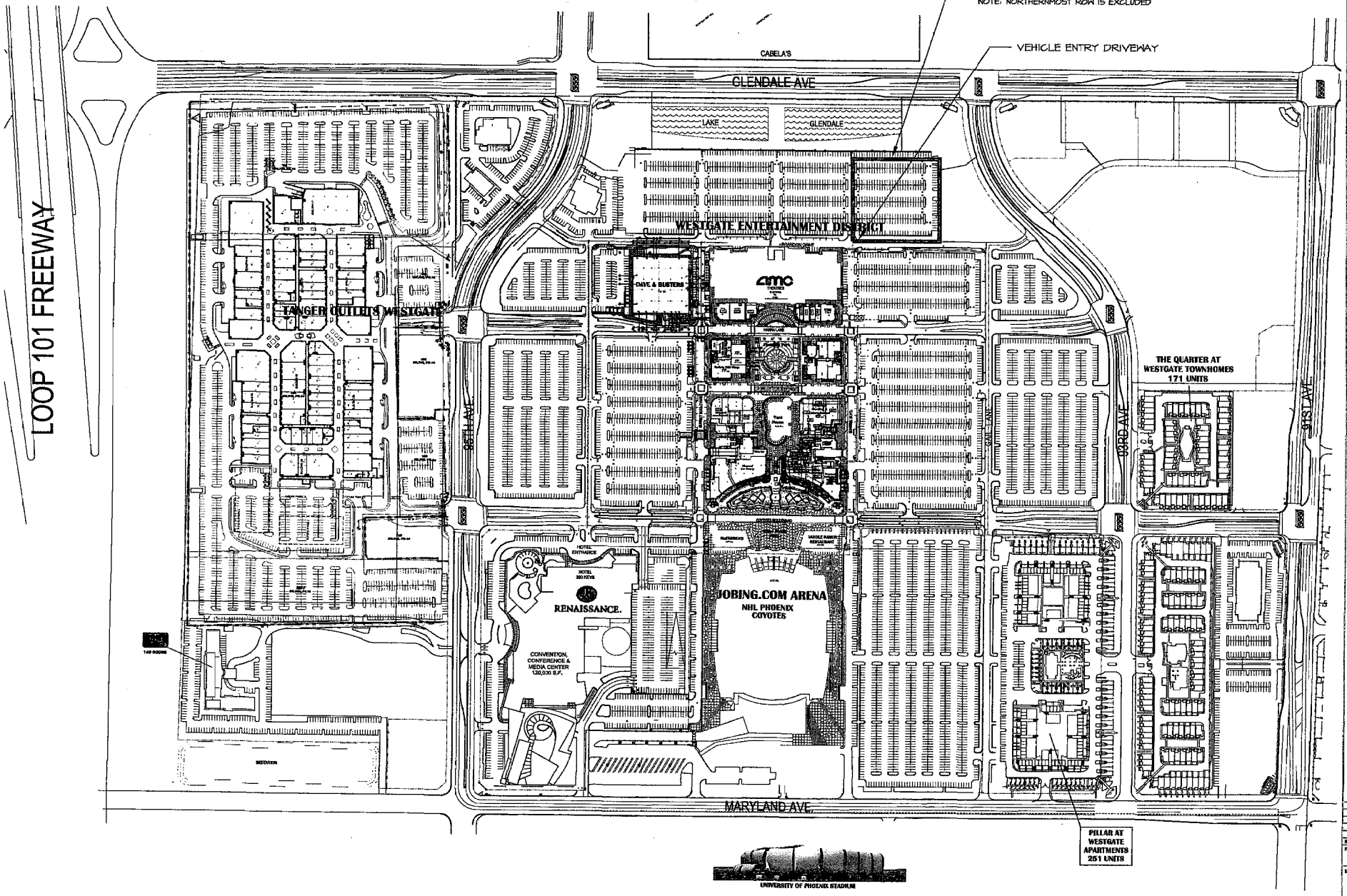
With a copy to:

The New Westgate LLC
c/o *i*Star Financial Inc.
10960 WilshireBlvd., Ste. 1260
Los Angeles, CA 90024
Attn: David Sotolov

Teetsel Properties, LLC
2415 E. Camelback Rd., Ste. 700
Phoenix, AZ 85016
Attn: Jeff Teetsel

EXHIBIT A

Site Plan Showing 259 Spaces in Portion of Lot 1



FIRST LEVEL
LEASE PLAN (07.23.15) SCALE: N.T.S.

* Existing Development Plans – subject to change

THE NEW WESTGATE

ARCHITECT/SPACE PLANNING

evolutiondesign

WESTGATE ENTERTAINMENT DISTRICT

NO.	REVISE		DATE
FILE	DRAWN	CHECKED	ISSUED

Sheet Title

MASTER SITE PLAN

Scale: NONE

FIRST LEVEL

Sheet Number LP-1F

EXHIBIT B
Insurance Requirements

Licensee shall maintain, at its sole expense, the following types of insurance coverage or programs of self-insurance coverage as required by statute:

1. Workers' Compensation Insurance as required by law.

2. Commercial General liability Insurance or statutory self-insurance as authorized for Arizona municipalities against any and all damages and liability, including attorneys' fees on account of or arising out of injuries to or the death of any person or damages to the property, however occasioned in, on or about the License Area (with the Licensor's insurance to cover the Center) with at least a single combined liability and property damage limit of One Million and No/100 Dollars ($1,000,000.00), which policy maintained by Licensee shall name Licensor as an additional insured.

Each policy shall (a) be issued by insurance companies licensed to do business in the State of Arizona, and acceptable to Licensor, (b) name the parties listed below and their respective affiliates, officers, directors, employees, agents and assigns as additional insured's, (c) be primary and noncontributing with respect to any coverage that Licensor may carry and the Certificate of Insurance must contain the following statement (by attachment, if necessary): 'This insurance shall be primary and non-contributing with respect to any coverage that Licensor may carry for losses arising out of the Named Insured's operations.", (d) provide that it shall not be canceled or materially changed without thirty (30) days prior written notice to the other party, and (e) be endorsed to provide that Licensee's and Licensor's underwriters and insurance companies shall not have any right of subrogation against the other party. An original copy of the insurance certificate shall be given to Licensor prior to the commencement of the License Term. The obligations contained in this Exhibit are separate and distinct from all other obligations set forth in this Agreement, and are in no way intended to merely support Licensee's duty to indemnify set forth in this Agreement.

Additional Insured Parties:

1) The New Westgate LLC
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040

2) iStar Financial Inc., and its subsidiaries, successors & assigns
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040

3) Teetsel Properties, LLC
2415 East Camelback Road
Suite 700
Phoenix, Arizona
85016

4) Vestar Properties, Inc.
2425 East Camelback Road
Suite 750
Phoenix, Arizona
85016

5) SFI Westgate City Center – Glendale LLC
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040

6) CCD Equity Partners, LLC
c/o Solus Alternative Asset Management LP (Attn: Francis Blair)
410 Park Avenue
New York, NY 10022