

CITY CLERK ORIGINAL

C-5575-4
01/25/2011

AMENDED AND RESTATED AGREEMENT FOR THE REPLACEMENT OF TEMPORARY PARKING

THIS AMENDED AND RESTATED AGREEMENT FOR THE REPLACEMENT OF TEMPORARY PARKING (this "**Agreement**") is made and entered into effective as of January 25, 2011, by and between the CITY OF GLENDALE, an Arizona municipal corporation (the "**City**"), and COYOTE CENTER DEVELOPMENT, LLC, a Delaware limited liability company ("**CCD**").

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.

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 was obligated to provide 5,500 parking spaces (whether surface spaces or spaces in parking structures) on the Parking Land (the "**CCD Parking Space Obligation**"). These parking spaces 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 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. At the time of the execution of the Purchase Agreement, Lot 10 was a part of the Parking Land, was used for Arena parking purposes, and contained an aggregate of 1,200 parking spaces (the "**Lot 10 Parking Spaces**").

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. Prior to the expiration of the Temporary Parking License on November 29, 2008, CCD requested that the City, the Team, and Arena Manager enter into an agreement as an alternative to providing the permanent replacement parking spaces as required by the Temporary Parking License. The parties determined that the desirable manner by which CCD would satisfy its remaining obligations under the Temporary Parking License was 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.

J. Accordingly, the City and CCD entered into an Agreement for the Replacement of Temporary Parking dated as of July 1, 2008 (the "**Temporary Parking Agreement**").

K. At all pertinent times, CCD has provided the 5,500 parking spaces under Recital D above, either on the Parking Land or pursuant to the Temporary Parking License or pursuant to the Temporary Parking Agreement. As of the date of this Amendment, the 5,500 parking spaces are located as follows: Lot 8, 1209 parking spaces; Lot 13, 763 parking spaces; Lot 14B, 176 parking spaces; Lot 15, 712 parking spaces; Minor Land Division Parcel A (credited to CCD

as part of JQH/City Conference Center Transaction), 1200 parking spaces; and Lots 1A & 12 A, 1440 parking spaces.

L. Other parties to the Temporary Parking Agreement were 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**"). The Team and the Arena Manager had 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**"). Pursuant to actions taken in the United States Bankruptcy Court, District of Arizona in connection with the voluntary petitions for relief under Chapter 11 of the Bankruptcy Code filed by the Team and Arena Manager on May 5, 2009 (Case Nos. 2:09-bk-09491-RTB and 2:09-bk- 09495-RTB, which cases are being jointly administered with the Chapter 11 bankruptcy proceedings of Dewey Ranch Hockey, LLC (Case No. 2:09-bk-09488-RTBP) and Coyotes Holdings, LLC (Case No. 2:09-bk-09500-RTB) under Case No. 2:09-bk-09488-RTBP), the Team and Arena Manager rejected the Arena Lease and the Temporary Parking Agreement and no longer have any right, title or interest in, or liability under, either such agreement. Garage Developer was never created as a legal entity, and accordingly the Temporary Parking Agreement never became effective as to Garage Developer. Therefore, the City and CCD, acting alone, have the right and power to modify the Temporary Parking Agreement.

M. Pursuant to the First Amendment to Mixed-Use Development Agreement (the "**MUDA Amendment**") that the City and CCD have entered into concurrently with this Agreement, the City and CCD have agreed to execute this Agreement for the purpose of amending and restating the Temporary Parking Agreement in its entirety.

AGREEMENT:

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

1. **Recitals and Defined Terms.** The City and CCD confirm the accuracy of the foregoing Recitals, which are incorporated into and comprise part of this Agreement. Capitalized Terms not defined in this Agreement shall have the meanings set forth in the MUDA or in other documents to which the MUDA refers for definitional purposes, as applicable.

2. **Council Approval; and Conditions Precedent.** The City and CCD shall concurrently enter into this Agreement and the MUDA Amendment. This Agreement and the MUDA Amendment shall be binding upon the parties and irrevocable only upon execution by all parties, final approval by the City Council, and execution of the consent set forth below by Credit Suisse on its own behalf and on behalf of those entities for which it is agent. 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, the Temporary Parking Agreement 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, such Agreement. 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 Agreement as it 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, 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.

3. Superseding Effect. This Agreement amends, restates, and supersedes the Temporary Parking Agreement in its entirety.

4. New Parking Facility.

(a) Not later than the seventh anniversary of the date of this Agreement, if and only if development of Westgate has proceeded to the point that the Parking Land and the other undeveloped Lots in the aggregate are not sufficient to allow CCD to fulfill the CCD Parking Space Obligation (as defined in the MUDA Amendment) without the construction of parking structures, the City shall construct or shall cause to be constructed 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**"). The City anticipates that the CFD (as defined in the MUDA Amendment) may perform and finance the construction of the New Parking Facility.

(b) 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 re-construction of the phase 1 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 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 and CCD (and their respective successors and assigns) under the MUDA with respect to Parking Land and Parking Improvements; provided, however, that as additional consideration for the City 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 its part, and as additional consideration for CCD entering into this Agreement the City shall 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.

5. Settlement & Confirmation of CCD Parking Obligations.

(a) CCD and the City hereby acknowledge and agree that, notwithstanding anything to the contrary contained in any previous agreements, CCD has through the date of this Agreement fully and completely satisfied the CCD Parking Space Obligation by providing (i) permanent replacement parking (being “**Replacement Parking Improvements**” as defined in the MUDA) under all previous agreements, including but not limited to 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), and the 1,200 parking spaces that were formerly on Lot 10 (totaling 2,640 parking spaces), which is now a portion of what is now known as Parcel A of the Minor Land Division (without regard to the number of parking spaces constructed or to be constructed thereon); and (ii) 2,860 parking spaces (being “Parking Improvements” as defined in the MUDA) on the Parking Land (located as follows: Lot 8, 1,209 parking spaces; Lot 13, 763 parking spaces; Lot 14B, 176 parking spaces; Lot 15, 712 parking spaces).

(b) From and after the date of this Agreement, CCD’s continuing obligations with respect to the CCD Parking Space Obligation shall be in accordance with Section 4.6 of the MUDA but shall be solely limited to those spaces: (A) as described under Section 6 below, (B) pursuant to Section 6 of the MUDA Amendment (with respect to Lot 15), and (C) 763 spaces with respect to Lots 13 and 176 spaces with respect to Lot 14B.

6. Temporary Parking Pending Construction of New Parking Facility.

(a) **Generally.** Until such time, if any, as the New Parking Facility has been completed and is open for use as parking for all hockey events and other events held at the Arena (collectively “**Arena Events**”), CCD shall, unless otherwise agreed by the City in writing, provide 1,440 temporary parking spaces (the “**1,440 Parking Spaces**”) for Arena use consistent with the MUDA, 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 and on all or portions of surface parking areas owned by CCD or any of CCD’s wholly owned subsidiaries. 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. The 1,440 Parking Spaces can be relocated anywhere within Westgate as long as such replacement parking spaces meet all other stated requirements and are within ½ mile of the geographic center of the Arena.

(b) **Parking Improvement Requirements.** The 1,440 Parking Spaces (i) shall be paved as temporary spaces, (ii) shall be maintained by the City or by the Arena manager 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.

(c) **Use.** 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 City. **“Arena Event Times”** means a reasonable period of time before, during and after all Arena Events. The License Area shall be used for no other purpose including, without limitation, storage of vehicles, overnight vehicle parking, repairing, servicing, or working on any vehicles, or long-term parking of any vehicles. Notwithstanding anything to the contrary in this Agreement, CCD (and not the City or the Arena Manager) shall be solely responsible for repair, maintenance, operation and insurance of the 1,440 Spaces with respect to or required as a result of events held on the Lots containing the 1,440 Spaces by CCD or with CCD’s permission.

(d) Operational Requirements. All operational and maintenance requirements applicable to Parking Land as set forth in the Arena Development Agreement, the MUDA and the Safety and Security Agreement shall apply to the 1,440 Parking Spaces. Appropriate signage, striping, vehicle rights-of-way and pedestrian walkways within with the location of the 1,440 Parking Spaces and to and from the Arena shall be provided by CCD, subject to approval by the City, but shall be maintained by the City or the Arena manager. The City or the Arena manager shall be solely responsible for operating and maintaining Parking Spaces on Lots owned by the City.

(e) Insurance. So long as the 1,440 Parking Spaces are required to be provided to the City under Section 6(a), the City or the Arena Manager shall, at no cost or expense to CCD, obtain and maintain (or cause to be obtained and maintained) in full force and effect with respect to such temporary parking spaces, parking operator liability insurance with respect to: (i) the use of the 1,440 Parking Spaces for Arena Events and (ii) all Parking Spaces on Lots owned by the City.

(f) Restoration. Upon the expiration of CCD’s obligation to provide the 1,440 Parking Spaces, the City may require that the location of the 1,440 Parking Spaces be restored to the same condition as existed on the Effective Date; provide, however, that if CCD has obtained and provided to the City a binding agreement for the development of such location (or any part thereof) in accordance with the MUDA and such development will and does occur within 90 days of such expiration, the obligation to restore such area (or the part thereof being developed) shall terminate

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, 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).

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. Contingency. This Agreement is subject to rescission as provided in the MUDA Amendment, and in the event of any such rescission, this Agreement shall be void *ab initio* and the rights and obligations of the parties shall be as though this Amendment had never been executed.

12. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the City 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, 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, prior written consent as provided above, such attempted assignment or transfer shall be void, shall be a default hereunder, and at the election of the City, shall entitle the City to all remedies at law or in equity.

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

14. 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: Tim Wright
Executive Vice President
Coyote Center Development, LLC
c/o Ellman Management Group, Inc.
2850 East Camelback Road, Suite 110
Phoenix, AZ 85016

With copy to: Ty Fields
General Counsel
Coyote Center Development, LLC
c/o Ellman Management Group, Inc.
2850 East Camelback Road, Suite 110
Phoenix, AZ 85016

Any party may from time-to-time, by written notice to the other parties given in the manner described in this Section 14, 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.

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

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

17. 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.

18. Conflict; Effect on Other Agreements. If there is any conflict between any provision of this Agreement and any provision of the MUDA, 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.



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

20. **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.

21. **Interpretation.** 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]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

CITY:

CITY OF GLENDALE, a municipal corporation

By: Ed Beasley

Name: Ed Beasley

Title: City Manager

Approved as to form:

Craig Tindall

Craig Tindall, City Attorney

Attestation:

Pam Hanna

Pam Hanna, City Clerk

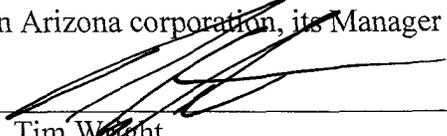
[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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CCD:

COYOTE CENTER DEVELOPMENT, LLC,
a Delaware limited liability company

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

By: 
Name: Tim Wright
Title: Executive Vice President

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

CITY OF GLENDALE, ARIZONA

AGREEMENT C- 5575-4

(Amended and Restated Agreement for the Replacement of Temporary Parking)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)