

**AGREEMENT FOR THE  
REPLACEMENT OF TEMPORARY PARKING**

THIS AGREEMENT FOR THE REPLACEMENT OF TEMPORARY PARKING (this "**Agreement**") is made and entered into effective as of July 1, 2008, by and between the CITY OF GLENDALE, an Arizona municipal corporation (the "**City**"), COYOTE CENTER DEVELOPMENT, LLC, a Delaware limited liability company ("**CCD**"), COYOTES HOCKEY, LLC, a Delaware limited liability company (the "**Team**"), ARENA MANAGEMENT GROUP, LLC, a Delaware limited liability company ("**Arena Manager**"), and GLENDALE GARAGE LLC, an Arizona limited liability company ("**Garage Developer**").

**RECITALS:**

A. The City and CCD are parties to that certain Mixed-Use Development Agreement (the "**MUDA**") dated as of November 29, 2001, and recorded in the Official Records of the County Recorder of Maricopa County, Arizona as Instrument No. 2001-1155422, originally by and among the City, CCD and Glendale-101 Development, LLC, a Delaware limited liability company ("**101**"). CCD has, pursuant to an Assignment and Assumption Agreement dated as of September 26, 2006, succeeded to the duties, rights, obligations and interest of 101 under the MUDA.

B. The MUDA provides, among other things, for the development by CCD (in its capacity as an original party to the MUDA and in its capacity as successor to 101 for purposes of the MUDA) of both the "**Entertainment Project**" and the "**Retail/Residential Project**", each as defined in the MUDA. The Entertainment Project and Retail/Residential Project are collectively referred to in this Agreement as the "**Westgate Project**" or "**Westgate**" and are on Lots 1A, 1B, 2A, 2B, 2C, 3A, 3B, 3C, 5A, 5B, 5C, 5D, 5E, 5F, 6A, 6B-1, 6B-2, 11, 12A-1, 12B, 12C, 12D, 12E, 12F-2, 12G, 12H and Parcel B of Westgate, according to the plat thereof (the "**Westgate Final Plat**") recorded on May 2, 2005 in the Official Records of the Maricopa County Arizona Recorder in Book 745, at Page 14 and as amended by minor land divisions (in this Agreement, all references to "**Lot**" or "**Lots**" shall be to the corresponding Lot or Lots shown on the Westgate Final Plat). Westgate is adjacent to the City-owned arena (the "**Arena**" as defined in the MUDA) that is now known as the Jobing.com Arena. The Team and the Arena Manager have the right to use and occupy the Arena pursuant to an Arena Management, Use and Lease Agreement dated as of November 29, 2001 (the "**Arena Lease**").

C. The MUDA further provides for the City to own certain Lots in the vicinity of the Arena and the Westgate Project that have been improved for and are being used for parking for the Arena (being the "**Parking Land**" as defined in the MUDA). The Parking Land as it exists on the date of this Agreement includes Lots 8, 13, 14B and 15 of the Westgate Final Plat.

D. CCD is obligated to provide 5,500 parking spaces on the Parking Land. These parking spaces (whether surface spaces or spaces in parking structures) and their associated vehicle and pedestrian access improvements (as existing from time to time) are defined in the MUDA as the "**Parking Improvements**". Under the MUDA all Parking Improvements are to be owned by the City and have been set aside for use by the Arena with provision for "**Cross**

**Easements**" (as defined in the MUDA) for shared use and cross access for the benefit of the Lots within the Entertainment Project and the Lots within the Retail/Residential Project.

E. Section 4.6 of the MUDA provides for, among other things, the conveyance by the City to CCD, at the request of CCD and under the circumstances described in such Section 4.6, of certain portions of the Parking Land for development by CCD as part of the Westgate Project. Such Section 4.6 provides that, as a condition to any such conveyance, CCD must have arranged for and provide to the City permanent replacement parking (in the Entertainment Project and satisfying the replacement parking requirements set forth in such Section 4.6).

F. On November 29, 2005, the City and CCD (and others) entered into that certain Real Property Purchase Agreement (the "**Purchase Agreement**") pursuant to which, among other things, CCD agreed to convey (and subsequently did convey) to the City part of Lot 16 of Westgate ("**Part of Lot 16**"), as described therein, for the purpose of enabling the City to combine Part of Lot 16 with Lot 10 of Westgate, which was then owned by the City, for the development by the City and a hotel developer of a hotel, conference center, media facility and parking facility (the "**Hotel Project**").

G. At the time of the execution of the Purchase Agreement, Lots 7 and 14A were part of the Parking Land, were used for Arena parking purposes, and contained an aggregate of 1,440 parking spaces (the "**Lots 7 and 14A Parking Spaces**").

H. In connection with the closing of the transactions contemplated by the Purchase Agreement, and in order to provide for temporary and permanent replacement Arena parking for the Lots 7 and 14A Parking Spaces, the City and CCD (and others) entered into that certain Lots 7 and 14A Temporary Parking License Agreement (the "**Temporary Parking License**") dated as of November 29, 2005. By virtue of the Temporary Parking License, the City allowed the development of Lots 7 and 14A without CCD providing permanent replacement parking prior to development of these lots as required by the MUDA.

I. The Temporary Parking License will expire on November 29, 2008 and requires CCD to provide, and transfer to the City title to, 1,440 permanent replacement parking spaces in accordance with the MUDA by this expiry date. CCD has requested that the City, the Team, and Arena Manager enter into this Agreement as an alternative to providing the permanent replacement parking spaces as required by the Temporary Parking License.

J. The parties believe that the desirable manner by which CCD can satisfy its remaining obligations under the Temporary Parking License (specifically including CCD's obligations under Section 7 thereof to provide the City with 1,440 permanent replacement parking spaces but specifically excluding CCD's indemnification obligations under the Temporary Parking License) is to contribute to the construction of a permanent multi-story parking structure on Lot 8 of Westgate (the "**New Parking Facility**") containing not less than (i) 1,440 City owned permanent parking spaces, plus (ii) the number of Lot 8 surface spaces displaced by the structure (items (i) and (ii) above being collectively the "**Minimum Space Count**"). Therefore, the parties desire to provide: (1) for the deposit by CCD of \$20,000,000 into the Parking Disbursement Account (as defined below) to be applied towards construction of the New Parking Facility (the "**CCD Parking Payment**"), as described in this Agreement; (2)

for the deposit by CCD of an additional \$5,000,000 (the "**Parking Reserve Payment**") into the Parking Disbursement Reserve Account (as defined below) to be applied towards Cost Shortfalls (as defined below) or Cost Overruns (as defined below) and (3) that the CCD Parking Payment and the Parking Reserve Payment, when made, shall be in full satisfaction of any and all obligations of CCD under the Temporary Parking License, except that CCD's indemnification obligations under the Temporary Parking License shall survive.

K. The Team and Arena Manager believe that this Agreement and the construction of the New Parking Facility are also in the best interests of Arena operations. The Garage Developer is controlled, directly or indirectly, by Jerry Moyes and has been formed solely for the purpose of performing the obligations and exercising the rights and remedies of the Garage Developer under this Agreement, including, without limitation, if it has made an Election or accepted a Consensual Delegation (as defined below) with respect to the completion of the design and construction of the New Parking Facility.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the covenants, agreements and obligations contained in this Agreement, the parties agree as follows:

**1. New Parking Facility.** The City has determined that it is in its best interests to expedite the design and construction of the New Parking Facility. The New Parking Facility will be located on Lot 8 and contain at least the Minimum Space Count and, unless consented to by the Team and Arena Manager, not more than the Flex Count (as defined below). The parties expect that the New Parking Facility may (i) incorporate speed ramps to facilitate rapid loading and unloading typical of modern arena parking facilities elsewhere in the United States and (ii) be designed in a way to accommodate future expansion at a contiguous site without major reconstruction of the phase I component. The New Parking Facility will be owned by the City and all parking spaces (from time to time situated therein and elsewhere on Lot 8 if not in the New Parking Facility) shall be treated for all purposes under the MUDA and the Arena Lease as Parking Improvements situated on Parking Land and, except as expressly provided below, shall be subject to all of the rights and obligations granted in favor and binding upon each of the City, the Team, Arena Manager and CCD (and their respective successors and assigns) under the MUDA and the Arena Lease with respect to Parking Land and Parking Improvements; provided, however, that as additional consideration for the City, the Team and Arena Manager entering into this Agreement, CCD hereby forever relinquishes and waives any rights under Section 4.6 of the MUDA with respect to Lot 8 and the New Parking Facility (and any additions thereto and replacements thereof) including the right to cause any portion thereof to be conveyed to CCD for development as part of the Entertainment Project. For their part, and as additional consideration for CCD entering into this Agreement and for contributing the CCD Parking Payment and the Parking Reserve Payment towards the design and construction of the New Parking Facility, the City, Team, Arena Manager and Garage Developer shall, upon the timely deposit of the CCD Parking Payment into the Parking Disbursement Account, and the timely deposit of the Parking Reserve Payment into the Parking Disbursement Reserve Account, forever release CCD from any and all obligations associated in any way with the design, construction, financing, operation and maintenance of the New Parking Facility (or any additions thereto or replacements thereof), including, without limitation any further obligation to fund any of the costs associated with the

design or construction of the New Parking Facility; provided, however that the forgoing shall not operate to release CCD from its obligations under this Agreement.

2. **Release and Settlement of Certain CCD Parking Obligations.** Upon CCD's timely deposit of the CCD Parking Payment into the Parking Disbursement Account and the timely deposit of the Parking Reserve Payment into the Parking Disbursement Reserve Account on or before the Closing Date (as defined below), CCD shall be deemed to have satisfied in full all of its obligations under the Temporary Parking License, except that the indemnification provision shall survive this satisfaction, and CCD shall, without further action by the City or any other person or entity, be released from and deemed to have satisfied all of its obligations to provide temporary and permanent replacement parking (being "**Replacement Parking Improvements**") as defined in the MUDA) under the Purchase Agreement, the Temporary Parking License and the MUDA with respect to all of the 1,440 parking spaces that were formerly on Lots 7 and 14A (without regard to the number of parking spaces constructed or to be constructed in the New Parking Facility); provided, however, that CCD shall be obligated to provide temporary replacement parking during the construction of the New Parking Facility as provided in this Agreement. Notwithstanding the foregoing, if the total number of parking spaces constructed in the New Parking Facility, less the number of surface parking spaces on Lot 8 displaced by such New Parking Facility (the "**Net New Parking Spaces**"), exceeds 1,440 spaces, then CCD shall be given credit for the total number of Net New Parking Spaces and shall be deemed to have satisfied its obligations to provide temporary and permanent Replacement Parking Improvements under the Purchase Agreement, the Temporary Parking License and the MUDA with respect to such larger number of Net New Parking Spaces. Such release and satisfaction shall include (without limitation) the release and satisfaction of any and all obligations of CCD to (i) provide temporary replacement parking pursuant to the Temporary Parking License; (ii) provide permanent Replacement Parking Improvements under Section 7 of the Temporary Parking License, and (iii) restore the "License Area" under Section 9 of the Temporary Parking License. Nothing in this Agreement shall affect CCD's obligation under the MUDA to provide parking spaces exclusively for Arena use, net of the number of spaces for which CCD receives credit pursuant to this Section 2. Nothing in this Agreement shall be construed to reduce, limit or modify any obligation of CCD to the Team or Arena Manager to provide parking spaces, or any obligation of CCD to the Team or Arena Manager relating to parking spaces (including the location, use and time of control thereof), under the agreements to which they are a party and the City is not.

3. **New Parking Facility Construction & Temporary Arena Parking.**

(a) **Generally.** Until the earlier of October 30, 2010 (the "**Outside Completion Date**"), or such time as the New Parking Facility construction has been completed and the same is open for use as parking for all "Hockey Events" and other "Events" (each as defined in the Arena Lease and for purposes of this Agreement collectively "**Arena Events**"), and except as provided in Section 3(b), CCD shall, unless otherwise agreed by the City, the Team and Arena Manager in writing, provide 1,440 temporary parking spaces (the "**1,440 Parking Spaces**") for Arena use consistent with the MUDA and the Arena Lease, and may from time-to-time relocate the 1,440 Parking Spaces in whole or in part (so long as the 1,440 Parking Spaces are continuously made available during such period, and so long as partial relocation provides no less than 500 contiguous spaces in each of the Lots selected by CCD for that

purpose), all at no charge to the City, the Team or Arena Manager and on all or portions of surface parking areas owned by CCD or any of CCD's wholly owned subsidiaries. Notwithstanding anything in this Agreement to the contrary, if Garage Manager shall make an Election under Section 3(c) or accept a Consensual Delegation, then the Outside Completion Date shall automatically be extended until the earlier to occur of (i) October 30, 2011 and (ii) the date the New Parking Facility has been completed and the same is open for use as parking for all Arena Events. Until the Outside Completion Date, the 1,440 Parking Spaces are intended to replace the 1,440 temporary parking spaces previously made available to the City and the Arena under the Temporary Parking License.

All operational, configuration, lighting, maintenance, security, insurance, indemnification and other similar requirements of CCD under the Temporary Parking License shall apply to the 1,440 Parking Spaces, and the 1,440 Parking Spaces shall be provided and such requirements shall be complied with at the sole cost of CCD. The 1,440 Parking Spaces (i) shall be paved as temporary spaces, (ii) shall be maintained at all times in good temporary condition and in a manner comparable to the parking space improvements made by the City on Lot 1-A and Lot 12 F-2 of Westgate as originally constructed (e.g. 1,440 Parking Spaces to receive a blacktop or other appropriate surface with a 3 year life not less than once every 3 years) and (iii) shall have paved access to and from a public roadway as approved by the City. The 1,440 Parking Spaces shall be reserved solely for the use by the Arena during Arena Event Times and shall not be put into any other use by CCD during Arena Event Times without the express prior written approval of the Arena Manager and the City. "**Arena Event Times**" means a reasonable period of time before, during and after all Arena Events.

**(b) Construction & Completion of New Parking Facility.** The CCD Parking Payment shall be used by the City (or upon an Election or Consensual Delegation by Garage Developer) solely for all costs, including costs of design, permitting and construction, associated with the completion of the New Parking Facility ("**Construction Costs**"). The Parking Reserve Payment shall be used by the City (or upon an Election (as defined below) Garage Developer) solely to cover Cost Shortfalls or Cost Overruns. The parties intend that the New Parking Facility be designed, constructed and open for all Arena Events at the earliest possible commercially reasonable date but not later than the Outside Completion Date. The City agrees to apply the CCD Parking Payment solely towards the Construction Costs of the New Parking Facility, and to make commercially reasonable efforts to cause the New Parking Facility to be designed and constructed, open and available for parking for all Arena Events no later than the Outside Completion Date.

**(c) Consultation; Milestones.** The City will consult with and seek input from the Team and Arena Manager regarding the design of the New Parking Facility, keep the Team and Arena Manager reasonably apprised regarding all the progress being made on all aspects of architect and contractor selection and the design/construction critical path and schedules, and the status of New Parking Facility budgets and expenditures from the Parking Disbursement Account and Parking Disbursement Reserve Account all to the end that the design and construction of the New Parking Facility is coordinated and compatible with Arena operations to the greatest extent possible. The City, the Team and the Arena Manager shall cause their respective representatives to cooperate with one another to establish regular meetings and working sessions to accomplish each of the above objectives. Copies of all design and

construction contracts for the New Parking Facility, and any amendments or material change orders thereto, shall be provided to all parties hereto promptly after execution and delivery of each. Notwithstanding the foregoing, however, the parties acknowledge and agree that all contractor selection, design and construction decisions are in the City's sole discretion, until such time as an Election by or Consensual Delegation to the Garage Developer has occurred.

To accomplish completion and the Arena's utilization of the New Parking Facility by the Outside Completion Date, the City agrees to use its commercially reasonable efforts to achieve the following New Parking Facility milestones (each being a "Milestone" and collectively the "Milestones"):

- Preliminary design completion no later than February 28, 2009;
- Final design completion no later than August 30, 2009;
- Contractor selection no later than October 30, 2009;
- Commencement of construction no later than December 31, 2009 (as evidenced by the issuance of a notice to proceed to the contractor under the Garage Construction Contract (as defined below)); and
- Diligent pursuit of construction completion in accordance with the critical path set forth in the Garage Construction Contract, subject to customary force majeure events outside of the City's control.

The City shall notify the parties hereto in writing promptly upon completion of each particular Milestone; however, the failure to notify shall not be considered a breach of this Agreement. The City reserves the right, but has no obligation (except following an Election), to elect to delegate its responsibility for the design and construction of the New Parking Facility to a third party, including the Garage Developer. Should the City make such election then the City similarly reserves the right to require such third party to enter into customary development and other agreements (collectively, a "Development Agreement") on terms and conditions acceptable to the City and such third party. Any such delegation or election by the City shall be subject to the prior written consent of the third party delegate or assignee (in the context of the Garage Developer, a "Consensual Delegation"). Irrespective of whether the City delegates the responsibility for the design and construction of the New Parking Facility to a third party, construction of the New Parking Facility will be based upon a design-build or construction-manager-at-risk contract (the "Garage Construction Contract") in compliance with Title 34 of the Arizona Revised Statutes. Each of the material contracts pertaining to the design and construction of the New Parking Facility shall contain clauses that allow assignments thereof to another third party (including the Garage Developer) should the City delegate its responsibility for the design and construction of the New Parking Facility to such party with such party's consent or should the Garage Developer make an Election (as defined below). Upon any such assignment, the other third party or the Garage Developer shall be deemed to have assumed all obligations of the City under all such contracts to the extent that such obligations first mature and are required to be performed after the date of assignment. The Garage Developer's monetary liability under any such contracts shall be limited to its rights and interest in and to the amounts

remaining from time to time in the Parking Disbursement Account and the Parking Disbursement Reserve Account as set forth in this Agreement, and the City shall cause each of the contracts relating to the design and construction of the New Parking Facility to contain an express provision to such effect. The Garage Developer shall have no personal liability to the parties to this Agreement or the Collateral Agent (as defined below) in the event of any Election or Consensual Delegation so long as Garage Developer applies the funds remaining in the Parking Disbursement Account and, subject to limitations on the use of such funds as set forth in this Agreement, the Parking Disbursement Reserve Account, solely towards the payment of the Construction Costs, Cost Overruns and Cost Shortfalls; provided, however, that the Garage Developer will have a fiduciary duty to the City to apply the money in the Parking Disbursement Account and the Parking Disbursement Reserve Account in accordance with this Agreement and a duty to provide an accounting to the City for the Parking Disbursement Account and the Parking Disbursement Reserve Account. The Garage Developer shall have no obligation to fund any shortfalls in the Parking Disbursement Account or Parking Disbursement Reserve Account or otherwise have any personal liability for any Construction Costs, Cost Overruns and Cost Shortfalls.

The parties acknowledge and agree that the Milestones are targets only and that the City shall not be liable to any other party if it fails to achieve any Milestone. Should the City fail to achieve any particular Milestone on or before the outside date therefor set forth above, then within 30 days following the Garage Developer's notice of intent to do so, the Garage Developer shall have the right, but not the obligation, to elect to assume the material contracts as described above and control of the Parking Disbursement Account and the Parking Disbursement Reserve Account subject to the limitations on the assumption of liability set forth above (an "**Election**") and the Garage Developer, acting as the Construction Administrator (as defined below), shall cause all of such funds (and any interest earned thereon) to be used to complete the design, permitting and construction of the New Parking Facility as expeditiously as possible, consistent with the terms and conditions of all design and construction contracts applicable thereto, and for no other purpose. The failure of the Garage Developer to make a timely Election with respect to a particular Milestone listed above shall constitute a waiver of the right to do so with respect to that Milestone, but not subsequent Milestones. The Garage Developer's right to make the Election shall be the sole and exclusive remedy of all of the other parties against the City for the City's failure to achieve any such Milestone.

**(d) Insurance.** So long as the 1,440 Parking Spaces are required to be provided to the City under Section 3(a), CCD shall, at its sole cost and expense, obtain and maintain (or cause to be obtained and maintained) in full force and effect with respect to such temporary parking spaces, the respective liability insurance coverages for the use and operation of the 1,440 Parking Spaces as is required by (i) the MUDA; (ii) the Arena Lease; and (iii) the "Safety and Security Agreement" as defined in the MUDA, in each case with respect to the Parking Land and any Parking Improvements. The City shall be shown as an additional insured on all such policies and all carriers shall provide to CCD and the City a proper endorsement of the City as an additional insured.

**(e) Use of Parking Disbursement Reserve Account.** CCD has agreed to provide the City (and the Garage Developer in the event of an Election or Consensual Delegation) with an additional source of funding should the Construction Costs of the New

Parking Facility up to the Flex Count (as defined below) exceed the amount of the CCD Parking Payment. CCD is funding the Parking Reserve Payment into the Parking Disbursement Reserve Account solely (i) to provide additional funding above the \$20,000,000 amount originally deposited in the Parking Disbursement Account towards payment of the Construction Costs up to (but not in excess of) the Minimum Space Count, plus up to sixty (60) additional parking spaces (the Minimum Space Count, plus up to the sixty (60) additional parking spaces being the "**Flex Count**") (a "**Cost Shortfall**"), and (ii) to provide additional funding for potential Cost Overruns (as defined below) in connection with the New Parking Facility up to (but not in excess of) the Flex Count if there are insufficient funds in the Parking Disbursement Account to cover the remaining unpaid Construction Costs. The funds in the Parking Disbursement Reserve Account shall not be used to construct any parking spaces in excess of the Flex Count or for Cost Overruns associated with such excess parking spaces. Disbursements from the Parking Disbursement Reserve Account shall be governed by the provisions of Section 6. The intent of the Flex Count is to provide flexibility to the City and the Garage Developer with respect to the design of the New Parking Facility while at the same time providing CCD a cap on the use of funds from the Parking Disbursement Reserve Account.

(f) **Lien on Parking Disbursement Reserve Account.** Credit Suisse, Cayman Islands Branch, in its capacity as collateral agent for certain first lien, second lien and third lien lenders (in such capacity, "**Collateral Agent**") shall be entitled to a first priority, second priority and third priority lien, as applicable (the "**Reserve Account Liens**") on the Parking Disbursement Reserve Account and all funds from time to time existing in the Parking Disbursement Reserve Account to secure the obligations of CCD and its affiliates under certain first, second and third lien senior secured credit facilities. In conjunction with the imposition of the Reserve Account Liens, CCD shall cause the Collateral Agent to execute and deliver to the City and the Garage Developer a subordination agreement, in form acceptable to the City and the Garage Developer in their reasonable discretion (the "**Subordination Agreement**"), pursuant to which Collateral Agent shall agree to fully subject and subordinate the Reserve Account Liens to the rights of the City and Garage Developer (in the event of an Election or Consensual Delegation) to utilize the funds from time to time existing in the Parking Disbursement Reserve Account in accordance with this Agreement. The execution and delivery of the Subordination Agreement shall be made concurrently with the deposit of the Parking Reserve Payment into the Parking Disbursement Reserve Account. Notwithstanding the above, so long as there remain potential funding obligations against the funds in the Parking Disbursement Reserve Account to cover a Cost Shortfall or Cost Overruns, such funds shall be set aside solely to provide funding for those potential obligations and may not be appropriated by the Collateral Agent pursuant to the rights and remedies accorded it under the Reserve Account Liens. The foregoing shall not operate to preclude the Collateral Agent from taking any other steps to enforce and realize on the Reserve Account Liens so long as such actions do not result in an appropriation of such funds or impede access to or use of such funds by the City or the Garage Developer (in the event of an Election or Consensual Delegation) as described in this Agreement.

(g) **CCD Right of Subrogation.** If any of the funds are released from the Parking Disbursement Reserve Account and used to pay any Cost Shortfalls or Cost Overruns that are a direct result of any breach of contract, errors or negligence of any third party contractor, architect or subcontractor performing work on the New Parking Facility, then CCD shall be subrogated on a pari passu basis with the applicable contracting party to all of the rights,

claims, liens, titles, and interests held by, or in favor of, the holder of such rights, claims, liens, titles, and interests against such contractor, architect or subcontractor and are not waived but rather are continued in full force and effect in favor of CCD.

**(h) Limitation on City Obligations.** Notwithstanding any other provisions of this Agreement, the City shall have no obligation to expend any of its own funds on the New Parking Facility and shall have no obligation to expend funds for such purposes other than those funds available to it in the Parking Disbursement Account, and, as applicable, the Parking Disbursement Reserve Account.

**4. Certain Lots in the City Parking Land Remain Subject to Section 4.6 of MUDA.** Nothing in this Agreement is intended, or shall be construed, to alter the rights or obligations of the parties with respect to Lots 13, 14B and/or 15 of Westgate as set forth in the MUDA, including the provisions of Section 4.6 of the MUDA, and such Lots shall remain subject to the rights and obligations of the MUDA notwithstanding any provision of this Agreement.

**5. Council Approval; Remittance of the CCD Parking Payment into Parking Disbursement Account; and Conditions Precedent.** This Agreement shall be binding upon the parties and irrevocable only upon execution by all parties, final approval by the City Council, the deposit of the CCD Parking Payment into the Parking Disbursement Account, the deposit of the Parking Reserve Payment into the Parking Disbursement Reserve Account, and the execution and delivery of the Subordination Agreement. This Agreement shall be void if CCD fails to deposit the CCD Parking Payment and the Parking Reserve Payment (in immediately available funds) into such accounts within ten (10) business days following the date of final approval of this Agreement by the City Council (the "**Closing Date**"). The parties acknowledge and agree that City Council approval of this Agreement is within the sole and absolute discretion of the City Council. If this Agreement is not approved by the City Council or becomes void as provided above, all provisions of the Temporary Parking License shall remain in full force and effect, and nothing in this Agreement shall be deemed to be a waiver or relinquishment of any duty or obligation under, or any claim or position of either the City or CCD with respect to any claim, issue, matter or interpretation under, of or with respect to, the Temporary Parking License. The intent of the parties is that in such event: (a) the negotiation and execution of this Agreement shall not affect the respective rights, duties and obligations of each of the City, CCD or any other party with respect to the Temporary Parking License as they existed immediately prior to the execution of this Agreement and (b) this Agreement shall be null and void and of no force or effect and the negotiation and execution of this Agreement shall not affect the respective rights, duties and obligations of the City, CCD, the Team, the Arena Manager or any other party with respect to any agreements being amended, modified or released as they existed immediately prior to the execution of this Agreement.

**6. Parking Disbursement Account; Disbursement Agent; Progress Payments.** In conjunction with the execution of this Agreement, the City shall enter into a construction disbursement agreement ("**Construction Disbursement Agreement**") with First American Title Insurance Company or other disbursing agent reasonably acceptable to the City and the Garage Developer ("**Disbursement Agent**") pursuant to which Disbursement Agent shall establish (a) an interest bearing parking disbursement account (the "**Parking Disbursement Account**") into

which the CCD Parking Payment shall be deposited and (b) an interest bearing parking disbursement reserve account (the "**Parking Disbursement Reserve Account**") into which the Parking Reserve Payment shall be deposited. The Construction Disbursement Agreement shall be in a form consistent with the terms of this Agreement and reasonably approved by the City, CCD and the Garage Developer. Among other things, the Construction Disbursement Agreement shall provide that Disbursement Agent shall administer the Parking Disbursement Account and the Parking Disbursement Reserve Account in accordance with the provisions set forth in this Agreement and the Parking Disbursement Reserve Account shall only be used to fund Cost Shortfalls or Cost Overruns. Under the Construction Disbursement Agreement, the Disbursement Agent shall be authorized and directed to pay the Construction Costs, Cost Overruns and Cost Shortfalls pursuant to written draw requests which must first be approved by the construction administrator ("**Construction Administrator**"). Construction Administrator will be the City's designated project manager ("**Project Manager**") or, in the event the Garage Developer makes an Election or a Consensual Delegation is made to the Garage Developer, the Garage Developer or its project manager. Any interest accrued and paid on the Parking Disbursement Account or the Parking Disbursement Reserve Account shall be considered as funds of those accounts and shall be handled as are all other funds of those accounts. Following an Election by the Garage Developer, the City shall have no right to pre-approve disbursements from the Parking Disbursement Account or the Parking Disbursement Reserve Account; provided, however, that: (i) the Garage Developer shall comply with its obligations under this Agreement and the City may make claims against the Garage Developer for any breach of such obligations; and (ii) the City shall retain the right to direct that the balance of funds remaining in the Parking Disbursement Account be transferred into the account held for the Arena Reserve and Replacement funds in accordance with Section 6(e). Upon funding the CCD Parking Payment into the Parking Disbursement Account, CCD shall have no right, title or interest in and to the CCD Parking Payment, the Parking Disbursement Account or the funds therein or any interest earned thereon, and none of the same shall be property of CCD, except to the extent funds from the Parking Disbursement Reserve Account are transferred to the Parking Disbursement Account, in which event, CCD shall have the rights set forth in Section 6(e) hereof.

(a) **Processing Draws.** Following the funding of the CCD Parking Payment into the Parking Disbursement Account and the Parking Reserve Payment into the Parking Disbursement Reserve Account, Construction Administrator shall provide Disbursement Agent with the following items:

- All design services agreements for the preliminary and final design of the New Parking Facility whose progress payments are to be funded out of the Parking Disbursement Account (collectively the "**Design Contracts**" and each a "**Design Contract**"). All of the Design Contracts shall be specific in specifying a scope of work, as well as a schedule of payments tied to the completion of that scope of work.
- The Garage Construction Contract, which shall be specific in specifying a scope of work as well as a schedule of payments tied to the completion of that scope of work.

Prior to each disbursement (each a **“Draw”**) from the Parking Disbursement Account, Disbursement Agent must be furnished the following items (each a **“Draw Document”** and collectively the **“Draw Documents”**):

- A Draw request signed by Construction Administrator for the requested disbursement along with written instructions to disburse directly to the party identified in the relevant draw request as being entitled thereto (i.e., the architect, general contractor, or Construction Administrator - if such costs were first funded by Construction Administrator from other sources);
- A certificate from an authorized officer or other representative of the Construction Administrator setting forth the contract (Design Contract or Garage Construction Contract) under which the Draw is being made, the amount paid-to-date under such contract, the amount being requested, and the balance remaining due under such contract after crediting the Draw against the contract account;
- If the Draw request instructs the Disbursement Agent to make a disbursement to Construction Administrator, then a sworn statement from an authorized officer or other representative of Construction Administrator certifying that the design or construction costs represented by the Draw request were previously funded by Construction Administrator from other sources, the date of such funding, the amount thereof and contract (Design Contract or Garage Construction Contract) under which such earlier funding was made; and
- Invoices and lien waivers from each person that has furnished labor or materials to or for the New Parking Facility for which payment is requested in the Draw request. Lien waivers may be conditioned only on payment under the Draw being requested, and each lien waiver shall state the period during which labor and materials were furnished and the amount for which the lienholder's waiver is effective. Although it is contrary to Arizona law for any party to file a lien against public property, waivers will still be requested in substantially the forms required by A.R.S. §33-1008, as amended or superseded.

All of the Draw Documents and draw procedures may be altered to correspond with the final design and construction documents, which shall be consistent with Title 34 of the Arizona Revised Statutes.

Not later than five (5) business days following Disbursement Agent's receipt of all of the Draw Documents relevant to a particular Draw request, Disbursement Agent shall give written notice to Construction Administrator as to the sufficiency of the delivered Draw Documents. If the delivered Draw Documents are satisfactory to Disbursement Agent, then Disbursement Agent shall, contemporaneously with the giving of such notice, disburse directly to the payee or payees identified in the Draw request. If within such five (5) business day period Disbursement Agent determines that one or more of the Draw Documents is not sufficient, then Disbursement Agent will give written notice to Construction Administrator as to the insufficiency of the delivered Draw Documents and the nature of each defect to be corrected. Construction Administrator shall thereupon expeditiously correct each defect and once all defects are corrected, then

Disbursement Agent shall give written notice to Construction Administrator as to the sufficiency of the delivered Draw Documents and contemporaneously with the giving of such notice, disburse directly to the payee or payees identified in the Draw request. The time periods for the draw disbursement procedure may be altered to assure compliance with the Arizona Prompt Payment statute.

Construction Administrator and Disbursement Agent will be required keep and maintain books and records to reflect all of the Draws and their other activities under the Construction Disbursement Agreement and each of the parties to this Agreement shall have access to all of such records at all reasonable times.

Disbursement Agent shall be paid its customary fees from the Parking Disbursement Account (and as applicable the Parking Disbursement Reserve Account) for performing its services under the Construction Disbursement Agreement. All customary fees of the Disbursement Agent shall be deemed a cost of designing and constructing the New Parking Facility. Each of the above provisions shall be incorporated into the Construction Disbursement Agreement in addition to standard protective provisions typically required by the Disbursement Agent in its disbursement contracts.

**(b) Parking Disbursement Reserve Account Definitions.** The following definition is incorporated into this Agreement for purposes of administering the Parking Disbursement Reserve Account:

**“Cost Overruns”** means the costs of designing, permitting and constructing the New Parking Facility up to the Flex Count that are in excess of those which were established or payable under the Design Contracts and Garage Construction Contract due to increased costs of labor or materials, the unavailability of materials, change orders required to accommodate site conditions, building code or other legal requirements, acceleration costs to maintain construction schedules, or construction delays resulting from force majeure events for which neither the Construction Administrator (nor any of its affiliates) are responsible, and any increased cost resulting from a breach of the Garage Construction Contract by the contractor or the breach of any subcontract by any subcontractor. Cost Overruns shall specifically not include elective changes in the scope of work under the Garage Construction Contract (other than as provided above) or any of the costs associated with designing and constructing the New Parking Facility in excess of the Flex Count.

**“Notice Parties”** means the City, the Project Manager, the Garage Developer, the Team, the Arena Manager, CCD, and Disbursement Agent; provided, however, that a party giving an applicable notice or providing copies of documentation need not provide notice or copies of documentation to itself.

**(c) Cost Shortfall Transfers.** If, at any time following the preliminary design phase of the planned New Parking Facility, Construction Administrator determines that a Cost Shortfall exists, then prior to any disbursement from the Parking Disbursement Reserve Account into the Parking Disbursement Account to cover the Cost Shortfall, Construction Administrator shall submit the following items to each of the Notice Parties:

- A draw request for the amount of the Cost Shortfall (“**Cost Shortfall Draw**”) signed by Construction Administrator for the requested disbursement, along with written instructions to Disbursement Agent to transfer the requested disbursement from the Parking Disbursement Reserve Account into the Parking Disbursement Account;
- All customary backup information supporting the Cost Shortfall Draw, which shall include true and correct copies of all documentation prepared and certified by the applicable New Parking Facility architects, contractors, engineers and other design professionals supporting the determination that the cost of designing, permitting and constructing the New Parking Facility to the Flex Count will exceed \$20,000,000; and
- A certificate from Construction Administrator that the aforementioned backup information is, to its actual knowledge, true and complete in all material respects.

(d) **Cost Overrun Transfers.** If Construction Administrator determines that the Cost Overruns of designing, permitting and constructing the New Parking Facility to the Flex Count will exceed the amounts then on deposit in the Parking Disbursement Account and there are funds remaining in the Parking Disbursement Reserve Account, then prior to any disbursement from the Parking Disbursement Reserve Account into the Parking Disbursement Account to cover the Cost Overruns, Construction Administrator shall submit the following items to each of the Notice Parties:

- A draw request for the amount of the Cost Overrun (“**Cost Overrun Draw**”) signed by the Construction Administrator for the requested disbursement along with written instructions to the Disbursement Agent to transfer the requested disbursement from the Parking Disbursement Reserve Account into the Parking Disbursement Account;
- All customary backup information supporting the Cost Overrun Draw, which shall include true and correct copies of all documentation prepared and certified by the applicable New Parking Facility architects, contractors, engineers and other design professionals supporting the determination of the Cost Overrun; and
- A certificate from Construction Administrator that the aforementioned backup information is, to its actual knowledge, true and complete in all material respects.

(e) **Post-Construction Disbursements.** If there remain any excess funds in the Parking Disbursement Account after the final payment has been made for the New Parking Facility construction under the Design Contracts and the Garage Construction Contract, then Disbursement Agent shall transfer all of such excess funds back to the Parking Disbursement Reserve Account up to the aggregate amount of all Cost Shortfall Draws and Cost Overrun Draws funded from the Parking Disbursement Reserve Account and the balance of such excess funds shall be transferred into the account held for the Arena Reserve and Replacement funds and such funds shall be designated for capital improvements or repairs to the New Parking Facility. After giving effect to the foregoing, all funds then remaining in the Parking Disbursement Reserve Account shall then be paid over to CCD as CCD and the Collateral Agent shall jointly direct; provided, however, that if there remains any outstanding dispute between CCD and any other party to this Agreement, or any claims by third parties for

payments due and for which the Parking Disbursement Reserve Account may be used under the terms of this Agreement, no funds shall be disbursed from the Parking Disbursement Reserve Account to CCD until the dispute is fully and finally resolved and all funds are paid in accordance with that resolution.

**7. Arbitration.** Any dispute arising under or otherwise related to this Agreement which involves the City shall be deemed an "Arbitration Dispute" under the MUDA between CCD and the City, and shall be submitted to "Arbitration" under Article 11 of the MUDA, with the parties to such Arbitration being the parties to this Agreement. Any such Arbitration shall be conducted, decided and enforced in accordance with the provisions of Article 11 of the MUDA, modified only to the extent necessary to accommodate the provisions and circumstances of this Agreement (as agreed to by the parties having the dispute or, absent of such agreement, as determined by the arbitrator). All parties to this Agreement hereby consent to this Section 7 and submit to such arbitration process, regardless of whether or not they were parties to the MUDA. Notwithstanding any other provision of this Agreement: (a) CCD shall be liable for any costs to itself, to the City or Garage Developer (acting in its capacity as Construction Administrator) associated with any delay in the construction of the New Parking Facility that results from any dispute that is initiated by CCD which is arbitrated, regardless of whether such costs relate to an increase in the cost of construction or otherwise and regardless of whether such costs are incurred directly by the City or Garage Developer (acting in its capacity as Construction Administrator) or are incurred by the City or Garage Developer (acting in its capacity as Construction Administrator) as a result of a claim against the City or Garage Developer (acting in its capacity as Construction Administrator) by any party to this Agreement or any third party that arises as a result of such dispute initiated by CCD; (b) CCD shall not bring any claim against the City or Garage Developer (acting in its capacity as Construction Administrator) with respect to a particular Cost Shortfall or Cost Overrun unless CCD provides a written objection to each of the Notice Parties within ten (10) days after Construction Administrator has submitted to the Notice Parties the items required by Section 6(c) or 6(d), as applicable; and (c) CCD shall in no event make a claim relating to any Cost Shortfall or Cost Overrun if the New Parking Facility is designed and constructed within the Flex Count and if there have been no elective changes in the scope of work under the Garage Construction Contract (other than those changes contemplated by the first sentence of the definition of "Cost Overruns" in Section 6(b)).

**8. Attorneys' Fees.** In the event of any controversy, claim or dispute between or among the parties arising from or relating to this Agreement, the prevailing party(ies) shall be entitled to recover reasonable costs, expenses and attorneys' fees. For all purposes of this Agreement, the terms "attorneys' fees" or "counsel fees" shall be deemed to include paralegals and legal assistants' fees, and wherever provision is made in this Agreement for the payment of attorneys' or counsel's fees or expenses, such provision shall include, but not be limited to, such fees and expenses incurred in any and all Arbitration, judicial, bankruptcy, reorganization, administrative or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

**9. Amendment; Waiver.** No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties with the same formality as this Agreement. The failure of any party to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or

conditions of this Agreement, or to exercise any election or option contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, and the same shall continue in full force and effect. No waiver by either party of any covenant, agreement, term, provision or condition shall be deemed to have been made unless set forth in writing and signed by the appropriate official or officer of such party.

**10. Severability.** If any section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be held or determined to be invalid or unenforceable, then the remainder of such section, subsection, term or provision, or the application thereof to parties or circumstances other than those to which it is held or determined to be invalid, shall not be affected thereby, and each remaining section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**11. Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the City, the Team, Arena Manager, Garage Developer and CCD and their respective successors and assigns; provided, however, that CCD shall not assign or transfer its rights and obligations under this Agreement in any manner or at any time without the prior written consent of the City, Garage Developer, the Team and Arena Manager, such consent not to be unreasonably withheld, conditioned or delayed, and provided further that if CCD attempts to assign or transfer any or all of its rights or obligations under this Agreement without the City's, Garage Developer's, Team's and Arena Manager's prior written consent as provided above, such attempted assignment or transfer shall be void, shall be a default hereunder, and at the election of such party, shall entitle the City, the Garage Developer, the Team and Arena Manager to all remedies at law or in equity. Nothing in this Agreement shall limit the right of any party, without the consent or approval of any other party hereto, to assign to any lender providing financing to such party, as security for such financing, the rights of such party under this Agreement.

**12. Relationship of Parties.** No partnership or joint venture between the parties is established, or intended to be established, by this Agreement.

**13. Notices.** All notices, demands, consents, approvals, and other communications to be given under this Agreement shall be in writing, and shall be deemed effective upon (i) receipt of hand-delivered or overnight courier service, or (ii) delivery or date of refusal of delivery if sent by U.S. mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the City:           City Manager  
                              City of Glendale  
                              5850 West Glendale Avenue  
                              Glendale, AZ 85301

With copy to:        City Attorney  
                              City of Glendale  
                              5850 West Glendale Avenue

Glendale, AZ 85301

- To CCD: Steven Ellman  
Coyote Center Development, LLC  
c/o The Ellman Companies  
2850 East Camelback Road, Suite 110  
Phoenix, AZ 85016
- With copy to: Robert P. Kaufman  
Executive Vice President, Chief Legal Officer  
Coyote Center Development, LLC  
c/o The Ellman Companies  
2850 East Camelback Road, Suite 110  
Phoenix, AZ 85016
- And to: Tim Wright  
Executive Vice President  
Coyote Center Development, LLC  
c/o The Ellman Companies  
2850 East Camelback Road, Suite 110  
Phoenix, AZ 85016
- To Team: Coyotes Hockey, LLC  
Attn: Jeff Shumway, Chief Executive Officer  
Douglas Moss, President, Chief Operating Officer  
6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305
- With a copy to: Coyotes Hockey, LLC  
Attn: Steve Weinreich, General Counsel  
6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305
- To Arena Manager: Arena Management Group, LLC  
Attn: Jeff Shumway, Chief Executive Officer  
Douglas Moss, President, Chief Operating Officer  
6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305
- With a copy to: Arena Management Group, LLC  
Attn: Steve Weinreich, General Counsel  
6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305
- To Garage Developer: Glendale Garage LLC  
c/o Arena Management Group, LLC  
Attn: Jeff Shumway

6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305

With a copy to: Arena Management Group, LLC  
Attn: Steve Weinreich, General Counsel  
6751 N. Sunset Boulevard, Suite 200  
Glendale, AZ 85305

Any party may from time-to-time, by written notice to the other parties given in the manner described in this Section 13, change the address to which communications to such party pursuant to this Agreement are to be sent, or designate one or more persons to whom such communications are to be sent.

**14. Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Arizona.

**15. Time is of the Essence.** Time is of the essence of this Agreement and every term or performance hereunder.

**16. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

**17. Conflict; Effect on Other Agreements.** If there is any conflict between any provision of this Agreement and any provision of the MUDA, or the Arena Lease, the provision of this Agreement shall govern and control. If there is any conflict between any provision in the Recitals to this Agreement and any provision in any Section of this Agreement, the provision in the Section shall govern. Except as expressly provided in this Agreement, nothing in this Agreement is intended to affect or modify any other agreement between or among any of the persons or entities mentioned in this Agreement, all of which shall remain in full force and effect.

**18. Statutory Conflict Provision.** This Agreement is subject to cancellation under the provisions of A.R.S. § 38-511.

**19. Saturday, Sunday or Holiday.** If the date, or the final day for any period, provided in this Agreement for the performance of any obligation or the taking of any other action hereunder falls on a day that is a Saturday, Sunday or holiday in the State of Arizona, then the date by which such obligation shall be performed or such action shall be taken shall be the first date following such Saturday, Sunday or holiday which is not a Saturday, Sunday or holiday.

**20. Interpretation.** It is the parties' intention that the Recitals above are merely for the purpose of setting forth the context for this Agreement and defining certain terms used in this Agreement, and such Recitals are not intended to be a part of this Agreement and shall not be used for purposes of interpreting this Agreement or any other agreement. Each of the parties has been represented by legal counsel in the negotiation of this Agreement. This Agreement shall be

interpreted, applied and enforced according to the fair meaning of its provisions and terms, and shall not be construed in favor of, or against, either party, regardless of which party may have proposed or drafted any of its provisions or terms.

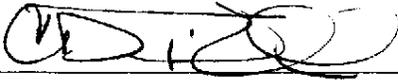
*[Signatures appear on the following pages]*

**CITY:**

**CITY OF GLENDALE**, a municipal corporation

By:   
Name: Ed Beasley  
Title: City Manager

Approved as to form:

  
**Craig Tindall**, City Attorney

Attestation:

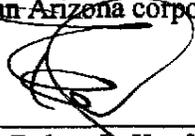
  
**Pam Hanna**, City Clerk

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**CCD:**

**COYOTE CENTER DEVELOPMENT, LLC, a  
Delaware limited liability company**

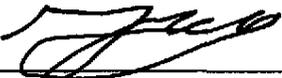
**By: ELLMAN MANAGEMENT GROUP,  
INC., an Arizona corporation, its manager**

By:   
Name: Robert P. Kaufman  
Title: Executive Vice President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**ARENA MANAGER:**

**ARENA MANAGEMENT GROUP, LLC**, a  
Delaware limited liability company

By:   
Name: Jeff A. Shumway  
Title: Chairman and Chief Executive Officer

**TEAM:**

**COYOTES HOCKEY, LLC**, a Delaware limited  
liability company

By:   
Name: Jeff A. Shumway  
Title: Chairman and Chief Executive Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**GARAGE DEVELOPER:**

Glendale Garage LLC \_\_\_\_\_, an  
Arizona \_\_\_\_\_ limited liability company

By:  \_\_\_\_\_  
Name:  
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]