

# CITY COUNCIL REPORT



Meeting Date: 11/26/18  
 General Plan Element: *Public Services and Facilities*  
 General Plan Goal: *Provide city service facilities to meet the needs of the Community*

## ACTION

**Approval of Lease and Sub-Lease** – Adopt Resolution No. 11322 authorizing Contract No. 2018-201-COS authorizing the City to enter into a lease agreement with the City of Phoenix for the use of the Papago Sports Complex property at the northwest corner of McDowell Road and 64<sup>th</sup> Street, and; authorizing Contract No. 2018-202-COS authorizing the City to enter into a sub-lease agreement with the San Francisco Giants, LLC for the use of the Papago Sports Complex property at the northwest corner of McDowell Road and 64<sup>th</sup> Street.

## BACKGROUND

In 2016, Phoenix entered into a letter of agreement with the City of Scottsdale to allow the San Francisco Giants to utilize the Papago baseball complex for player development and practice in the event the Scottsdale practice fields became temporarily unavailable. This letter also expressed Scottsdale's intent to explore the possibility of permanently relocating the Giants' player development from the nearby Scottsdale Indian School Park to the Papago Sports Complex.

This action is the result of a three-year master plan analysis by Scottsdale and the San Francisco Giants to determine the appropriate long-term facilities for Spring Training and year-round player development. A related design effort for revisions to Scottsdale Stadium is currently proceeding and will primarily address Spring Training and community tourism interests. This action will provide the Giants with a permanent, dedicated year-round player development facility at the Papago Sports Complex and allow expanded public use of Indian School Park and Scottsdale Stadium in the near future.

On March 13, 2018 the City of Scottsdale and the City of Phoenix jointly executed a Letter of Intent for the use of the Papago Sports Complex ("Facility") by the San Francisco Giants ("Team") to move their Player Development Program from Indian School Park to the Papago Sports Complex at the northwest corner of McDowell Road and 64<sup>th</sup> Street. The Letter of Intent was to negotiate a long-term agreement with the City of Phoenix for the Team to have exclusive use of the Facility.

Some important points included in the Letter of Intent are:

- The Facility will be used for Major League Baseball Player Development, Spring Training and related MLB and scheduled public baseball/recreational uses;
- The Facility will be fully functional for operation by January 2021 under a 35-year lease;
- Scottsdale will be responsible for all Facility management and operations and delegate these responsibilities to the Team through a sub-lease;
- Annual meetings between Scottsdale, the Team representatives, and Phoenix will occur to review operations plans and maintenance schedules and the Team may be required to participate in these meetings;
- Improvements and conditions include but are not limited to
  - Batting tunnel expansion
  - Upgrades and renovations to the Clubhouse
  - Improvement to perimeter trails around the Facility which are open to the public
  - Offer Phoenix youth organizations and other Adult/Youth organizations opportunities to play at Scottsdale's Indian School Park and the Scottsdale Stadium
  - Giants have committed to hosting at least four clinics annually for the benefit of Phoenix Youth
  - Add an additional overflow parking lot to the north for shared and Team use

On March 22, 2018 the Phoenix Parks and Recreation Board unanimously recommended the proposal be approved by the Phoenix City Council.

On April 18, 2018 the City of Phoenix City Council unanimously approved the request to authorize the City Manager, or his designee, to enter into an Intergovernmental Agreement with the City of Scottsdale for the improvement, operations, maintenance and use of the Papago baseball fields for Major League Baseball and to enter into other related agreements as necessary and appropriate.

## **ANALYSIS / ASSESSMENT**

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As a result of the execution of the lease with the City of Phoenix and the sub-lease with the San Francisco Giants, LLC., and the movement of the Giants' Player Development from Indian School Park to the Papago Sports Complex, the City of Scottsdale will be able to provide additional recreational opportunities and uses at both Indian School Park and Scottsdale Stadium sports complexes which open those facilities to various youth and adult organizations for programming. It would also create opportunities for the City to gain revenues through other professional organization's use of the two facilities.

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

Adopt Resolution No. 11322 authorizing Contract No. 2018-201-COS authorizing the City to enter into a lease agreement with the City of Phoenix for the use of the Papago Sports Complex property at the northwest corner of McDowell Road and 64<sup>th</sup> Street, and; authorizing Contract No. 2018-202-COS authorizing the City to enter into a sub-lease agreement with the San Francisco Giants, LLC for the use of the Papago Sports Complex property at the northwest corner of McDowell Road and 64<sup>th</sup> Street.

### Proposed Next Steps

Upon approval by the City Council, staff will execute the lease with the City of Phoenix and the sub-lease with the San Francisco Giants, LLC.

## RESPONSIBLE DEPARTMENT(S)

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Community Services Division, Parks & Recreation Department

## STAFF CONTACT (S)

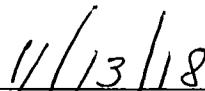
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William B. Murphy, Director, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

## APPROVED BY

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William B. Murphy, Community Services Director  
480-312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

  
Date

## ATTACHMENTS

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1. Resolution 11322
2. Contract 2018-201-COS
3. Contract 2018-202-COS

**RESOLUTION NO. 11322**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO LEASE AGREEMENT NO. 2018-201-COS WITH THE CITY OF PHOENIX AND SUBLEASE AGREEMENT NO. 2018- 202-COS WITH THE SAN FRANCISCO GIANTS, LLC FOR PROPERTY AT THE NORTHWEST CORNER OF MCDOWELL ROAD AND 64TH STREET

(Papago Baseball Facilities)

WHEREAS A.R.S. Section 3, paragraph A of the Scottsdale City Charter authorizes the City to lease and sublease both within and outside of its corporate limits for any city purposes; and

WHEREAS the City of Scottsdale ("Lessee") and the City of Phoenix ("Lessor") wish to enter into a long term lease for the use of the Papago Baseball Facility by the City, which will sublet the property to the San Francisco Giants, LLC for its player development program.

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Mayor is authorized and directed to execute on behalf of the City of Scottsdale the Lease Agreement No. 2018-201-COS after it has been signed by all other parties.

Section 2. The Mayor is authorized and directed to execute the Sublease Agreement No. 2018-202-COS after it has been signed by all other parties.

Section 3. The Mayor, the City Manager or their designees are authorized to approve and execute such other documents as are necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

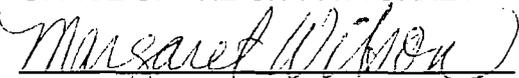
CITY OF SCOTTSDALE, an Arizona municipal corporation

ATTEST:

\_\_\_\_\_  
W. J. "Jim" Lane, Mayor

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Senior Assistant City Attorney

## LEASE OF PAPAGO BASEBALL FACILITY

### BY THE CITY OF SCOTTSDALE

THIS LEASE OF THE PAPAGO BASEBALL FACILITY ("Lease") by and between the CITY OF PHOENIX, an Arizona municipal corporation (hereinafter "Landlord" or "Phoenix"), and the City of Scottsdale, an Arizona municipal corporation (hereinafter "Tenant" or "Scottsdale") is entered into as of \_\_\_\_\_, 20\_\_\_\_("Effective Date"). Phoenix and Scottsdale are individually referred to as a "Party" and collectively as the "Parties."

### RECITALS

A. Phoenix owns the Papago Baseball Facility located at 1802 N. 64<sup>th</sup> Street, Phoenix, Arizona, 85008 including all existing major league baseball fields, clubhouse, batting cages, parking areas and other improvements located thereon (collectively, the "Facility") on property legally described on **Exhibit "A"** and depicted on **Exhibit "B"**, both attached hereto and incorporated herein by this reference.

B. The Facility is currently being used by Phoenix for youth and adult baseball, and for foreign professional baseball teams.

C. Indian School Park practice fields in Scottsdale have been used by the San Francisco Giants Baseball Club, LLC ("Giants") since 1986, but have proved to be inadequate for the expansion of year round Giants' Player Development Program.

D. Phoenix has agreed to lease the Facility to Scottsdale, which will grant rights to sublease the Facility to the Giants so that the Giants' Player Development Program can be moved to the Facility from Indian School Park. Phoenix has agreed to this grant of rights to sublease.

### ARTICLE 1 - FACILITY LEASE; TERM

1.1 **Grant of Facility Lease.** Phoenix hereby leases to Scottsdale and Scottsdale hereby leases from Phoenix, upon and in consideration of the terms and conditions contained herein, the Facility in the condition in which it exists as of the Effective Date. The Parties anticipate that Scottsdale will enter into a sublease arrangement with the Giants who will make substantial improvements to the Facility and will move its year-round Player Development Program to the Facility. This lease and any sublease shall be subject to all of the provisions of this Lease and in addition, the following:

(a) Present and future building restrictions and regulations, master plans, zoning laws, ordinances, resolutions and regulations of the City of Phoenix ("City Regulations"), but with respect to any future City Regulations, only to the extent the same are enacted and applied uniformly and consistently to similar classes of property or similar uses.

(b) Present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any county, state, or federal authority now or hereafter having jurisdiction over the Land.

Upon receipt of confirmation of the sublease arrangement to the Giants, referenced above, Phoenix acknowledges and agrees that no decision, waiver, approval, disapproval, notice or communication involving Scottsdale and required or otherwise provided in this Lease shall be effective without joinder with the Giants.

1.2 **Term.** The term of this Lease ("Term") is thirty five (35) years, which will commence on December 1, 2018, the "Commencement Date", and expire at 12:00 midnight on November 30, 2053.

1.3 **Extensions.** The Term may be extended for two (2) five (5) year periods subject to consent by Phoenix City Council and Scottsdale City Council, which either may withhold in its sole and absolute discretion.

1.4 **Condition of Facility at Commencement Date.** Promptly after the Effective Date, Phoenix and Scottsdale shall, together, inspect the Facility. Phoenix acknowledges and agrees that during the period between the Effective Date and the Commencement Date, Phoenix will take good care of the Facility, make, or cause to be made, all commercially reasonable repairs thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, and take all commercially reasonable steps to maintain and keep, or cause to be maintained and kept, the Facility and the fields, sidewalks, curbs, adjacent rights-of-way, and landscaping in good and debris-free order, repair, and condition in accordance with applicable City of Phoenix ordinances, and shall deliver the Facility to Scottsdale on the Commencement Date in such condition, except that Scottsdale recognizes that Phoenix will not oversee the Facility in the Fall of 2018.

1.5 **Tenant's Right to Terminate.** Scottsdale has the right to terminate the Lease in any year for any reason, subject to a one year notification period provided the Facility is free and clear of all claims, liens, and encumbrances, including subleases and concession contracts, and in at least as good repair as on the Commencement Date.

## **ARTICLE 2 - RENT; ADDITIONAL PAYMENTS; TAXES AND ASSESSMENTS**

2.1 **Lease Payments.** Scottsdale shall pay to Phoenix lease payments annually ("Lease Payments"), beginning on the first day of December, 2018. Subsequent payments shall be made by Scottsdale to Phoenix on the same day (or the next business day, if such day is not a business day) of each year thereafter until the Term expires. Scottsdale shall pay the Lease Payments to Phoenix to:

City of Phoenix  
Parks and Recreation Department  
200 West Washington  
Phoenix, AZ 85003  
Attention: Accounting Supervisor

or to such other address as Phoenix may designate by written notice to Scottsdale, in lawful money of the United States of America or by check supported by good and immediately available funds.

2.2 **Payment Schedule.** Lease payments shall be made according to the following schedule:

Lease Year	Calendar	Lease Payment
1	2019	\$ 0
2	2020	\$ 0
3	2021	\$ 0
4	2022	\$ 50,000
5	2023	\$ 50,000
6	2024	\$ 50,000
7	2025	\$ 50,000
8	2026	\$ 50,000
9	2027	\$ 50,000
10	2028	\$ 50,000
11	2029	\$ 50,000
12	2030	\$ 50,000
13	2031	\$ 50,000
14	2032	\$ 65,000
15	2033	\$ 65,000
16	2034	\$ 65,000
17	2035	\$ 65,000
18	2036	\$ 65,000
19	2037	\$ 65,000
20	2038	\$ 65,000
21	2039	\$ 65,000
22	2040	\$ 65,000
23	2041	\$ 65,000
24	2042	\$ 70,000
25	2043	\$ 70,000
26	2044	\$ 70,000
27	2045	\$ 70,000
28	2046	\$ 70,000
29	2047	\$ 75,000
30	2048	\$ 75,000
31	2049	\$ 75,000
32	2050	\$ 75,000
33	2051	\$ 75,000

34	2052	\$	75,000
35	2053	\$	75,000

**2.3 Perimeter Trail; Overflow Parking Lot; Substitute Fields.**

2.3.1 Scottsdale will design and construct to Phoenix specifications a new perimeter walking trail, as illustrated on **Exhibit “C”** attached hereto and incorporated herein by this reference. The trail will be a minimum of 4 feet wide and constructed of native soil according to Phoenix standards. The trail design will be submitted to Phoenix for approval no later than November 30, 2019 and construction will be completed no later than January 31, 2021.

2.3.2 Scottsdale or its sublessee will construct a new overflow parking lot with a minimum of 110 spaces to be located east of the existing parking lot, as illustrated on **Exhibit “D”** attached hereto and incorporated herein by this reference and in conformance with all City of Phoenix requirements. Plans for the parking lot will be submitted to Phoenix for approval no later than November 30, 2019 and construction will be completed no later than January 31, 2021. Scottsdale or its sublessee will maintain the overflow parking lot at its sole cost and expense.

2.3.3 No later than January 1, 2021 and for the remainder of the Term, Scottsdale will make the Facility, a baseball practice facility located at the southeast corner of Camelback Road and Hayden Road in Scottsdale commonly referred to as Indian School Park (“Park”) and Scottsdale Stadium (“Stadium”) available to youth and adult organizations currently utilizing the fields at the three facilities combined under similar, reasonable terms, when such facilities are not in use by the Giants.

(a) No later than April 1, 2021, the Park will generally be made available during the spring, summer and fall seasons to youth and adult organizations on a reservation basis, subject to mutual agreement of the Parties. Scottsdale will maintain the Park at its cost throughout the term.

(b) The Stadium will be made available on a reservation basis after spring training season up to the beginning of the Fall League occurring in the fall of each year, subject to mutual agreement of the Parties. Scottsdale will maintain the Stadium at its cost throughout the term.

(c) The Facility will be made available pursuant to the terms of Article 6.

**2.4 Taxes and Assessments.** Scottsdale shall be responsible for and shall pay as additional payments during the Term (“Additional Payments”) before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, fees, charges or other impositions applicable to or imposed on the Facility or related to any Giants game or event or any use or rights under this Lease, including without limitation all income, lease, sales and transaction privilege taxes, related to or on account of the operations and use rights granted to and exercised by any sublessee under this Lease.

**2.5 Other Additional Payments – Operating and Maintenance Costs.** At its sole cost and expense, Scottsdale will operate, repair and maintain the Facility, and pay for all 15722181v16

services related to such use, including all water and sewer rates and charges, charges for public utility, excises, levies, licenses, permit fees, and costs of construction, alterations, repairs, and reconstruction, as hereinafter provided, which may arise or become due during the Term hereof.

2.6 **Government Property Lease Excise Tax.** Scottsdale acknowledges that the Facility will be used throughout the Term of the Lease for a governmental activity pursuant to A.R.S. Section 42-6208(1). Accordingly, the Parties hereby agree that the Facility is exempt from the Government Property Lease Excise Tax as set forth under A.R.S. Section 42-6201 through 42-6210. Additionally, Scottsdale agrees to promptly provide any information or documentation requested by Phoenix in order for Phoenix to comply with its obligations as a government lessor under the GPLET statutes, A.R.S. Sections 42-6201 through 42-6210.

### **ARTICLE 3 – INSURANCE**

3.1 **Tenant Obligation to Insure.** Scottsdale will provide insurance coverage outlined in **Exhibit “E”** attached hereto and incorporated herein by this reference, directly or will require each sublessee and its subcontractors to provide the coverage under **Exhibit “E”** on a primary basis naming Phoenix and Scottsdale as loss payees and additional insureds. Property insurance for buildings under construction shall be insured by each sublessee or its subcontractor until construction is completed. Thereafter, Scottsdale may insure the buildings on the blanket property insurance of Scottsdale with Phoenix listed as loss payee to the extent of its title interest. Notwithstanding the foregoing, Scottsdale will require that its sublessees and contractors procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with activities at the Facility by such sublessee or contractor or their agents, representatives, employees or contractors in accordance with the requirements set forth in **Exhibit “E”**.

### **ARTICLE 4 – SURRENDER**

4.1 Upon the expiration or sooner termination of the Term or of Scottsdale’s right to possession, Scottsdale will remove all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed at the Facility by Scottsdale. Scottsdale agrees that in the event of damage to the Facility due to such removal, Scottsdale shall repair any damage to the Facility caused by such removal. Upon the termination or expiration of this Lease, or upon the termination of Scottsdale’s right of possession, whether by lapse of time or otherwise, Scottsdale will at once surrender possession of the Facility to Phoenix in good condition, ordinary wear and tear, casualty loss and condemnation excepted. Any real or personal property of Scottsdale that remains at the Facility after the expiration of the Term hereof or sooner termination will be deemed to have been abandoned, and may either be retained by Phoenix as its property or disposed of in such manner as Phoenix may see fit. If such property or any part thereof is sold, Phoenix may retain the proceeds of such sale.

### **ARTICLE 5 – LANDLORD’S CURES**

5.1 **Landlord’s Cures.** If Scottsdale fails to make any payment required to be made under this Lease within any applicable cure period, or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained and fails to cure the same within the applicable cure period, then after reasonable notice to Scottsdale, which is

agreed to be not less than ten (10) business days, Phoenix, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Scottsdale, immediately and without additional notice to Scottsdale. Bills for any expense incurred by Phoenix in connection therewith, and bills for all such expenses and disbursements of every kind whatsoever, including reasonable attorneys' fees involved in collection or endeavoring to collect any payments or any part thereof due hereunder, may be sent by Phoenix to Scottsdale monthly, and will be due and payable in accordance with the terms of said bills, and if not paid within ten(10) business days of Scottsdale's receipt thereof, the amount thereof will immediately become due and payable as Additional Payments.

## ARTICLE 6 – USES OF FACILITY; MAINTENANCE

6.1 **Permitted Uses.** Scottsdale will have the exclusive use of the Facility practice fields, the clubhouse and any incidental retail uses associated with the clubhouse, batting cages, pitching mounds, offices and other baseball related or ancillary uses ("Permitted Uses"). Except that Phoenix may request the following annual uses of the Facility up to a maximum number of days or events as follows:

6.1.1 Dates for 4 youth baseball clinics to be hosted by Scottsdale's sublessee at the Facility, at no cost to Phoenix.

6.1.2 15 days of games (or comparable field activities) on 2 practice fields.

6.1.3 11 days of use of hitting tunnels and half fields.

The dates of these allowed exceptions shall be reviewed and negotiated between the Parties as may be reasonably requested.

6.2 **Contact Persons.** Phoenix and Scottsdale acknowledge that administering an agreement of this type requires clear communications among their representatives regarding design, construction and use of the Facilities. To that end, Phoenix and Scottsdale shall each designate contact persons (collectively the "Contact Persons"). Until Scottsdale designates another person, the person who shall be the Scottsdale Contact Person shall be William Murphy or his designee. Until Phoenix designates another person the person who shall be the Phoenix's Contact Person shall be Inger Erickson or her designee. In addition, if Scottsdale has entered into a sublease of this Agreement, the Sublessee shall appoint a contact person to attend meetings specified in Section 6.2.1, *et seq.*

6.2.1 **Periodic Meetings.** Contact Persons shall meet as necessary or appropriate to accomplish the intents of this Lease. At minimum, the Contact Persons shall meet, either in person or telephonically, at least annually, on or before December 15, to discuss the upcoming season of player development activity, any related operational or maintenance issues, and proposed dates of youth baseball clinics and games or comparable field activities to be hosted by Scottsdale's sublessee at the Facility.

6.3 **Naming Rights.** During the Term, Scottsdale has the right to name components of the Facility and any baseball amenity at the Facility, including the entry drive along the north side of the Facility with approval of the Phoenix Parks and Recreation Board ("Board").

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Scottsdale is also granted the right to place signage, including sponsor and advertisement, on the building frontages (i.e., along 64<sup>th</sup> Street and McDowell Road), of the Facility, consistent with the City of Phoenix sign code and as approved by the Board. Notwithstanding the foregoing, neither Scottsdale nor any sublessee shall have the right to rename the Papago Sports Complex in which the Facility is located.

**6.4 Compliance with Laws.** Scottsdale may not use or occupy, or suffer or permit any portion of the Facility to be used or occupied in violation of any applicable law, certificate of occupancy, or other governmental requirement.

**6.5 Tenant Improvements to Facility.** Scottsdale, through a sublease arrangement with the Giants, will improve the Facility by adding an additional full size field or fields of MLB standards, a renovation of the clubhouse, and ballfield lighting (the "Improvements"). Other ancillary improvements may also be made. These Improvements and all design and construction costs will be at no cost to Phoenix. Scottsdale estimates that the construction or placement of the Improvements will begin in 2019. For avoidance of doubt, and subject to reasonable and normal customary permitting (if applicable) with the planning and development service department of Phoenix, the parties have conceptually approved the Improvements which are depicted in **Exhibit "D"**.

**6.6 Maintenance and Repairs.** Scottsdale will be solely responsible to repair and maintain the Facility, whether to the interior and exterior, ordinary and extraordinary, foreseen and unforeseen, and must maintain and keep the Facility and the sidewalks, curbs, adjacent rights-of-way, main driveway (which connects to 64<sup>th</sup> Street), overflow parking lot, and landscaping, all in good and debris-free order, repair and condition in accordance with applicable City of Phoenix ordinances and the Lease, whichever is more stringent, ordinary wear and tear, casualty loss and condemnation excepted.

**6.7 Plans, Specifications, Permits and Warranties.** Phoenix has delivered to Scottsdale any and all existing plans, specifications, guaranties and warranties pertaining to the design or construction of any improvements at the Facility, and other governmental permits, legal certificates, authorizations and permissions relating to the Facility that Phoenix had in its possession or reasonable control (the "Plans, Specification, Permits and Warranties"). To the extent assignable by Phoenix, Phoenix shall assign the Plans, Specifications, Permits and Warranties to Scottsdale on a non-exclusive basis pursuant to an assignment agreement that shall be acceptable to Scottsdale in its reasonable discretion.

**6.8 Waste.** Subject to Article 11 (Damage or Destruction) and Article 12 (Condemnation) herein, Scottsdale may not commit or suffer to be committed any waste or impairment of the Facility.

**6.9 Performance by Landlord.** In the event Scottsdale fails to maintain and repair the Facility in the condition required by Section 6.6 hereof and following reasonable notice and the expiration of any applicable cure period, Phoenix, without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its reasonable discretion, deems necessary to maintain or restore the Facility to its required condition. Any and all work performed by or for Phoenix pursuant to this Section 6.9 will

be deemed to have been undertaken for and at the expense of Scottsdale. All costs incurred by Phoenix in undertaking such work will be Additional Payments.

**6.10 Alterations; Additional Improvements.** Scottsdale shall be responsible for acquiring all required permits and approvals with respect to all Scottsdale alterations or additional improvements. Any alteration, addition or improvement must be completed in good and workmanlike manner in accordance with plans, specifications and drawings approved in writing by the Phoenix and in compliance with all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Facility. Scottsdale shall deliver as-built drawings to Phoenix to the extent the same are available, promptly following the completion of any construction or repair work by Scottsdale with respect to the Facility.

## **ARTICLE 7 – COMPLIANCE WITH CODES**

**7.1 Certificate of Occupancy.** Scottsdale will obtain any certificate of occupancy with respect to the Facility which may at any time be required by any governmental agency having jurisdiction thereof.

## **ARTICLE 8 - IMPAIRMENT OF LANDLORD'S TITLE**

**8.1 No Liens.** Scottsdale may not create, or suffer to be created or to remain, and must discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Facility or any part thereof arising out of work, material or services performed or supplied by or contracted for Scottsdale or those claiming by, through or under Scottsdale, and Scottsdale will not suffer any other matter or thing arising out of Scottsdale's use and occupancy of the Facility whereby the estate, rights, and interest of Phoenix in the Facility or any part thereof might be impaired. The provisions of this Article 8 are not intended to limit any rights Scottsdale may have under this Lease, or to apply to any such lien or encumbrance arising out of any work to be performed by Phoenix pursuant hereto.

**8.2 Discharge.** If any mechanic's, laborer's, or materialman's lien is at any time filed against the Facility or any part thereof arising out of work, material or services performed or supplied by or contracted for Scottsdale or those claiming by, through or under Scottsdale, Scottsdale must, within sixty (60) days after notice of the filing thereof, cause such lien to be discharged or record by payment, bond, order of court of competent jurisdiction or otherwise; provided, however, Scottsdale shall have the right to contest any such mechanic's lien or other lien beyond such sixty (60) day period, provided that Scottsdale diligently commences and continues such contest in good faith. Scottsdale will notify Phoenix in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Scottsdale fails to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Phoenix may, but is not obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Phoenix and costs and expenses incurred by Phoenix in connection therewith, will constitute an Additional Payment payable by Scottsdale and must be paid by Scottsdale to Phoenix on demand.

**8.3 No Implied Consent.** Nothing contained in this Lease will be deemed or construed in any way as constituting Phoenix's expressed or implied authorization, consent or

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request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Facility or any part thereof.

**8.4 No Agency Intended.** The Parties agree that Scottsdale is not the agent of Phoenix for the construction, alteration or repair of any improvement Scottsdale may construct upon the Facility, the same being done at the sole expense of Scottsdale.

## **ARTICLE 9 – INSPECTION**

**9.1 Inspection and Entry.** Subject to prior written notice of at least two (2) business days by Phoenix to Scottsdale (and any sublessee). Phoenix has the right to enter the Facility, or any part thereof, for the purpose of ascertaining its condition or whether Scottsdale is observing and performing the obligations assumed by it under this Lease, provided that such entry does not interfere with the use and operations at the Facility by Scottsdale and any sublessee. The two (2) business days' notice provision is not to be construed to prohibit or delay any entry by Phoenix in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issue by any court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

## **ARTICLE 10 – INDEMNIFICATION**

**10.1 Indemnification.** Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in liability to the Indemnitee are caused by the negligent act, culpable omission, misconduct, or other fault of the Indemnitor, its officers, official, agents, employees, or volunteers. Each Party agrees on behalf of itself and all insurers engaged by such party, to waive rights of subrogation against the other, to the fullest extent allowed.

**10.2** Scottsdale will cause any sublessee ("Additional Indemnitor") to agree to indemnify, defend, save and hold harmless Phoenix from and against any and all Claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property cause, or alleged to be caused, in whole or in part, by the negligent or willful; acts or culpable omissions of the Additional Indemnitor or the Additional Indemnitor's employees and contracted employees, contracted players, and contractors or any of their respective directors, officers, agents, or employees or subcontractors of such contractor. This indemnification includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Additional Indemnitor to conform to any federal, state or local law, statute, ordinance, rule regulation or court decree. It is the specific intention of the Parties that Phoenix will, in all instances, except for Claims arising from the negligent or willful acts or culpable omissions of Phoenix, be indemnified by such Additional Indemnitor from and against any and all Claims.

The Parties agree that with respect to any claim falling within the scope of an Additional Indemnitor's indemnity obligation, such Additional Indemnitor will be responsible from primary  
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loss investigation, defense and judgment costs. In consideration for the use and occupancy of the Facility. Scottsdale will require each Additional Indemnitor to agree to waive all rights of subrogation against Phoenix, Scottsdale, and their respective officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Facility.

10.3 The obligations under this Article 10 will not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation in its part to be performed under insurance policies affecting the Facility.

10.4 The provisions of this Article 10 will survive the expiration or earlier termination of this Lease.

## ARTICLE 11 – DAMAGE OR DESTRUCTION

11.1 **Tenant Repair and Restoration.** If at any time during the Term hereof, the Facility or any part thereof is damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Scottsdale will proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Such repair, alteration, restoration, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion thereof, are sometimes referred to in this Article as the "Work."

Notwithstanding the foregoing, if (i) the available insurance proceeds are insufficient to repair, alter, restore, replace or rebuild the Facility or any part thereof to as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, (ii) fire or other casualty renders the whole or any material part of the Facility untenable or unusable for baseball purposes, and Scottsdale determines (in Scottsdale's reasonable discretion) that Scottsdale cannot make the Facility tenantable or usable for baseball purposes within one hundred eighty (180) days after the date of casualty, or (iii) material damage or destruction occurs to the Facility within the last five (5) years of the Term, then Scottsdale shall have the right, in its sole discretion, to terminate the Lease by providing Phoenix thirty (30) days' prior written notice of such election to terminate and giving Phoenix all applicable insurance proceeds in the amounts required by this Lease. Anything herein to the contrary notwithstanding, Scottsdale must immediately secure the Facility and undertake temporary repairs and work necessary to protect the public and to protect the Facility from further damage.

11.2 **Duty to Commence Repairs.** Scottsdale must diligently and expeditiously undertake all required design, architectural and engineering work following such damage or destruction, and will thereafter diligently and expeditiously seek and obtain all required permits for the Work. The Work must be commenced within one hundred twenty (120) days after the date the damage or destruction and must be completed within twelve (12) months after commencement or such additional period of time, provided Scottsdale is diligently and reasonably pursuing the completion of the Work.

## ARTICLE 12 – CONDEMNATION

### 12.1 Total, Substantial, or Unusable Remainder.

(a) If at any time during the Term of this Lease:

(1) Title to the whole or substantially all of the Facility is taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease will terminate and expire on the date of such taking and any unpaid Rent will be paid to the date of such taking; or

(2) Title to a substantial portion of the Facility is taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceeding, and the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein (in the sole and absolute discretion of Scottsdale), Scottsdale may, at its option, terminate the Lease within ninety (90) days after such taking by serving upon Phoenix at any time within said ninety (90) day period, a thirty (30) day written notice of Scottsdale's election to so terminate accompanied by a certificate of Scottsdale that the remaining part of the Facility cannot feasible be used or converted for use by Scottsdale as contemplated herein.

(b) In the event of such taking and the termination of this Lease, any award will be divided as follows:

(1) Scottsdale will receive that portion attributed to the then fair market value of the Facility and related improvements and the fair market value, immediately prior to such taking, of Scottsdale's leasehold interest in the Facility taken.

(2) Phoenix will receive the fair market value of its reversionary interest under this Lease (exclusive of any value attributable to improvements and the leasehold estate).

**12.2 Partial Taking – Lease Continues.** In the event of any such taking of less than the whole or substantially all of the Facility and, if such taking is not of the character described in Section 12.1.A (2) (or if such taking is of such character and the option of Scottsdale to terminate this Lease is not exercised), the Term will not be reduced or affected in any way and the following applies:

(a) The award or awards (herein sometimes referred to as "Condemnation Proceeds") are to be deposited with any escrow company authorized to do business in the State of Arizona for disbursement pursuant to Section 12.2.C.

(b) If the remaining part of the Facility can feasibly be used or converted for use by Scottsdale as contemplated herein, Scottsdale, at its sole cost and expense and whether or not the Condemnation Proceeds are sufficient for the purpose, will proceed with reasonable diligence to repair, alter (including any necessary demolition and reconstruction) and restore the remaining part of the Facility to substantially its former condition, so as to be complete, rentable and usable and of the quality provided for in this Lease for the original construction of the affected buildings. If the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein, Scottsdale at its sole cost and expense, will proceed with due

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diligence to repair, alter (including any necessary demolition and reconstruction ) and restore the remaining part of the Facility so as to constitute a complete, rentable building for a purpose deemed appropriate by Phoenix in the manner hereinafter provided in this Section 12.2.B; provided, however, that not less than sixty (60) days prior to proceeding with any such repairs, alterations, or restoration, Scottsdale gives written notice to Phoenix certifying that the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein and requesting approval of a new use, and Phoenix has approved in writing such restoration and new use. Such repairs, alterations, or restoration, including such changes and alterations as above mentioned and including temporary repairs, or the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the Work.

(c) After the Condemnation Proceeds are deposited with the escrow company under the provisions of Section 12.2.A, the escrow company will hold, apply, make available and pay over to Scottsdale the Condemnation Proceeds which are to be applied to the payment of the cost of the Work to the extent such condemnation Proceeds are sufficient for the purpose. If the Condemnation Proceeds are not sufficient to pay the entire cost of the Work, Scottsdale must supply the amount of any such deficiency. Under no circumstances will Phoenix be obligated to make any payment, reimbursement, or contribution towards the cost of the Work. Any balance of the Condemnation Proceeds remaining after completion of the Work is to be paid to Scottsdale.

**12.3 Rights of Participation.** Each Party has the right, at its own expense, to appear in any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

**12.4 Notice of Proceeding.** In the event Phoenix or Scottsdale receives notice of any proposed or pending condemnation proceedings affecting the Facility, the Party receiving such notice must promptly notify the other Party of the receipt and contents thereof.

## **ARTICLE 13 – MORTGAGES**

**13.1 Mortgages.** Phoenix's interest in this Lease, as the same may be modified, amended or renewed, may not be subject or subordinate to (a) any mortgage now or hereafter placed upon Scottsdale's interest in this Lease, or (b) any other liens or encumbrances arising out of actions or omissions to act by Scottsdale, its officials, agents, employees, or sublessees. In the event Scottsdale notifies Phoenix that a security interest has been granted on the leasehold interest created by this Lease, Phoenix agrees to enter into such estoppel agreements as well such recognition agreements with such creditor, with provisions and protections, including a typical notice and right to perform, for such creditor as are reasonable and customary.

## **ARTICLE 14 – SUBLEASE**

**14.1 Sublease Permitted.** The Parties hereby specifically agree that Scottsdale may enter into an arrangement to sublease the Facility with a major league baseball team subject to the terms of this Lease. Scottsdale will incorporate any sublessee obligations contained in this Agreement into the sublease arrangement and will make Phoenix a third party beneficiary of the sublease with respect to the incorporated obligations.

## ARTICLE 15 – DEFAULT BY TENANT

**15.1 Events of Default.** Subject to the provisions of this Article 15, the happening of any one of the following events (herein call "Events of Default") will be considered a material breach and default by Scottsdale under this Lease:

(a) If default is made in the due and punctual payment of any Rent or Additional Payments within thirty (30) days after written notice thereof to Scottsdale; or

(b) If default is made by Scottsdale in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof, other than those referred to in the foregoing Section 15.1(a), or if any of its representations and warranties contained herein shall prove to be untrue in whole or in part, and such default continues for a period of sixty (60) days after written notice thereof from Phoenix to Scottsdale (provided, that if Scottsdale proceeds with due diligence during such sixty (60) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required sixty (60) days, then the time to complete the cure may be extended by the time reasonably necessary to cure the same as reasonably necessary); or

(c) If Scottsdale abandons the Facility for a period in excess of one hundred eighty (180) consecutive days for a reason other than an event of damage or destruction or condemnation; or

(d) If default is made by Scottsdale under a Leasehold Mortgage or any related document that is not cured within the applicable cure periods thereunder.

**15.2 Notice and Termination.** Upon the occurrence of one or more of the Events of Default listed in Section 15.1, Phoenix at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Scottsdale specifying such Event(s) of Default and stating that this Lease and the Term hereby demised will expire and terminate on the date specified in such notice, which must be at least ten(10) business days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the provisions of Section 15.3, this Lease and the Term hereby demised and all rights of Scottsdale under this Lease will expire and terminate as though such date were the date originally set forth herein for the termination hereof.

**15.3 Tenant Liability Continues.** No such expiration or termination of this Lease will relieve Scottsdale of its liability and obligations arising or accruing under this Lease prior to the expiration or termination of the Lease, and such liability and obligations will survive any such expiration or termination. In the event of any such expiration or termination, Scottsdale must pay to Phoenix any Rent or Additional Payments required to be paid by Scottsdale up to the time of such expiration or termination of this Lease.

**15.4 No Implied Waivers.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, will constitute a waiver of any such breach or of such covenant,

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agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Phoenix or Scottsdale, and no beach thereof, will be waived, altered or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach will affect or alter this Lease, but each and every covenant, agreement, term limitation and condition hereof will continue in full force and effect with respect to any other then existing or subsequent breach hereof.

**15.5 Remedies Cumulative; Default Interest.** In the event of any breach by a Party of any of the covenants, agreement, terms or conditions hereof, the non-breaching Party, in addition to any and all other rights, is entitled to enjoin such breach and has the right to invoke any right and remedy approved at law or in equity or by statute or otherwise for such breach. In the event of Scottsdale's failure to pay the Rent or Additional Payments within twenty (20) days of the due date therefor. Scottsdale will pay Phoenix interest on any such overdue payments and associated late charges from the due date at the rate of one percent (1%) per month, but in no event an amount greater than permitted by law.

#### **ARTICLE 16 – DEFAULT BY LANDLORD**

**16.1 Landlord Event of Default.** It is an event of default if Phoenix (a) fails to perform any of its material duties and obligations set forth in this Lease, or (b) if any of its representations and warranties contained herein shall prove to be untrue in whole or in part. Phoenix will not be deemed in default of this Lease if Phoenix commences the curing of such default within sixty (60) days and prosecutes in good faith the curing of same continuously thereafter until the same is cured, but in no event will the cure period be extended later than one hundred twenty (120) days after written notice from Scottsdale to Phoenix.

**16.2 Tenant Remedy.** In the event of any breach by Phoenix of any of the covenants, agreements, representations and warranties, terms, or conditions hereof, Scottsdale, in addition to any and all other rights, is entitled to enjoin such breach and has the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

**16.3 Landlord Liability Continues.** No expiration or termination of this Lease will relieve Phoenix of its liability and obligations under this Lease and such liability and obligations will survive any such expiration or termination.

#### **ARTICLE 17 – NOTICES**

**17.1 Notices.** Any notice request, demand, statement, or consent herein required or permitted to be given by either Party to the other hereunder, except as otherwise specifically provided herein, must be in writing signed by or on behalf of the Party giving the notice and addressed to the other at the address as set forth below:

Phoenix: Director, Parks and Recreation Department  
City of Phoenix  
200 West Washington Street, 16<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611  
Fax: (602) 732-2336

and City Clerk, City of Phoenix  
200 West Washington Street, 15<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611

and City Attorney's Office, City of Phoenix  
200 West Washington Street, 13<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611  
Fax: (602) 534-9866

Scottsdale City of Scottsdale  
Community Services Director  
7447 E. Indian School Road, Suite 300  
Scottsdale, AZ 85251

and Chris Walsh  
Community Services  
Parks & Recreation Manager  
7447 E. Indian School Road, Suite 300  
Scottsdale, AZ 85251

and Reed Pryor  
Parks & Recreation Director  
7447 E Indian School Rd, Suite 300  
Scottsdale, AZ 85251

and City of Scottsdale  
City Attorney  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

**17.2 Effectiveness.** Each Party may by notice in writing change its address for the purpose of this Lease, which address will thereafter be used in place of the former address. Each notice, demand, request, or communication mailed to any of the aforesaid will be deemed sufficiently given, served, or sent for all purposes hereunder two (2) business days after it is mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, upon personal delivery, or one (1) business day after deposit with any nationally recognized commercial air courier or express service, with all delivery charges prepaid. Notice by electronic mail or telefacsimile will be effective upon transmission, provided that a confirmation copy of any such notice is sent by one of the other methods described above. Any notice to be given by any Party hereto may be given by legal counsel for such Party.

## **ARTICLE 18 – REPRESENTATIONS AND WARRANTIES**

**18.1 Tenant's Representations and Warranties.** Scottsdale hereby warrants and represents to Phoenix as follows:

(a) This Lease has been duly and validly executed and delivered by Scottsdale and constitutes a legal, valid and binding obligation of Scottsdale enforceable in accordance with its terms.

(b) There is no pending or, to Scottsdale's knowledge, threatened investigation, action or proceeding by or before any court, any governmental entity or arbitrator which (i) questions the validity of this Lease or any action or act taken or to be taken by Scottsdale pursuant to this Lease or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition, financial or otherwise, of Scottsdale, which will materially impair its ability to perform its obligations hereunder.

(c) No representation, statement or warranty by Scottsdale contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make such statement of fact therein no misleading.

(d) Scottsdale represents that the Facility, any sidewalks, vaults, the title to the Facility, parking areas adjoining the same, any subsurface conditions thereof, and the present uses and nonuses thereof, have been examined by Scottsdale and, provided that no material change in condition thereof occurs between the Effective Date and the Commencement Date and subject to Phoenix's obligations under **Section 1.3** herein, Scottsdale will accept the same in the condition or state in which they or any of them may be on the Commencement Date, without representation or warranty, express or implied in fact or by law, by Phoenix and without recourse to Phoenix, as to the nature, condition, or usability thereof or the use or uses to which the Facility or any part thereof may be put.

**18.2 Landlord's Representations.** Phoenix hereby warrants and represents to Scottsdale as follows:

(a) This Lease has been duly and validly executed and delivered by Phoenix and constitutes a legal, valid and binding obligation of Phoenix enforceable in accordance with its terms.

(b) There is no pending or, to Phoenix's knowledge, threatened investigation, action or proceeding by or before any court, any governmental entity or arbitrator which (i) questions the validity of this Lease or any action or act taken or to be taken by Phoenix pursuant to this Lease or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition, financial or otherwise, of Phoenix, which will materially impair its ability to perform its obligations hereunder.

(c) To City's knowledge, the Facility (and all improvements therein) are not in violation of any applicable ordinances, laws, regulations, rules, restrictions and orders of the City of Phoenix or of all boards, bureaus, administrative agencies, commissions and bodies of any federal, state, county or municipal authority having jurisdiction over the Facility, including, but not limited to, the Americans with Disability Act (ADA) and the Environmental Laws (as defined below).

(d) Phoenix has not granted, either orally or in writing, to any person or entity, other than to Scottsdale hereunder, any leases, options, rights of first refusal, contracts to purchase or other legal or equitable interest in or rights, pertaining to the Facility.

(e) Phoenix has no knowledge of any covenants, restrictions, easements, claims of liens, encumbrances, or reservations that encumber the Facility or affect the use thereof other than the Permitted Encumbrances enumerated in **Exhibit "F"**, and during the Term Phoenix shall not consent to the placement of any additional covenants, restrictions, easements, claims of liens, encumbrances, or reservations against the title to the Facility without Scottsdale's prior written consent, which may be withheld or granted in Scottsdale's sole discretion.

(f) Phoenix shall cause any Contract affecting the Facility to which Phoenix is a party to be terminated before the Commencement Date.

(g) There are no use or similar agreements that grant other parties the right to use the Facility on or after the Commencement Date.

(h) No representation by Phoenix contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make such statement of fact therein and misleading.

#### **ARTICLE 19 – EQUAL EMPLOYMENT OPPORTUNITY**

19.1 **Nondiscrimination.** Scottsdale, in performing under this Lease, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Scottsdale will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action includes but is not limited to the following: employment, promotion, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. Scottsdale further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. In addition, Scottsdale will comply with all applicable federal, state and municipal laws and regulations regarding equal employment opportunity and nondiscrimination, including but not limited to Arizona Executive Order No. 2009-09.

#### **ARTICLE 20 – UNAVOIDABLE DELAY**

20.1 **Unavoidable Delay; Extension of Time for Performance.** In addition to specific provisions of this Lease, performance by any Party hereunder will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; laws or ordinances; absolute and unforeseeable inability to obtain labor and materials; moratorium; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental controls, laws, ordinances, restrictions or priority; litigation; unusually severe weather; inability (when either Party is faultless) of any contractor, subcontractor or supplier; acts of the other Party and other unforeseeable causes beyond the reasonable control of the Party obligated to perform hereunder. The time for

performance of an obligation(s) hereunder (other than the payment of money) will be extended and the performance excused for any such cause only for the period of the enforced delay, which period will commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) calendar days after the commencement of the cause, the period will commence to run only thirty (30) calendar days prior to the giving of such notice. Times of performance under this Lease may also be extended in writing by the Parties hereto.

## ARTICLE 21 – COMPLIANCE WITH ENVIRONMENTAL LAWS

21.1 **Restrictions on Tenant.** Scottsdale may not do any of the following:

(a) Make, or permit to be made, any use of the Facility, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, particulates or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, except in compliance with Environmental Laws or in compliance with permit(s) secured for that purpose. Within the context of this Lease, “**Environmental Laws**” are defined as those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Clean Water Act, 33 U.S.C. § 2601, *et. Seq.*; The Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(b) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water which matter, as reasonably determined by Phoenix or any governmental entity, does, or may, pollute or contaminate the same, or is, or may become, radioactive, or does, or may, adversely affect (i) the health or safety of persons, wherever located, whether on the Facility or anywhere else, (ii) the condition, use, or enjoyment of the Facility or any other real or personal property, whether on the Facility or anywhere else, or (iii) the Facility or any of the improvements thereon, including buildings, foundations, pipes, utility lines, landscaping, or parking areas, except in compliance with Environmental Laws.

(c) Use, store, dispose of, or permit to remain on the Facility or the underlying or adjacent property, except as expressly permitted by the Lease, any Hazardous Materials used, stored or disposed of by Scottsdale, except in compliance with Environmental Laws or in compliance with permit(s) secured for that purpose. Within the context of this Lease “**Hazardous Materials**” is defined as follows: (1) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Hazardous Materials Transportation

Act, 49 U.S.C. § 1801 *et seq.*; and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i; (2) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. § 49-201, *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. § 49-281, *et seq.*; the Solid Waste Management Act, A.R.S. § 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. § 49-1001, *et seq.*; Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4821-4846, and Management of Special Waste, A.R.S. § 49-851 to 49-868; or (3) all substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the Term of this Lease as well as any other materials or substances in amounts which have been determined to be hazardous to human health or the environment including, but not limited to, asbestos, mold and mercury.

**21.2 Disposal of Waste.** Scottsdale will manage all potentially infectious waste in compliance with Environmental Laws. Scottsdale will not keep any trash, garbage, waste, or other refuse on the Facility except in sanitary containers and will regularly and frequently remove the same from the Facility in accordance with the terms and conditions of Scottsdale's applicable permits. Scottsdale must keep all incinerators, containers, or other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Scottsdale must monitor and properly dispose of all sanitary sewage and not use the sewage disposal system of the Facility (i) for the disposal of anything except sanitary sewage, (ii) in excess of the amount reasonably contemplated by the uses permitted under the Lease, or (iii) in excess of the amount permitted by any governmental entity. Scottsdale must use appropriately licensed and regulated waste removal services at Scottsdale's sole cost.

### **21.3 Compliance with Environmental Laws.**

(a) Subject to the remaining provisions of this **Section 21.3**, Scottsdale will, at Scottsdale's own expense, comply with all existing and any hereinafter enacted Environmental Laws that relate to Hazardous Materials generated by the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers, during the Term of the Lease. Scottsdale will, at Scottsdale's own expense, make all submissions to, provide all information to, and comply with all requirements of any appropriate governmental authority ("**Authority**") under such Environmental Laws. In particular, Scottsdale will comply with all laws and obtain all required permits and approvals relating to the storage, use, and disposal of Hazardous Materials. Should any Authority require that a cleanup or remediation plan be prepared or that a cleanup or any other remediation action be undertaken because of any spills or discharges of Hazardous Materials at the Facility or on the underlying or adjacent property that occur during the Term of the Lease as a result of the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers, during the Term of the Lease, or after expiration of the Lease if as a result of Scottsdale's use of the Facility (a "**Tenant Environmental Obligation**"), then Scottsdale will, at Scottsdale's own expense, prepare and submit to the Authority all required plans and financial assurances, and carry out the approved plans. At no expense to the other Party, each Party will promptly provide all information requested by the requesting Party for preparation of affidavits required by the requesting Party to determine the applicability of the Environmental Laws to the Facility, and will promptly sign such reasonable affidavits with respect thereto as may be requested by the requesting Party.

(b) If the presence of any Hazardous Materials on, or under, the Facility arising out of the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers results in any contamination to the Facility or any adjacent real property during the Term of this Lease, Scottsdale will promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment in compliance with Environmental Laws. Scottsdale will then undertake any further action necessary to return the Facility or other property to the condition existing prior to the introduction of any Hazardous Materials to the Facility; provided that Phoenix's written approval of such actions must first be obtained. Scottsdale must undertake such actions without regard to the potential legal liability of any other person. However, any remedial activities by Scottsdale will not be construed as to impair Scottsdale's rights, if any, to seek contribution for indemnity from another person.

(c) Scottsdale will, at Scottsdale's own cost and expense, make all reasonable tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to any Environmental Laws pertaining to Scottsdale's use of the Facility. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Hazardous Materials on, or under the Facility, during the Term of this Lease. At no cost or expense to Phoenix, Scottsdale will promptly provide all information requested by Phoenix pertaining to the applicability of the Environmental Laws to the Facility, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination. In addition, Phoenix has the right to access, within ten (10) days of Scottsdale's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Hazardous Materials by Scottsdale on, or under, the Facility.

(d) Scottsdale must immediately notify Phoenix of any of the following: (i) any correspondence or communication from any governmental agency regarding any violation or apparent violation of Environmental Laws at the Facility or by Scottsdale's use of the Facility, (ii) any change in Scottsdale's use of the Facility that will change or has the potential to change Scottsdale's or Phoenix's obligations or liabilities under Environmental Laws, and (iii) any assertion of a claim or other occurrence for which Scottsdale may incur an obligation under this Article.

(e) Scottsdale will use commercially reasonable efforts to cause all contractors, permittees and concessionaires (each an "Indemnitor") to indemnify, defend and hold harmless, on demand, Phoenix, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Facility and any and all claims or actions brought by any person, entity or governmental body, arising in connection with contamination of, or adverse effects on, human health, property or the environment arising out of such Indemnitor's acts or omissions pursuant to any Hazardous Materials or Environmental Laws.

#### 21.4 **Noncompliance.**

(a) Scottsdale's failure or the failure of agents, employees, contractors, invitees or third parties during the Term of this Lease to substantially comply with any of the requirements and obligations of this **Article 21** constitutes a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, each Party has the right of "self help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Facility without waiving any of its rights under this Lease. The exercise by Phoenix or Scottsdale of any of its rights under this Article does not release the other Party from any obligation it would otherwise have hereunder.

(b) Notwithstanding the provisions of this **Article 21**, Phoenix has the right to terminate this Lease in Phoenix's reasonable discretion in the event that (i) Scottsdale has been required by any governmental authority to take remedial action in connect with Hazardous Materials contaminating the Facility if the contamination resulted from Scottsdale's action or use of the Facility (unless, and as long as, Scottsdale is diligently seeking compliance with such remedial action); or (ii) Scottsdale is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of Hazardous Materials at the Facility (unless Scottsdale is diligently seeking compliance with such enforcement order).

(c) The covenants in this **Article 21** will survive the expiration or earlier termination of this Lease.

**21.5 Landlord's Right to Perform Tests.** Phoenix has the right following reasonable written notice (except in the event of an emergency), to enter into the Facility at all reasonable times in order to review Scottsdale's Hazardous Materials handling and otherwise inspect the Facility for Hazardous Materials contamination. Without limiting the foregoing sentence, Phoenix has the right to have an environmental audit of the Facility conducted within ninety (90) days of the scheduled expiration date of this Lease or of termination of this Lease, if the Lease is terminated on a date other than the scheduled date. Scottsdale will promptly perform any remedial action recommended by such environmental audit unless the audit reveals that the Hazardous Materials resulted from the activities of a person other than Scottsdale, its agents, contractors, invitees, or employees. The costs of any such environmental audits will be borne by Scottsdale.

### **ARTICLE 22 – MISCELLANEOUS PROVISIONS**

**22.1 Contract Administrators.** Upon execution of this lease, the Parties shall each designate a contract administrator to coordinate the respective Party's participation in carrying out its obligations under this lease. The initial contract administrator for Scottsdale shall be the Community Services Director (William Murphy) who may delegate this duty from time to time. The initial contract administrator for Phoenix shall be Parks and Recreation Director (Inger Erickson) who may delegate this duty from time to time. Each Party will notify the other Party of its respective contract administrator and provide contact information for the contract administrator. A Party's contract administrator may not be exclusively assigned to this lease. Scottsdale's contract administrator's authority is limited to the administration of the requirements of this lease. No approval, consent or direction by Scottsdale's contract administrator or other persons affiliated

with Scottsdale inconsistent with this lease shall be binding upon Scottsdale. Scottsdale shall be responsible for securing all zoning approvals, development review, building, and other local, state, county or federal governmental approvals and for satisfying all governmental requirements pertaining to any of Scottsdale's obligations under this lease and shall not rely on Phoenix's contract administrator for any of the same.

**22.2 Cancellation for Conflict of Interest.** The Parties hereto acknowledge that this Lease is subject to cancellation by Phoenix or Scottsdale pursuant to the provisions of A.R.S. § 38-511, which provides that this Lease may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of City of Phoenix or City of Scottsdale is, at any time while this Lease or any extension thereof is in effect, an employee or agent of the other Party to this Lease in any capacity or a consultant to any other Party with respect to the subject matter of this Lease.

**22.3 Nondiscrimination.** The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act.

**22.4 Notice of Arbitration Status.** Pursuant to A.R.S. § 12-1518, the Parties acknowledge and agree that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Lease if required by A.R.S. § 12-133.

**22.5 Contractor's Records.** Phoenix and Scottsdale agree to retain all records relating to this Lease. The Parties each agree to make those records available at all reasonable times for inspection and audit by the other Party during the Term of this Lease and for a period of five (5) years after the completion of this Lease.

**22.6 Confidentiality.** Any other provision of this Lease to the contrary notwithstanding, the parties are both public institutions, and as such are subject to Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes (Sections 39-121 through 39-127). Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law. In the event a public records request is made for information and/or documents designed by the either party as confidential or proprietary the party will notify the other party as soon as reasonably possible.

**22.7 Governing Law; Binding Effect.** This Lease is not to be construed against the Party who prepared it but will be construed as though prepared by both Parties. This Lease is to be construed, interpreted, and governed by the laws of the State of Arizona, and with respect to any dispute hereunder, venue will lie exclusively with the State Courts of Maricopa County, Arizona.

**22.8 Memorandum of Lease.** Promptly following the Effective Date, Phoenix and Scottsdale will execute a short form memorandum of this Lease in the form attached hereto as **Exhibit "G"**, and cause the same to be recorded in the Office of the County Recorder for Maricopa County, Arizona.

**22.9 Entire Agreement.** This Lease with its exhibits contains the entire agreement between Phoenix and Scottsdale and any executory agreement hereafter made between Phoenix and Scottsdale is ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the Party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

**22.10 Captions.** The captions of Articles and Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

**22.11 Execution and Delivery.** This Lease will bind Scottsdale upon the approval by the Scottsdale City Council and the execution thereof. Phoenix will be bound after approval by the Phoenix City Council and the execution thereof.

**23.12 Time of Essence.** Time is of the essence in the performance of each and every provision of this Lease.

**23.13 No Brokers.** Neither Phoenix nor Scottsdale has dealt with any broker or finder with regard to the Facility or this Lease. Neither Party will be responsible for any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions incurred by the other Party in connection with this Lease.

**23.14 No Waiver.** No waiver of any condition or agreement in this Lease by either Phoenix or Scottsdale will imply or constitute a further waiver by such Party of the same or any other condition or agreement. No act or thing done by Phoenix or Phoenix's agents during the Term of this Lease will be deemed an acceptance of a surrender of the Facility, and no agreement to accept such surrender will be valid unless in writing signed by Phoenix. No payment by Scottsdale, nor receipt from Phoenix, of a lesser amount than the City Retained Revenue, City Shared Revenue, Additional Payments or other charges stipulated in this Lease will be deemed to be anything other than a payment on account.

**23.15 Attorneys' Fees.** If either Phoenix or Scottsdale litigate any provision of this Lease or the subject matter of this Lease, the unsuccessful litigant will pay the successful litigant all reasonable attorneys' fees and court costs incurred by it in connection with such litigation as determined or fixed by the court.

**23.16 Cumulative Rights.** Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder are cumulative and not restrictive of those provided at law or in equity.

**23.17 Relationship of Parties, No Third Party Beneficiary.** The Parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal-agent relationship exist between them, nor are there any intended third-party beneficiaries of this Lease.

**23.18 Counterparts.** This Lease may be executed in counterparts and all such counterparts are deemed to be originals and together they constitute but one and the same instrument.

**23.19 Computation of Time; Business Days.** In computing any period of time prescribed or allowed by this Lease, the day of the act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. "**Business day**" shall mean Monday through Friday, excluding any such dates that are legal holidays in the State of Arizona. If any day on which performance is due hereunder occurs on a day that is not a business day, then the day for such performance shall occur on the next occurring business day.

**23.20 Provisions Severable.** If any term or provision hereof or the application thereof to any person or circumstances is found, to any extent, to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision hereof will be valid and be enforced to the fullest extent permitted by law.

**23.21 Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Phoenix covenants that Scottsdale, upon paying the Rent and Additional Payments and observing and keeping all terms covenants, agreements, limitations, and conditions hereof on its part to be kept, will quietly have and enjoy the Facility during the Term hereof, without hindrance by Phoenix or any person claiming an interest in the Facility by or through Phoenix.

**23.22 No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either Party is required, such consent or approval will not be unreasonably withheld nor delayed, except where otherwise specifically provided. The remedy of the Party requesting such consent or approval, in the event such Party should claim or establish that the other Party has unreasonably withheld or delayed such consent or approval, is to be limited to injunction or declaratory judgment and in no event will such other Party be liable for a money judgment.

**23.23 Statutory Cancellation Right.** In addition to all the rights of the Parties hereunder, Parties shall have the rights specified in A.R.S. § 38-511.

**(Signature Pages Follow)**

IN WITNESS WHEREOF, the Parties have executed this lease of the PAPAGO BASEBALL FACILITY BY THE CITY OF SCOTTSDALE as of the date first above written.

**CITY OF PHOENIX**

ED ZUERCHER, CITY MANAGER

By: \_\_\_\_\_  
Inger Erickson, Director  
Parks & Recreation Department

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA            )  
  )        ss.  
County of Maricopa         )

This instrument was acknowledged before me this day of \_\_\_\_\_, 2018 by Inger Erickson, Parks and Recreation Director on behalf of the CITY OF PHOENIX, a municipal corporation.

\_\_\_\_\_  
Notary Public

(Notary Seal)

CITY: CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
W. J "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

*Margaret Wilson*  
\_\_\_\_\_  
Bruce Washburn, City Attorney

By: Margaret Wilson, Senior Assistant City Attorney

*William B. Murphy*  
\_\_\_\_\_  
William B. Murphy, Community Services Director

*Katie Callaway*  
\_\_\_\_\_  
Katie Callaway, Risk Management Director

\_\_\_\_\_  
Jim Thompson, City Manager

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
15722181v16

**TABLE OF LEASE EXHIBITS**  
*(Document and Exhibit Status Chart)*

<u>Exhibit</u>	<u>Page number from Lease</u>	<u>Paragraph</u>	<u>Status and responsible party</u>	<u>Description</u>
A	Page 1	Recital paragraph A	City of Scottsdale	Legal description
B	Page 1	Recital paragraph A	City of Scottsdale	Depiction of the Facility
C	Page 4	2.3.1	City of Scottsdale	Illustration of perimeter walking trail
D	Page 4 and 7	2.3.2 and 6.5	City of Scottsdale	Illustration of overflow parking lot location and depiction conceptually approved improvements
E	Page 5	3.1	City of Scottsdale (attached)	Insurance requirements
F	Page 17	18.2(e)	City of Phoenix	Permitted Encumbrances
G	Page 22	22.8	City of Scottsdale (attached)	Memorandum of Lease

*[Note: This page is not part of the agreement. Remove it before the city council meeting.]*

**EXHIBIT A**  
**Legal Description**

That portion of the Southeast Quarter of Section 33, Township 2 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Section 33, from which the South Quarter corner of said Section 33 bears S 89°41'44" W, a distance of 2688.12 feet;

**THENCE** along the South line of the Southeast Quarter of said Section 30, S 89°41'44" W, a distance of 726.76 feet;

**THENCE** leaving said South line, N 00°18'16" W, a distance of 371.96 feet to the **POINT OF BEGINNING**;

**THENCE** S 88°41'44" W, a distance of 175.40 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 254.14 feet with a chord bearing of N 70°05'22" W, a distance of 381.78 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 97°22'33" for an arc length of 431.92 feet;

**THENCE** N 09°41'09" W, a distance of 133.10 feet;

**THENCE** S 88°21'32" W, a distance of 99.79 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 146.43 feet with a chord bearing of S 50°21'18" W, a distance of 199.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 85°38'16", for an arc length of 218.86 feet;

**THENCE** N 78°25'26" W, a distance of 94.71 feet;

**THENCE** S 83°08'48" W, a distance of 74.84 feet to the beginning of a non-tangent curve concave northerly having a radius of 178.85 feet with a chord bearing of N 76°52'49" W, a distance of 116.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 37°51'47", for an arc length of 118.19 feet;

**THENCE** N 58°04'21" W, a distance of 100.16 feet;

**THENCE** N 26°45'56" W, a distance of 186.88 feet;

THENCE N 03°28'13" E, a distance of 76.71 feet;

THENCE N 48°13'20" W, a distance of 74.62 feet;

THENCE N 16°20'55" W, a distance of 301.37 feet;

THENCE N 00°36'21" E, a distance of 55.94 feet;

THENCE N 18°46'50" E, a distance of 82.44 feet;

THENCE N 26°51'30" E, a distance of 74.73 feet to the beginning of a non-tangent curve concave southerly having a radius of 266.61 feet with a chord bearing of N 83°25'33" E, a distance of 364.97 feet;

THENCE along the arc of said curve, to the right, through a central angle of 86°23'11", for an arc length of 401.98 feet;

THENCE S 48°47'29" E, a distance of 112.43 feet;

THENCE N 29°49'19" E, a distance of 99.98 feet;

THENCE N 03°37'35" E, a distance of 55.39 feet;

THENCE N 51°07'06" E, a distance of 197.60 feet;

THENCE S 68°12'34" E, a distance of 44.67 feet;

THENCE S 81°38'45" E, a distance of 197.16 feet;

THENCE S 15°49'58" E, a distance of 61.14 feet;

THENCE S 55°02'29" E, a distance of 269.12 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 536.44 feet with a chord bearing of S 71°56'11" E, a distance of 278.24 feet;

THENCE along the arc of said curve, to the left, through a central angle of 30°03'42", for an arc length of 281.46 feet;

THENCE S 88°44'47" E, a distance of 132.97 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 252.46 feet with a chord bearing of S 56°03'13" E, a distance of 207.31 feet;

THENCE along the arc of said curve, to the right, through a central angle of 48°29'00", for an arc length of 213.63 feet;

EXHIBIT A

Page 2 of 3

Contract No. 2018-201-COS

**THENCE** S 01°34'20" E, a distance of 49.29 feet to the beginning of a non-tangent curve concave westerly having a radius of 277.67 feet with a chord bearing of S 02°27'46" W, a distance of 231.50 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 49°16'25", for an arc length of 238.79 feet;

**THENCE** S 00°18'49" E, a distance of 136.37 feet;

**THENCE** S 14°41'54" E, a distance of 111.67 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 234.25 feet with a chord bearing of S 45°55'07" W, a distance of 390.61 feet;

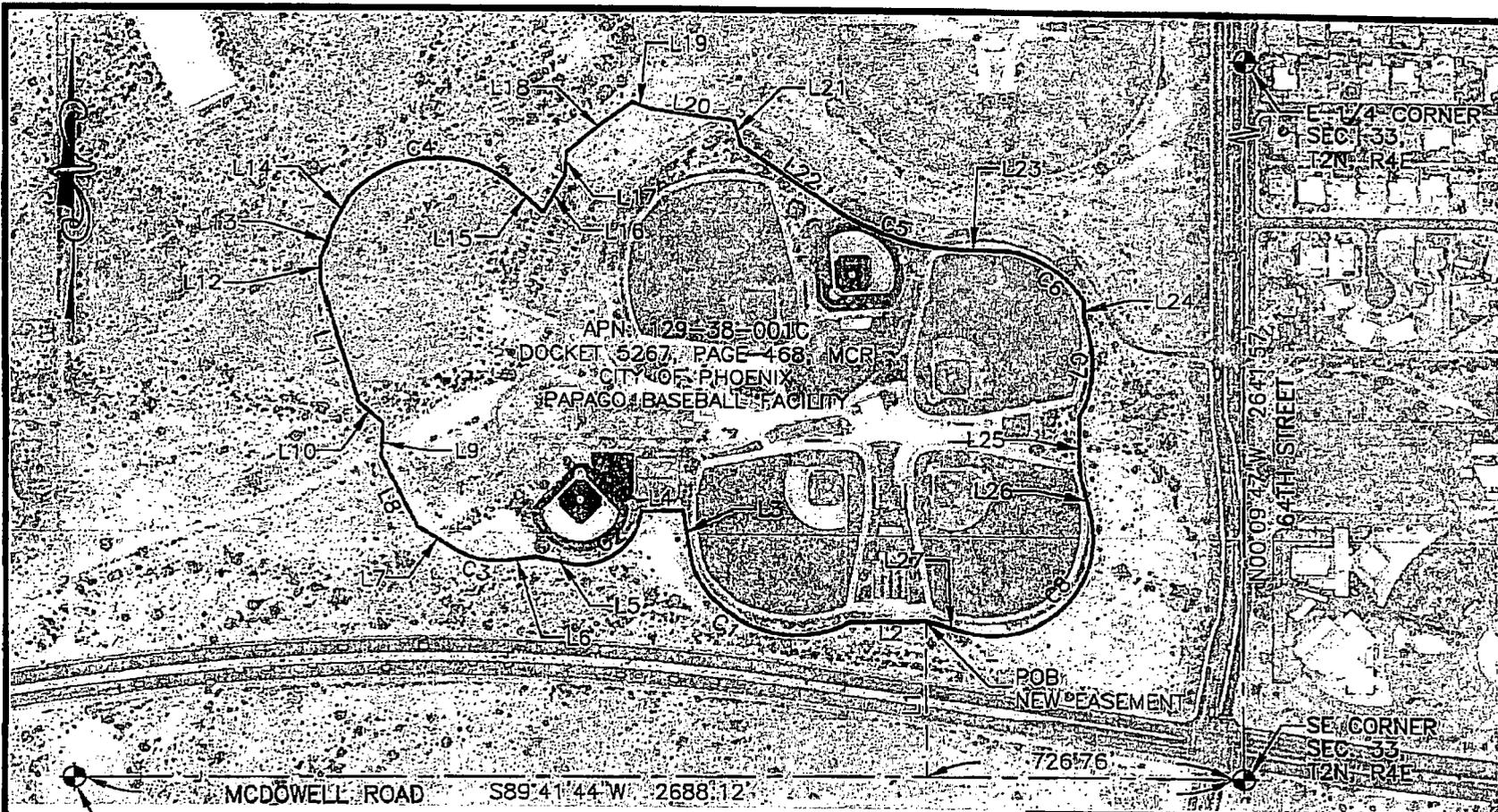
**THENCE** along the arc of said curve, to the right, through a central angle of 112°58'12", for an arc length of 461.87 feet;

**THENCE** N 75°41'31" W, a distance of 106.69 feet to the **POINT OF BEGINNING**.

Said parcel contains 36.75 acres (more or less)



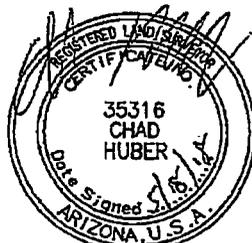
Expires: 9/30/2018



S 1/4 CORNER  
SEC. 33, T2N, R4E

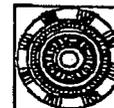
**LEGEND**

- POB = POINT OF BEGINNING
- ROW = RIGHT-OF-WAY
- MCR = MARICOPA COUNTY RECORDER
-  = NEW EASEMENT



EXPIRES: 9/30/18

**EASEMENT EXHIBIT**



**AZTEC ENGINEERING**  
4561 E. McDowell Rd., Phoenix, AZ 85008  
Tel (602) 454-0402 Fax (602) 454-0403  
website: www.aztec.us

DR: CWH	CK: ADR	SHEET NO.	TOTAL SHEETS
DATE: 5-18-18	REV:	1	2
SCALE: N/A			



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Populous for the City of Phoenix, Arizona.

EXHIBIT C  
Page 1 of 1  
Contract No. 2018-201-COS

PAPAGO SITE // CONCEPTUAL TRAIL CORRIDOR PLAN

07.06.2017

POPULOUS



PAPAGO ENLARGED SITE PLAN

07.06.2017 **POPULOUS**

EXHIBIT "E"

**Sublessee and Contractor Insurance Requirements**

**1. INSURANCE REQUIREMENTS:**

Sublessee and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Sublessee and its agents, representatives, employees and subconsultants. Sublessee and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this agreement. Phoenix in no way warrants that the minimum limits stated in this section are sufficient to protect Scottsdale from liabilities that might arise out of the activities encompassed by this agreement by Scottsdale, its agents, representatives, employees or subcontractors and Scottsdale is free to purchase additional insurance as may be determined necessary.

- 1.1. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Scottsdale or sublessee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1.1.1. Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Damage to Rented Premises)	\$50,000
Liquor Liability (if alcohol is being sold)	\$1,000,000

- The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Tenant, sub tenant, or subcontractors."

- The policy must be endorsed to include Liquor Liability coverage if alcohol is being sold at the event.

### 1.1.2 Property Insurance

Coverage for buildings including Scottsdale’s tenant improvements shall be insured for special form perils coverage on a replacement value basis.

- The City of Phoenix must be named as a loss payee on property coverage for buildings and tenant improvements.
- Policy must contain a waiver of subrogation against the City of Phoenix.

### 1.1.3 Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

The policy must be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Tenant, sub tenant, or sub contractor, including automobiles owned, leased, hired or borrowed by any of them. ”

### 1.1.4 Worker’s Compensation and Employers’ Liability

Workers’ Compensation	Statutory
Employers’ Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a Sponsor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such Sponsor or subcontractor executes the appropriate sole proprietor waiver form.

- 2 **ADDITIONAL INSURANCE REQUIREMENTS:** The policies must include, or be endorsed to include, the following provisions:
- On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured.
  - Scottsdale or Sublessee's Subcontractors insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
- 3 **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, Scottsdale must provide to Phoenix, within ten (10) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to **(City of Phoenix Department Representative's Name & Address & Fax Number)**.
- 4 **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Phoenix in no way warrants that the above-required minimum insurer rating is sufficient to protect Scottsdale from potential insurer insolvency. Notwithstanding the foregoing, Scottsdale shall have the absolute right to self-insure or carry any of its insurance under "blanket policies" covering the Premises and other locations it owns or leases. If requested by Phoenix, Scottsdale will furnish to Phoenix a letter certifying or self- insurance certificate to document that Scottsdale has provided for the insurance coverage required
- 5 **VERIFICATION OF COVERAGE:** Scottsdale must furnish Phoenix certificates of insurance (ACORD form or equivalent approved by Phoenix) as required at least 10 days prior to occupancy or renewal of said insurance. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Each insurance policy required by this agreement must be in effect at or prior to commencement of the occupancy and remain in effect for the duration of the contract. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required must be sent directly to **(City Department Representative's Name and Address)**. The contract number and title must be noted on the certificate of insurance.

- 6 **SUBCONTRACTORS**: If any work under this agreement is subcontracted in any way, Scottsdale or sublessee on behalf of Scottsdale shall execute written agreements with all Subcontractors containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Scottsdale and Phoenix. The sublessee shall be responsible for executing the agreement with all Subcontractors and obtaining Certificates of Insurance verifying the insurance requirements.
  
- 7 **APPROVAL**: Any modification or variation from these insurance requirements must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

List No. 1.

RECEIVED  
DEC 4 - 1937  
STATE LAND DEPT.  
OF ARIZONA

01-DEED

32964

Patent No. 1093785

*City Clerk*

County Recorder  
Deputy Recorder  
*375*

Witness my hand and seal  
the day and year above said.  
N. C. 'RELAND' NOTARY  
FEB 23 1938  
in District of Arizona  
on page 443 of Volume 117  
at request of *City of Phoenix*

STATE SELECTION

Act of April 7, 1930 (46 Stat. 142),  
as amended by the Act of July 7, 1932 (47 Stat.  
646).

Phoenix Land District.

Arizona.

*PHOENIX  
COURSE*

ENT 3500 (44)

EXHIBIT F

Page 1 of 18

Contract No. 2018-201-COS

Phoenix 071491.

NOV 5 1939 444

## The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Phoenix, Arizona, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of April 7, 1930 (46 Stat. 142), entitled "An Act To abolish the Papago Saguaro National Monument, Arizona, to provide for the disposition of certain lands therein for park and recreational uses, and for other purposes", as amended by the Act of July 7, 1932 (47 Stat. 646), the claim of the State of Arizona, has been established and duly consummated, in conformity to law, for the Lots six, seven, ten, and eleven of Section three, the Lots one and two, the south half of the north half, and the south half of Section four, the south half of the northeast quarter and the east half of the southeast quarter of Section five, the north half of the northeast quarter, the north half of the northwest quarter of the northwest quarter, the north half of the northeast quarter of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, and the east half of the southeast quarter of the northwest quarter of Section nine, and the Lots one and two of Section ten in Township one north and the southeast quarter of Section thirty-three in Township two north all in Range four east of the Gila and Salt River Meridian, Arizona, containing one thousand one hundred eighty-five acres and fourteen hundredths of an acre, according to the Official Plat of the Survey of the said Land, on file in the General Land Office:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES OF AMERICA, unto the said State of Arizona, the tracts of Land above described; TO HAVE AND TO HOLD the said tracts of Land, with the appurtenances thereof, unto the said State of Arizona, and to its successors, forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches.

EXHIBIT F

Page of 18

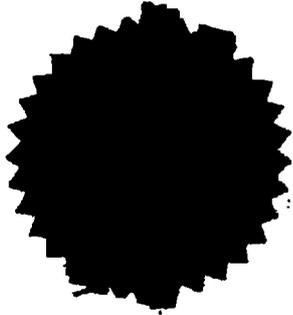
Contract No. 2018-201-COS

and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. And there is also reserved to the United States under the provisions of said Act of April 7, 1930, all the oil, coal, or other mineral deposits found at any time in the lands above described, and the right to prospect for, mine, and remove the same under such rules and regulations as the Secretary of the Interior may prescribe.

This patent is issued upon the express condition, that the lands so granted shall be used only for municipal, park, recreation, or public-convenience purposes, and if the lands or any part thereof, shall be abandoned for such use, such lands, or such part, shall revert to the United States.

*Certificate No. 1 of Approval of Transfer and Change of Use approved June 26, 1954, to the City of Phoenix, State of Arizona for 624.83 acres. Authority, Sec. 3 act of June 14, 1926, as amended (68 Stat. 173; 43 U.S.C. 869).  
Rose M. Beall, Chief,  
Patents Section.*

Supplemental Patent No. 1153369-5.80 a.  
Aug. 8, 1955



IN TESTIMONY WHEREOF, I, **Franklin D. Roosevelt,**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **SEVENTEENTH** day of **NOVEMBER** in the year of our Lord one thousand nine hundred and **THIRTY-SEVEN** and of the Independence of the United States the one hundred and **SIXTY-SECOND.**

By the President: *Franklin D. Roosevelt*  
By *James H. Brown* Secretary,  
*Carl S. Adams*  
Recorder of the General Land Office.

DATE 8599 PAGE 446

attached 7749



THE SECRETARY OF THE INTERIOR  
WASHINGTON

Serial No. Phoenix 971481

Certificate No. 1

CERTIFICATE OF APPROVAL OF TRANSFER  
AND CHANGE OF USE

(Act of June 14, 1926; 44 Stat. 741;  
43 U.S.C. 869 et seq., as amended)

This is to certify that the authorized officer of the Bureau of Land Management, on April 28, 1959, authorized the State of Arizona to transfer the lands described below and in Patent No. 1,093,785 issued November 17, 1937, to the City of Phoenix, State of Arizona, for use as a park, recreation, public convenience purposes, including the construction of a baseball stadium. This approval is subject to the reversionary provisions of the above noted Act, terminating 25 years from April 28, 1959.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.  
sec. 4, lot 2, SW1/4, S1/4, SW1/4, W1/4  
sec. 5, S1/4, E1/4  
sec. 9, E1/4 except lot 8 in the SE1/4 and  
in the E1/4 which was included in Patent  
No. 1,153,369 dated August 8, 1955, which  
issued under the Act of Congress of May 13,  
1955 (69 Stat. 48), NW1/4, N1/4  
Containing 624.83 acres

June 16, 1959

*[Signature]*  
Assistant Secretary



HOLD FOR PICK UP  
CITY OF PHX. ACCT. #34



# Unofficial Document

OFFICE  
MARICOPA

HELEN PURCELL

97-0380744 06/05/97 03:03

TAMM SE OF SE

## The United States of America

To all to whom these presents shall come, Greeting:

EXEMPT UNDER A.R.S. 42-1414 A3  
AZA 29355

WHEREAS

CITY OF PHOENIX

is entitled to a land patent pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. 869 et seq., for the following described land:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.,  
sec. 4, lots 3 and 5;  
sec. 5, lot 6.

T. 2 N., R. 4 E.,  
sec. 33, lot 2.

containing 65.84 acres.

NOW KNOW YE, that there is, therefore, granted by the United States, unto the City of Phoenix, the land above described for a city park only; TO HAVE AND TO HOLD the land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the City of Phoenix, and its assigns forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 43 U.S.C. 945.
2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of the Interior.
3. An appropriation of a right-of-way for a Federal Aid Highway, under the Act of November 9, 1921, 42 Stat. 216; repealed 1958 (AZAR 04330).

Patent Number 02-97-0007

*REAR SIDE  
PARK  
SCHOOL  
COURSE*

EXHIBIT F

Page 5 of 18

Contract No. 2018-201-COS

## SUBJECT TO:

1. Those rights for a water storage site and drainage control, granted to the City of Phoenix, its successors or assigns, by right-of-way No. AZA 06039, pursuant to the Act of February 15, 1901, 43 U.S.C. 959.
2. Those rights for a water storage tank site, water supply pipeline and access road, granted to the City of Phoenix, its successors or assigns by right-of-way No. AZAR 024174, pursuant to the Act of February 15, 1901, 43 U.S.C. 959.

Provided, that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

Provided further, that the Secretary of the Interior may take action to revert title in the United States if the patentee directly or indirectly permits its agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex, national origin, or handicap.

The grant of the herein described lands is subject to the following reservations, conditions, and limitations:

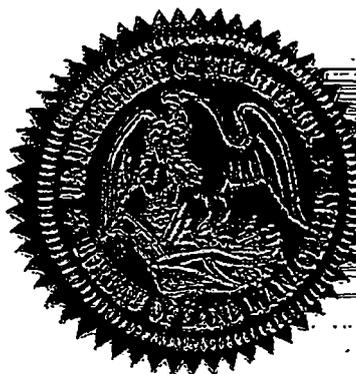
1. The patentee or its successor in interest shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 241, and requirements of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant thereto, 43 CFR 17, for the period that the lands conveyed herein are used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits.
2. If the patentee or its successor in interest does not comply with the terms or provisions of Title VI of the Civil Rights Act of 1964, and the requirements imposed by the Department of the Interior issued pursuant to that title, during the period during which the property described herein is used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits, the Secretary of the Interior or his delegate may declare the terms of this grant terminated in whole or in part.
3. The patentee, by acceptance of this patent, agrees for itself or its successors in interest that a declaration of termination in whole or in part of this grant shall, at the option of the Secretary or his delegate, operate to revert in the United States full title to the lands involved in the declaration.

Patent Number **02-97-0007**

EXHIBIT F  
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Contract No. 2018-201-COS

4. The United States shall have the right to seek judicial enforcement of the requirements of Title VI of the Civil Rights Act of 1964, and the terms and conditions of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant to said Title VI, in the event of their violation by the patentee.
5. The patentee or its successor in interest will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property conveyed by this document signs and posters bearing a legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the area or facility conveyed.
6. The reservations, conditions, and limitations contained in paragraphs (1) through (5) shall constitute a covenant running with the land, binding on the patentee and its successors in interest for the period for which the land described herein is used for the purpose for which this grant was made, or for another purpose involving the provision of similar services or benefits.
7. The assurances and covenant required by sections (1) through (6) above shall not apply to ultimate beneficiaries under the program for which this grant is made. "Ultimate beneficiaries" are identified in 43 CFR 17.12(h).

Unofficial Document



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Phoenix, Arizona, the twenty-second day of May in the year of our Lord one thousand nine hundred and ninety-seven and of the Independence of the United States the two hundred and twenty first.

By

Ceci Sturm  
Acting State Director

Patent Number 02-97-0007

EXHIBIT F  
Page 7 of 18  
Contract No. 2018-201-COS

STATE OF ARIZONA, County of Maricopa: ss  
I do hereby certify that the within instrument was filed and recorded at request of *C*  
Docket - 5267

RECORDED 20 9 00  
WITNESS my hand and official seal the day and year  
Records of Maricopa County, Arizona  
CLIFFORD W. WARD, Deputy  
By: *Clifford W. Ward*

DI-DEED 201144

5267 468  
DEED

THIS INDENTURE made this 11<sup>th</sup> day of August, 1964, between the State of Arizona, acting by and through Paul J. Fannin, the duly elected, qualified Governor of the State of Arizona, under and pursuant to Sections 41-511.16, 41-511.17, and 41-511.18, Arizona Revised Statutes, Grantor, and the City of Phoenix, a municipal corporation, Grantee.

WITNESSETH:

Grantor, for and in consideration of the sum of \$3,529.02 paid to it, through its State Parks Board, the receipt whereof is hereby acknowledged, and in further consideration of the assumption by the Grantee of all the obligations and its taking subject to certain reservations, restrictions, and conditions and its covenant to abide by and agreement to certain other reservations, restrictions, and conditions, all as set out hereinafter, does by these presents convey unto Grantee, its successors and assigns, all of its right, title, interest, claim, and demand in and to the following-described property situated in the County of Maricopa, State of Arizona, to-wit:

Southeast quarter of Section Thirty-three, in Township Two North; Lots Six, Seven, Ten, and Eleven of Section Three; Lots One and Two, the south half of the north half and the south half of Section Four; the south half of the northeast quarter, and the east half of the southeast quarter of Section Five; the north half of the northeast quarter, the north half of the north half of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, except for Lots Seven and Eight of said Section Nine; and the Lots One and Two of Section Ten; in Township One North, all in Range Four East of the Gila and Salt River Base and meridian, Arizona;

containing one thousand one hundred seventy-six and thirty-four hundredths acres, more or less.

DKT 5267 REG 469

TO HAVE AND TO HOLD the foregoing described premises, together with all and singular appurtenances and privileges thereunto belonging and all the estate, right, title, interest, and claim of the Grantor unto the said Grantee, its successors and assigns, forever.

By the acceptance of this deed or any rights hereunder the said Grantee, for itself, its successors and assigns, agrees that the transfer of the property transferred by this instrument is accepted subject to the following restrictions and reservations contained in Patent No. 1093785 from the United States of America to the State of Arizona, dated November 17, 1937, and in amendments or modifications thereof:

- (1) Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.
- (2) There is reserved from the lands hereby granted a right-of-way for ditches or canals constructed by the authority of the United States.
- (3) There is also reserved to the United States under provisions of the Act of April 7, 1930, all the oil, coal, or other mineral deposits found at any time in above-described lands and the right to prospect for, mine, and remove the same under such rules and regulations as the Secretary of Interior may prescribe.
- (4) This deed is issued upon the express condition that the lands so conveyed shall be used only for a park, recreation, public convenience purposes, including the construction of a baseball stadium, and if the lands, or any part thereof, shall

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be abandoned for such use, such lands or such part shall revert to the United States.

By the acceptance of this deed, or any rights hereunder, the said Grantee, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and that this transfer is made subject to the following reservations, restrictions, and conditions contained in Section 41-511.17 and 37-231, Arizona Revised Statutes, and in Conditional Certificate of Purchase No. 1, dated July 27, 1959, heretofore issued to Grantee.

(a) The lands shall be used only for municipal, park, recreation, or public convenience purposes, and if the lands or any part thereof shall be abandoned for such use, such lands, or such part, shall revert to the United States of America.

(b) The lands are subject to the following leases, easements, permits, and right-of-way agreements, the holders of which are entitled to successive renewals thereof for terms of five years each as long as they comply with the terms of the same:

Arizona Game & Fish Department	108.67 Acres	✓
Salt River Project Agricultural Improve- ment and Power Dis- trict	2.78 Acres	
Arizona Highway Depart- ment	31.77 Acres	
City of Tempe	43.44 Acres	
Arizona Cactus and Native Floral Society, Ino.	150.73 Acres	
United States Army	70.38 Acres	
Highway Rights-of-way	10.52 Acres	

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The improvements on said leases, easements, permits, and rights-of-way have not been sold, and the purchaser has only acquired title to the land subject to the same.

(c) The Grantee shall consult with the Arizona State Parks Board in the preparation of a Master Plan for the development of Papago Park. The Grantee shall prepare the Master Plan.

(d) The Grantee shall submit to the Arizona State Parks Board, within six months of date of conveyance, a program of development of Papago Park, with the understanding that the Grantee shall make every effort to spend at least one million dollars in such development in the first five years, <sup>United States</sup> and that in any event at least one million dollars shall be spent in the first ten years.

(e) The Grantee shall, within the first year of development, construct and install picnic facilities, water supply, sanitation facilities, and ingress and egress to such picnic area.

(f) The Grantee shall not charge an admission or exact a toll for entry into Papago Park; and charges made at concessions or fees fixed for the use of such facilities as the golf course, swimming pool, etc., shall be reasonable.

(g) "Municipal use" shall be limited to mean the construction of a baseball stadium for commercial baseball enterprises; and only other facilities and administrative building essential to the operation of Papago Park and in the interest of health, safety, and welfare of the park visitor.

(h) If the Grantee constructs a baseball stadium and parking area for such a facility for use by

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commercial baseball enterprises, such facilities shall not be constructed on Papago Park lands lying south of McDowell Road and north of Van Buren Street.

(i) The Grantee shall acknowledge the tomb of Governor Hunt and that square area 120 feet by 120 feet; this parcel of land being one-third of an acre; the apex of the pyramid being the center of the square, and the sides of the square being parallel to the base of the pyramid. In addition, the Grantee shall incorporate the Master Plan for the tomb of Governor Hunt into the Master Plan for Papago Park, to provide egress and ingress, including a path to the tomb proper, providing easy ascent and descent; parking, lighting, water, landscaping, maintenance, and a retaining wall of approximately two feet in height for stabilization purposes. The Grantee agrees to make every effort to comply with these stipulations within a five-year period, and to maintain and keep in good repair said tomb in perpetuity. And, in addition, the Grantee shall grant to the surviving family of Governor Hunt the right to entomb other members of their family in said tomb until the spaces for such in said tomb have been filled.

(j) The Grantee agrees that a representative or a committee representing the United States of America may inspect Papago Park at any time for the purpose of determining whether stipulations and conditions herein set forth are being complied with. Said representative or committee shall advise the Grantee of any non-compliance with any stipulation or condition herein, and said Grantee shall be given one full fiscal year to comply. In the event of a dispute between the United States of America

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EX: 5267 473

and the Grantee as to whether there has been non-compliance with any stipulation or condition, the matter shall be decided by the courts.

(k) The Grantee is hereby prohibited from selling or transferring or attempting to sell or transfer Papago Park. Any such action or attempted action by said Grantee shall be deemed an abandonment, and Papago Park shall revert to the United States of America.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed by Paul J. Fannin, its duly elected, qualified, and acting Governor, and its Great Seal hereto affixed the day and year first herein written.

Unofficial Document



*Paul J. Fannin*  
PAUL J. FANNIN  
GOVERNOR OF THE STATE OF ARIZONA

ATTEST  
*Masley Bohlin*  
SECRETARY OF STATE OF THE STATE OF ARIZONA

STATE OF ARIZONA }  
County of Maricopa } ss

On this 11<sup>th</sup> day of August, 1964, before me, the undersigned notary public, personally appeared Paul J. Fannin, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official

*Paul J. Bohlin*  
My commission expires  
Aug 30, 1966

*Paul J. Bohlin*  
Notary Public

DKT 2950 PAGE 214

CONDITIONAL

CERTIFICATE OF PURCHASE # 474,

NO. 1

SALE NO. 1SALES REPORT NO. 1

ARIZONA STATE PARKS BOARD - STATE OF ARIZONA,

WHEREAS, on the 25th day of February, A. D. 1959, the CITY OF PHOENIX purchased from the State of Arizona the following described land, to-wit:

Southeast quarter of Section thirty-three, in Township Two north, Lots six, seven, ten and eleven of Section three; Lots one and two, the south half of the north half and the south half of Section four; the south half of the northeast quarter, and the east half of the southeast quarter of Section five; the north half of the northeast quarter, the north half of the north half of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, except for Lots seven and eight of said Section nine; and the Lots one and two of Section ten; in Township one north, all in Range four east of the Gila and Salt River Base and Meridian, Arizona;

containing one thousand one hundred seventy-six and thirty-four hundredths acres, more or less, under and subject to the provisions of the laws of the State of Arizona, for the sum of THREE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND TWO CENTS (\$3,529.02), of which there has been paid to the STATE PARKS BOARD the sum of THREE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND TWO CENTS (\$3,529.02).

NOW, THEREFORE, the said purchaser, THE CITY OF PHOENIX, will be entitled to have and receive a Patent from the State of Arizona to the land hereinbefore described, upon surrendering this Certificate and fully complying with all the terms and conditions herein contained, and complying with all the pro-

EXHIBIT F

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visions of law. Before said patent is issued the purchaser must supply the Arizona State Parks Board with proof that the purchaser has secured the approval of the Secretary of the Interior as to transfer of title and change of use.

CONDITIONS

This instrument is executed subject to all conditions, requirements and provisions of the Public Land Code of the State of Arizona, passed at the Second Special Session of the Second Legislature of the State of Arizona.

Said lands are subject to the following leases, easements, permits and right-of-way agreements, the holders of which are entitled by the provisions of A. R. S. § 41-511.17.2 to successive renewals thereof for terms of five years each as long as they comply with the terms of the same:

Arizona Game & Fish Department	108.67 Acres
Salt River Project Agricultural Improvement and Power District	2.78 Acres
Arizona Highway Department <small>Unofficial Document</small>	31.77 Acres
City of Tempe	43.44 Acres
Arizona Cactus and Native Floral Society, Inc.	150.73 Acres
United States Army	70.38 Acres
Highway Rights of Way	10.52 Acres

The improvements on said leases, easements, permits and rights-of-way have not been sold, and the purchaser has only acquired title to the land subject to the same.

In addition to the above encumbrances, A. R. S. § 41-511.16 provides that said lands may only be sold in one parcel to any municipality for the purposes set forth in Patent No. 1093785 from the United States of America to the State of Arizona, dated November 17, 1937. That patent was issued upon the express condition that said lands shall be used only for municipal, park, recreation, or public-convenience purposes, and if abandoned for such use, such lands, or such part, shall revert to the United States, and subject to any vested and accrued water

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rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection therewith, and for ditches or canals constructed by the authority of the United States. The United States Government further reserved in said patent all the oil, coal, or other mineral deposits found at any time in said lands, and the right to prospect for, mine and remove the same. If the State of Arizona has any such rights, pursuant to A. R. S. § 37-231, it reserves one-sixteenth of all gas, oil, metal and mineral rights in the above described lands.

In conformity with the restrictions of sale found in A. R. S. § 41-511.16 and the uses and purposes of said land set forth in said patent, certain other stipulations and conditions have been adopted by the Arizona State Parks Board to be included in the conveyance of Papago Park to a purchaser. These read as follows:

1. That the Grantee shall agree to consult with the Arizona State Parks Board in the preparation of a Master Plan for the development of Papago Park. Unofficial Document The Grantee shall prepare the Master Plan.
2. That the Grantee shall submit to the Arizona State Parks Board, within six months of date of conveyance, a program of development of Papago Park, with the understanding that the Grantee shall make every effort to spend at least one million dollars in such development in the first five years, and that in any event at least one million dollars shall be spent in the first ten years.
3. That the Grantee shall, within the first year of development, construct and install picnic facilities, water supply, sanitation facilities, and ingress and egress to such picnic area.
4. That the Grantee shall agree not to charge an admission or to exact a toll for entry into Papago

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Park; and that charges made at concessions, or fees fixed for the use of such facilities as the golf course, swimming pool, etc., shall be reasonable.

5. That the Grantee shall agree the "municipal use" shall be limited to mean the construction of a baseball stadium for commercial baseball enterprises; and only other facilities and administrative building essential to the operation of Papago Park and in the interest of health, safety and welfare of the park visitor.
6. That if the Grantee constructs a baseball stadium and parking area for such a facility for use by commercial baseball enterprises, such facilities shall not be constructed on Papago Park lands lying south of McDowell Road and north of Van Buren Street.
7. That the Grantee agrees to acknowledge the Tomb of Governor Hunt and that square area 120 feet by 120 feet; this parcel of land being one-third of an acre; the apex of the pyramid being the center of the square, and the sides of the square being parallel to the base of the pyramid. In addition the Grantee shall agree to incorporate the Master Plan for the Tomb of Governor Hunt into the Master Plan for Papago Park, to provide egress and ingress, including a path to the tomb proper, providing easy ascent and descent; parking, lighting, water, landscaping, maintenance, and a retaining wall of approximately two feet in height for stabilization purposes. The Grantee agrees to make every effort to comply with these stipulations within a five year period, and to maintain and keep in good repair said tomb in perpetuity. And in addition, the Grantee shall grant to the surviving family of

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Governor Hunt the right to entomb such other members of their family in said tomb until the spaces for such in said tomb have been filled.

- 8. That the Grantee shall agree that a representative or a committee of the Arizona State Parks Board may inspect Papago Park at any time for the purpose of determining whether stipulations and conditions herein set forth are being complied with. Said representative or committee shall advise the Grantee of any non-compliance with any stipulation or condition herein and said Grantee shall be given one full fiscal year to comply. In the event of a dispute between the State Parks Board and the Grantee as to whether there has been non-compliance with any stipulation or condition, the matter shall be decided by the courts.
- 9. The Grantee is hereby prohibited from selling or transferring or attempting to sell or transfer Papago Park. Any such action or attempted action by said Grantee shall be deemed an abandonment and Papago Park shall revert to the State of Arizona.

IN WITNESS WHEREOF, the Arizona State Parks Director has affixed his signature at Phoenix, State of Arizona, on the 30<sup>th</sup> day of July, A. D. 1959, and the said City of Phoenix, a municipal corporation, the purchaser herein, has affixed its signature at Phoenix, State of Arizona, on the 27<sup>th</sup> day of July, A. D. 1959.

Dennis McCarthy  
Arizona State Parks Director

CITY OF PHOENIX, a municipal corporation

By Ray Wilson  
City Manager

ARIZONA  
CITY OF PHOENIX  
Richard L. Currier  
City Clerk  
APPROVED AS TO FORM:  
[Signature]  
City Attorney

128358

FILE NUMBER:  
Nature of Instrument  
Indexed in  
Date of Instr.  
Other Index Cards Needed  
Detail Department

STATE OF ARIZONA } ss  
County of Maricopa

I hereby certify that the within instrument was filed and recorded at request of City of Phoenix in Book 3013 Page 2950 on page 214 to 218 of the day and year aforesaid.  
Witness my hand and official seal  
-1- C. Hedy -1-1000

County Clerk  
[Signature]  
By [Signature]  
3-75  
Black type

**WHEN RECORDED, RETURN TO:**

City of Scottsdale  
c/o City Clerk  
3939 North Drinkwater Boulevard  
Scottsdale, Arizona 85251

**MEMORANDUM OF LEASE**

This Memorandum of Lease is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF SCOTTSDALE, an Arizona municipal corporation, having a mailing address of 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251 ("Tenant"), and the City of Phoenix, an Arizona municipal corporation, having an address of 200 West Washington, Phoenix, Arizona 85003 ("Landlord").

**WITNESSETH:**

That in consideration of the rents, covenants, and conditions more particularly set forth in a certain Lease between Landlord and Tenant dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), Landlord and Tenant do hereby covenant, promise, and agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Lease.
2. **Leased Premises.** Landlord does lease unto Tenant and Tenant does lease from Landlord for the Term (as hereinafter defined) the real property described in **Exhibit A** attached hereto and made a part hereof, together with all improvements, rights, privileges, permits and approvals and other appurtenances associated therewith (the "Premises").
3. **Term.** The "Term" of the Lease shall commence on the Commencement Date and unless sooner terminated under the terms and conditions contained in the Lease, shall continue for thirty-five (35) years. The Term may be extended for two (2) five (5) year periods subject to consent by the Phoenix City Council and the Scottsdale City Council.

4. **Restricted Uses.** Except as may otherwise be agreed to in writing by Landlord, the Premises may be used for any Permitted Use (as such term is defined in Section 6.1 of the Lease).

5. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first written above.

**LANDLORD**

THE CITY OF PHOENIX, an Arizona  
municipal corporation

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

Name printed: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

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

Name printed: \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_

**TENANT**  
THE CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Senior Assistant City Attorney

**EXHIBIT A**  
**Legal Description**

That portion of the Southeast Quarter of Section 33, Township 2 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Section 33, from which the South Quarter corner of said Section 33 bears S 89°41'44" W, a distance of 2688.12 feet;

**THENCE** along the South line of the Southeast Quarter of said Section 30, S 89°41'44" W, a distance of 726.76 feet;

**THENCE** leaving said South line, N 00°18'16" W, a distance of 371.96 feet to the **POINT OF BEGINNING**;

**THENCE** S 88°41'44" W, a distance of 175.40 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 254.14 feet with a chord bearing of N 70°05'22" W, a distance of 381.78 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 97°22'33" for an arc length of 431.92 feet;

**THENCE** N 09°41'09" W, a distance of 133.10 feet;

**THENCE** S 88°21'32" W, a distance of 99.79 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 146.43 feet with a chord bearing of S 50°21'18" W, a distance of 199.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 85°38'16", for an arc length of 218.86 feet;

**THENCE** N 78°25'26" W, a distance of 94.71 feet;

**THENCE** S 83°08'48" W, a distance of 74.84 feet to the beginning of a non-tangent curve concave northerly having a radius of 178.85 feet with a chord bearing of N 76°52'49" W, a distance of 116.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 37°51'47", for an arc length of 118.19 feet;

**THENCE** N 58°04'21" W, a distance of 100.16 feet;

**THENCE** N 26°45'56" W, a distance of 186.88 feet;

**THENCE** N 03°28'13" E, a distance of 76.71 feet;

**THENCE** N 48°13'20" W, a distance of 74.62 feet;

**THENCE** N 16°20'55" W, a distance of 301.37 feet;

**THENCE** N 00°36'21" E, a distance of 55.94 feet;

**THENCE** N 18°46'50" E, a distance of 82.44 feet;

**THENCE** N 26°51'30" E, a distance of 74.73 feet to the beginning of a non-tangent curve concave southerly having a radius of 266.61 feet with a chord bearing of N 83°25'33" E, a distance of 364.97 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 86°23'11", for an arc length of 401.98 feet;

**THENCE** S 48°47'29" E, a distance of 112.43 feet;

**THENCE** N 29°49'19" E, a distance of 99.98 feet;

**THENCE** N 03°37'35" E, a distance of 55.39 feet;

**THENCE** N 51°07'06" E, a distance of 197.60 feet;

**THENCE** S 68°12'34" E, a distance of 44.67 feet;

**THENCE** S 81°38'45" E, a distance of 197.16 feet;

**THENCE** S 15°49'58" E, a distance of 61.14 feet;

**THENCE** S 55°02'29" E, a distance of 269.12 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 536.44 feet with a chord bearing of S 71°56'11" E, a distance of 278.24 feet;

**THENCE** along the arc of said curve, to the left, through a central angle of 30°03'42", for an arc length of 281.46 feet;

**THENCE** S 88°44'47" E, a distance of 132.97 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 252.46 feet with a chord bearing of S 56°03'13" E, a distance of 207.31 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 48°29'00", for an arc length of 213.63 feet;

EXHIBIT A to Exhibit G

Page 2 of 3

Contract No. 2018-201-COS

**THENCE** S 01°34'20" E, a distance of 49.29 feet to the beginning of a non-tangent curve concave westerly having a radius of 277.67 feet with a chord bearing of S 02°27'46" W, a distance of 231.50 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 49°16'25", for an arc length of 238.79 feet;

**THENCE** S 00°18'49" E, a distance of 136.37 feet;

**THENCE** S 14°41'54" E, a distance of 111.67 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 234.25 feet with a chord bearing of S 45°55'07" W, a distance of 390.61 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 112°58'12", for an arc length of 461.87 feet;

**THENCE** N 75°41'31" W, a distance of 106.69 feet to the **POINT OF BEGINNING**.

Said parcel contains 36.75 acres (more or less)



Expires: 9/30/2018

## PAPAGO BASEBALL FACILITY INTERIM SUBLEASE

THIS PAPAGO BASEBALL FACILITY SUBLEASE (this "Sublease") is executed as of \_\_\_\_\_, 20\_\_\_\_, by and between City of Scottsdale, an Arizona municipal corporation ("Scottsdale" or "Sublessor"), and the San Francisco Giants Baseball Club, LLC, a Delaware limited liability company ("Giants" or "Sublessee"). Scottsdale and Giants are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### RECITALS

A. The City of Phoenix, a municipal corporation, as "Landlord" ("Master Lessor"), and Scottsdale, as "Tenant", previously entered into that certain Papago Baseball Facility Lease, City of Phoenix Contract No. \_\_\_\_\_ and City of Scottsdale Contract No. 2018-201-COS, dated as of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto as **Exhibit "A"** (the "Master Lease"), pursuant to which Master Lessor has leased to Scottsdale certain premises located at 1802 North 64<sup>th</sup> Street, Phoenix, Arizona 85008, more particularly described therein (the "Facility").

B. Scottsdale and Giants desire to allow Giants to construct certain improvements at the Facility (the "Improvements") necessary to allow the Giants to transition its current uses at Indian School Park ("ISP") to the Facility.

C. Scottsdale desires to sublease the entirety of the Facility to Giants and the Giants desire to sublease the entirety of the Facility from Scottsdale on an interim basis until Scottsdale and Giants execute a Baseball Facilities Agreement and Sublease ("BFA") further setting forth the Parties obligations and rights with respect to the use of the Facility and the Improvements to be constructed thereon, in addition to Giants use of ISP during the construction of said improvements and the use and rehabilitation of Scottsdale Stadium. Unless otherwise defined in this Sublease, all capitalized terms used herein shall have the meanings ascribed to them in the Master Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Sublease. Scottsdale hereby subleases to Giants, and Giants hereby subleases from Scottsdale, the Facility for the Term, the Rent and other terms set forth in the Master Lease and subject to the additional terms and conditions set forth herein.

(a) Acceptance of Sublease Premises. Except for the warrants and representations of the Master Lessor as set forth in Section 18.2 of the Master Lease, Giants accept the Sublease Premises in their present, "**AS-IS, WHERE IS**" condition and with all

faults. Giants acknowledge: (i) that Giants have had full opportunity to examine the Facility and is fully informed, independently of Scottsdale or any employee, agent, representative, shareholder, officer or director of Scottsdale, as to the character of the Facility; (ii) that neither Scottsdale nor any of Scottsdale's employees, agents, representative, shareholders, officers or directors has made any representations, warranties or promises with respect to the Facility, including without limitation any representation or warranty as to fitness thereof for any purpose; and (iii) that Giants agrees that the Facility is subject to the limitations, encumbrances, and other matters described in the Master Lease.

2. Master Lease.

(a) Giants's Assumption of Master Lease Obligations. Except as may be inconsistent with the terms of this Sublease, all of the terms, covenants and conditions contained in the Master Lease are hereby incorporated by this reference into, and made a part of, this Sublease, and shall be applicable with the same force and effect as if Scottsdale were the "Landlord" under the Master Lease and Giants were the "Tenant" under the Master Lease. In this regard, and except as otherwise provided herein, Giants hereby assumes and may exercise the rights of Tenant under the Master Lease and assumes, covenants and agrees with Scottsdale to perform and be bound by and subject to all of the terms and conditions contained in the Master Lease to be performed by the "Tenant" thereunder or by which the "Tenant" is bound under the Master Lease, with respect to the Facility. Scottsdale does not assume the obligations of the Master Lessor under the provisions of the Master Lease, but shall exercise commercially reasonable efforts to cause Master Lessor to perform its obligations or provide approval required under the Master Lease for the benefit of Giants. If any express provision of this Sublease conflicts with any provision of the Master Lease, such conflict shall be resolved in favor of the express provision of this Sublease. For the avoidance of doubt, notwithstanding anything to the contrary in the Master Lease or herein, Giants is not required to comply with the provisions of the Master Lease relating to the design and construction of a new perimeter walking trail described in Section 2.3 of the Master Lease. Giants will begin occupying the Facility on December 1, 2018.

(b) Sublessor Representations and Warranties. Scottsdale represents and warrants to Giants that a true, complete and accurate copy of the Master Lease is attached hereto and that there are no other agreements, oral or written, between Scottsdale and Master Lessor with respect to the Master Lease. Scottsdale further represents and warrants to Giants that Scottsdale is in full compliance with all of its obligations under the Master Lease as of the date hereof, and that entering into this Sublease will not create a default under the Master Lease.

(c) Future Amendments to Master Lease. Any future amendment to the Master Lease that materially and adversely affects Giants' obligations, liabilities or rights under this Sublease shall be subject to Giants' prior written consent, which shall not be unreasonably withheld.

3. Construction of Improvements. The BFA shall set forth Giants' obligations concerning the construction of Improvements at the Facility including, but not limited to, schedule, construction standards, ownership, insurance, and additional provisions as the Parties shall mutually agree upon.

4. Term of Sublease.

4.1 The term of this Sublease (the "Term") shall commence on December 1, 2018, (the "Commencement") and shall expire at 11:59 p.m. on the earlier of (i) the Parties execution of the BFA to the sublease of the Facility, use of Indian School Park, and use and improvement of Scottsdale Stadium, or (ii) November 30, 2043, unless extended pursuant to the Master Lease, or unless terminated earlier pursuant to the provisions hereof. The Giants will move its year round baseball operations to the Facility.

4.2 Surrender of Facility. Upon the expiration of the Term (or any earlier termination of this Sublease), and without cost or liability to Scottsdale: (i) Giants' interest in the Facility and all Improvements shall terminate, possession of the Facility shall be surrendered, and the Facility shall be delivered to Scottsdale, in good condition and repair, reasonable wear and tear, casualty and condemnation excepted; (ii) all Improvements constructed on the Facility shall be free and clear of all liens and claims thereto created, caused or suffered by Giants; and (iii) Giants shall promptly execute and acknowledge a quit claim deed, bill of sale, or other instrument reasonably requested by Scottsdale to confirm the foregoing.

5. Basic Sublease Provisions.

- (a) *Facility Address:* 1802 N 64<sup>th</sup> Street  
Phoenix, Arizona 85008
- (b) *Sublessee's Address for Notices:* San Francisco Giants  
Baseball Club, LLC  
ATTN: Alfonso Felder,  
EVP Administration  
24 Willie Mays Plaza  
San Francisco, CA 94107

Copy to: Jack Bair, EVP and General Counsel  
San Francisco Giants  
Baseball Club LLC  
24 Willie Mays Plaza  
San Francisco, CA 94107

*Sublessor's Address for Payment:* City of Scottsdale  
Attention: Director of  
Community Services  
7447 E. Indian School Road

Scottsdale, AZ 85251  
Phone No. 480-312-7954

(c) *Sublessor's Address for Notices:* Director of Community Services  
City of Scottsdale  
7447 E. Indian School Road  
Scottsdale, AZ 85251

AND

Scottsdale City Attorney's Office  
3939 N Drinkwater Blvd.  
Scottsdale, AZ 85251

(d) *Lease Payment Schedule:* Giants shall pay to Scottsdale the annual lease payment on the first day of October for the year beginning December 1, without notice, demand, deduction, or offset. For example, for the calendar year 2022, the annual lease payment shall be paid no later than October 1, 2021. All lease payments and maintenance required under the Master Lease shall continue in the event of a strike or lockout.

6. Maintenance and Use of Facility. Giants will maintain the Facility beginning December 1, 2018, Giants shall at all times use the Facility in accordance with the terms of the Master Lease and all applicable laws, rules, codes, regulations and ordinances. Subject to all Phoenix ordinances, alcohol may be served at the Facility. The Giants shall be entitled to place advertising at or upon the Facility consistent with the Master Lease which will be further described in the BFA.

7. Overflow Parking: Lot Use. Scottsdale and Giants may enter into agreements with Master Lessor from time to time for use of the overflow parking lot.

8. Rights and Remedies.

(a) Notwithstanding anything contained in the Master Lease, Giants shall be in default hereunder if Giants defaults in the performance of its obligations under this Sublease, including but not limited to the timely payment of Rent, if: (i) such default is a monetary default and such monetary default continues for a period of seven (7) days after written notice from Scottsdale to Giants, or (ii) such default is a non-monetary default and such default continues for a period of twenty-one (21) days after written notice thereof from Scottsdale to Giants (provided that if Giants proceeds with due diligence during such twenty-one (21) day period to cure such default and is unable by reason of the nature of the work involved, to cure the same within the required twenty-one (21) days, Giants' time to do so shall be extended by the time reasonably necessary to cure the same as determined by Scottsdale). If Giants is in default hereunder (and the applicable cure period has expired), Scottsdale shall be entitled to exercise any and all of the rights and remedies available under this Sublease, at law or in equity, including, without

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limitation, the same rights and remedies against Giants as Master Lessor would have against Scottsdale in connection with an "Event of Default" under the Master Lease.

(b) If Scottsdale defaults in the performance of its obligations under this Sublease, or in any of its obligations under the Master Lease, Giants shall have the same rights and remedies against Scottsdale as Scottsdale has against Master Lessor in the event of a default by Master Lessor under the Master Lease.

(c) Scottsdale agrees that if Master Lessor commits an event of default under the Master Lease and fails to cure the same within any applicable cure period set forth in the Master Lease, Giants shall have the right to terminate this Sublease by providing written notice of its election to terminate to Scottsdale.

9. Sublessor's Right to Cure Defaults. At any time during the Term and without notice to Giants, Scottsdale may, but shall not be obligated to, cure or otherwise discharge any default by Giants under this Sublease, provided that the total costs to cure for which Giants shall be liable shall be limited to direct, actual out-of-pocket damages, and shall not include any consequential, punitive or exemplary damages. Such costs and expenses may include the payment of rent or other amounts due under the Master Lease provided such amounts do not exceed the amount of Rent payable by Giants hereunder with respect to the Facility. All such costs and expenses expended by Scottsdale shall be due and payable in full promptly upon Scottsdale's written demand therefor. All such costs and expenses incurred by Scottsdale shall bear interest at the maximum rate permitted by law for the time period commencing on the date Scottsdale incurs such cost or expense and ending on (and including) the date Giants reimburses Scottsdale therefor, plus any interest chargeable to Scottsdale under the Master Lease as a result of Giants' failure to pay under the Sublease.

10. Performance. Subject to the prior written consent of Master Lessor, Scottsdale may direct Giants to perform directly to Master Lessor such obligations of Giants under this Sublease as Scottsdale shall designate, and such performance shall be applied in reduction of Giants' obligations under the Sublease.

11. No Waiver. No Waiver of any breach or violation of any of the covenants, agreements and obligations of either Party under this Sublease shall be construed, taken or held to be a waiver of any other breach or violation or a waiver, acquiescence in or consent to any further or succeeding breach or violation of the same covenant, agreement or obligation.

12. Utilities During the Term, Giants shall pay or cause to be paid all charges for water, sewage, natural gas, electricity, telephone, cable and other utility services (individually, "**Utility**" and collectively, "**Utilities**"), as well as charges for security, landscape maintenance, inspections, janitorial services, management services and other similar services, related to development, construction and operation of the Facility. All such charges shall be paid before delinquency, and Giants shall indemnify, defend and hold Scottsdale harmless for, from and against all Claims/Losses relating to the Utilities, including but not limited to, all required

deposits. All costs of construction and causing the provision of Utilities and other services to the Facility shall be borne by Giants.

13. Indemnification. In addition to all other obligations, to the fullest extent permitted by law, throughout the term of this Sublease and until all obligations and performances under or related to this Sublease are satisfied and all matters described in this paragraph are completely resolved, Giants (“Additional Indemnitor”) shall jointly and severally pay, indemnify, defend, save and hold harmless Phoenix from and against any and all Claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful, acts or culpable omissions of the Additional Indemnitor or the Additional Indemnitor’s employees and contracted employees, contracted players, and contractors or any of their respective directors, officers, agents, or employees or subcontractors of such contractor. This indemnification includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such Additional Indemnitor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that Phoenix will, in all instances, except for Claims arising from the negligent or willful acts or omissions of Phoenix, be indemnified by such Additional Indemnitor from and against any and all Claims. Notwithstanding the foregoing, the Indemnity does not apply to:

- (a) Claims arising only from the gross negligence of Phoenix.
- (b) Claims that the law prohibits from being imposed upon Giants.

In addition to the obligations above in paragraph 13, it is agreed that with respect to any claim falling within the scope of an Additional Indemnitor’s indemnity obligation, such Additional Indemnitor will be responsible for primary loss investigation, defense and judgment costs. Additionally, each Party (the “**Indemnitor**”) shall defend, indemnify and hold harmless the other Party and their respective officers and employees from all damages, claims, liabilities, losses and expenses (including attorneys’ fees) asserted by third parties for property damage, personal injury, or wrongful death to the extent caused by the Indemnitor’s failure to perform its obligations under this Sublease or to the extent caused by the Indemnitor’s negligence or intentional misconduct in exercising its rights under this Sublease. In the event that a claim or action is initiated alleging that both Scottsdale and the Giants are wholly or partially at fault, the Party who is primarily responsible for the alleged liability, as determined based on the respective obligations under this Sublease, shall be responsible to defend the claim or action as to both Parties. Provided, however, the non-defending Party shall be entitled, but not obligated, to participate in the defense of the claim or action. Upon notice of such a claim or action, the Parties will promptly confer and attempt to agree regarding which Party shall bear responsibility to defend the claim or action and if no agreement can be reached, either Party may seek redress through the existing claim or action or by separate action. To the fullest extent, each Party, on behalf of itself and all its agents, contractors, lessees and sublessees (each a “**Waiving Party**”), hereby waives all rights of recovery (including rights of subrogation) against the other Party and the City of Phoenix (and their respective officers, officials, agents and employees), for losses

arising from the use, occupancy or condition of the Facility that: (i) is covered by any insurance maintained by each such Waiving Party; or (ii) would have been covered by any insurance required to be maintained by each such Waiving Party under this Agreement. All of the insurance policies of each Waiving Party shall include a waiver of subrogation clause or endorsement denying to the insurer rights of subrogation against the Waiving Parties and such other additional insured parties.

14. Insurance. Giants and its contractors or their agents, representatives, employees or contractors occupying, working on or about, or using the Facility pursuant to this Sublease shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with activities at the Facility by Giants or contractor or their agents, representatives, employees or contractors in accordance with the requirements set forth in **Exhibit "E"** of the Master Lease. In addition, Giants and all its contractors shall include Scottsdale as an additional insured on all liability policies.

(a) Risk of Loss. Scottsdale must carry special form property insurance on any completed improvements to protect its interest as well as the interest of the City of Phoenix. It is recommended that the sublessee procure its own property insurance to protect its interests under the lease agreement.

(b) Evidence of Insurance. Giants shall deliver to Scottsdale and Phoenix, on or before the date hereof and thereafter at least thirty (30) days prior to the expiration date of any then existing policies, true, correct and complete copies of all such insurance policies to be obtained and maintained by Giants pursuant hereto (or certificates thereof in form and content reasonably satisfactory to Scottsdale), evidencing that all such insurance policies required to be obtained and maintained by Giants hereunder have been obtained.

15. Subordination. This Sublease is subject and subordinate to all of the provisions of the Master Lease and neither Scottsdale nor Giants shall undertake or permit any act or omission that would violate any of the provisions of the Master Lease, or which could or would cause Scottsdale or Giants to be in violation thereof.

16. Termination of Master Lease. In the event of any termination of the Master Lease, this Sublease shall terminate.

17. Holdover by Sublessee. Unless Scottsdale, Master Lessor and Giants agree to the contrary in writing, Giants' occupancy of the Facility after the expiration of the Term, any extension thereof, or after the termination of this Sublease shall create a tenancy at sufferance.

18. Assignment. Notwithstanding anything contained in the Master Lease, Giants shall not sell, transfer, convey, mortgage, sublet, quitclaim, pledge, assign, permit or suffer the use or occupancy of the Facility or any part thereof by anyone other than the entity owning the San Francisco Giants Major League Baseball franchise or otherwise grant any person or entity

any interest in this Sublease or the Facility, in whole or in part, without Scottsdale's prior written consent and the prior written consent of Master Lessor. This Sublease and Giants' interest herein and hereunder shall not be assignable by operation of law. Any attempted or actual transfer by Giants (whether by way of an assignment, sublease or otherwise) without Scottsdale's and Master Lessor's prior written consent shall be null and void and of no force or effect, and shall convey no right or interest hereunder to the purported transferee. Any approved transfer of Giants' interest hereunder must comply with all requirements of the Master Lease and such other reasonable requirements as may be set by Scottsdale and/or Master Lessor at the time such approval is given.

19. Notices. All notices, requests, demands, claims and other communications permitted or required to be given hereunder must be in writing and will be deemed duly given and received (i) if personally delivered, when so delivered, (ii) if mailed, three (3) Business Days after having been sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below, or (iii) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent, to the Parties at the addresses set forth in Section 4 hereof. Either Party may give any notice, request, demand, claim or other communication hereunder using any other means, but no such notice, request, demand, claim or other communication will be deemed to have been duly given or received unless and until it actually is received by the Party for which it is intended and the notifying Party can provide evidence of such actual receipt. Either Party may change its address for the receipt of notices, requests, demands, claims and other communications hereunder by giving the other Party notice of such change in the manner herein set forth.

20. Fees and Costs. If any suit, action, arbitration or other proceeding, including without limitation, an appellate proceeding is instituted in connection with any controversy, dispute, default or breach arising out of this Sublease, the prevailing or non-defaulting Party shall be entitled to recover from the losing or defaulting Party all reasonable fees, costs and expenses (including the reasonable fees and expenses of attorneys, consultants, paralegals and witnesses) incurred in connection with the prosecution or defense of such proceeding, whether or not the proceeding is prosecuted to a final judgment or determination; provided, however, that if there is no clear prevailing Party, such fees, costs and expenses shall be borne as determined by the applicable fact finder.

21. Sublessor's Consent. Whenever Scottsdale's consent is required under this Sublease, it shall be reasonable for Scottsdale to condition its consent on the approval of the Master Lessor if and only if Master Lessor approval is required for such request under the terms of the Master Lease.

22. Dates and Times. Dates and times set forth in this Sublease for the performance of the Parties' respective obligations hereunder or for the exercise of their rights hereunder will be strictly construed, time being of the essence of this Sublease. All provisions in this Sublease which specify or provide a method to compute a number of days for the

performance, delivery, completion or observance by any Party of any action, covenant, agreement, obligation or notice hereunder will mean and refer to calendar days, unless otherwise expressly provided. Except as expressly provided herein, the time for performance of any obligation or taking any action under this Sublease will be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided for herein. If the date specified or computed under this Sublease for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by any Party, or for the occurrence of any event provided for herein, is a day other than a Business Day, then the date for such performance, delivery, completion, observance or occurrence will automatically be extended to the next Business Day following such date. The term "Business Day" means any day other than a Saturday, Sunday or day on which banks in Arizona are permitted or required by applicable law to close.

23. Governing Law. This Sublease will be governed by and construed under the laws of the State of Arizona without regard to conflicts-of-laws principles that would require the application of any other law.

24. Miscellaneous Provisions.

(a) Nondiscrimination. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

(b) Statutory Cancellation Rights. In addition to all the rights of the Parties hereunder, Scottsdale shall have the rights specified in "A.R.S.") § 38-511.

(c) Arbitration in Superior Court. The parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

(d) Giants' Records. The Parties shall set forth each Party's respective obligations with regard to access and production of records relating to the Facility in the BFA.

(e) Weapons, Explosive Devices and Fireworks. Giants shall not permit the use, possession, display or storage of any firearms, ammunition (including live ammunition and blanks) and other weapons (including knives, swords, or other similar devices) or fireworks by any person at the Facility, except such materials that are in the possession of sworn police officers who are on duty.

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25. Execution of Sublease. This Sublease may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Sublease and of signature pages by email will constitute effective execution and delivery of this Sublease as to the Parties and may be used in lieu of the original Sublease for all purposes. Signatures of the Parties transmitted by email will be deemed to be their original signatures for all purposes.

26. Contract Administrators. Upon execution of this Sublease, the Parties shall each designate a contract administrator to coordinate the respective Party's participation in carrying out its obligations under this Sublease. The initial contract administrator for Scottsdale shall be the Community Service Director (William Murphy) who may delegate this duty from time to time. The initial contract administrator for Giants shall be Alfonso Felder who may delegate this duty from time to time. Each Party will notify the other Party of its respective contract administrator and provide contact information for the contract administrator. A Party's contract administrator may not be exclusively assigned to this Sublease. Scottsdale's contract administrator's authority is limited to the administration of the requirements of this Sublease. No approval, consent or direction by Scottsdale's contract administrator or other persons affiliated with Scottsdale inconsistent with this Sublease shall be binding upon Scottsdale. Giants shall be responsible for securing all zoning approvals, development review, building, and other local, state, county or federal governmental approvals and for satisfying all governmental requirements pertaining to any of Giants' obligations under this Sublease and shall not rely on Scottsdale's contract administrator for any of the same.

***[REMAINDER OF PAGE LEFT BLANK]***

***[SIGNATURE PAGES FOLLOW SEPARATELY]***

IN WITNESS WHEREOF, Scottsdale and Giants have executed this Papago Baseball Facility Sublease as of the date first set forth above.

**SUBLESSEE** SAN FRANCISCO GIANTS BASEBALL CLUB LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ the San Francisco Giants Baseball Club LLC, a Delaware limited liability company, this \_\_day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

SUBLESSOR: CITY OF SCOTTSDALE, an Arizona municipal corporation

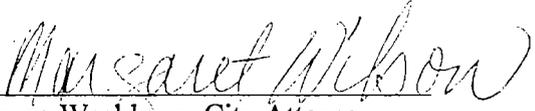
By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

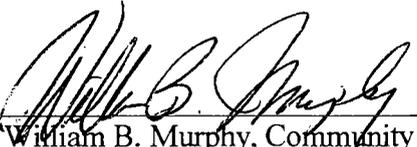
ATTEST:

\_\_\_\_\_  
City Clerk, Carolyn Jagger

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Senior Assistant City Attorney

  
\_\_\_\_\_  
William B. Murphy, Community Services Director

## LEASE OF PAPAGO BASEBALL FACILITY

### BY THE CITY OF SCOTTSDALE

THIS LEASE OF THE PAPAGO BASEBALL FACILITY ("Lease") by and between the CITY OF PHOENIX, an Arizona municipal corporation (hereinafter "Landlord" or "Phoenix"), and the City of Scottsdale, an Arizona municipal corporation (hereinafter "Tenant" or "Scottsdale") is entered into as of \_\_\_\_\_, 20\_\_\_\_("Effective Date"). Phoenix and Scottsdale are individually referred to as a "Party" and collectively as the "Parties."

### RECITALS

A. Phoenix owns the Papago Baseball Facility located at 1802 N. 64<sup>th</sup> Street, Phoenix, Arizona, 85008 including all existing major league baseball fields, clubhouse, batting cages, parking areas and other improvements located thereon (collectively, the "Facility") on property legally described on **Exhibit "A"** and depicted on **Exhibit "B"**, both attached hereto and incorporated herein by this reference.

B. The Facility is currently being used by Phoenix for youth and adult baseball, and for foreign professional baseball teams.

C. Indian School Park practice fields in Scottsdale have been used by the San Francisco Giants Baseball Club, LLC ("Giants") since 1986, but have proved to be inadequate for the expansion of year round Giants' Player Development Program.

D. Phoenix has agreed to lease the Facility to Scottsdale, which will grant rights to sublease the Facility to the Giants so that the Giants' Player Development Program can be moved to the Facility from Indian School Park. Phoenix has agreed to this grant of rights to sublease.

### ARTICLE 1 - FACILITY LEASE; TERM

1.1 **Grant of Facility Lease.** Phoenix hereby leases to Scottsdale and Scottsdale hereby leases from Phoenix, upon and in consideration of the terms and conditions contained herein, the Facility in the condition in which it exists as of the Effective Date. The Parties anticipate that Scottsdale will enter into a sublease arrangement with the Giants who will make substantial improvements to the Facility and will move its year-round Player Development Program to the Facility. This lease and any sublease shall be subject to all of the provisions of this Lease and in addition, the following:

(a) Present and future building restrictions and regulations, master plans, zoning laws, ordinances, resolutions and regulations of the City of Phoenix ("City Regulations"), but with respect to any future City Regulations, only to the extent the same are enacted and applied uniformly and consistently to similar classes of property or similar uses.

(b) Present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any county, state, or federal authority now or hereafter having jurisdiction over the Land.

Upon receipt of confirmation of the sublease arrangement to the Giants, referenced above, Phoenix acknowledges and agrees that no decision, waiver, approval, disapproval, notice or communication involving Scottsdale and required or otherwise provided in this Lease shall be effective without joinder with the Giants.

1.2 **Term.** The term of this Lease ("Term") is thirty five (35) years, which will commence on December 1, 2018, the "Commencement Date", and expire at 12:00 midnight on November 30, 2053.

1.3 **Extensions.** The Term may be extended for two (2) five (5) year periods subject to consent by Phoenix City Council and Scottsdale City Council, which either may withhold in its sole and absolute discretion.

1.4 **Condition of Facility at Commencement Date.** Promptly after the Effective Date, Phoenix and Scottsdale shall, together, inspect the Facility. Phoenix acknowledges and agrees that during the period between the Effective Date and the Commencement Date, Phoenix will take good care of the Facility, make, or cause to be made, all commercially reasonable repairs thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, and take all commercially reasonable steps to maintain and keep, or cause to be maintained and kept, the Facility and the fields, sidewalks, curbs, adjacent rights-of-way, and landscaping in good and debris-free order, repair, and condition in accordance with applicable City of Phoenix ordinances, and shall deliver the Facility to Scottsdale on the Commencement Date in such condition, except that Scottsdale recognizes that Phoenix will not oversee the Facility in the Fall of 2018.

1.5 **Tenant's Right to Terminate.** Scottsdale has the right to terminate the Lease in any year for any reason, subject to a one year notification period provided the Facility is free and clear of all claims, liens, and encumbrances, including subleases and concession contracts, and in at least as good repair as on the Commencement Date.

## **ARTICLE 2 - RENT; ADDITIONAL PAYMENTS; TAXES AND ASSESSMENTS**

2.1 **Lease Payments.** Scottsdale shall pay to Phoenix lease payments annually ("Lease Payments"), beginning on the first day of December, 2018. Subsequent payments shall be made by Scottsdale to Phoenix on the same day (or the next business day, if such day is not a business day) of each year thereafter until the Term expires. Scottsdale shall pay the Lease Payments to Phoenix to:

City of Phoenix  
Parks and Recreation Department  
200 West Washington  
Phoenix, AZ 85003  
Attention: Accounting Supervisor

or to such other address as Phoenix may designate by written notice to Scottsdale, in lawful money of the United States of America or by check supported by good and immediately available funds.

2.2 **Payment Schedule.** Lease payments shall be made according to the following schedule:

Lease Year	Calendar	Lease Payment
1	2019	\$ 0
2	2020	\$ 0
3	2021	\$ 0
4	2022	\$ 50,000
5	2023	\$ 50,000
6	2024	\$ 50,000
7	2025	\$ 50,000
8	2026	\$ 50,000
9	2027	\$ 50,000
10	2028	\$ 50,000
11	2029	\$ 50,000
12	2030	\$ 50,000
13	2031	\$ 50,000
14	2032	\$ 65,000
15	2033	\$ 65,000
16	2034	\$ 65,000
17	2035	\$ 65,000
18	2036	\$ 65,000
19	2037	\$ 65,000
20	2038	\$ 65,000
21	2039	\$ 65,000
22	2040	\$ 65,000
23	2041	\$ 65,000
24	2042	\$ 70,000
25	2043	\$ 70,000
26	2044	\$ 70,000
27	2045	\$ 70,000
28	2046	\$ 70,000
29	2047	\$ 75,000
30	2048	\$ 75,000
31	2049	\$ 75,000
32	2050	\$ 75,000
33	2051	\$ 75,000

34	2052	\$	75,000
35	2053	\$	75,000

**2.3 Perimeter Trail; Overflow Parking Lot; Substitute Fields.**

2.3.1 Scottsdale will design and construct to Phoenix specifications a new perimeter walking trail, as illustrated on **Exhibit "C"** attached hereto and incorporated herein by this reference. The trail will be a minimum of 4 feet wide and constructed of native soil according to Phoenix standards. The trail design will be submitted to Phoenix for approval no later than November 30, 2019 and construction will be completed no later than January 31, 2021.

2.3.2 Scottsdale or its sublessee will construct a new overflow parking lot with a minimum of 110 spaces to be located east of the existing parking lot, as illustrated on **Exhibit "D"** attached hereto and incorporated herein by this reference and in conformance with all City of Phoenix requirements. Plans for the parking lot will be submitted to Phoenix for approval no later than November 30, 2019 and construction will be completed no later than January 31, 2021. Scottsdale or its sublessee will maintain the overflow parking lot at its sole cost and expense.

2.3.3 No later than January 1, 2021 and for the remainder of the Term, Scottsdale will make the Facility, a baseball practice facility located at the southeast corner of Camelback Road and Hayden Road in Scottsdale commonly referred to as Indian School Park ("Park") and Scottsdale Stadium ("Stadium") available to youth and adult organizations currently utilizing the fields at the three facilities combined under similar, reasonable terms, when such facilities are not in use by the Giants.

(a) No later than April 1, 2021, the Park will generally be made available during the spring, summer and fall seasons to youth and adult organizations on a reservation basis, subject to mutual agreement of the Parties. Scottsdale will maintain the Park at its cost throughout the term.

(b) The Stadium will be made available on a reservation basis after spring training season up to the beginning of the Fall League occurring in the fall of each year, subject to mutual agreement of the Parties. Scottsdale will maintain the Stadium at its cost throughout the term.

(c) The Facility will be made available pursuant to the terms of Article 6.

**2.4 Taxes and Assessments.** Scottsdale shall be responsible for and shall pay as additional payments during the Term ("Additional Payments") before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, fees, charges or other impositions applicable to or imposed on the Facility or related to any Giants game or event or any use or rights under this Lease, including without limitation all income, lease, sales and transaction privilege taxes, related to or on account of the operations and use rights granted to and exercised by any sublessee under this Lease.

**2.5 Other Additional Payments – Operating and Maintenance Costs.** At its sole cost and expense, Scottsdale will operate, repair and maintain the Facility, and pay for all

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services related to such use, including all water and sewer rates and charges, charges for public utility, excises, levies, licenses, permit fees, and costs of construction, alterations, repairs, and reconstruction, as hereinafter provided, which may arise or become due during the Term hereof.

2.6 **Government Property Lease Excise Tax.** Scottsdale acknowledges that the Facility will be used throughout the Term of the Lease for a governmental activity pursuant to A.R.S. Section 42-6208(1). Accordingly, the Parties hereby agree that the Facility is exempt from the Government Property Lease Excise Tax as set forth under A.R.S. Section 42-6201 through 42-6210. Additionally, Scottsdale agrees to promptly provide any information or documentation requested by Phoenix in order for Phoenix to comply with its obligations as a government lessor under the GPLET statutes, A.R.S. Sections 42-6201 through 42-6210.

### ARTICLE 3 – INSURANCE

3.1 **Tenant Obligation to Insure.** Scottsdale will provide insurance coverage outlined in **Exhibit “E”** attached hereto and incorporated herein by this reference, directly or will require each sublessee and its subcontractors to provide the coverage under **Exhibit “E”** on a primary basis naming Phoenix and Scottsdale as loss payees and additional insureds. Property insurance for buildings under construction shall be insured by each sublessee or its subcontractor until construction is completed. Thereafter, Scottsdale may insure the buildings on the blanket property insurance of Scottsdale with Phoenix listed as loss payee to the extent of its title interest. Notwithstanding the foregoing, Scottsdale will require that its sublessees and contractors procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with activities at the Facility by such sublessee or contractor or their agents, representatives, employees or contractors in accordance with the requirements set forth in **Exhibit “E”**.

### ARTICLE 4 – SURRENDER

4.1 Upon the expiration or sooner termination of the Term or of Scottsdale's right to possession, Scottsdale will remove all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed at the Facility by Scottsdale. Scottsdale agrees that in the event of damage to the Facility due to such removal, Scottsdale shall repair any damage to the Facility caused by such removal. Upon the termination or expiration of this Lease, or upon the termination of Scottsdale's right of possession, whether by lapse of time or otherwise, Scottsdale will at once surrender possession of the Facility to Phoenix in good condition, ordinary wear and tear, casualty loss and condemnation excepted. Any real or personal property of Scottsdale that remains at the Facility after the expiration of the Term hereof or sooner termination will be deemed to have been abandoned, and may either be retained by Phoenix as its property or disposed of in such manner as Phoenix may see fit. If such property or any part thereof is sold, Phoenix may retain the proceeds of such sale.

### ARTICLE 5 – LANDLORD'S CURES

5.1 **Landlord's Cures.** If Scottsdale fails to make any payment required to be made under this Lease within any applicable cure period, or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained and fails to cure the same within the applicable cure period, then after reasonable notice to Scottsdale, which is

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agreed to be not less than ten (10) business days, Phoenix, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Scottsdale, immediately and without additional notice to Scottsdale. Bills for any expense incurred by Phoenix in connection therewith, and bills for all such expenses and disbursements of every kind whatsoever, including reasonable attorneys' fees involved in collection or endeavoring to collect any payments or any part thereof due hereunder, may be sent by Phoenix to Scottsdale monthly, and will be due and payable in accordance with the terms of said bills, and if not paid within ten(10) business days of Scottsdale's receipt thereof, the amount thereof will immediately become due and payable as Additional Payments.

## ARTICLE 6 – USES OF FACILITY; MAINTENANCE

**6.1 Permitted Uses.** Scottsdale will have the exclusive use of the Facility practice fields, the clubhouse and any incidental retail uses associated with the clubhouse, batting cages, pitching mounds, offices and other baseball related or ancillary uses ("Permitted Uses"). Except that Phoenix may request the following annual uses of the Facility up to a maximum number of days or events as follows:

6.1.1 Dates for 4 youth baseball clinics to be hosted by Scottsdale's sublessee at the Facility, at no cost to Phoenix.

6.1.2 15 days of games (or comparable field activities) on 2 practice fields.

6.1.3 11 days of use of hitting tunnels and half fields.

The dates of these allowed exceptions shall be reviewed and negotiated between the Parties as may be reasonably requested.

**6.2 Contact Persons.** Phoenix and Scottsdale acknowledge that administering an agreement of this type requires clear communications among their representatives regarding design, construction and use of the Facilities. To that end, Phoenix and Scottsdale shall each designate contact persons (collectively the "Contact Persons"). Until Scottsdale designates another person, the person who shall be the Scottsdale Contact Person shall be William Murphy or his designee. Until Phoenix designates another person the person who shall be the Phoenix's Contact Person shall be Inger Erickson or her designee. In addition, if Scottsdale has entered into a sublease of this Agreement, the Sublessee shall appoint a contact person to attend meetings specified in Section 6.2.1, *et seq.*

**6.2.1 Periodic Meetings.** Contact Persons shall meet as necessary or appropriate to accomplish the intents of this Lease. At minimum, the Contact Persons shall meet, either in person or telephonically, at least annually, on or before December 15, to discuss the upcoming season of player development activity, any related operational or maintenance issues, and proposed dates of youth baseball clinics and games or comparable field activities to be hosted by Scottsdale's sublessee at the Facility.

**6.3 Naming Rights.** During the Term, Scottsdale has the right to name components of the Facility and any baseball amenity at the Facility, including the entry drive along the north side of the Facility with approval of the Phoenix Parks and Recreation Board ("Board").

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Scottsdale is also granted the right to place signage, including sponsor and advertisement, on the building frontages (i.e., along 64<sup>th</sup> Street and McDowell Road), of the Facility, consistent with the City of Phoenix sign code and as approved by the Board. Notwithstanding the foregoing, neither Scottsdale nor any sublessee shall have the right to rename the Papago Sports Complex in which the Facility is located.

**6.4 Compliance with Laws.** Scottsdale may not use or occupy, or suffer or permit any portion of the Facility to be used or occupied in violation of any applicable law, certificate of occupancy, or other governmental requirement.

**6.5 Tenant Improvements to Facility.** Scottsdale, through a sublease arrangement with the Giants, will improve the Facility by adding an additional full size field or fields of MLB standards, a renovation of the clubhouse, and ballfield lighting (the "Improvements"). Other ancillary improvements may also be made. These Improvements and all design and construction costs will be at no cost to Phoenix. Scottsdale estimates that the construction or placement of the Improvements will begin in 2019. For avoidance of doubt, and subject to reasonable and normal customary permitting (if applicable) with the planning and development service department of Phoenix, the parties have conceptually approved the Improvements which are depicted in **Exhibit "D"**.

**6.6 Maintenance and Repairs.** Scottsdale will be solely responsible to repair and maintain the Facility, whether to the interior and exterior, ordinary and extraordinary, foreseen and unforeseen, and must maintain and keep the Facility and the sidewalks, curbs, adjacent rights-of-way, main driveway (which connects to 64<sup>th</sup> Street), overflow parking lot, and landscaping, all in good and debris-free order, repair and condition in accordance with applicable City of Phoenix ordinances and the Lease, whichever is more stringent, ordinary wear and tear, casualty loss and condemnation excepted.

**6.7 Plans, Specifications, Permits and Warranties.** Phoenix has delivered to Scottsdale any and all existing plans, specifications, guaranties and warranties pertaining to the design or construction of any improvements at the Facility, and other governmental permits, legal certificates, authorizations and permissions relating to the Facility that Phoenix had in its possession or reasonable control (the "Plans, Specification, Permits and Warranties"). To the extent assignable by Phoenix, Phoenix shall assign the Plans, Specifications, Permits and Warranties to Scottsdale on a non-exclusive basis pursuant to an assignment agreement that shall be acceptable to Scottsdale in its reasonable discretion.

**6.8 Waste.** Subject to Article 11 (Damage or Destruction) and Article 12 (Condemnation) herein, Scottsdale may not commit or suffer to be committed any waste or impairment of the Facility.

**6.9 Performance by Landlord.** In the event Scottsdale fails to maintain and repair the Facility in the condition required by Section 6.6 hereof and following reasonable notice and the expiration of any applicable cure period, Phoenix, without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its reasonable discretion, deems necessary to maintain or restore the Facility to its required condition. Any and all work performed by or for Phoenix pursuant to this Section 6.9 will

be deemed to have been undertaken for and at the expense of Scottsdale. All costs incurred by Phoenix in undertaking such work will be Additional Payments.

**6.10 Alterations; Additional Improvements.** Scottsdale shall be responsible for acquiring all required permits and approvals with respect to all Scottsdale alterations or additional improvements. Any alteration, addition or improvement must be completed in good and workmanlike manner in accordance with plans, specifications and drawings approved in writing by the Phoenix and in compliance with all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Facility. Scottsdale shall deliver as-built drawings to Phoenix to the extent the same are available, promptly following the completion of any construction or repair work by Scottsdale with respect to the Facility.

## ARTICLE 7 – COMPLIANCE WITH CODES

**7.1 Certificate of Occupancy.** Scottsdale will obtain any certificate of occupancy with respect to the Facility which may at any time be required by any governmental agency having jurisdiction thereof.

## ARTICLE 8 - IMPAIRMENT OF LANDLORD'S TITLE

**8.1 No Liens.** Scottsdale may not create, or suffer to be created or to remain, and must discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Facility or any part thereof arising out of work, material or services performed or supplied by or contracted for Scottsdale or those claiming by, through or under Scottsdale, and Scottsdale will not suffer any other matter or thing arising out of Scottsdale's use and occupancy of the Facility whereby the estate, rights, and interest of Phoenix in the Facility or any part thereof might be impaired. The provisions of this Article 8 are not intended to limit any rights Scottsdale may have under this Lease, or to apply to any such lien or encumbrance arising out of any work to be performed by Phoenix pursuant hereto.

**8.2 Discharge.** If any mechanic's, laborer's, or materialman's lien is at any time filed against the Facility or any part thereof arising out of work, material or services performed or supplied by or contracted for Scottsdale or those claiming by, through or under Scottsdale, Scottsdale must, within sixty (60) days after notice of the filing thereof, cause such lien to be discharged or record by payment, bond, order of court of competent jurisdiction or otherwise; provided, however, Scottsdale shall have the right to contest any such mechanic's lien or other lien beyond such sixty (60) day period, provided that Scottsdale diligently commences and continues such contest in good faith. Scottsdale will notify Phoenix in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Scottsdale fails to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Phoenix may, but is not obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Phoenix and costs and expenses incurred by Phoenix in connection therewith, will constitute an Additional Payment payable by Scottsdale and must be paid by Scottsdale to Phoenix on demand.

**8.3 No Implied Consent.** Nothing contained in this Lease will be deemed or construed in any way as constituting Phoenix's expressed or implied authorization, consent or

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request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Facility or any part thereof.

**8.4 No Agency Intended.** The Parties agree that Scottsdale is not the agent of Phoenix for the construction, alteration or repair of any improvement Scottsdale may construct upon the Facility, the same being done at the sole expense of Scottsdale.

#### **ARTICLE 9 – INSPECTION**

**9.1 Inspection and Entry.** Subject to prior written notice of at least two (2) business days by Phoenix to Scottsdale (and any sublessee). Phoenix has the right to enter the Facility, or any part thereof, for the purpose of ascertaining its condition or whether Scottsdale is observing and performing the obligations assumed by it under this Lease, provided that such entry does not interfere with the use and operations at the Facility by Scottsdale and any sublessee. The two (2) business days' notice provision is not to be construed to prohibit or delay any entry by Phoenix in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issue by any court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

#### **ARTICLE 10 – INDEMNIFICATION**

**10.1 Indemnification.** Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in liability to the Indemnitee are caused by the negligent act, culpable omission, misconduct, or other fault of the Indemnitor, its officers, official, agents, employees, or volunteers. Each Party agrees on behalf of itself and all insurers engaged by such party, to waive rights of subrogation against the other, to the fullest extent allowed.

**10.2** Scottsdale will cause any sublessee ("Additional Indemnitor") to agree to indemnify, defend, save and hold harmless Phoenix from and against any and all Claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property cause, or alleged to be caused, in whole or in part, by the negligent or willful; acts or culpable omissions of the Additional Indemnitor or the Additional Indemnitor's employees and contracted employees, contracted players, and contractors or any of their respective directors, officers, agents, or employees or subcontractors of such contractor. This indemnification includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Additional Indemnitor to conform to any federal, state or local law, statute, ordinance, rule regulation or court decree. It is the specific intention of the Parties that Phoenix will, in all instances, except for Claims arising from the negligent or willful acts or culpable omissions of Phoenix, be indemnified by such Additional Indemnitor from and against any and all Claims.

The Parties agree that with respect to any claim falling within the scope of an Additional Indemnitor's indemnity obligation, such Additional Indemnitor will be responsible from primary 15722181v16

loss investigation, defense and judgment costs. In consideration for the use and occupancy of the Facility. Scottsdale will require each Additional Indemnitor to agree to waive all rights of subrogation against Phoenix, Scottsdale, and their respective officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Facility.

10.3 The obligations under this Article 10 will not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation in its part to be performed under insurance policies affecting the Facility.

10.4 The provisions of this Article 10 will survive the expiration or earlier termination of this Lease.

## ARTICLE 11 – DAMAGE OR DESTRUCTION

11.1 **Tenant Repair and Restoration.** If at any time during the Term hereof, the Facility or any part thereof is damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Scottsdale will proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Such repair, alteration, restoration, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion thereof, are sometimes referred to in this Article as the "Work."

Notwithstanding the foregoing, if (i) the available insurance proceeds are insufficient to repair, alter, restore, replace or rebuild the Facility or any part thereof to as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, (ii) fire or other casualty renders the whole or any material part of the Facility untenable or unusable for baseball purposes, and Scottsdale determines (in Scottsdale's reasonable discretion) that Scottsdale cannot make the Facility tenantable or usable for baseball purposes within one hundred eighty (180) days after the date of casualty, or (iii) material damage or destruction occurs to the Facility within the last five (5) years of the Term, then Scottsdale shall have the right, in its sole discretion, to terminate the Lease by providing Phoenix thirty (30) days' prior written notice of such election to terminate and giving Phoenix all applicable insurance proceeds in the amounts required by this Lease. Anything herein to the contrary notwithstanding, Scottsdale must immediately secure the Facility and undertake temporary repairs and work necessary to protect the public and to protect the Facility from further damage.

11.2 **Duty to Commence Repairs.** Scottsdale must diligently and expeditiously undertake all required design, architectural and engineering work following such damage or destruction, and will thereafter diligently and expeditiously seek and obtain all required permits for the Work. The Work must be commenced within one hundred twenty (120) days after the date the damage or destruction and must be completed within twelve (12) months after commencement or such additional period of time, provided Scottsdale is diligently and reasonably pursuing the completion of the Work.

## ARTICLE 12 – CONDEMNATION

### 12.1 Total, Substantial, or Unusable Remainder.

(a) If at any time during the Term of this Lease:

(1) Title to the whole or substantially all of the Facility is taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease will terminate and expire on the date of such taking and any unpaid Rent will be paid to the date of such taking; or

(2) Title to a substantial portion of the Facility is taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceeding, and the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein (in the sole and absolute discretion of Scottsdale), Scottsdale may, at its option, terminate the Lease within ninety (90) days after such taking by serving upon Phoenix at any time within said ninety (90) day period, a thirty (30) day written notice of Scottsdale's election to so terminate accompanied by a certificate of Scottsdale that the remaining part of the Facility cannot feasible be used or converted for use by Scottsdale as contemplated herein.

(b) In the event of such taking and the termination of this Lease, any award will be divided as follows:

(1) Scottsdale will receive that portion attributed to the then fair market value of the Facility and related improvements and the fair market value, immediately prior to such taking, of Scottsdale's leasehold interest in the Facility taken.

(2) Phoenix will receive the fair market value of its reversionary interest under this Lease (exclusive of any value attributable to improvements and the leasehold estate).

**12.2 Partial Taking – Lease Continues.** In the event of any such taking of less than the whole or substantially all of the Facility and, if such taking is not of the character described in Section 12.1.A (2) (or if such taking is of such character and the option of Scottsdale to terminate this Lease is not exercised), the Term will not be reduced or affected in any way and the following applies:

(a) The award or awards (herein sometimes referred to as "Condemnation Proceeds") are to be deposited with any escrow company authorized to do business in the State of Arizona for disbursement pursuant to Section 12.2.C.

(b) If the remaining part of the Facility can feasibly be used or converted for use by Scottsdale as contemplated herein, Scottsdale, at its sole cost and expense and whether or not the Condemnation Proceeds are sufficient for the purpose, will proceed with reasonable diligence to repair, alter (including any necessary demolition and reconstruction) and restore the remaining part of the Facility to substantially its former condition, so as to be complete, rentable and usable and of the quality provided for in this Lease for the original construction of the affected buildings. If the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein, Scottsdale at its sole cost and expense, will proceed with due

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diligence to repair, alter (including any necessary demolition and reconstruction ) and restore the remaining part of the Facility so as to constitute a complete, rentable building for a purpose deemed appropriate by Phoenix in the manner hereinafter provided in this Section 12.2.B; provided, however, that not less than sixty (60) days prior to proceeding with any such repairs, alterations, or restoration, Scottsdale gives written notice to Phoenix certifying that the remaining part of the Facility cannot feasibly be used or converted for use by Scottsdale as contemplated herein and requesting approval of a new use, and Phoenix has approved in writing such restoration and new use. Such repairs, alterations, or restoration, including such changes and alterations as above mentioned and including temporary repairs, or the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the Work.

(c) After the Condemnation Proceeds are deposited with the escrow company under the provisions of Section 12.2.A, the escrow company will hold, apply, make available and pay over to Scottsdale the Condemnation Proceeds which are to be applied to the payment of the cost of the Work to the extent such condemnation Proceeds are sufficient for the purpose. If the Condemnation Proceeds are not sufficient to pay the entire cost of the Work, Scottsdale must supply the amount of any such deficiency. Under no circumstances will Phoenix be obligated to make any payment, reimbursement, or contribution towards the cost of the Work. Any balance of the Condemnation Proceeds remaining after completion of the Work is to be paid to Scottsdale.

**12.3 Rights of Participation.** Each Party has the right, at its own expense, to appear in any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

**12.4 Notice of Proceeding.** In the event Phoenix or Scottsdale receives notice of any proposed or pending condemnation proceedings affecting the Facility, the Party receiving such notice must promptly notify the other Party of the receipt and contents thereof.

### **ARTICLE 13 – MORTGAGES**

**13.1 Mortgages.** Phoenix's interest in this Lease, as the same may be modified, amended or renewed, may not be subject or subordinate to (a) any mortgage now or hereafter placed upon Scottsdale's interest in this Lease, or (b) any other liens or encumbrances arising out of actions or omissions to act by Scottsdale, its officials, agents, employees, or sublessees. In the event Scottsdale notifies Phoenix that a security interest has been granted on the leasehold interest created by this Lease, Phoenix agrees to enter into such estoppel agreements as well such recognition agreements with such creditor, with provisions and protections, including a typical notice and right to perform, for such creditor as are reasonable and customary.

### **ARTICLE 14 – SUBLEASE**

**14.1 Sublease Permitted.** The Parties hereby specifically agree that Scottsdale may enter into an arrangement to sublease the Facility with a major league baseball team subject to the terms of this Lease. Scottsdale will incorporate any sublessee obligations contained in this Agreement into the sublease arrangement and will make Phoenix a third party beneficiary of the sublease with respect to the incorporated obligations.

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## ARTICLE 15 – DEFAULT BY TENANT

15.1 **Events of Default.** Subject to the provisions of this Article 15, the happening of any one of the following events (herein call "Events of Default") will be considered a material breach and default by Scottsdale under this Lease:

(a) If default is made in the due and punctual payment of any Rent or Additional Payments within thirty (30) days after written notice thereof to Scottsdale; or

(b) If default is made by Scottsdale in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof, other than those referred to in the foregoing Section 15.1(a), or if any of its representations and warranties contained herein shall prove to be untrue in whole or in part, and such default continues for a period of sixty (60) days after written notice thereof from Phoenix to Scottsdale (provided, that if Scottsdale proceeds with due diligence during such sixty (60) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required sixty (60) days, then the time to complete the cure may be extended by the time reasonably necessary to cure the same as reasonably necessary); or

(c) If Scottsdale abandons the Facility for a period in excess of one hundred eighty (180) consecutive days for a reason other than an event of damage or destruction or condemnation; or

(d) If default is made by Scottsdale under a Leasehold Mortgage or any related document that is not cured within the applicable cure periods thereunder.

15.2 **Notice and Termination.** Upon the occurrence of one or more of the Events of Default listed in Section 15.1, Phoenix at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Scottsdale specifying such Event(s) of Default and stating that this Lease and the Term hereby demised will expire and terminate on the date specified in such notice, which must be at least ten(10) business days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the provisions of Section 15.3, this Lease and the Term hereby demised and all rights of Scottsdale under this Lease will expire and terminate as though such date were the date originally set forth herein for the termination hereof.

15.3 **Tenant Liability Continues.** No such expiration or termination of this Lease will relieve Scottsdale of its liability and obligations arising or accruing under this Lease prior to the expiration or termination of the Lease, and such liability and obligations will survive any such expiration or termination. In the event of any such expiration or termination, Scottsdale must pay to Phoenix any Rent or Additional Payments required to be paid by Scottsdale up to the time of such expiration or termination of this Lease.

15.4 **No Implied Waivers.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, will constitute a waiver of any such breach or of such covenant,

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agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Phoenix or Scottsdale, and no beach thereof, will be waived, altered or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach will affect or alter this Lease, but each and every covenant, agreement, term limitation and condition hereof will continue in full force and effect with respect to any other then existing or subsequent breach hereof.

**15.5 Remedies Cumulative; Default Interest.** In the event of any breach by a Party of any of the covenants, agreement, terms or conditions hereof, the non-breaching Party, in addition to any and all other rights, is entitled to enjoin such breach and has the right to invoke any right and remedy approved at law or in equity or by statute or otherwise for such breach. In the event of Scottsdale's failure to pay the Rent or Additional Payments within twenty (20) days of the due date therefor. Scottsdale will pay Phoenix interest on any such overdue payments and associated late charges from the due date at the rate of one percent (1%) per month, but in no event an amount greater than permitted by law.

#### **ARTICLE 16 – DEFAULT BY LANDLORD**

**16.1 Landlord Event of Default.** It is an event of default if Phoenix (a) fails to perform any of its material duties and obligations set forth in this Lease, or (b) if any of its representations and warranties contained herein shall prove to be untrue in whole or in part. Phoenix will not be deemed in default of this Lease if Phoenix commences the curing of such default within sixty (60) days and prosecutes in good faith the curing of same continuously thereafter until the same is cured, but in no event will the cure period be extended later than one hundred twenty (120) days after written notice from Scottsdale to Phoenix.

**16.2 Tenant Remedy.** In the event of any breach by Phoenix of any of the covenants, agreements, representations and warranties, terms, or conditions hereof, Scottsdale, in addition to any and all other rights, is entitled to enjoin such breach and has the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

**16.3 Landlord Liability Continues.** No expiration or termination of this Lease will relieve Phoenix of its liability and obligations under this Lease and such liability and obligations will survive any such expiration or termination.

#### **ARTICLE 17 – NOTICES**

**17.1 Notices.** Any notice request, demand, statement, or consent herein required or permitted to be given by either Party to the other hereunder, except as otherwise specifically provided herein, must be in writing signed by or on behalf of the Party giving the notice and addressed to the other at the address as set forth below:

Phoenix: Director, Parks and Recreation Department  
City of Phoenix  
200 West Washington Street, 16<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611  
Fax: (602) 732-2336

and City Clerk, City of Phoenix  
200 West Washington Street, 15<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611

and City Attorney's Office, City of Phoenix  
200 West Washington Street, 13<sup>th</sup> Floor  
Phoenix, Arizona 85003-1611  
Fax: (602) 534-9866

Scottsdale City of Scottsdale  
Community Services Director  
7447 E. Indian School Road, Suite 300  
Scottsdale, AZ 85251

and Chris Walsh  
Community Services  
Parks & Recreation Manager  
7447 E. Indian School Road, Suite 300  
Scottsdale, AZ 85251

and Reed Pryor  
Parks & Recreation Director  
7447 E Indian School Rd, Suite 300  
Scottsdale, AZ 85251

and City of Scottsdale  
City Attorney  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

**17.2 Effectiveness.** Each Party may by notice in writing change its address for the purpose of this Lease, which address will thereafter be used in place of the former address. Each notice, demand, request, or communication mailed to any of the aforesaid will be deemed sufficiently given, served, or sent for all purposes hereunder two (2) business days after it is mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, upon personal delivery, or one (1) business day after deposit with any nationally recognized commercial air courier or express service, with all delivery charges prepaid. Notice by electronic mail or telefacsimile will be effective upon transmission, provided that a confirmation copy of any such notice is sent by one of the other methods described above. Any notice to be given by any Party hereto may be given by legal counsel for such Party.

#### **ARTICLE 18 – REPRESENTATIONS AND WARRANTIES**

**18.1 Tenant's Representations and Warranties.** Scottsdale hereby warrants and represents to Phoenix as follows:

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EXHIBIT A

Contract No. 2018-201-COS  
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(a) This Lease has been duly and validly executed and delivered by Scottsdale and constitutes a legal, valid and binding obligation of Scottsdale enforceable in accordance with its terms.

(b) There is no pending or, to Scottsdale's knowledge, threatened investigation, action or proceeding by or before any court, any governmental entity or arbitrator which (i) questions the validity of this Lease or any action or act taken or to be taken by Scottsdale pursuant to this Lease or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition, financial or otherwise, of Scottsdale, which will materially impair its ability to perform its obligations hereunder.

(c) No representation, statement or warranty by Scottsdale contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make such statement of fact therein no misleading.

(d) Scottsdale represents that the Facility, any sidewalks, vaults, the title to the Facility, parking areas adjoining the same, any subsurface conditions thereof, and the present uses and nonuses thereof, have been examined by Scottsdale and, provided that no material change in condition thereof occurs between the Effective Date and the Commencement Date and subject to Phoenix's obligations under **Section 1.3** herein, Scottsdale will accept the same in the condition or state in which they or any of them may be on the Commencement Date, without representation or warranty, express or implied in fact or by law, by Phoenix and without recourse to Phoenix, as to the nature, condition, or usability thereof or the use or uses to which the Facility or any part thereof may be put.

**18.2 Landlord's Representations.** Phoenix hereby warrants and represents to Scottsdale as follows:

(a) This Lease has been duly and validly executed and delivered by Phoenix and constitutes a legal, valid and binding obligation of Phoenix enforceable in accordance with its terms.

(b). There is no pending or, to Phoenix's knowledge, threatened investigation, action or proceeding by or before any court, any governmental entity or arbitrator which (i) questions the validity of this Lease or any action or act taken or to be taken by Phoenix pursuant to this Lease or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition, financial or otherwise, of Phoenix, which will materially impair its ability to perform its obligations hereunder.

(c) To City's knowledge, the Facility (and all improvements therein) are not in violation of any applicable ordinances, laws, regulations, rules, restrictions and orders of the City of Phoenix or of all boards, bureaus, administrative agencies, commissions and bodies of any federal, state, county or municipal authority having jurisdiction over the Facility, including, but not limited to, the Americans with Disability Act (ADA) and the Environmental Laws (as defined below).

(d) Phoenix has not granted, either orally or in writing, to any person or entity, other than to Scottsdale hereunder, any leases, options, rights of first refusal, contracts to purchase or other legal or equitable interest in or rights, pertaining to the Facility.

(e) Phoenix has no knowledge of any covenants, restrictions, easements, claims of liens, encumbrances, or reservations that encumber the Facility or affect the use thereof other than the Permitted Encumbrances enumerated in **Exhibit "F"**, and during the Term Phoenix shall not consent to the placement of any additional covenants, restrictions, easements, claims of liens, encumbrances, or reservations against the title to the Facility without Scottsdale's prior written consent, which may be withheld or granted in Scottsdale's sole discretion.

(f) Phoenix shall cause any Contract affecting the Facility to which Phoenix is a party to be terminated before the Commencement Date.

(g) There are no use or similar agreements that grant other parties the right to use the Facility on or after the Commencement Date.

(h) No representation by Phoenix contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make such statement of fact therein and misleading.

#### **ARTICLE 19 – EQUAL EMPLOYMENT OPPORTUNITY**

19.1 **Nondiscrimination.** Scottsdale, in performing under this Lease, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Scottsdale will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action includes but is not limited to the following: employment, promotion, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. Scottsdale further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. In addition, Scottsdale will comply with all applicable federal, state and municipal laws and regulations regarding equal employment opportunity and nondiscrimination, including but not limited to Arizona Executive Order No. 2009-09.

#### **ARTICLE 20 – UNAVOIDABLE DELAY**

20.1 **Unavoidable Delay; Extension of Time for Performance.** In addition to specific provisions of this Lease, performance by any Party hereunder will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; laws or ordinances; absolute and unforeseeable inability to obtain labor and materials; moratorium; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental controls, laws, ordinances, restrictions or priority; litigation; unusually severe weather; inability (when either Party is faultless) of any contractor, subcontractor or supplier; acts of the other Party and other unforeseeable causes beyond the reasonable control of the Party obligated to perform hereunder. The time for

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performance of an obligation(s) hereunder (other than the payment of money) will be extended and the performance excused for any such cause only for the period of the enforced delay, which period will commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) calendar days after the commencement of the cause, the period will commence to run only thirty (30) calendar days prior to the giving of such notice. Times of performance under this Lease may also be extended in writing by the Parties hereto.

## ARTICLE 21 – COMPLIANCE WITH ENVIRONMENTAL LAWS

### 21.1 Restrictions on Tenant. Scottsdale may not do any of the following:

(a) Make, or permit to be made, any use of the Facility, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, particulates or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, except in compliance with Environmental Laws or in compliance with permit(s) secured for that purpose. Within the context of this Lease, “**Environmental Laws**” are defined as those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Clean Water Act, 33 U.S.C. § 2601, *et. Seq.*; The Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(b) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water which matter, as reasonably determined by Phoenix or any governmental entity, does, or may, pollute or contaminate the same, or is, or may become, radioactive, or does, or may, adversely affect (i) the health or safety of persons, wherever located, whether on the Facility or anywhere else, (ii) the condition, use, or enjoyment of the Facility or any other real or personal property, whether on the Facility or anywhere else, or (iii) the Facility or any of the improvements thereon, including buildings, foundations, pipes, utility lines, landscaping, or parking areas, except in compliance with Environmental Laws.

(c) Use, store, dispose of, or permit to remain on the Facility or the underlying or adjacent property, except as expressly permitted by the Lease, any Hazardous Materials used, stored or disposed of by Scottsdale, except in compliance with Environmental Laws or in compliance with permit(s) secured for that purpose. Within the context of this Lease “**Hazardous Materials**” is defined as follows: (1) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Hazardous Materials Transportation

Act, 49 U.S.C. § 1801 *et seq.*; and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i; (2) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. § 49-201, *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. § 49-281, *et seq.*; the Solid Waste Management Act, A.R.S. § 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. § 49-1001, *et seq.*; Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4821-4846, and Management of Special Waste, A.R.S. § 49-851 to 49-868; or (3) all substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the Term of this Lease as well as any other materials or substances in amounts which have been determined to be hazardous to human health or the environment including, but not limited to, asbestos, mold and mercury.

**21.2 Disposal of Waste.** Scottsdale will manage all potentially infectious waste in compliance with Environmental Laws. Scottsdale will not keep any trash, garbage, waste, or other refuse on the Facility except in sanitary containers and will regularly and frequently remove the same from the Facility in accordance with the terms and conditions of Scottsdale's applicable permits. Scottsdale must keep all incinerators, containers, or other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Scottsdale must monitor and properly dispose of all sanitary sewage and not use the sewage disposal system of the Facility (i) for the disposal of anything except sanitary sewage, (ii) in excess of the amount reasonably contemplated by the uses permitted under the Lease, or (iii) in excess of the amount permitted by any governmental entity. Scottsdale must use appropriately licensed and regulated waste removal services at Scottsdale's sole cost.

### **21.3 Compliance with Environmental Laws.**

(a) Subject to the remaining provisions of this **Section 21.3**, Scottsdale will, at Scottsdale's own expense, comply with all existing and any hereinafter enacted Environmental Laws that relate to Hazardous Materials generated by the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers, during the Term of the Lease. Scottsdale will, at Scottsdale's own expense, make all submissions to, provide all information to, and comply with all requirements of any appropriate governmental authority ("**Authority**") under such Environmental Laws. In particular, Scottsdale will comply with all laws and obtain all required permits and approvals relating to the storage, use, and disposal of Hazardous Materials. Should any Authority require that a cleanup or remediation plan be prepared or that a cleanup or any other remediation action be undertaken because of any spills or discharges of Hazardous Materials at the Facility or on the underlying or adjacent property that occur during the Term of the Lease as a result of the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers, during the Term of the Lease, or after expiration of the Lease if as a result of Scottsdale's use of the Facility (a "**Tenant Environmental Obligation**"), then Scottsdale will, at Scottsdale's own expense, prepare and submit to the Authority all required plans and financial assurances, and carry out the approved plans. At no expense to the other Party, each Party will promptly provide all information requested by the requesting Party for preparation of affidavits required by the requesting Party to determine the applicability of the Environmental Laws to the Facility, and will promptly sign such reasonable affidavits with respect thereto as may be requested by the requesting Party.

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(b) If the presence of any Hazardous Materials on, or under, the Facility arising out of the act, culpable omission, negligence, misconduct, or other fault of Scottsdale, its officers, official, agents, employees or volunteers results in any contamination to the Facility or any adjacent real property during the Term of this Lease, Scottsdale will promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment in compliance with Environmental Laws. Scottsdale will then undertake any further action necessary to return the Facility or other property to the condition existing prior to the introduction of any Hazardous Materials to the Facility; provided that Phoenix's written approval of such actions must first be obtained. Scottsdale must undertake such actions without regard to the potential legal liability of any other person. However, any remedial activities by Scottsdale will not be construed as to impair Scottsdale's rights, if any, to seek contribution for indemnity from another person.

(c) Scottsdale will, at Scottsdale's own cost and expense, make all reasonable tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to any Environmental Laws pertaining to Scottsdale's use of the Facility. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Hazardous Materials on, or under the Facility, during the Term of this Lease. At no cost or expense to Phoenix, Scottsdale will promptly provide all information requested by Phoenix pertaining to the applicability of the Environmental Laws to the Facility, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination. In addition, Phoenix has the right to access, within ten (10) days of Scottsdale's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Hazardous Materials by Scottsdale on, or under, the Facility.

(d) Scottsdale must immediately notify Phoenix of any of the following: (i) any correspondence or communication from any governmental agency regarding any violation or apparent violation of Environmental Laws at the Facility or by Scottsdale's use of the Facility, (ii) any change in Scottsdale's use of the Facility that will change or has the potential to change Scottsdale's or Phoenix's obligations or liabilities under Environmental Laws, and (iii) any assertion of a claim or other occurrence for which Scottsdale may incur an obligation under this Article.

(e) Scottsdale will use commercially reasonable efforts to cause all contractors, permittees and concessionaires (each an "Indemnitor") to indemnify, defend and hold harmless, on demand, Phoenix, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Facility and any and all claims or actions brought by any person, entity or governmental body, arising in connection with contamination of, or adverse effects on, human health, property or the environment arising out of such Indemnitor's acts or omissions pursuant to any Hazardous Materials or Environmental Laws.

#### 21.4 Noncompliance.

(a) Scottsdale's failure or the failure of agents, employees, contractors, invitees or third parties during the Term of this Lease to substantially comply with any of the requirements and obligations of this **Article 21** constitutes a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, each Party has the right of "self help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Facility without waiving any of its rights under this Lease. The exercise by Phoenix or Scottsdale of any of its rights under this Article does not release the other Party from any obligation it would otherwise have hereunder.

(b) Notwithstanding the provisions of this **Article 21**, Phoenix has the right to terminate this Lease in Phoenix's reasonable discretion in the event that (i) Scottsdale has been required by any governmental authority to take remedial action in connect with Hazardous Materials contaminating the Facility if the contamination resulted from Scottsdale's action or use of the Facility (unless, and as long as, Scottsdale is diligently seeking compliance with such remedial action); or (ii) Scottsdale is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of Hazardous Materials at the Facility (unless Scottsdale is diligently seeking compliance with such enforcement order).

(c) The covenants in this **Article 21** will survive the expiration or earlier termination of this Lease.

**21.5 Landlord's Right to Perform Tests.** Phoenix has the right following reasonable written notice (except in the event of an emergency), to enter into the Facility at all reasonable times in order to review Scottsdale's Hazardous Materials handling and otherwise inspect the Facility for Hazardous Materials contamination. Without limiting the foregoing sentence, Phoenix has the right to have an environmental audit of the Facility conducted within ninety (90) days of the scheduled expiration date of this Lease or of termination of this Lease, if the Lease is terminated on a date other than the scheduled date. Scottsdale will promptly perform any remedial action recommended by such environmental audit unless the audit reveals that the Hazardous Materials resulted from the activities of a person other than Scottsdale, its agents, contractors, invitees, or employees. The costs of any such environmental audits will be borne by Scottsdale.

### ARTICLE 22 – MISCELLANEOUS PROVISIONS

**22.1 Contract Administrators.** Upon execution of this lease, the Parties shall each designate a contract administrator to coordinate the respective Party's participation in carrying out its obligations under this lease. The initial contract administrator for Scottsdale shall be the Community Services Director (William Murphy) who may delegate this duty from time to time. The initial contract administrator for Phoenix shall be Parks and Recreation Director (Inger Erickson) who may delegate this duty from time to time. Each Party will notify the other Party of its respective contract administrator and provide contact information for the contract administrator. A Party's contract administrator may not be exclusively assigned to this lease. Scottsdale's contract administrator's authority is limited to the administration of the requirements of this lease. No approval, consent or direction by Scottsdale's contract administrator or other persons affiliated

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with Scottsdale inconsistent with this lease shall be binding upon Scottsdale. Scottsdale shall be responsible for securing all zoning approvals, development review, building, and other local, state, county or federal governmental approvals and for satisfying all governmental requirements pertaining to any of Scottsdale's obligations under this lease and shall not rely on Phoenix's contract administrator for any of the same.

**22.2 Cancellation for Conflict of Interest.** The Parties hereto acknowledge that this Lease is subject to cancellation by Phoenix or Scottsdale pursuant to the provisions of A.R.S. § 38-511, which provides that this Lease may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of City of Phoenix or City of Scottsdale is, at any time while this Lease or any extension thereof is in effect, an employee or agent of the other Party to this Lease in any capacity or a consultant to any other Party with respect to the subject matter of this Lease.

**22.3 Nondiscrimination.** The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act.

**22.4 Notice of Arbitration Status.** Pursuant to A.R.S. § 12-1518, the Parties acknowledge and agree that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Lease if required by A.R.S. § 12-133.

**22.5 Contractor's Records.** Phoenix and Scottsdale agree to retain all records relating to this Lease. The Parties each agree to make those records available at all reasonable times for inspection and audit by the other Party during the Term of this Lease and for a period of five (5) years after the completion of this Lease.

**22.6 Confidentiality.** Any other provision of this Lease to the contrary notwithstanding, the parties are both public institutions, and as such are subject to Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes (Sections 39-121 through 39-127). Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law. In the event a public records request is made for information and/or documents designed by the either party as confidential or proprietary the party will notify the other party as soon as reasonably possible.

**22.7 Governing Law; Binding Effect.** This Lease is not to be construed against the Party who prepared it but will be construed as though prepared by both Parties. This Lease is to be construed, interpreted, and governed by the laws of the State of Arizona, and with respect to any dispute hereunder, venue will lie exclusively with the State Courts of Maricopa County, Arizona.

**22.8 Memorandum of Lease.** Promptly following the Effective Date, Phoenix and Scottsdale will execute a short form memorandum of this Lease in the form attached hereto as **Exhibit "G"**, and cause the same to be recorded in the Office of the County Recorder for Maricopa County, Arizona.

**22.9 Entire Agreement.** This Lease with its exhibits contains the entire agreement between Phoenix and Scottsdale and any executory agreement hereafter made between Phoenix and Scottsdale is ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the Party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

**22.10 Captions.** The captions of Articles and Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

**22.11 Execution and Delivery.** This Lease will bind Scottsdale upon the approval by the Scottsdale City Council and the execution thereof. Phoenix will be bound after approval by the Phoenix City Council and the execution thereof.

**23.12 Time of Essence.** Time is of the essence in the performance of each and every provision of this Lease.

**23.13 No Brokers.** Neither Phoenix nor Scottsdale has dealt with any broker or finder with regard to the Facility or this Lease. Neither Party will be responsible for any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions incurred by the other Party in connection with this Lease.

**23.14 No Waiver.** No waiver of any condition or agreement in this Lease by either Phoenix or Scottsdale will imply or constitute a further waiver by such Party of the same or any other condition or agreement. No act or thing done by Phoenix or Phoenix's agents during the Term of this Lease will be deemed an acceptance of a surrender of the Facility, and no agreement to accept such surrender will be valid unless in writing signed by Phoenix. No payment by Scottsdale, nor receipt from Phoenix, of a lesser amount than the City Retained Revenue, City Shared Revenue, Additional Payments or other charges stipulated in this Lease will be deemed to be anything other than a payment on account.

**23.15 Attorneys' Fees.** If either Phoenix or Scottsdale litigate any provision of this Lease or the subject matter of this Lease, the unsuccessful litigant will pay the successful litigant all reasonable attorneys' fees and court costs incurred by it in connection with such litigation as determined or fixed by the court.

**23.16 Cumulative Rights.** Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder are cumulative and not restrictive of those provided at law or in equity.

**23.17 Relationship of Parties, No Third Party Beneficiary.** The Parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal-agent relationship exist between them, nor are there any intended third-party beneficiaries of this Lease.

**23.18 Counterparts.** This Lease may be executed in counterparts and all such counterparts are deemed to be originals and together they constitute but one and the same instrument.

**23.19 Computation of Time; Business Days.** In computing any period of time prescribed or allowed by this Lease, the day of the act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. "**Business day**" shall mean Monday through Friday, excluding any such dates that are legal holidays in the State of Arizona. If any day on which performance is due hereunder occurs on a day that is not a business day, then the day for such performance shall occur on the next occurring business day.

**23.20 Provisions Severable.** If any term or provision hereof or the application thereof to any person or circumstances is found, to any extent, to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision hereof will be valid and be enforced to the fullest extent permitted by law.

**23.21 Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Phoenix covenants that Scottsdale, upon paying the Rent and Additional Payments and observing and keeping all terms covenants, agreements, limitations, and conditions hereof on its part to be kept, will quietly have and enjoy the Facility during the Term hereof, without hindrance by Phoenix or any person claiming an interest in the Facility by or through Phoenix.

**23.22 No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either Party is required, such consent or approval will not be unreasonably withheld nor delayed, except where otherwise specifically provided. The remedy of the Party requesting such consent or approval, in the event such Party should claim or establish that the other Party has unreasonably withheld or delayed such consent or approval, is to be limited to injunction or declaratory judgment and in no event will such other Party be liable for a money judgment.

**23.23 Statutory Cancellation Right.** In addition to all the rights of the Parties hereunder, Parties shall have the rights specified in A.R.S. § 38-511.

**(Signature Pages Follow)**

IN WITNESS WHEREOF, the Parties have executed this lease of the PAPAGO BASEBALL FACILITY BY THE CITY OF SCOTTSDALE as of the date first above written.

CITY OF PHOENIX

ED ZUERCHER, CITY MANAGER

By: \_\_\_\_\_  
Inger Erickson, Director  
Parks & Recreation Department

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  )  
County of Maricopa        )        ss.

This instrument was acknowledged before me this day of \_\_\_\_\_, 2018 by Inger Erickson, Parks and Recreation Director on behalf of the CITY OF PHOENIX, a municipal corporation.

\_\_\_\_\_  
Notary Public

(Notary Seal)

CITY: **CITY OF SCOTTSDALE**,  
an Arizona municipal corporation

By: \_\_\_\_\_  
W. J "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Senior Assistant City Attorney

\_\_\_\_\_  
William B. Murphy, Community Services Director

\_\_\_\_\_  
Katie Callaway, Risk Management Director

\_\_\_\_\_  
Jim Thompson, City Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
15722181v16

**EXHIBIT A**  
**Legal Description**

That portion of the Southeast Quarter of Section 33, Township 2 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Section 33, from which the South Quarter corner of said Section 33 bears S 89°41'44" W, a distance of 2688.12 feet;

**THENCE** along the South line of the Southeast Quarter of said Section 30, S 89°41'44" W, a distance of 726.76 feet;

**THENCE** leaving said South line, N 00°18'16" W, a distance of 371.96 feet to the **POINT OF BEGINNING**;

**THENCE** S 88°41'44" W, a distance of 175.40 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 254.14 feet with a chord bearing of N 70°05'22" W, a distance of 381.78 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 97°22'33" for an arc length of 431.92 feet;

**THENCE** N 09°41'09" W, a distance of 133.10 feet;

**THENCE** S 88°21'32" W, a distance of 99.79 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 146.43 feet with a chord bearing of S 50°21'18" W, a distance of 199.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 85°38'16", for an arc length of 218.86 feet;

**THENCE** N 78°25'26" W, a distance of 94.71 feet;

**THENCE** S 83°08'48" W, a distance of 74.84 feet to the beginning of a non-tangent curve concave northerly having a radius of 178.85 feet with a chord bearing of N 76°52'49" W, a distance of 116.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 37°51'47", for an arc length of 118.19 feet;

**THENCE** N 58°04'21" W, a distance of 100.16 feet;

**THENCE** N 26°45'56" W, a distance of 186.88 feet;

EXHIBIT A

Page 1 of 3

Contract No. 2018-201-COS

EXHIBIT A

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THENCE N 03°28'13" E, a distance of 76.71 feet;

THENCE N 48°13'20" W, a distance of 74.62 feet;

THENCE N 16°20'55" W, a distance of 301.37 feet;

THENCE N 00°36'21" E, a distance of 55.94 feet;

THENCE N 18°46'50" E, a distance of 82.44 feet;

THENCE N 26°51'30" E, a distance of 74.73 feet to the beginning of a non-tangent curve concave southerly having a radius of 266.61 feet with a chord bearing of N 83°25'33" E, a distance of 364.97 feet;

THENCE along the arc of said curve, to the right, through a central angle of 86°23'11", for an arc length of 401.98 feet;

THENCE S 48°47'29" E, a distance of 112.43 feet;

THENCE N 29°49'19" E, a distance of 99.98 feet;

THENCE N 03°37'35" E, a distance of 55.39 feet;

THENCE N 51°07'06" E, a distance of 197.60 feet;

THENCE S 68°12'34" E, a distance of 44.67 feet;

THENCE S 81°38'45" E, a distance of 197.16 feet;

THENCE S 15°49'58" E, a distance of 61.14 feet;

THENCE S 55°02'29" E, a distance of 269.12 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 536.44 feet with a chord bearing of S 71°56'11" E, a distance of 278.24 feet;

THENCE along the arc of said curve, to the left, through a central angle of 30°03'42", for an arc length of 281.46 feet;

THENCE S 88°44'47" E, a distance of 132.97 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 252.46 feet with a chord bearing of S 56°03'13" E, a distance of 207.31 feet;

THENCE along the arc of said curve, to the right, through a central angle of 48°29'00", for an arc length of 213.63 feet;

EXHIBIT A

Page 2 of 3

Contract No. 2018-201-COS

EXHIBIT A

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**THENCE** S 01°34'20" E, a distance of 49.29 feet to the beginning of a non-tangent curve concave westerly having a radius of 277.67 feet with a chord bearing of S 02°27'46" W, a distance of 231.50 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 49°16'25", for an arc length of 238.79 feet;

**THENCE** S 00°18'49" E, a distance of 136.37 feet;

**THENCE** S 14°41'54" E, a distance of 111.67 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 234.25 feet with a chord bearing of S 45°55'07" W, a distance of 390.61 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 112°58'12", for an arc length of 461.87 feet;

**THENCE** N 75°41'31" W, a distance of 106.69 feet to the **POINT OF BEGINNING**.

Said parcel contains 36.75 acres (more or less)



Expires: 9/30/2018

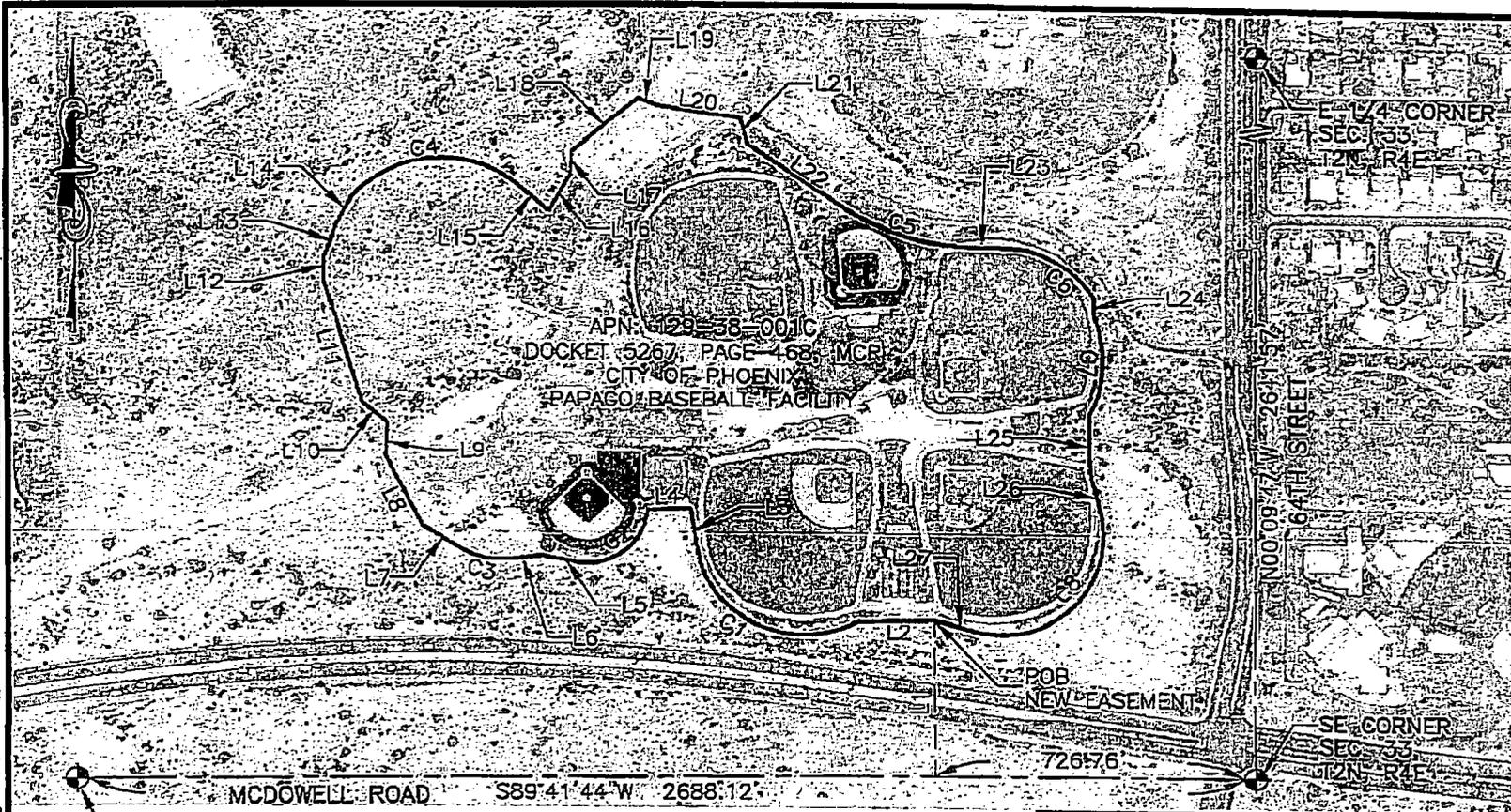
EXHIBIT A

Page 3 of 3

Contract No. 2018-201-COS

EXHIBIT A

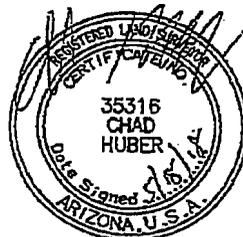
Page 29 of 57 to Contract No. 2018-202-COS



S 1/4 CORNER  
 SEC. 33, T2N, R4E

**LEGEND**

- POB = POINT OF BEGINNING
- ROW = RIGHT-OF-WAY
- MCR = MARICOPA COUNTY RECORDER
-  = NEW EASEMENT



EXPIRES: 9/30/18

**EASEMENT EXHIBIT**



**AZTEC ENGINEERING**  
 4561 E. McDowell Rd., Phoenix, AZ 85008  
 Tel: (602) 454-0402 Fax: (602) 454-0403  
 website: www.aztec.us

DR: CWH	CK: ADR	SHEET NO.	TOTAL SHEETS
DATE: 5-18-18	REV:	1	2
SCALE: N/A			

EXHIBIT B  
 Page 1 of 1  
 Contract No. 2018-201-COS

Public trails to be developed by  
City of Scottsdale (noted in yellow)

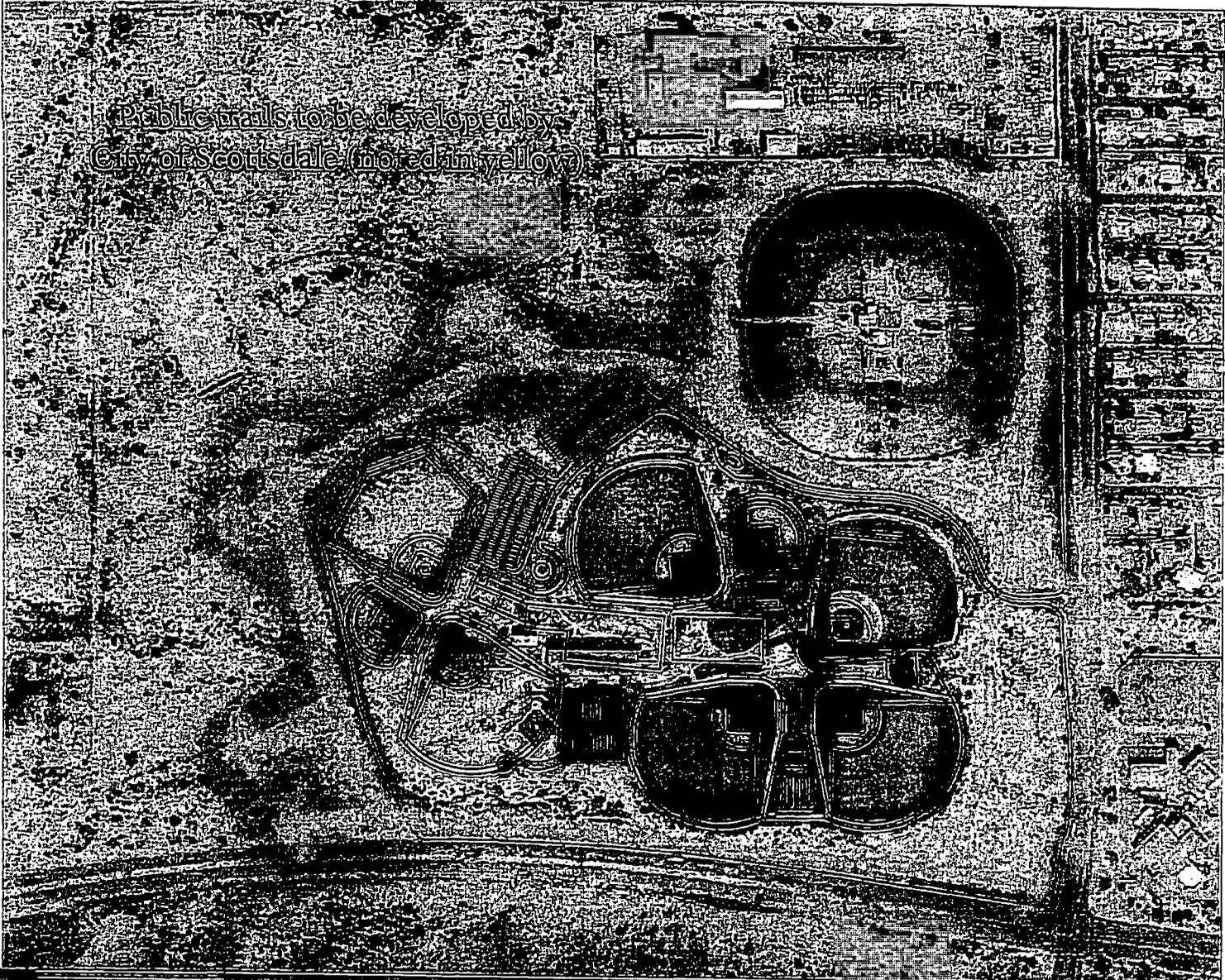


EXHIBIT A

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EXHIBIT C  
Page 1 of 1

Contract No. 2018-201-COS

PAPAGO SITE / CONCEPTUAL TRAIL CORRIDOR PLAN

07.06.2017 POPULOUS



Scottsdale/Giants Use Area subject to scheduled public baseball/rec uses (area within red)

S.F. GIANTS EXCLUSIVE USE BOUNDARY FENCED AND GATED  
 NOTE: ALL FULL FIELDS MAY BE LIGHTED AND ALL OUTFIELDS MAY HAVE 32' HIGH NETTING

PAPAGO ENLARGED SITE PLAN

**EXHIBIT "E"**

**Sublessee and Contractor Insurance Requirements**

**1. INSURANCE REQUIREMENTS:**

Sublessee and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Sublessee and its agents, representatives, employees and subconsultants. Sublessee and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this agreement. Phoenix in no way warrants that the minimum limits stated in this section are sufficient to protect Scottsdale from liabilities that might arise out of the activities encompassed by this agreement by Scottsdale, its agents, representatives, employees or subcontractors and Scottsdale is free to purchase additional insurance as may be determined necessary.

- 1.1. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Scottsdale or sublessee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1.1.1. Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Damage to Rented Premises)	\$50,000
Liquor Liability (if alcohol is being sold)	\$1,000,000

- The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Tenant, sub tenant, or subcontractors."

- The policy must be endorsed to include Liquor Liability coverage if alcohol is being sold at the event.

### 1.1.2 Property Insurance

Coverage for buildings including Scottsdale's tenant improvements shall be insured for special form perils coverage on a replacement value basis.

- The City of Phoenix must be named as a loss payee on property coverage for buildings and tenant improvements.
- Policy must contain a waiver of subrogation against the City of Phoenix.

### 1.1.3 Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Tenant, sub tenant, or sub contractor, including automobiles owned, leased, hired or borrowed by any of them. "

### 1.1.4 Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a Sponsor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such Sponsor or subcontractor executes the appropriate sole proprietor waiver form.

- 2 **ADDITIONAL INSURANCE REQUIREMENTS:** The policies must include, or be endorsed to include, the following provisions:
- On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured.
  - Scottsdale or Sublessee's Subcontractors insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
- 3 **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, Scottsdale must provide to Phoenix, within ten (10) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to **(City of Phoenix Department Representative's Name & Address & Fax Number)**.
- 4 **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Phoenix in no way warrants that the above-required minimum insurer rating is sufficient to protect Scottsdale from potential insurer insolvency. Notwithstanding the foregoing, Scottsdale shall have the absolute right to self-insure or carry any of its insurance under "blanket policies" covering the Premises and other locations it owns or leases. If requested by Phoenix, Scottsdale will furnish to Phoenix a letter certifying or self-insurance certificate to document that Scottsdale has provided for the insurance coverage required
- 5 **VERIFICATION OF COVERAGE:** Scottsdale must furnish Phoenix certificates of insurance (ACORD form or equivalent approved by Phoenix) as required at least 10 days prior to occupancy or renewal of said insurance. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Each insurance policy required by this agreement must be in effect at or prior to commencement of the occupancy and remain in effect for the duration of the contract. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required must be sent directly to **(City Department Representative's Name and Address)**. The contract number and title must be noted on the certificate of insurance.

Exhibit E  
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Contract No. 2018-201-COS

EXHIBIT A

Page 35 of 57 to Contract No. 2018-202-COS

- 6 **SUBCONTRACTORS**: If any work under this agreement is subcontracted in any way, Scottsdale or sublessee on behalf of Scottsdale shall execute written agreements with all Subcontractors containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Scottsdale and Phoenix. The sublessee shall be responsible for executing the agreement with all Subcontractors and obtaining Certificates of Insurance verifying the insurance requirements.
- 7 **APPROVAL**: Any modification or variation from these insurance requirements must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

Exhibit E  
Page 4 of 4

15722181v16

EXHIBIT A

Contract No. 2018-201-COS  
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Phoenix 071491.

MAY 5 1939 PM 4:44  
2-1022

## The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Phoenix, Arizona, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of April 7, 1930 (46 Stat. 142), entitled "An Act To abolish the Papago Saguaro National Monument, Arizona, to provide for the disposition of certain lands therein for park and recreational uses, and for other purposes", as amended by the Act of July 7, 1932 (47 Stat. 645), the claim of the State of Arizona, has been established and duly consummated, in conformity to law, for the Lots six, seven, ten, and eleven of Section three, the Lots one and two, the south half of the north half, and the south half of Section four, the south half of the northeast quarter and the east half of the southeast quarter of Section five, the north half of the northeast quarter, the north half of the northwest quarter of the northwest quarter, the north half <sup>of the</sup> northeast quarter of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, and the east half of the southeast quarter of the northwest quarter of Section nine, and the Lots one and two of Section ten in Township one north and the southeast quarter of Section thirty-three in Township two north all in Range four east of the Gila and Salt River Meridian, Arizona, containing one thousand one hundred eighty-five acres and fourteen hundredths of an acre, according to the Official Plat of the Survey of the said Land, on file in the General Land Office:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES OF AMERICA, unto the said State of Arizona, the tracts of Land above described; TO HAVE AND TO HOLD the said tracts of Land, with the appurtenances thereof, unto the said State of Arizona, and to its successors, forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches.

EXHIBIT F

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Contract No. 2018-201-COS

1.

U.S. GOVERNMENT PRINTING OFFICE: 1933

and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. And there is also reserved to the United States under the provisions of said Act of April 7, 1930, all the oil, coal, or other mineral deposits found at any time in the lands above described, and the right to prospect for, mine, and remove the same under such rules and regulations as the Secretary of the Interior may prescribe.

This patent is issued upon the express condition, that the lands so granted shall be used only for municipal, park, recreation, or public-convenience purposes, and if the lands or any part thereof, shall be abandoned for such use, such lands, or such part, shall revert to the United States.

*Certificate No. 1 of Approval of Transfer and Change of Use approved June 16, 1954, to the City of Phoenix, State of Arizona for 624.83 acres. Authority, Sec. 3 Act of June 14, 1926, as amended. (68 Stat. 173; 43 U.S.C. 864).  
Rose M. Beall, Chief,  
Patents Section.*

Supplemental Patent No. 1153369-5:80a.  
Aug. 8, 1955

IN TESTIMONY WHEREOF, I, Franklin D. Roosevelt,

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the SEVENTEENTH day of NOVEMBER in the year of our Lord one thousand nine hundred and TWENTY-SEVEN and of the Independence of the United States the one hundred and SIXTY-SECOND.

By the President:

*Franklin D. Roosevelt*  
By *James H. Harbo*, Secretary,  
*Charles S. Adams*  
Recorder of the General Land Office.

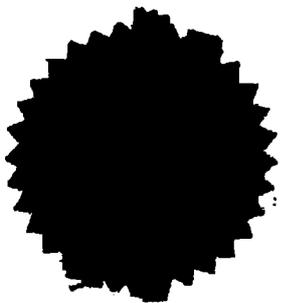


EXHIBIT F

Page 3 of 18.

DATE 5509 PAGE 446

attached 7749



THE SECRETARY OF THE INTERIOR  
WASHINGTON

Serial No. Phoenix 77491

Certificate No. 1

**CERTIFICATE OF APPROVAL OF TRANSFER  
AND CHANGE OF USE**  
(Act of June 14, 1926; 44 Stat. 741;  
43 U.S.C. 869 et seq., as amended)

This is to certify that the authorized officer of the Bureau of Land Management, on April 28, 1959, authorized the State of Arizona to transfer the lands described below and in Patent No. 1,093,785 issued November 17, 1937, to the City of Phoenix, State of Arizona, for use as a park, recreation, public convenience purposes, including the construction of a baseball stadium. This approval is subject to the reversionary provisions of the above noted Act, terminating 25 years from April 28, 1959.

Gila and Salt River Meridian, Arizona  
Unfolded Survey

T. 1 N., R. 4 E.  
sec. 4, lot 2, SW1/4, SW1/4, SW1/4, NW1/4  
sec. 5, SW1/4, E1/2  
sec. 9, E1/2 except lot 8 in the SW1/4 and  
in the E1/2 which was included in Patent  
No. 1,153,369 dated August 8, 1955, which  
issued under the Act of Congress of May 13,  
1955 (69 Stat. 48), NW1/4, E1/2  
Containing 624.83 acres

June 16, 1959

*[Signature]*  
Assistant Secretary



HOLD FOR PICK UP  
CITY OF PHX. ACCT. #34



Unofficial  
Document

OFFICE  
MARICOP

HELEN PURCELL

97-0380744 06/05/97 03:03

PAGE 06 OF 56

# The United States of America

To all to whom these presents shall come, Greeting:

EXEMPT UNDER A.R.S. 42-1414 A3  
AZA 29355

WHEREAS

CITY OF PHOENIX

is entitled to a land patent pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. 869 et seq., for the following described land:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.,  
sec. 4, lots 3 and 5;  
sec. 5, lot 6.

T. 2 N., R. 4 E.,  
sec. 33, lot 2.

containing 65.84 acres.

NOW KNOW YE, that there is, therefore, granted by the United States, unto the City of Phoenix, the land above described for a city park only; TO HAVE AND TO HOLD the land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the City of Phoenix, and its assigns forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 43 U.S.C. 945.
2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of the Interior.
3. An appropriation of a right-of-way for a Federal Aid Highway, under the Act of November 9, 1921, 42 Stat. 216; repealed 1958 (AZAR 04330).

Patent Number 02-97-0007

*PHOENIX  
PARK  
GOLF  
COURSE*

EXHIBIT F  
Page 5 of 18

Contract No. 2018-201-COS  
Page 41 of 57 to Contract No. 2018-202-COS

EXHIBIT A

**SUBJECT TO:**

1. Those rights for a water storage site and drainage control, granted to the City of Phoenix, its successors or assigns, by right-of-way No. AZA 06039, pursuant to the Act of February 15, 1901, 43 U.S.C. 959.
2. Those rights for a water storage tank site, water supply pipeline and access road, granted to the City of Phoenix, its successors or assigns by right-of-way No. AZAR 024174, pursuant to the Act of February 15, 1901, 43 U.S.C. 959.

Provided, that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

Provided further, that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits its agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex, national origin, or handicap.

The grant of the herein described lands is <sup>Unofficial Document</sup> subject to the following reservations, conditions, and limitations:

1. The patentee or its successor in interest shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 241, and requirements of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant thereto, 43 CFR 17, for the period that the lands conveyed herein are used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits.
2. If the patentee or its successor in interest does not comply with the terms or provisions of Title VI of the Civil Rights Act of 1964, and the requirements imposed by the Department of the Interior issued pursuant to that title, during the period during which the property described herein is used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits, the Secretary of the Interior or his delegate may declare the terms of this grant terminated in whole or in part.
3. The patentee, by acceptance of this patent, agrees for itself or its successors in interest that a declaration of termination in whole or in part of this grant shall, at the option of the Secretary or his delegate, operate to revest in the United States full title to the lands involved in the declaration.

Patent Number **02-97-0007**

EXHIBIT A

EXHIBIT F

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Contract No. 2018-201-COS

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- 4. The United States shall have the right to seek judicial enforcement of the requirements of Title VI of the Civil Rights Act of 1964, and the terms and conditions of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant to said Title VI, in the event of their violation by the patentee.
- 5. The patentee or its successor in interest will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property conveyed by this document signs and posters bearing a legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the area or facility conveyed.
- 6. The reservations, conditions, and limitations contained in paragraphs (1) through (5) shall constitute a covenant running with the land, binding on the patentee and its successors in interest for the period for which the land described herein is used for the purpose for which this grant was made, or for another purpose involving the provision of similar services or benefits.
- 7. The assurances and covenant required by sections (1) through (6) above shall not apply to ultimate beneficiaries under the program for which this grant is made. "Ultimate beneficiaries" are identified in 43 CFR 17.12(h).

Unofficial Document



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Phoenix, Arizona, the twenty-second day of May in the year of our Lord one thousand nine hundred and ninety-seven and of the Independence of the United States the two hundred and twenty first.

By Ceci Sturm  
 Ceci Sturm  
 Acting State Director

Patent Number **02-97-0007**

EXHIBIT A

EXHIBIT F  
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STATE OF ARIZONA, County of Maricopa, ss. I do hereby certify that the within instrument was filed and recorded at request of Docket - 5267 - 468  
1964 OCT 20 9 00 Records of Maricopa County, Arizona. First above words CLIFFORD B. WARD, Deputy.  
WITNESS my hand and official seal the day and year  
DI-DEED 201144  
By: *[Signature]*

DI-DEED 201144  
D E E D

THIS INDENTURE made this 11<sup>th</sup> day of August, 1964, between the State of Arizona, acting by and through Paul J. Fannin, the duly elected, qualified Governor of the State of Arizona, under and pursuant to Sections 41-511.16, 41-511.17, and 41-511.18, Arizona Revised Statutes, Grantor, and the City of Phoenix, a municipal corporation, Grantee.

WITNESSETH:

Grantor, for and in consideration of the sum of \$3,529.02 paid to it, through its State Parks Board, the receipt whereof is hereby acknowledged, and in further consideration of the assumption by the Grantee of all the obligations and its taking subject to certain reservations, restrictions, and conditions and its covenant to abide by and agreement to certain other reservations, restrictions, and conditions, all as set out hereinafter, does by these presents convey unto Grantee, its successors and assigns, all of its right, title, interest, claim, and demand in and to the following-described property situated in the County of Maricopa, State of Arizona, to-wit:

Southeast quarter of Section Thirty-three, in Township Two North, Lots Six, Seven, Ten, and Eleven of Section Three; Lots One and Two, the south half of the north half and the south half of Section Four; the south half of the northeast quarter, and the east half of the southeast quarter of Section Five; the north half of the northeast quarter, the north half of the north half of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, except for Lots Seven and Eight of said Section Nine; and the Lots One and Two of Section Ten; in Township One North, all in Range Four East of the Gila and Salt River Base and meridian, Arizona;

containing one thousand one hundred seventy-six and thirty-four hundredths acres, more or less.

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TO HAVE AND TO HOLD the foregoing described premises, together with all and singular appurtenances and privileges thereunto belonging and all the estate, right, title, interest, and claim of the Grantor unto the said Grantee, its successors and assigns, forever.

By the acceptance of this deed or any rights hereunder the said Grantee, for itself, its successors and assigns, agrees that the transfer of the property transferred by this instrument is accepted subject to the following restrictions and reservations contained in Patent No. 1093785 from the United States of America to the State of Arizona, dated November 17, 1937, and in amendments or modifications thereof:

(1) Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

(2) There is reserved from the lands hereby granted a right-of-way for ditches or canals constructed by the authority of the United States.

(3) There is also reserved to the United States under provisions of the Act of April 7, 1930, all the oil, coal, or other mineral deposits found at any time in above-described lands and the right to prospect for, mine, and remove the same under such rules and regulations as the Secretary of Interior may prescribe.

(4) This deed is issued upon the express condition that the lands so conveyed shall be used only for a park, recreation, public convenience purposes, including the construction of a baseball stadium, and if the lands, or any part thereof, shall

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be abandoned for such use, such lands or such part shall revert to the United States.

By the acceptance of this deed, or any rights hereunder, the said Grantee, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and that this transfer is made subject to the following reservations, restrictions, and conditions contained in Section 41-511.17 and 37-231, Arizona Revised Statutes, and in Conditional Certificate of Purchase No. 1, dated July 27, 1959, heretofore issued to Grantee.

(a) The lands shall be used only for municipal, park, recreation, or public convenience purposes, and if the lands or any part thereof shall be abandoned for such use, such lands, or such part, shall revert to the United States of America.

(b) The lands are subject to the following leases, easements, permits, and right-of-way agreements, the holders of which are entitled to successive renewals thereof for terms of five years each as long as they comply with the terms of the same:

Arizona Game & Fish Department	108.67 Acres	✓ ?
Salt River Project Agricultural Improve- ment and Power Dis- trict	2.78 Acres	
Arizona Highway Depart- ment	31.77 Acres	
City of Tempe	43.44 Acres	
Arizona Cactus and Native Floral Society, Inc.	150.73 Acres	
United States Army	70.38 Acres	
Highway Rights-of-way	10.52 Acres	

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The improvements on said leases, easements, permits, and rights-of-way have not been sold, and the purchaser has only acquired title to the land subject to the same.

(c) The Grantee shall consult with the Arizona State Parks Board in the preparation of a Master Plan for the development of Papago Park. The Grantee shall prepare the Master Plan.

(d) The Grantee shall submit to the Arizona State Parks Board, within six months of date of conveyance, a program of development of Papago Park, with the understanding that the Grantee shall make every effort to spend at least one million dollars in such development in the first five years, <sup>Useful Document</sup> and that in any event at least one million dollars shall be spent in the first ten years.

(e) The Grantee shall, within the first year of development, construct and install picnic facilities, water supply, sanitation facilities, and ingress and egress to such picnic area.

(f) The Grantee shall not charge an admission or exact a toll for entry into Papago Park; and charges made at concessions or fees fixed for the use of such facilities as the golf course, swimming pool, etc., shall be reasonable.

(g) "Municipal use" shall be limited to mean the construction of a baseball stadium for commercial baseball enterprises; and only other facilities and administrative building essential to the operation of Papago Park and in the interest of health, safety, and welfare of the park visitor.

(h) If the Grantee constructs a baseball stadium and parking area for such a facility for use by

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commercial baseball enterprises, such facilities shall not be constructed on Papago Park lands lying south of McDowell Road and north of Van Buren Street.

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(i) The Grantee shall acknowledge the tomb of Governor Hunt and that square area 120 feet by 120 feet; this parcel of land being one-third of an acre; the apex of the pyramid being the center of the square, and the sides of the square being parallel to the base of the pyramid. In addition, the Grantee shall incorporate the Master Plan for the tomb of Governor Hunt into the Master Plan for Papago Park, to provide egress and ingress, including a path to the tomb proper, providing easy ascent and descent; parking, lighting, water, landscaping, maintenance, and a retaining wall of approximately two feet in height for stabilization purposes. The Grantee agrees to make every effort to comply with these stipulations within a five-year period, and to maintain and keep in good repair said tomb in perpetuity. And, in addition, the Grantee shall grant to the surviving family of Governor Hunt the right to entomb other members of their family in said tomb until the spaces for such in said tomb have been filled.

(j) The Grantee agrees that a representative or a committee representing the United States of America may inspect Papago Park at any time for the purpose of determining whether stipulations and conditions herein set forth are being complied with. Said representative or committee shall advise the Grantee of any non-compliance with any stipulation or condition herein, and said Grantee shall be given one full fiscal year to comply. In the event of a dispute between the United States of America

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and the Grantee as to whether there has been non-compliance with any stipulation or condition, the matter shall be decided by the courts.

(k) The Grantee is hereby prohibited from selling or transferring or attempting to sell or transfer Papago Park. Any such action or attempted action by said Grantee shall be deemed an abandonment, and Papago Park shall revert to the United States of America.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed by Paul J. Fannin, its duly elected, qualified, and acting Governor, and its Great Seal hereto affixed the day and year first herein written.

Usefield Document



*Paul J. Fannin*  
PAUL J. FANNIN  
GOVERNOR OF THE STATE OF ARIZONA

ATTEST  
*Wesley Bolton*  
SECRETARY OF STATE OF THE STATE OF ARIZONA

STATE OF ARIZONA }  
County of Maricopa } ss

On this 11<sup>th</sup> day of July, 1964, before me, the undersigned notary public, personally appeared Paul J. Fannin, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official

*Wesley Bolton*  
My commission expires  
July 30, 1966

*Wesley Bolton*  
Notary Public

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CONDITIONAL

CERTIFICATE OF PURCHASE

# 474,

NO. 1

SALE NO. 1SALES REPORT NO. 1

ARIZONA STATE PARKS BOARD - STATE OF ARIZONA,

WHEREAS, on the 25th day of February, A. D. 1959, the CITY OF PHOENIX purchased from the State of Arizona the following described land, to-wit:

Southeast quarter of Section thirty-three, in Township Two north, Lots six, seven, ten and eleven of Section three; Lots one and two, the south half of the north half and the south half of Section four; the south half of the northeast quarter, and the east half of the southeast quarter of Section five; the north half of the northeast quarter, the north half of the north half of the northwest quarter, the southeast quarter of the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, except for Lots seven and eight of said Section nine; and the Lots one and two of Section ten; in Township one north, all in Range four east of the Gila and Salt River Base and Meridian, Arizona;

containing one thousand one hundred seventy-six and thirty-four hundredths acres, more or less, under and subject to the provisions of the laws of the State of Arizona, for the sum of THREE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND TWO CENTS (\$3,529.02), of which there has been paid to the STATE PARKS BOARD the sum of THREE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND TWO CENTS (\$3,529.02).

NOW, THEREFORE, the said purchaser, THE CITY OF PHOENIX, will be entitled to have and receive a Patent from the State of Arizona to the land hereinbefore described, upon surrendering this Certificate and fully complying with all the terms and conditions herein contained, and complying with all the pro-

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visions of law. Before said patent is issued the purchaser must supply the Arizona State Parks Board with proof that the purchaser has secured the approval of the Secretary of the Interior as to transfer of title and change of use.

CONDITIONS

This instrument is executed subject to all conditions, requirements and provisions of the Public Land Code of the State of Arizona, passed at the Second Special Session of the Second Legislature of the State of Arizona.

Said lands are subject to the following leases, easements, permits and right-of-way agreements, the holders of which are entitled by the provisions of A. R. S. § 41-511.17.2 to successive renewals thereof for terms of five years each as long as they comply with the terms of the same:

Arizona Game & Fish Department	108.67 Acres
Salt River Project Agricultural Improvement and Power District	2.78 Acres
Arizona Highway Department <small>Legal Document</small>	31.77 Acres
City of Tempe	43.44 Acres
Arizona Cactus and Native Floral Society, Inc.	150.73 Acres
United States Army	70.38 Acres
Highway Rights of Way	10.52 Acres

The improvements on said leases, easements, permits and rights-of-way have not been sold, and the purchaser has only acquired title to the land subject to the same.

In addition to the above encumbrances, A. R. S. § 41-511.16 provides that said lands may only be sold in one parcel to any municipality for the purposes set forth in Patent No. 1093785 from the United States of America to the State of Arizona, dated November 17, 1937. That patent was issued upon the express condition that said lands shall be used only for municipal, park, recreation, or public-convenience purposes, and if abandoned for such use, such lands, or such part, shall revert to the United States, and subject to any vested and accrued water

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rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection therewith, and for ditches or canals constructed by the authority of the United States. The United States Government further reserved in said patent all the oil, coal, or other mineral deposits found at any time in said lands, and the right to prospect for, mine and remove the same. If the State of Arizona has any such rights, pursuant to A. R. S. § 37-231, it reserves one-sixteenth of all gas, oil, metal and mineral rights in the above described lands.

In conformity with the restrictions of sale found in A. R. S. § 41-511.16 and the uses and purposes of said land set forth in said patent, certain other stipulations and conditions have been adopted by the Arizona State Parks Board to be included in the conveyance of Papago Park to a purchaser. These read as follows:

1. That the Grantee shall agree to consult with the Arizona State Parks Board in the preparation of a Master Plan for the development of Papago Park. The Grantee shall prepare the Master Plan.
2. That the Grantee shall submit to the Arizona State Parks Board, within six months of date of conveyance, a program of development of Papago Park, with the understanding that the Grantee shall make every effort to spend at least one million dollars in such development in the first five years, and that in any event at least one million dollars shall be spent in the first ten years.
3. That the Grantee shall, within the first year of development, construct and install picnic facilities, water supply, sanitation facilities, and ingress and egress to such picnic area.
4. That the Grantee shall agree not to charge an admission or to exact a toll for entry into Papago

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Park; and that charges made at concessions, or fees fixed for the use of such facilities as the golf course, swimming pool, etc., shall be reasonable.

5. That the Grantee shall agree the "municipal use" shall be limited to mean the construction of a baseball stadium for commercial baseball enterprises; and only other facilities and administrative building essential to the operation of Papago Park and in the interest of health, safety and welfare of the park visitor.
6. That if the Grantee constructs a baseball stadium and parking area for such a facility for use by commercial baseball enterprises, such facilities shall not be constructed on Papago Park lands lying south of McDowell Road and north of Van Buren Street.
7. That the Grantee agrees to acknowledge the Tomb of Governor Hunt and that square area 120 feet by 120 feet; this parcel of land being one-third of an acre; the apex of the pyramid being the center of the square, and the sides of the square being parallel to the base of the pyramid. In addition the Grantee shall agree to incorporate the Master Plan for the Tomb of Governor Hunt into the Master Plan for Papago Park, to provide egress and ingress, including a path to the tomb proper, providing easy ascent and descent; parking, lighting, water, landscaping, maintenance, and a retaining wall of approximately two feet in height for stabilization purposes. The Grantee agrees to make every effort to comply with these stipulations within a five year period, and to maintain and keep in good repair said tomb in perpetuity. And in addition, the Grantee shall grant to the surviving family of

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Governor Hunt the right to entomb such other members of their family in said tomb until the spaces for such in said tomb have been filled.

- 8. That the Grantee shall agree that a representative or a committee of the Arizona State Parks Board may inspect Papago Park at any time for the purpose of determining whether stipulations and conditions herein set forth are being complied with. Said representative or committee shall advise the Grantee of any non-compliance with any stipulation or condition herein and said Grantee shall be given one full fiscal year to comply. In the event of a dispute between the State Parks Board and the Grantee as to whether there has been non-compliance with any stipulation or condition, the matter shall be decided by the courts.
- 9. The Grantee is hereby prohibited from selling or transferring or attempting to sell or transfer Papago Park. Any such action or attempted action by said Grantee shall be deemed an abandonment and Papago Park shall revert to the State of Arizona.

IN WITNESS WHEREOF, the Arizona State Parks Director has affixed his signature at Phoenix, State of Arizona, on the 30<sup>th</sup> day of July, A. D. 1959, and the said City of Phoenix, a municipal corporation, the purchaser herein, has affixed its signature at Phoenix, State of Arizona, on the 27<sup>th</sup> day of July, A. D. 1959.

Dennis Mc Carthy  
Arizona State Parks Director

CITY OF PHOENIX, a municipal corporation

By Ray W. Wilson  
City Manager

Richard J. Curker  
City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney

128358

FILE NUMBER \_\_\_\_\_  
Name of Instrument \_\_\_\_\_  
Indicated in \_\_\_\_\_  
Date of Instr. \_\_\_\_\_  
Other Index Cards Needed \_\_\_\_\_  
Detail Department \_\_\_\_\_

STATE OF ARIZONA } ss  
County of Maricopa }

I hereby certify that the within instrument was filed and recorded at request of Phoenix in Book 30113 on page 214 to 218 on the 27 day and year aforesaid.

WITNESSES:  
County Recorder  
[Signature]  
County Clerk  
[Signature]

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**WHEN RECORDED, RETURN TO:**

City of Scottsdale  
c/o City Clerk  
3939 North Drinkwater Boulevard  
Scottsdale, Arizona 85251

**MEMORANDUM OF LEASE**

This Memorandum of Lease is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF SCOTTSDALE, an Arizona municipal corporation, having a mailing address of 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251 ("Tenant"), and the City of Phoenix, an Arizona municipal corporation, having an address of 200 West Washington, Phoenix, Arizona 85003 ("Landlord").

**WITNESSETH:**

That in consideration of the rents, covenants, and conditions more particularly set forth in a certain Lease between Landlord and Tenant dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), Landlord and Tenant do hereby covenant, promise, and agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Lease.

2. **Leased Premises.** Landlord does lease unto Tenant and Tenant does lease from Landlord for the Term (as hereinafter defined) the real property described in **Exhibit A** attached hereto and made a part hereof, together with all improvements, rights, privileges, permits and approvals and other appurtenances associated therewith (the "Premises").

3. **Term.** The "Term" of the Lease shall commence on the Commencement Date and unless sooner terminated under the terms and conditions contained in the Lease, shall continue for thirty-five (35) years. The Term may be extended for two (2) five (5) year periods subject to consent by the Phoenix City Council and the Scottsdale City Council.

Exhibit G  
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4. **Restricted Uses.** Except as may otherwise be agreed to in writing by Landlord, the Premises may be used for any Permitted Use (as such term is defined in Section 6.1 of the Lease).

5. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first written above.

**LANDLORD**

THE CITY OF PHOENIX, an Arizona  
municipal corporation

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

Name printed: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

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

Name printed: \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_

TENANT  
THE CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Senior Assistant City Attorney

**EXHIBIT A**  
**Legal Description**

That portion of the Southeast Quarter of Section 33, Township 2 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Section 33, from which the South Quarter corner of said Section 33 bears S 89°41'44" W, a distance of 2688.12 feet;

**THENCE** along the South line of the Southeast Quarter of said Section 30, S 89°41'44" W, a distance of 726.76 feet;

**THENCE** leaving said South line, N 00°18'16" W, a distance of 371.96 feet to the **POINT OF BEGINNING**;

**THENCE** S 88°41'44" W, a distance of 175.40 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 254.14 feet with a chord bearing of N 70°05'22" W, a distance of 381.78 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 97°22'33" for an arc length of 431.92 feet;

**THENCE** N 09°41'09" W, a distance of 133.10 feet;

**THENCE** S 88°21'32" W, a distance of 99.79 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 146.43 feet with a chord bearing of S 50°21'18" W, a distance of 199.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 85°38'16", for an arc length of 218.86 feet;

**THENCE** N 78°25'26" W, a distance of 94.71 feet;

**THENCE** S 83°08'48" W, a distance of 74.84 feet to the beginning of a non-tangent curve concave northerly having a radius of 178.85 feet with a chord bearing of N 76°52'49" W, a distance of 116.05 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 37°51'47", for an arc length of 118.19 feet;

**THENCE** N 58°04'21" W, a distance of 100.16 feet;

**THENCE** N 26°45'56" W, a distance of 186.88 feet;

**THENCE** N 03°28'13" E, a distance of 76.71 feet;

**THENCE** N 48°13'20" W, a distance of 74.62 feet;

**THENCE** N 16°20'55" W, a distance of 301.37 feet;

**THENCE** N 00°36'21" E, a distance of 55.94 feet;

**THENCE** N 18°46'50" E, a distance of 82.44 feet;

**THENCE** N 26°51'30" E, a distance of 74.73 feet to the beginning of a non-tangent curve concave southerly having a radius of 266.61 feet with a chord bearing of N 83°25'33" E, a distance of 364.97 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 86°23'11", for an arc length of 401.98 feet;

**THENCE** S 48°47'29" E, a distance of 112.43 feet;

**THENCE** N 29°49'19" E, a distance of 99.98 feet;

**THENCE** N 03°37'35" E, a distance of 55.39 feet;

**THENCE** N 51°07'06" E, a distance of 197.60 feet;

**THENCE** S 68°12'34" E, a distance of 44.67 feet;

**THENCE** S 81°38'45" E, a distance of 197.16 feet;

**THENCE** S 15°49'58" E, a distance of 61.14 feet;

**THENCE** S 55°02'29" E, a distance of 269.12 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 536.44 feet with a chord bearing of S 71°56'11" E, a distance of 278.24 feet;

**THENCE** along the arc of said curve, to the left, through a central angle of 30°03'42", for an arc length of 281.46 feet;

**THENCE** S 88°44'47" E, a distance of 132.97 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 252.46 feet with a chord bearing of S 56°03'13" E, a distance of 207.31 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 48°29'00", for an arc length of 213.63 feet;

EXHIBIT A to Exhibit G

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**THENCE** S 01°34'20" E, a distance of 49.29 feet to the beginning of a non-tangent curve concave westerly having a radius of 277.67 feet with a chord bearing of S 02°27'46" W, a distance of 231.50 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 49°16'25", for an arc length of 238.79 feet;

**THENCE** S 00°18'49" E, a distance of 136.37 feet;

**THENCE** S 14°41'54" E, a distance of 111.67 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 234.25 feet with a chord bearing of S 45°55'07" W, a distance of 390.61 feet;

**THENCE** along the arc of said curve, to the right, through a central angle of 112°58'12", for an arc length of 461.87 feet;

**THENCE** N 75°41'31" W, a distance of 106.69 feet to the **POINT OF BEGINNING**.

Said parcel contains 36.75 acres (more or less)



Expires: 9/30/2018