

## **GROUND LEASE**

THIS GROUND LEASE (“Ground Lease”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025 is entered into by and between the City of Billings, a Montana municipality (“Landlord”), and Yellowstone Ice Foundation, a Montana nonprofit corporation (“Tenant”).

### **RECITALS**

(A) Landlord is the owner of that certain real property located in the City of Billings, Yellowstone County, Montana, composed of three existing tracts generally described as being Lot 3A-4, Lot 3A-1A, and Lot 3A-5, of Popelka Commerce Center Subdivision Second Filing (“Subdivision Tracts”).

(B) Landlord seeks to ultimately develop a recreation campus by leasing portions of the Subdivision Tracts to third parties for development, construction, and operation of recreation facilities.

(C) In furtherance of that effort, Landlord seeks to lease a portion of each of the Subdivision Tracts to Tenant pursuant to this Ground Lease. The leased premises is legally described in Exhibit A attached hereto, and depicted on the Survey prepared by Sanbell for the City of Billings, dated \_\_\_\_\_, and attached here as Exhibit B (the “Land”), which leased premises are primarily located on Lot 3A-5; and

(D) Landlord seeks to lease the Land to Tenant, and Tenant seeks to lease the Land from Landlord and to construct thereon of a recreational ice facility in accordance with the terms and conditions hereof (“Project”).

NOW, THEREFORE, the parties agree as follows:

### **ARTICLE I. DEFINITIONS.**

For all purposes of this Ground Lease, each of the following terms shall have the meaning set out or referred to below.

“Additional Rent” – As defined in Section 5.1(d).

“Affiliated Entity” – (1) Any corporation, nonprofit corporation, limited liability company, partnership, joint venture, trust or other entity that may assist with or participate in the development of the Project; or (2) any assignee or partial assignee of Tenant’s rights and obligations hereunder, as may be provided for herein; or (3) any successor nonprofit of the Tenant.

“Amend Park Recreation Center Campus” or “Campus”– An informal reference or name for the proposed development of Lots 3A-4, 3A-1A, and 3A-5, which Campus includes the Land and other property owned by the Landlord.

“Building” – The building and improvements to be constructed by Tenant pursuant to this Ground Lease, generally described as being an indoor ice facility housing one or more rinks, and inclusive of spectator seating, locker or changing rooms, lobby, and offices.

“Campus Maintenance Rent” – As defined in Section 5.1(b).

“Commencement Date” – The date Landlord delivers the possession of the Land to Tenant.

“Completion Date” – The date of Substantial Completion.

“Construction Schedule” – As defined in Section 7.1(b).

“Default Rate” – Six percent (6%) as of the date of the Event of Default per annum.

“Event of Default” – As defined in Section 20.1.

“**Force Majeure**” – Matters beyond the reasonable control of a party responsible for a particular action (including, by means of example and not as limitation, general unavailability or moratorium on the issuance of required governmental approvals, unforeseeable governmental delays or restrictions, strikes, lockouts not caused by the party responsible for the particular action, labor unrest, inability to obtain labor, materials or energy sources for any reason whatsoever outside the control of Tenant, abnormally inclement weather, acts of God and fire or other casualties not caused by the party responsible for the particular action), provided that such matters shall excuse performance of a particular action only for so long as such matters actually and directly cause delay in the party's performance of its obligations. The party seeking an extension of time because of a Force Majeure delay shall notify the other affected party within five (5) business days of obtaining knowledge of the onset of the delay, and shall take reasonable, diligent steps to overcome the delay. Tenant Force Majeure delays shall include, without limitation, delays caused by environmental testing or remediation not arising out of Tenant's construction or improvement activities, unforeseen site conditions, or acts of any contractors outside the control of Tenant.

“Gross Receipts” – All revenue of Tenant derived from and attributable to the Property, specifically including: (1) rent, parking charges, and other fees and charges received from Subtenants or other parties in connection with the use, occupancy, or operation of any space in the Property; (2) payments to Tenant for the cancellation, modification, or termination of a Sublease or for any default under a Sublease; (3) payments to Tenant under rental insurance policies; and (4) the reimbursement from Subtenants of operating expenses, common area maintenance costs, and real estate taxes under Subleases which are net leases. Gross Receipts shall not include the following: (i) proceeds from fire, earthquake, or other hazard or casualty insurance or liability insurance policies, or condemnation proceeds; (ii) the proceeds of any Mortgage; (iii) capital contributions made by Tenant or any partner of Tenant; and (iv) reimbursement by any Subtenant for separately metered utility payments.

“Improvements” – The Building, together with all fixtures, trade fixtures, and utilities serving the Building and located on the Land.

“Institutional Lender” – shall mean a foreign or domestic commercial bank, trust company, savings bank, savings and loan association, life insurance company, real estate

investment trust, pension trust, pension plan or pension fund, a public or privately held fund engaged in real estate or corporate lending, or any other financial institution commonly known as an institutional lender.

“Land” – As defined and depicted on Exhibits A and B.

“Leasehold Estate” – Tenant’s leasehold estate arising under this Ground Lease, upon and subject to all the terms and conditions of this Ground Lease, or any part of such leasehold estate or any direct or indirect interest in such leasehold estate.

“Leasehold Mortgage” – As defined in Section 16.1.

“Leasehold Mortgagee” – The mortgagee under any Leasehold Mortgage.

“Minimum Rent” – As defined in Section 5.1(a).

“New Lease” – As defined in Section 16.3.

“Nondisturbance Agreement” – As defined in Section 15.2.

“Partial Taking” – A taking that is less than a Total Taking and affects the rentable portion of the Building.

“Permitted Exceptions” – The matters of record as shown on Exhibit F attached hereto and made a part hereof.

“Plans and Specifications” – As defined in Section 7.1(b).

“Project” – As defined in Recital (D).

“Property” – The Land and the Improvements.

“Rent” – All rental payable pursuant to this Ground Lease, including Minimum Rent, Base Rent, and Additional Rent.

“Restoration” – As defined in Section 11.2.

“Sublease” – Includes a sublease of any term, and any space lease or short-term lease (under one year) entered into by Tenant with a Subtenant pursuant to this Ground Lease.

“Substantial Completion” – The point at which Tenant is able to use the Improvements for their intended use, notwithstanding the possibility contemplated herein that a second ice sheet may be installed or constructed at a later date.

“Subtenant” – Any subtenant pursuant to a sublease entered into by Tenant pursuant to this Ground Lease.

“Term” – As defined in Section 3.1.

“Total Taking” – The taking of the entire leasehold estate of Tenant under the power of eminent domain by any public or quasi-public agency or entity.

## **ARTICLE II. DEMISE.**

**2.1. Demise.** Landlord, for and in consideration of the rents to be paid, the Improvements to be constructed by Tenant, and the other covenants and conditions to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, on the terms

and conditions and for the purposes stated in this Ground Lease, the Land, together with all easements, rights and appurtenances in connection therewith or thereunto belonging, subject to the following:

- (a) Facts which would be revealed by a survey of the Land;
- (b) Covenants, restrictions, easements, agreements and reservations of record;
- (c) Zoning regulations and other applicable laws;
- (d) Physical condition of the Land; and
- (e) Taxes, assessments, and other charges incurred at and after the Commencement Date, subject to the provisions of Article VI herein.

In further consideration for Tenant's obligations hereunder, Landlord covenants and warrants (1) that it has full power and authority to enter into this Lease, to carry out its obligations hereunder and consummate the transactions contemplated hereby; (2) that the execution, delivery and performance by Landlord of this Lease does not and will not: (i) conflict with, violate, result in a breach of or constitute a default under any agreement, instrument or obligation to which Landlord is a party or by which Landlord is bound; (ii) conflict with or violate any order, judgment, decree, statute, rule or regulation applicable to Landlord; or (iii) result in the creation or imposition of any lien against or upon the Land; and (3) no person has any option or right of first refusal or offer to purchase or lease or any similar right to purchase or lease the Land or any portion thereof.

- 2.2. Ownership of Improvements.** During the Term, the Improvements shall be and remain the property of Tenant and Tenant shall be entitled to all proceeds therefrom. Upon request of Tenant, Landlord shall execute such documents as shall be reasonably requested by Tenant to evidence Tenant's ownership of the Improvements. Upon the expiration or earlier termination of this Ground Lease (unless the Ground Lease is replaced by a New Lease pursuant to the terms hereof), fee ownership of the Improvements shall vest automatically in Landlord.

### **ARTICLE III. TERM.**

- 3.1. Term.** This Ground Lease shall be for a term commencing on the Commencement Date and shall terminate on the twentieth (20th) anniversary of the last day of the calendar month in which the Commencement Date occurs ("Term"), unless terminated earlier in accordance with the provisions of this Ground Lease. At the end of the Term, Tenant shall have the right to renew this Lease for two (2) additional five (5) year terms ("Renewal Term" or "Renewal Terms"). To renew this Lease for an additional period, Tenant shall be in good standing under the Lease and not in Default, and shall give Landlord at least 180 days written notice of Tenant's intent to renew prior to the end of the term.

### **ARTICLE IV. CONDITION OF PROPERTY.**

- 4.1. Condition of Land.** Tenant has inspected and is familiar with the physical condition of the Land. Tenant acknowledges and agrees that, except as provided in this Ground Lease, Landlord makes no representation or warranty, express or implied, written or oral, with

respect to the present physical or other condition of the Land, including, but not limited to, any of the following:

- (a) The physical condition of the Land, including the environmental condition of the Land, unless described in Section 7.5 herein;
- (b) The status of any rights under, and the compliance with any restrictions imposed pursuant to, any applicable zoning or other law, ordinance, or regulation or under any covenant, condition, restriction, easement, agreement, or reservation running with the Land; by entering into this Lease, Landlord make no representations or promises regarding Tenant's building permitting for the Improvements;
- (c) The suitability of the Land for the uses intended by Tenant including, without limitation, any proposed construction upon the Land; provided Landlord shall install a minimum of 300 parking spaces on the Campus, for non-exclusive use by the Tenant and its guests, invitees, and subtenants, prior to Substantial Completion; or
- (d) The accuracy or adequacy of any information or documentation which has been, or which may be furnished by Landlord to Tenant.

## **ARTICLE V. RENT AND UTILITIES.**

**5.1. Rent.** Tenant shall pay Rent during the term of this Ground Lease to Landlord as follows:

- (a) **Minimum Rent.** In consideration for the Ground Lease, Tenant shall contribute, as its Minimum Rent, the Improvements to be constructed by Tenant as set forth herein, and the ongoing upkeep, maintenance, and operation of the Improvements and Building as a recreational ice facility for the Term and any Renewal Terms.
- (b) **Campus Maintenance Rent.** In addition to Minimum Rent, the Tenant shall pay to Landlord on the first of each month an amount to be determined by the Landlord annually for Campus Maintenance Rent, with a partial or prorated amount determined as may be necessary beginning the year of Substantial Completion of the Tenant improvements. Campus Maintenance Rent shall consist of Tenant's share of maintenance expenses incurred by the City in the upkeep and maintenance of parking facilities the Tenant is allowed to use, inclusive of snow removal, and Tenant's share of landscape and other maintenance of the Campus. Tenant's share shall be a percentage of the Landlord's total maintenance expenses for all the Campus, with said percentage to be determined by the Landlord based on Tenant's use incident to operating Tenant's Property. The parties acknowledge the percentage of Tenant's obligation for Landlord provided maintenance will be revisited annually on or before May 1 of each year, taking into consideration any additional improvements made, facilities added to the Campus, or additional users (such as the adjacent soccer fields) using the Campus, altering the Landlord's maintenance obligations in future years. On or before May 1, Landlord shall calculate maintenance expenses for the prior year, inclusive of Tenant's percentage obligation, and that prior year's calculation shall be the rent Tenant owes for the next year, paid in advance. Maintenance expenses may include replacement, repair, or improvement costs incurred as facilities age or are damaged or improved over

time. Landlord reserves the right to expand or alter the Campus, provided if alteration results in expansion of uses or users of the Campus, such expanded uses and users shall participate in contributing to maintenance expenses. In the event expansion does not result in additional users but provides additional amenities (such as added parking) or other benefits for the Campus as determined by the Landlord, Landlord may also increase Tenant's contribution obligations hereunder. To the extent possible, Landlord shall provide notice to Tenant of any anticipated improvements or repairs which may materially alter Tenant's share of Campus Maintenance Rent. Upon Tenant's request, reasonable details and documentation regarding the calculation of maintenance expenses shall be provided. If the actual maintenance expenses for a calendar year exceed the estimated maintenance expenses for that calendar year, then Tenant shall pay to Landlord its pro rata share of the difference with the next monthly payment of Campus Maintenance Rent. Conversely, if the estimated maintenance obligations for a calendar year exceed the actual maintenance obligations for that calendar year, then Tenant shall be entitled to deduct its pro rata share of the difference from the next monthly installments of Campus Maintenance Rent.

- (c) **Adjustment to Campus Maintenance Rent.** Campus Maintenance Rent Adjustment shall occur in two ways: Landlord may annually adjust Campus Maintenance Rent as Landlord's maintenance expenses change; and Landlord may annually adjust Campus Maintenance Rent in the form of an adjustment of the percentage of total maintenance expenses Tenant is to pay, with the parties acknowledging that both the overall Landlord maintenance expense and the percentage applicable to the Tenant will change in future years, as additional adjacent facilities and improvements are developed on Landlord's property described in Recital A.
- (d) **Additional Rent.** Tenant shall pay additional rent as provided elsewhere in this Ground Lease ("Additional Rent"). If under the terms of this Ground Lease, Tenant is obligated to pay Additional Rent to a party other than Landlord, Landlord may, if Tenant fails to make the payment as herein required within the grace periods and after notice as provided herein, make the payment on Tenant's behalf. If Landlord makes such a payment, then Tenant shall pay to Landlord the Additional Rent, together with interest thereon which shall accrue at the Default Rate from the time of Landlord's payment of such Additional Rent.

**5.2. Utilities.** Tenant shall be responsible for other services, including, without limitation, water, sewer, stormwater, garbage services, electricity, gas, internet, telephone as well as any system development fees in place at the time of development.

**5.3. Manner of Payment.** Rent to be paid to Landlord shall be paid in legal tender, without counterclaim, set off, or deduction of any kind or nature whatsoever (except as otherwise stated in this Ground Lease) and without notice or demand. For any period of less than a full month, quarter, or year for which Rent is payable, the applicable Rent shall be prorated.

**5.4. Tenant's Records.** Tenant will keep, at its principal offices (or at the Property), true and complete records and books of account relating to the Property in accordance with generally accepted accounting principles reflecting all matters to be covered by

statements which Tenant is obligated by this Ground Lease to furnish to Landlord. Landlord may at any reasonable time, at its expense, examine, copy, and audit (or cause to be examined and audited) such records and books of account of Tenant.

- 5.5. **Past Due Rent.** All past due Rent that remains unpaid for 30 days after the due date shall bear interest at the Default Rate from the date on which such payment is due until paid.
- 5.6. **Net Rent.** Except as set forth in this Ground Lease, all Rent shall be absolutely net to Landlord so that this Ground Lease shall yield to Landlord the full amount of the Rent throughout the Term without deduction or offset.

## ARTICLE VI. TAXES.

- 6.1. **Payment of Taxes.** During the Term, Tenant covenants and agrees to pay or cause to be paid before any fine, penalty, interest, or cost may be added thereto for the nonpayment thereof and prior to delinquency, all taxes arising from Tenant's Improvements, assessments, water rates and charges, sewer rates and charges, and other governmental charges, of any kind and nature whatsoever, including but not limited to assessments for public improvements or benefits, which prior to or during the Term are assessed or imposed upon or become due and payable and a lien upon the Property or the Leasehold Estate or any part thereof (the "Taxes"); Tenant is expected at or immediately following Commencement Date to make any and all applications for tax exempt status with the Montana Department of Revenue relative to the leasehold interest created herein, however, following such exempt status being granted, Tenant will remain responsible for the timely payment of such taxes and assessments as are not subject to the exempt status. The City agrees to cooperate to the extent necessary for such exemption.
- 6.2. **Tenant's Right to Contest.** Tenant shall have the right before any delinquency occurs to contest or object to the amount or validity of any Taxes by appropriate legal proceedings. During the Term, Landlord shall not contest or object to the amount or validity of any Taxes without the prior written consent of Tenant.

## ARTICLE VII. CONSTRUCTION OF IMPROVEMENTS.

- 7.1. **Construction of Improvements.**
  - (a) **Improvements.** Tenant will improve, or caused to be improved, the Property by constructing thereon the Building at Tenant's own cost and expense. Landlord shall, at Landlord's expense, extend typical city-provided utilities (sewer and water) to within five (5) feet of the Building's exterior, in a location to be determined by the Tenant, and pursuant to Tenant's plans and specifications for the Building Tenant shall extend such other desired utilities to its Improvements, such as electricity, natural gas, and communication services. Landlord's extension of utilities shall include sufficient capacity to meet the needs of Tenant's proposed Improvements and its uses of the Improvements and Land. Tenant shall, at the time any utilities are extended to the Land, complete hook-up to utilities, inclusive of installation of all necessary meters, and establish all accounts associated with the provision of such utilities, and timely pay for such services, inclusive of City-provided utilities. The parties shall cooperate to provide for such easements and

agreements as may be necessary to procure such utility services. Utilities installed by Landlord and Tenant may be subject to future cost-share agreements, as other development and uses of those utilities are developed on the Campus, inclusive of late-comer agreements in which later development that benefits from such installed utilities reimburses the original installer for a reasonable share based on use.

- (b) Plans and Specifications. Tenant shall prepare and submit construction plans, drawings and related documents (the “Plans and Specifications”) to Landlord for written approval on or before the times established for submittal in the Construction Schedule. Landlord shall either approve or disapprove in writing any of the items submitted for approval to Landlord by Tenant within 30 days of Landlord’s receipt thereof. In the event Landlord disapproves of any such item, Tenant shall cause such item to be appropriately revised as soon as possible after receipt of a notice of disapproval and resubmit the same to Landlord for approval. Landlord and Tenant agree to cooperate reasonably with each other in resolving any objections of the other to such item and/or requested modifications. Tenant may make changes and modifications which are not material to the Plans and Specifications, or other items required to be approved by Landlord pursuant to the Construction Schedule or to resolve a minor inconsistency or ambiguity without obtaining Landlord’s prior approval. No material modification or alteration may be made to such items without the prior written consent of Landlord. Provided, Tenant’s plans and specifications, inclusive of the construction and completion times, may contemplate the initial construction of facilities for only a single ice sheet, with a second to be completed or installed at a later date, which later date shall not be later than ten (10) years from Substantial Completion. Tenant shall give written estimation to Landlord of expected installation of a second ice sheet, which Plans and Specifications shall follow the above review and approval process. Tenant may use or sublet the space allocated for the second ice sheet for other recreational purposes, until the same is installed. During the period that Tenant is preparing the Plans and Specifications, Landlord agrees, upon request of Tenant, to schedule and hold regular progress meetings to coordinate the compliance of such Plans and Specifications with the construction requirements of this Ground Lease. In addition, Landlord and Tenant agree to communicate and consult as frequently as is necessary to ensure that the formal submission of any item can receive timely consideration. The intent of this provision is to allow the Landlord to have full knowledge of Tenant’s proposal for Improvements to the Land. **Landlord’s approval of such proposed Improvements does not replace, alter, or supersede Tenant’s independent obligation to obtain required building and construction permitting and meet all requirements of such process, inclusive of application and review expenses. Landlord’s review and approval under this provision does not constitute any form of regulatory approval for the proposed Improvements and the deadlines described in this subsection b are not applicable to any permitting or regulatory review.**
- (c) Construction Schedule. The Improvements shall be constructed by Tenant in accordance with the time schedule set forth in Exhibit D hereto (the “Construction Schedule”), subject to extensions for delays occasioned by events of Force Majeure and site conditions requiring environmental remediation (not caused by Tenant, its

employees, or agents). which may include the construction or installation of ice sheets in phases, so long as the first ice sheet to be constructed is a fully enclosed facility, and so long as a construction schedule or end term or deadline is specified for the second ice sheet. Tenant shall submit to Landlord on or before each deadline set forth in the Construction Schedule satisfactory evidence of the satisfaction of such deadline.

- (d) **Subleasing, Use of Facilities.** Tenant shall at all times use diligent and commercially reasonable efforts to enter into Subleases with Subtenants at market rentals which shall obligate the Subtenant thereunder to pay or reimburse Tenant as Sublessor thereunder for taxes, insurance, utilities, maintenance, and other items of expense (either on a net basis or above specified levels) relating to such Sublease space, on terms reasonably consistent with general market conditions. Alternatively, Tenant shall make diligent and reasonable efforts to enter into use agreements with such leagues, user groups, school or educational organizations, as to allow efficient and effective use of the Improvements.
- (e) **As-Built Plans and Specifications.** Within 30 days following the Completion Date, which shall be no later than twelve (12) months from commencement of construction, Tenant shall provide Landlord with a complete and legible full-size set of all as-built Plans and Specifications (including all operating manuals for mechanical systems) regarding all of the Improvements.

## **7.2. Construction Procedures.**

- (a) **Conditions to Commencement of Construction.** Tenant shall satisfy the following conditions in accordance with the Construction Schedule, and in no event shall Tenant commence any construction of the Improvements until the following conditions have been satisfied or waived by Landlord, in addition to other conditions and requirements imposed by this Ground Lease:
  - (1) Landlord shall have approved the Plans and Specifications;
  - (2) Tenant shall have submitted to Landlord in writing its good faith estimate of the then anticipated total amount of the development and construction costs for the Improvements, together with evidence, reasonably satisfactory to Landlord, of Tenant's ability to pay such development and construction costs, either through equity contributions or binding commitments for financing, or otherwise to Landlord's satisfaction;
  - (3) Tenant shall have obtained all permits and other governmental approvals necessary to commence such construction; and
  - (4) If Tenant intends to employ a general contractor or contractors for the construction of the Improvements, Tenant shall have entered into written contracts in form and substance reasonably satisfactory to Landlord with such contractor(s) for the construction of the Improvements. Such contracts shall require the contractor and all subcontractors to carry insurance, both general liability insurance and for the general contractor insurance specific to this Project.

- (b) **Compliance with Laws.** No Improvements, including without limitation, grading, streets, and landscaping shall be constructed or maintained upon the Land unless the same conform to and are consistent with applicable zoning for the site, any conditional use permit or other license, permit, or certificate required by governmental authorities in connection with the Improvements, all other applicable governmental requirements and the Plans and Specifications. Before commencement of construction or development of the Improvements, Tenant shall, at Tenant's sole cost and expense, secure any and all applicable permits, licenses and other approvals which may be required by any city, county, state, or any other governmental authority having jurisdiction over such construction, development or work. Tenant shall provide a copy of such permit, license, or other approval to Landlord prior to commencing construction.
- (c) **Construction Standards.** All construction, alteration, or repair work permitted herein shall be performed diligently and in accordance with good construction practices. Tenant shall take all reasonably necessary measures to minimize any damage, disruption, or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall pay (or cause to be paid) all costs and expenses associated with such work and shall indemnify and hold Landlord harmless from all damages, lawsuits, and claims attributable to the performance of such work.
- (d) **Landlord's Cooperation.** Landlord will assist and cooperate with Tenant in connection with reasonable requests by Tenant for any permit, license or other approval from any governmental authority which may be reasonably necessary for or which will facilitate the development, construction, operation and use of the Improvements. Provided, however, this provision does not obligate the Landlord as a reviewing authority to approve, license, or permit any particular aspect of the project or afford Tenant any special consideration, rights, or privileges not available to the public at large. Landlord agrees to join in granting or dedicating such public or private utility company easements, parking or access easements, or other easements as may be reasonably required for the development, construction, operation and use of the Property in accordance with this Ground Lease, inclusive of temporary use by Tenant during the construction period of other adjacent property owned by Landlord. Such temporary use agreements shall be in writing, and signed by the parties hereto, and shall specify the use and time frame of use by the Tenant.

**7.3. Financing Requirements.** Prior to the commencement of construction of any portion of the Improvements, Tenant shall provide proof of funds available, documenting Tenant has readily available construction funding of at least \$10,500,000.00, whether cash on hand, commitments, or through construction financing. Tenant's construction schedule shall include the associated expenses, which will document the extent of construction that may be completed using the available funds.

**7.4. Mechanics' Liens and Other Liens.** If any liens, encumbrances and charges (other than liens, encumbrances and charges created by or expressly approved by Landlord) are filed or made against the Property or any action of any character affecting the title thereto is commenced, Tenant shall give Landlord written notice of such lien, encumbrance,

charge, or action within 48 hours of when Tenant receives notice of the same. During the Term and any Renewal Term, Tenant shall not permit to remain, and shall promptly discharge, at its sole cost and expense, all such liens upon the Land or any part thereof or any of the Improvements thereon. In addition, Tenant shall, upon demand, furnish a bond as required by Landlord, which results in the removal of such a lien from the Property or provide other evidence satisfactory to Landlord that such lien will be paid, removed or discharged as a claim against the Property. Should Tenant fail to remove liens or furnish bonds as required herein, Landlord may take such steps to resolve claims of liens or obtain necessary bonds, and shall charge the costs thereof as Additional Rent to Tenant. These provisions do not prevent the Tenant from contesting in good faith claims or liens Tenant believes are not valid.

- 7.5. Existing Conditions.** To the best of Landlord's knowledge, the Land does not contain any Hazardous Substances in violation of any Environmental Laws. Any provision in the Ground Lease to the contrary notwithstanding, in no event shall Tenant be liable to Landlord for any Hazardous Substances stored, released or disposed of on the Land prior to the Commencement Date by anyone other than the Tenant, or for any contamination due to Hazardous Substances in or about the Land which was not caused by Tenant.

## **ARTICLE VIII. USE OF PROPERTY.**

- 8.1. Permitted Uses.** Tenant may use the Land for any lawful purpose consistent with the development and operation of the Land and Improvements as a community ice facility open to the public, with at least a portion of the facilities potentially open and available for use on a year-round basis. Such other uses and rental of the space accommodating the second ice sheet are allowed as specified in this Agreement, pending the installation of that sheet; provided Tenant shall provide written notice to Landlord of those uses. Tenant shall establish a program or mechanism to secure appropriate assumption of risk waivers from all users and Subtenants of Tenant's facilities.
- 8.2. Specific Ice Privileges.** As part of Tenant's management of its facilities, Tenant shall make regular ice time available for low income or underprivileged city residents. Such arrangements meeting this requirement can take different forms, and when Tenant has a better sense of ice time scheduling, Tenant and Landlord shall spell out such arrangements in a subsequent writing. Such uses can include other recreational uses made of the space for the second ice sheet, until such time as that is installed.
- 8.3. Prohibited Uses.** Tenant agrees that in connection with the use and operation of the Property, it will maintain standards comparable to those maintained from time to time for other community recreation facilities similar to the Property. Specifically, Tenant will not: (a) create, cause, maintain, or permit any nuisance in, on or about the Property; (b) commit or suffer to be committed any waste in, on or about the Property; (c) use or allow the Property to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Property; (d) cause or permit any insurance coverage on the Property or the Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially feasible rates; (e) cause or permit any structural damage to the Property or the Improvements or to any

adjacent public or private property; or (f) violate or permit a violation of any law, ordinance, or regulation applicable to the Property and the Improvements.

- 8.4. Compliance with Laws.** In the use and occupation of the Land, the construction and operation of the Improvements thereon, and the conduct of its business thereon, Tenant, at its sole cost and expense, shall promptly comply with and shall include covenants in the Subleases with all of the Subtenants to cause them to promptly comply with all requirements of all governmental authorities, which may be applicable to the Property or to the use or manner of use of the Property or the owners, tenants or occupants thereof.
- 8.5. Environmental Laws.** Tenant shall comply with, and shall include covenants in the Subleases with all of its Subtenants to cause them to comply with, federal, state or local laws, ordinances or regulations (“Environmental Laws”) relating to: (1) the environmental conditions on, under, or about the Property including, but not limited to, soil and groundwater conditions, and (2) the use, generation, manufacture, production, storage, or disposal on, under, or about the Property or transportation to or from the Property of flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively, “Hazardous Materials”). For the purpose of this Ground Lease, Hazardous Materials shall include but not be limited to substances defined as “hazardous substances,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and those substances defined as “hazardous wastes” in the regulations adopted and publications promulgated from time to time pursuant to said laws.

## **ARTICLE IX. MAINTENANCE AND REPAIRS.**

- 9.1. Maintenance and Repairs.** Tenant covenants and agrees, throughout the Term, without cost to Landlord, to maintain the Land and the Improvements located thereon, and to keep the same in good order and condition, and shall promptly, at Tenant’s own cost and expense, make all necessary repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, to keep the Land and all Improvements thereon in a safe, clean and sanitary condition. When used herein, the term “repairs” shall include replacements or renewals when necessary, and all such repairs made by Tenant shall be at least equal in quality and class to the original work, taking into consideration the age of the facility at the time the repair was necessitated, except as otherwise provided herein. Tenant shall keep and maintain all portions of the Land in a clean and orderly condition, free of accumulation of dirt and rubbish. Tenant shall be fully responsible for the operation and maintenance of all of the Improvements and any landscaping, open space and common areas on the Property, and shall operate and maintain, or cause to be operated and maintained, such improvements, landscaping, open space, and common areas in good order, condition and repair.
- 9.2. Reserve Funds.** To ensure Tenant can provide maintenance and repairs beyond ordinary day-to-day needs without resorting to fundraising or other outside financing (other than borrowing), Tenant shall establish a reserve fund with at least annual contributions of Ten

Thousand Dollars (\$10,000.00). of Such reserve fund shall generally be used to cover unexpected repairs or maintenance, due to casualty or otherwise, that is not covered by insurance, and shall be used to cover future capital improvements or replacements to the Improvements. The Landlord may delay the establishment of such reserve until after its first full year of operations, but in no event shall establishment of such fund be delayed beyond December 31, 2027. The parties agree that upon commencement of any Renewal Term, the annual contribution amount for the reserve fund shall be reassessed to ensure the contributions are sufficient to cover ongoing repairs, maintenance, replacement or expansion of the Improvements for such Renewal Term.

## **ARTICLE X. INSURANCE.**

- 10.1. Casualty Insurance.** Tenant, at its sole cost and expense, shall keep the Improvements insured during the Term for the mutual benefit of Landlord, any Leasehold or Fee Mortgagee, and Tenant, against loss or damage by fire and lightning and against loss or damage by other risks pursuant to a comprehensive all-risk policy of insurance, and endorsed for broad form property damage, all in an amount not less than 100% of the then full replacement cost of the Improvements.
- 10.2. Liability and Other Insurance.** Tenant, at its sole cost and expense, but for the mutual benefit of Landlord, any Fee or Leasehold Mortgagees, and Tenant as named insureds, shall also maintain comprehensive general liability insurance on an occurrence basis against claims for personal injury, including without limitation, bodily injury, death, or property damage, occurring upon, in, or about the Land or the Improvements. Such insurance shall be in the minimum amount of not less than \$2,000,000.00 with respect to personal injury or death to any one or more persons or to damage to property, or such larger amounts as Landlord may from time to time reasonably determine. Tenant shall also maintain worker's compensation insurance, automobile liability insurance, product liability insurance, pollution coverage insurance during the construction phase, and such other insurance and in such amounts, as may from time to time be reasonably required by Landlord in accordance with good business practices or legal requirements which Landlord is or becomes subject to; provided, however, that Landlord may require Tenant to obtain insurance against damage and/or loss of business caused by flood, earthquake or other perils if, and only to the extent that, such insurance coverage is available in the marketplace at commercially reasonable rates, and the required coverage, including the level of loss deductible, is reasonable in light of similar coverage purchased by other owners of similar buildings in the area.
- In the event Tenant provides or makes available alcoholic beverages, Tenant shall carry the appropriate insurance for such service and provide Landlord proof of such insurance. In the event Tenant contracts with an alcoholic beverage licensee via a concession agreement or catering endorsement, Tenant shall require such licensee to provide proof of insurance, and shall provide to Landlord such proof along with a copy of the concession agreement or the catering agreement.
- 10.3. Forms of Insurance Policies.** All policies of insurance provided for shall be effected under policies, in such forms and amounts as may from time to time be issued by insurers approved by Landlord. Tenant agrees to name Landlord and any Fee or Leasehold

Mortgagees as additional insureds on all policies required hereunder. Tenant shall cause to be furnished to Landlord certificates of insurance evidencing the coverages hereunder. Except as otherwise expressly provided herein, all insurance policies required by the terms of this Lease Agreement shall be kept in full force and effect as customary and appropriate. All required policies shall provide that such insurance coverage may not be cancelled without at least thirty (30) days' prior written notice to Landlord.

- 10.4. Waiver of Subrogation.** Each policy of insurance shall contain, if obtainable, either (i) a waiver by the insurer of the right of subrogation against Landlord, any Fee or Leasehold Mortgagees, Tenant or any Subtenants for negligence of any of such parties, or (ii) a statement that the insurance shall not be invalidated should any insured waive in writing its right of subrogation prior to a loss accruing to the property described in the insurance policy.
- 10.5. Compliance with Insurer's Requirements.** Tenant shall observe and comply with (and shall, in its Subleases, require that Subtenants observe and comply with) the requirements of all policies of general liability, fire and other policies of insurance obtained pursuant to this Ground Lease. Tenant shall also perform and satisfy the reasonable requirements of insurance companies writing such policies so that at all times companies of good standing satisfactory to Landlord shall be willing to write or to continue such insurance. Tenant shall, in the event of any violations or attempted violations of the provisions of this Section by any Subtenant, undertake all reasonable efforts, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.
- 10.6. Blanket Insurance.** Any insurance provided for in this Ground Lease may be effected by a policy or policies of blanket insurance and may be continued in such form until otherwise required by Landlord; provided, however, that the amount of the total insurance allocated to the Property shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this Ground Lease. Tenant shall cause to be furnished to Landlord certificates of insurance evidencing the coverages hereunder.
- 10.7. Indemnification and Hold Harmless.** Landlord shall not be liable for injury to any person, or for the loss of or damage to any property (including property of Tenant) occurring in or about the Property from any cause whatsoever, except and to the extent of any loss or damage caused solely by Landlord's negligence or willful misconduct. Except to the extent caused by Landlord's negligence or willful misconduct, Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, charges, liabilities, obligations, penalties, damages, costs and expenses (including attorneys' fees) arising, claimed, charged or incurred against or by Landlord from any matter or thing arising from Tenant's use of the Property, the conduct of its business, or from any activity, work or other things done, permitted or suffered by the Tenant in or about the Property.

## **ARTICLE XI. DAMAGE AND DESTRUCTION.**

**11.1. Restoration by Tenant.** In case of damage to or destruction of the Improvements or any part thereof by fire or other cause, Tenant, at Tenant's sole cost and expense, whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall restore the same as nearly as possible to their value, condition, and character immediately prior to such damage or destruction. Such restoration shall be commenced and prosecuted with due diligence.

**11.2. Costs of Restoration.**

- (a) **Application of Insurance Proceeds to Restoration.** All insurance money paid on account of any damage or destruction, less the actual cost, fees, and expenses, if any, incurred by Tenant, Landlord or any Fee or Leasehold Mortgagee in connection with the adjustment of the loss, which costs, fees and expenses shall be paid to Landlord or any Fee or Leasehold Mortgagee, as the case may be, shall be applied (subject to reasonable terms for disbursement thereof included in any Fee or Leasehold Mortgage), to the payment of the cost of restoration, repairs, replacement, rebuilding, or alterations, including the cost of demolition and temporary repairs and for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding, or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding, or alterations are hereinafter collectively referred to as the "Restoration"), and, subject to reasonable terms for disbursement included in any Fee or Leasehold Mortgage, shall be paid out from time to time to Tenant or in accordance with its directions, as such Restoration progresses, upon the written request of Tenant which shall be accompanied by all certificates, invoices, and releases that may then be necessary to protect Landlord and the Property from any lien, charge, or liability (including, without limitation, mechanics' liens) and the written approval of the Fee or Leasehold Mortgagee, if any, or Landlord if there is then no Fee or Leasehold Mortgagee.
- (b) **Tenant to Pay any Deficiency.** If the insurance proceeds shall be insufficient in the reasonable judgment of Landlord to pay the entire cost of such Restoration, Tenant shall, to Landlord's reasonable satisfaction, arrange to pay the deficiency prior to commencement or continuation of construction. Additionally, if the estimated cost of such Restoration exceeds the amount of the insurance proceeds, Landlord may require Tenant, at Tenant's sole cost and expense, to furnish Landlord with a performance bond and surety bond or other assurances of completion as shall be satisfactory to Landlord.
- (c) **Distribution of Excess Insurance Proceeds.** Upon the completion and payment in full of the Restoration and the expiration of all applicable lien periods, and so long as there is no default under the terms, conditions, covenants, and agreements of this Ground Lease, any balance of the insurance proceeds remaining to be paid shall be paid to Tenant or to any Fee or Leasehold Mortgagee, as their interests may appear.

**11.3. No Release of Tenant's Obligations.** No destruction of, or damage to the Property or any part thereof by fire or any other cause shall permit Tenant to surrender this Ground Lease or shall relieve Tenant from its obligations to pay the full Rent payable under this Ground Lease or from any of its other obligations under this Ground Lease.

## **ARTICLE XII. CONDEMNATION.**

### **12.1. Total Taking.**

- (a) Effect of Taking. If during the term hereof there shall be a Total Taking, then the Tenant's Leasehold Estate shall cease and terminate as of the Date of Taking. If Tenant's Leasehold Estate is so terminated, all Rent and other charges payable by Tenant to Landlord hereunder attributable to the Land taken shall be paid by Tenant up to and prorated through the Date of Taking.
- (b) Allocation of Award. All compensation and damages awarded in connection with any Total Taking of the Property shall be allocated as follows: (a) to Landlord for its fee interest in the Land (including its interest as Landlord under this Ground Lease, and reversionary interest in the Improvements); and then, (b) to Tenant for its Leasehold Estate and its fee interest in the Improvements (subject to Landlord's reversionary interest therein) immediately prior to such taking.

### **12.2. Partial Taking.**

- (a) Effect of Taking. If during the term hereof there shall be a Partial Taking, then the portion of the Tenant's Leasehold Estate taken shall cease and terminate as of the Date of Taking. If Tenant's Leasehold Estate is so terminated in part, all Rent and other charges payable by Tenant to Landlord hereunder attributable to the portion of the Land taken shall be paid by Tenant up to and prorated through the Date of Taking. In the event of a Partial Taking, except to the extent that Tenant's Leasehold Estate is taken, this Ground Lease shall continue in full force and effect notwithstanding such Partial Taking.
- (b) Restoration of Property. Tenant shall, after any such Partial Taking and at its sole cost and expense, repair and restore any damage caused by any such Partial Taking in conformity with the requirements hereof so that after the completion of such Restoration the Improvements shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such Partial Taking.
- (c) Allocation of Award. The condemnation award for such Partial Taking shall be deposited with the Fee or Leasehold Mortgagee or, if there is none, with the Landlord. The Fee or Leasehold Mortgagee or Landlord, as the case may be, shall, subject to the terms of any Leasehold Mortgage, then make available to Tenant so much of said award as is necessary to effect such Restoration. Upon completion of such Restoration, any portion of the award then remaining will belong to Landlord to the extent of the value of Landlord's interest in the award and thereafter to Tenant. If the cost of the Restoration required to be made by Tenant under this Ground Lease shall exceed the amount of the award therefor, the deficiency will be paid by Tenant.
- (d) Partial Rent Abatement. In the event of a Partial Taking, the Rent payable by Tenant shall be adjusted from the Date of Taking. Such Rent adjustment caused by the Partial Taking shall be made by reducing the Rent payable by Tenant based on the ratio between the fair market value of the Leasehold Estate at the Date of Taking to the fair market value of the Leasehold Estate remaining immediately thereafter, valued for the use being made of the Leasehold Estate by Tenant

immediately prior to such Partial Taking. Tenant and Landlord shall negotiate in good faith with respect to such Rent adjustment. In the event Tenant and Landlord cannot agree on the appropriate adjustment to be made to Rent, either party may compel the resolution of the dispute by arbitration.

- 12.3. Temporary Taking.** If all or any portion of the Property shall be taken for temporary use or occupancy, this Ground Lease shall continue in full force and effect without reduction or abatement of Rent, notwithstanding any other provision of this Ground Lease, statute or rule of law to the contrary, and Tenant shall, in such event, be entitled to any award specifically made for the repair and restoration of any damage to the Land, or any Improvements thereon, as a result of such temporary use or occupancy and to the amount of the award for such taking applicable to the period of such temporary use or occupancy included in the Term of this Ground Lease, and Landlord shall be entitled to the remainder of the award. Tenant, however, shall, upon the termination of the temporary Taking, at its sole cost and expense, repair, and restore any damage to the Land or the Improvements caused by such temporary use or occupancy, whether or not the award received by Tenant is sufficient for such purpose.
- 12.4. Rights of Mortgagees.** Notwithstanding anything to the contrary elsewhere in this Ground Lease, in the event that Tenant's Leasehold Estate is subject to a Leasehold Mortgage or a Fee Mortgage, all amounts payable to Tenant with respect to condemnation, if required by the Leasehold Mortgage or the Fee Mortgagee, shall be paid to such Mortgagees, in the order of their priority, to be applied by the Mortgagees in accordance with the Mortgages. Such Mortgagees shall have the right to participate in any condemnation proceeding affecting the Property.
- 12.5. Definitions.** For purposes of this Section, the "Date of Taking" shall be deemed to be the earlier of (i) the date on which actual possession of all or a portion of the Premises is acquired by any lawful power or authority pursuant to the provisions of applicable federal or state law, or (ii) the date on which title to all or a portion of the Premises shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or state law.

### **ARTICLE XIII. LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS.**

- 13.1. Landlord's Right to Perform Tenant's Obligations.** If Tenant shall at any time fail to pay any Taxes or other charge in accordance with this Ground Lease within the time therein permitted, or to pay for or maintain any of the insurance policies provided for herein within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed under this Ground Lease, within the time permitted by this Ground Lease, then Landlord, after ten (10) days' written notice to Tenant (or, in case of any emergency, without notice or with such notice as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may, but shall not be required to, pay such Taxes or other charges payable by Tenant, or make such other payment or perform such other act on Tenant's part required by this Ground Lease, and may enter the Property for such purpose and take all such action as may be necessary therefor.

- 13.2. Right of Landlord to Inspect and Repair.** Tenant will permit Landlord and its authorized agents and representatives to enter the Property at all reasonable times, upon 48-hours' written notice, subject to the rights of Subtenants, for the purpose of inspecting the Property. If, as a result of any such inspection or otherwise, Landlord determines that Tenant has breached any of its repair, use, maintenance, or restoration obligations under this Ground Lease, then Landlord may (but shall not be required to) take any action to cure such breach (subject to the applicable notice and cure rights of Tenant). Nothing herein shall imply any duty on the part of Landlord to perform any such inspections or to do any work or perform any act in connection therewith or subject Landlord to any liability in connection therewith. Landlord shall be responsible for any loss or damage caused by the negligent acts of its agents or employees in taking any action authorized hereby.
- 13.3. Additional Rent.** All sums paid by Landlord pursuant to this Article XIII and all costs and expenses incurred by Landlord in connection with the performance of any act authorized by this Article XIII (together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each cost or expense) shall constitute Additional Rent payable by Tenant under this Ground Lease and shall be paid by Tenant to Landlord on demand.

#### **ARTICLE XIV. ASSIGNMENT.**

- 14.1. Assignments Prohibited.** Tenant may not assign this Ground Lease, or any interest herein, or otherwise sell, transfer or convey any right, title or interest Tenant may have in the Property, without the prior written consent of Landlord. Any such assignment without the Landlord's prior written consent shall be void and of no effect. In the event the Tenant obtains the Landlord's consent to such an assignment, the Tenant may only assign all (and not part) of its right, title, and interest in the Ground Lease, the Land and the Improvements. If Tenant is a partnership, joint venture, or corporation for profit or nonprofit, any direct or indirect sale, assignment, or other transfer of 50% or more of the partnership or joint venture interest (whether in one transaction or as a result of a series of transactions) or any direct or indirect sale, assignment or other transfer of 50% or more of the outstanding voting stock, or of any class of voting stock if there is more than one such class, of such a corporation (whether in one transaction or as a result of a series of transactions) shall constitute an assignment by Tenant of this Ground Lease.
- 14.2. Permitted Transfers.** Notwithstanding the above, any sales, assignments, or transfers which arise out of any of the following circumstances shall not be deemed an assignment for purposes of this Ground Lease, and shall not require the prior written consent of the Landlord: a sale, assignment, or other transfer to an "Affiliated Entity" (as defined above), provided that the assignor or transferor remains liable.
- 14.3. Landlord's Consent to Assignments.** Tenant may only assign all of its rights, title, and interest in and to this Ground Lease, the Land and the Improvements to a person or other entity, who, in Landlord's judgment, (1) has a financial net worth sufficient to discharge the obligations of Tenant hereunder, (2) will not materially adversely affect the long-term financial viability of the Property or the Rent to be received by Landlord, (3) has a good business and character reputation in the community, and (4) (if the assignment is to occur

prior to the occurrence of the Completion Date) has proven construction, development, and property management experience equal to or greater than Tenant's. The following information and assurances shall be provided to Landlord as part of Tenant's request for consent: (a) the name and address of the proposed Assignee; (b) financial information regarding the proposed Assignee, including a copy of its most recent audited balance sheet and income statement, credit references, and a report from a recognized credit rating agency; and (c) the identity, background and experience of all directors, officers, general partners, or other principals of the proposed Assignee, and the senior operational officer, agent or employee in charge of the Property. Before any proposed assignment can be effective for any purpose under this Ground Lease, the proposed Assignee must assume in writing the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such assignment.

## **ARTICLE XV. SUBLETTING.**

### **15.1. Requirements for Subletting.**

- (a) Generally. Tenant may enter into Subleases from time to time in accordance with the terms of this Ground Lease and without Landlord's prior approval; provided, however, that all Subleases shall be expressly subject to the terms of this Ground Lease and the following additional criteria:
  - (1) Third-Party Subtenants. All Subleases shall be with independent third parties who are not Affiliates, unless otherwise approved in writing by Landlord; shall be based on arm's-length negotiations between Tenant and such independent third parties; and shall provide for the payment of rent at market rates and upon standard and customary terms and conditions for users of comparable recreational space. Such Subleases and Subtenants may also include partial use of the Tenant's facilities, i.e. such subtenants may lease a portion of the facilities, or the facilities for a portion of each day, or portion of certain days, inclusive of league and other established seasons, with regular leased 'ice time'. Such subleases and the Tenant's own rental of facility use to the public should foster two goals: the establishment of regular revenue stream sufficient to meet Tenant's obligations hereunder, and foster the availability of the facilities to the public.
  - (2) Subordination to Ground Lease. All Subleases shall provide that they shall be subject and subordinate not only to this Ground Lease but also to any new lease made by Landlord.
  - (3) Consistent with Character of Project. All Subleases shall be for a use which is consistent with the nature of the Improvements of the Project. Notwithstanding any subletting, Tenant shall, at all times, remain liable for the performance of all of the covenants and agreements under this Ground Lease on its part to be so performed. Tenant shall keep Landlord informed as to the identity of all Sublessees. Subleasing does not include open ice or other use for a fee by the public on a daily or day to day basis.

**15.2. Nondisturbance Agreements.** Any Subtenant or proposed Subtenant under a Sublease which is consistent with this Ground Lease may apply to Landlord for a right of quiet

enjoyment in recordable form (a “Nondisturbance Agreement”) during the term of the Sublease, notwithstanding the expiration, termination or cancellation of this Ground Lease; provided that such Subtenant agrees that in the event this Ground Lease expires, terminates, or is cancelled during the term of the Sublease, the Sublease shall be deemed a direct lease between Landlord and such Subtenant and the Subtenant shall attorn to Landlord. Landlord shall base its determination whether or not to grant such Nondisturbance Agreements upon information provided by the Subtenant, including, but not limited to, a copy of the proposed form of Sublease, relevant financial information concerning the proposed Subtenant, and relevant information concerning the business character and reputation of the proposed Subtenant.

## **ARTICLE XVI. UNSUBORDINATED LEASEHOLD MORTGAGES.**

- 16.1. Tenant’s Right to Mortgage Leasehold Estate.** Tenant shall have the unrestricted right, from time to time, to pledge or mortgage Tenant’s Leasehold Estate to a Leasehold Mortgagee without the prior consent of Landlord (a “Leasehold Mortgage”); provided, however, that no such Leasehold Mortgage shall be valid or effective (i) unless simultaneously therewith the Tenant’s title to and interest in the Improvements shall be pledged to and encumbered by such Leasehold Mortgage, and (ii) until there shall be delivered to Landlord a conformed original or certified copy of the recorded Leasehold Mortgage, containing the name and address of the Leasehold Mortgagee. In no event shall Landlord be obligated to pledge its fee interest in the Property under any such Leasehold Mortgage; provided, however, that Landlord may agree to pledge its fee interest in the Property to a “Fee Mortgage,” as defined below, under circumstances described in Article XVII below.
- 16.2. Leasehold Mortgagee’s Notice and Cure Rights.** With respect to any valid Leasehold Mortgage, it is agreed by and between Landlord and Tenant as follows:
- (a) Landlord will mail to the Leasehold Mortgagee a copy of any notice or other communication from Landlord to Tenant under this Ground Lease at the time of giving such notice or communication to Tenant, and no termination of this Ground Lease, or of Tenant’s right to possession of the Property or any reletting of the Property by Landlord which requires the giving of such notice, shall be effective unless Landlord gives to the Leasehold Mortgagee written notice, or a copy of its notice to Tenant of such default or termination. Upon the expiration of any applicable cure period, Landlord will notify Leasehold Mortgagee of Tenant’s failure to effectuate a cure within said cure period.
  - (b) In the event of any default by Tenant under any of the provisions of this Ground Lease, the Leasehold Mortgagee will have the same grace period as is given Tenant for remedying such default or causing it to be remedied, plus an additional period of thirty (30) days after the expiration thereof. The Leasehold Mortgagee, without prejudice to any of its rights against Tenant, shall have the right to cure such default hereunder within such extended grace period, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been performed by Tenant; and for such purpose Landlord and Tenant hereby authorize

the Leasehold Mortgagee to enter upon the Property and to exercise any of Tenant's rights and powers under this Ground Lease.

- (c) In the event of any default by Tenant under any of the provisions of this Ground Lease which can reasonably be cured by the Leasehold Mortgagee, and if prior to the expiration of the applicable grace period, the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the interest of Tenant in the Ground Lease and the Improvements by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, then Landlord will not terminate or take any action to effect a termination of this Ground Lease or reenter, take possession of or relet the Property or otherwise enforce performance of this Ground Lease so long as the Leasehold Mortgagee is diligently proceeding to effect such foreclosure or the curing of such default and all Rent is being paid currently. In the event the nature of any such default is such that the Leasehold Mortgagee must take possession of the Property in order to cure such default, or there is an official restraint such as a judicial order or administrative order, including without limitation an automatic stay in bankruptcy, the running of all applicable grace periods shall be tolled so long as all Rent is being paid currently and the Leasehold Mortgagee is diligently attempting to obtain such possession.

**16.3. New Lease.** If, despite the notice and cure provisions described above, the Ground Lease is terminated as the result of any default by the Tenant or any other reason, then, as long as the Leasehold Mortgagee diligently proceeds to effectuate any such cures as it is capable of curing, and otherwise performs all obligations of the Tenant hereunder, then Landlord will execute and deliver to the Leasehold Mortgagee or to the purchaser, assignee, or transferee, as the case may be, a new lease of the Land (the "New Lease"). Such New Lease shall be for a term equal to the remainder of the Term before giving effect to such termination, shall contain the same covenants, agreement, conditions, and limitations as this Ground Lease, and shall be subject only to encumbrances and other matters existing as of the date hereof. In such event the ownership of all Improvements shall be deemed to have been transferred directly to such transferee of Tenant's interest in this Ground Lease. Landlord shall execute such deed or other instrument of conveyance as may be necessary for title to the Improvements to be insured in such transferee of Tenant's interest. Any New Lease made pursuant to this Section shall have the same priority as the original Ground Lease with respect to any mortgage or other lien, charge, or encumbrance on the fee of the Land created by Landlord. In order to effectuate such priority, all such subordinate liens, charges, or other encumbrances on the fee of the Land created by Landlord shall contain express provisions to the effect that such lien, charge or encumbrance shall be subordinate to any such New Lease, and that the mortgagee or other beneficiary thereof shall, upon request, confirm to Tenant and any Leasehold Mortgagee such subordination.

**16.4. Other Rights of the Leasehold Mortgagee.**

- (a) There shall be no merger of Tenant's Leasehold Estate with the fee estate in the Land by reason of the fact that Tenant's Leasehold Estate may be held directly or indirectly by or for the account of any person who shall also hold directly or indirectly the fee estate, or any interest in such fee estate, nor shall there be any

such merger by reason of the fact that all or any part of Tenant's Leasehold Estate may be conveyed or mortgaged to a Leasehold Mortgagee who shall also hold directly or indirectly the fee estate, or any part thereof, in the Land or any interest of Landlord under this Ground Lease.

- (b) No termination or rejection of this Ground Lease by Tenant shall be valid or effective, and neither this Ground Lease nor any of the terms hereof may be amended, modified, changed, rejected, or cancelled without the prior written consent of the Leasehold Mortgagee.
- (c) Landlord hereby consents to the inclusion of a provision in the Leasehold Mortgage for the assignment of rents from Subleases to the Leasehold Mortgagee, effective upon any default under the Leasehold Mortgage.
- (d) This Ground Lease may be assigned to a Leasehold Mortgagee by an assignment in lieu of foreclosure of a Leasehold Mortgage or pursuant to a foreclosure sale or sale pursuant to power of sale under a Leasehold Mortgage and may be further assigned by the Assignee or purchaser without the prior consent of Landlord, provided the ultimate Assignee fully assumes the Tenant's obligations under this Ground Lease. The liability of such Leasehold Mortgagee or other Assignee under such assumption agreement shall be limited to the period of ownership of this Ground Lease. No assignment of rights under this Ground Lease shall result in a full delegation of duties owed to the Landlord by the assignor and release of the assignor, unless Landlord also expressly approves such delegation by and release of assignor.
- (e) In the event there is more than one Leasehold Mortgage affecting the Leasehold Estate, the most senior Leasehold Mortgagee has priority in terms of exercising the rights of a Leasehold Mortgagee.
- (f) Landlord and Tenant hereby agree to cooperate in including in this Ground Lease, by suitable amendment from time to time, any provision which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the provisions contained in this Ground Lease with respect to the protection of the lien of the Leasehold Mortgagee and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage on the occurrence of an Event of Default hereunder; provided, however, that any such amendment shall not in any way affect the Term or Rent under this Ground Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease.

## **ARTICLE XVII. SUBORDINATED LEASEHOLD MORTGAGES.**

**17.1. Landlord's Approval of Fee Mortgage.** Provided that there does not exist an Event of Default by Tenant under the terms of this Ground Lease, Tenant may after Substantial Completion of the Improvements, request in writing that the Landlord execute and deliver one or more mortgages (or such other instrument or instruments as may be reasonably required) whereby Landlord pledges its fee simple interest in the Property as additional collateral for a loan payable by Tenant ("Fee Mortgages"), subject to the conditions contained herein. The agreement to and execution of a Fee Mortgage shall be exclusively at the Landlord's discretion.

## **ARTICLE XVIII. TRANSFER OF LANDLORD'S INTEREST.**

- 18.1. Transfer of Landlord's Interest.** Landlord shall have the right at any time, and from time to time during the term hereof, to sell or assign to any person all or any portion of its fee interest in the Land or any portion thereof, subject, however, to Tenant's Leasehold Estate created hereby and all interests relating thereto, including but not limited to, any Leasehold Mortgage, Fee Mortgage, or Sublease.
- 18.2. Attornment.** In the event that Landlord sells, conveys, or otherwise transfers its interest in the Land, whether voluntarily, involuntarily, by foreclosure (or by deed in lieu of foreclosure) of a Fee Mortgage, or by operation of law, then this Ground Lease shall remain in full force and effect and shall not be terminated, provided that with respect to any such transfer by foreclosure or deed in lieu of foreclosure, the terms of this Ground Lease shall be subject to the terms of the applicable nondisturbance, subordination, and attornment agreement, if any. Tenant hereby agrees that it will attorn to and recognize any successor to Landlord's interest in the Land as the new Landlord under this Ground Lease, and Tenant hereby covenants and agrees that it will execute any instruments reasonably required by such successor evidencing the same, provided that such successor shall not be bound by (i) any payment of Rent for more than one month in advance, (ii) any provision of any amendment to the Ground Lease to which Fee Mortgagee has not consented, (iii) the defaults of any prior Landlord under this Ground Lease, or (iv) any offset rights arising out of the defaults of any prior Landlord under this Ground Lease. Upon such attornment, this Ground Lease shall continue in full force and effect as a direct lease between each successor Landlord and Tenant, subject to all of the terms, covenants and conditions of this Ground Lease.

## **ARTICLE XIX. ESTOPPEL CERTIFICATES.**

- 19.1. Estoppel Certificates.** Landlord, on at least thirty (30) days' prior written request by Tenant, and Tenant, on at least thirty (30) days' prior written request by Landlord, will at any time and from time to time deliver to the party making such request or to any Mortgagee a statement in writing (an "Estoppel Certificate") certifying that this Ground Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the date to which the Rent and any other deposits or charges have been paid and stating whether or not, to the best knowledge of the party executing such certificate, the party requesting such statement is in default in the performance of any covenant, agreement, or condition contained in this Ground Lease and, if so, specifying each such default of which the executing party may have knowledge together with any other information that a Fee or Leasehold Mortgagee may reasonably require.

## **ARTICLE XX. DEFAULT AND REMEDIES.**

- 20.1. Tenant's Default.** The occurrence of any of the following shall constitute a material default and breach of this Ground Lease by Tenant (an "Event of Default"):
- (a) Any failure by Tenant to pay any Rent or to make any other payment required to be made by Tenant hereunder where such failure continues for ten (10) days after written notice thereof by Landlord to Tenant.

- (b) A failure by Tenant to perform any of the items required to be performed pursuant to the Construction Schedule by the times set forth therein for such performance subject to extensions for delays occasioned by events of Force Majeure and site conditions requiring environmental remediation (not caused by Tenant, its employees, or agents).
- (c) A failure by Tenant to observe and perform any other provision of this Ground Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30)-day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently proceed to complete such cure.
- (d) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 90 days); or the appointment of a trustee or receiver to take possession the Property, where possession is not restored to Tenant within ninety (90) days.

**20.2. Remedies.** Upon the occurrence of an Event of Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the following remedies:

- (a) Landlord shall have the immediate option to terminate this Ground Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate, and in such event, Landlord may recover damages from Tenant.
- (b) Landlord may, without terminating this Ground Lease, recover all Rent as it becomes due and may relet the Property (or any part thereof), upon such terms and conditions as Landlord in its sole discretion may deem advisable. If Landlord shall elect to so relet, then all rentals received by Landlord from such reletting (or from Subtenants) shall be applied: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should the amount of rental received from such reletting during any month which is applied to the payment of Rent hereunder be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting not covered by the rentals received from such reletting.

## **ARTICLE XXI. RIGHTS AND OBLIGATIONS UPON TERMINATION.**

**21.1. Surrender of Land and Improvements.** Upon the expiration or earlier termination of this Ground Lease pursuant to the terms hereof, or upon any reentry by Landlord upon

the Property pursuant to Article XX. hereof (subject to any right of a Leasehold Mortgagee hereunder to a New Lease), Tenant shall surrender to Landlord the Property in good order, condition, and repair (except for reasonable wear and tear, and Takings) and free and clear of all liens and encumbrances (other than those permitted hereby or otherwise created or consented to by Landlord); provided, however, that Tenant shall have no right to surrender the Property (except a surrender upon the expiration of the Term or upon termination by Landlord pursuant to and subject to the provisions of this Ground Lease) and Landlord will not accept any attempted surrender unless the prior written consent of any Leasehold Mortgagee shall have been obtained. If requested to do so, Tenant shall also execute, acknowledge and deliver to Landlord such instruments as may be necessary or desirable to effectuate the termination of the Ground Lease, inclusive of form suitable for recording, the transfer of the Leasehold Estate to the Landlord, or to perfect Landlord's right, title, and interest in and to the Property.

- 21.2. Removal of Improvements.** On the last day of the Term of this Ground Lease, inclusive of any extensions, or upon the earlier termination of this Ground Lease, Landlord may (but shall not be obligated to), upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than ninety (90) days after the expiration or earlier termination of this Ground Lease, all structures, buildings, and improvements of any kind whatsoever placed or maintained on the Property by Tenant and others; and Tenant shall, upon the expiration or earlier termination of this Ground Lease, immediately restore, and quit, and peacefully surrender possession of the Property to Landlord in at least as good and usable condition, reasonably acceptable to Landlord, as the same was in at the time of first occupation thereof by Tenant or others, ordinary wear and tear excepted. Should Tenant fail to so remove said structures, buildings, and improvements and restore the property, Landlord may do so, and in such event, Tenant shall reimburse Landlord for any cost or expense thereof.

## **ARTICLE XXII. MISCELLANEOUS.**

- 22.1. Entire Agreement.** This Ground Lease, including the Recitals which are incorporated into this Ground Lease and made a part hereof, and the documents signed and delivered by Landlord and Tenant in connection herewith and referred to herein contain the entire agreement between the parties hereto with respect to the Land, and there are no promises, agreements, conditions, undertakings, or warranties or representations, oral or written, express or implied, between them other than as set forth in this Ground Lease and such other documents, which are intended to be an integration of all prior or contemporaneous promises, agreements, conditions, and undertakings between the parties hereto relating to the Land. In executing and delivering this Ground Lease, Tenant has not relied on any statement, representation or warranty by Landlord or any of its agents or employees which is not set forth in this Ground Lease or in such other documents.
- 22.2. Severability.** If any provision of this Ground Lease or the application thereof to any extent shall be invalid or unenforceable, the remainder of this Ground Lease, or the application of such provision to the parties or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

**22.3. Notices.** Each notice that is to be given or made or communicated pursuant to this Ground Lease shall be in writing and shall be deemed to have been received, and shall be effective, (i) when delivered in person (including, without limitation, by messenger or courier), or (ii) when received via facsimile, or (iii) two (2) days after having been mailed by certified or registered United States Mail, postage prepaid, return receipt requested, or (iv) the next business day after having been sent by overnight mail service, receipt requested, at the following addresses:

If to Landlord: \_\_\_\_\_, with a copy to \_\_\_\_\_.

If to Tenant, Yellowstone Ice Foundation, PO Box 50427, Billings, MT 59105, with a copy to alex@yellowstoneicefoundation.org.

Each party shall have the right at any time and from time to time to designate a different address, or additional or other party or parties, at such additional or other addresses for the delivery of notices, by giving notice in accordance with the foregoing, such different addresses and/or parties being effective from and after the date of receipt of such notice by the other party as deemed in accordance with this paragraph.

- 22.4. Brokers.** Tenant and Landlord each represent to the other that it has not dealt with or engaged a real estate broker in connection with this Ground Lease and that no other broker has negotiated this Ground Lease or is entitled to any fee or commission in connection herewith.
- 22.5. Governing Law.** It is the intent of the parties hereto that all questions with respect to the construction of this Ground Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the State of Montana. Venue for any action arising out of this Ground Lease shall be Yellowstone County District Court, or as may be authorized, federal District Court for the State of Montana.
- 22.6. Modifications.** No change or modification of this Ground Lease or of any of the provisions hereof shall be valid or effective unless the same is in writing and signed by the parties hereto. No alleged or contended waiver of any of the provisions of this Ground Lease shall be valid or effective unless in writing signed by the party against whom it is sought to be enforced.
- 22.7. Counterparts.** This Ground Lease may be executed in several counterparts and the counterparts shall constitute but one and the same instrument.
- 22.8. Recording.** Except as otherwise permitted in this Section, neither this Ground Lease nor any other writing with respect to this Ground Lease may be recorded without the express written consent of Landlord. Concurrently with the execution of this Ground Lease, Landlord and Tenant shall execute and record a recordable memorandum of this Ground Lease in the form of Exhibit E attached hereto.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Ground Lease as of the date first above written.

YELLOWSTONE ICE FOUNDATION

By: \_\_\_\_\_  
Name: Parker Phipps, President  
Date:

CITY OF BILLINGS

By: \_\_\_\_\_  
Name: William A. Cole, Mayor  
Date:

**EXHIBIT A. LEGAL DESCRIPTION OF LAND.**

[legal description of land]

**EXHIBIT B. DEPICTION OF LAND AND IMPROVEMENTS**

[Proposed Improvements]

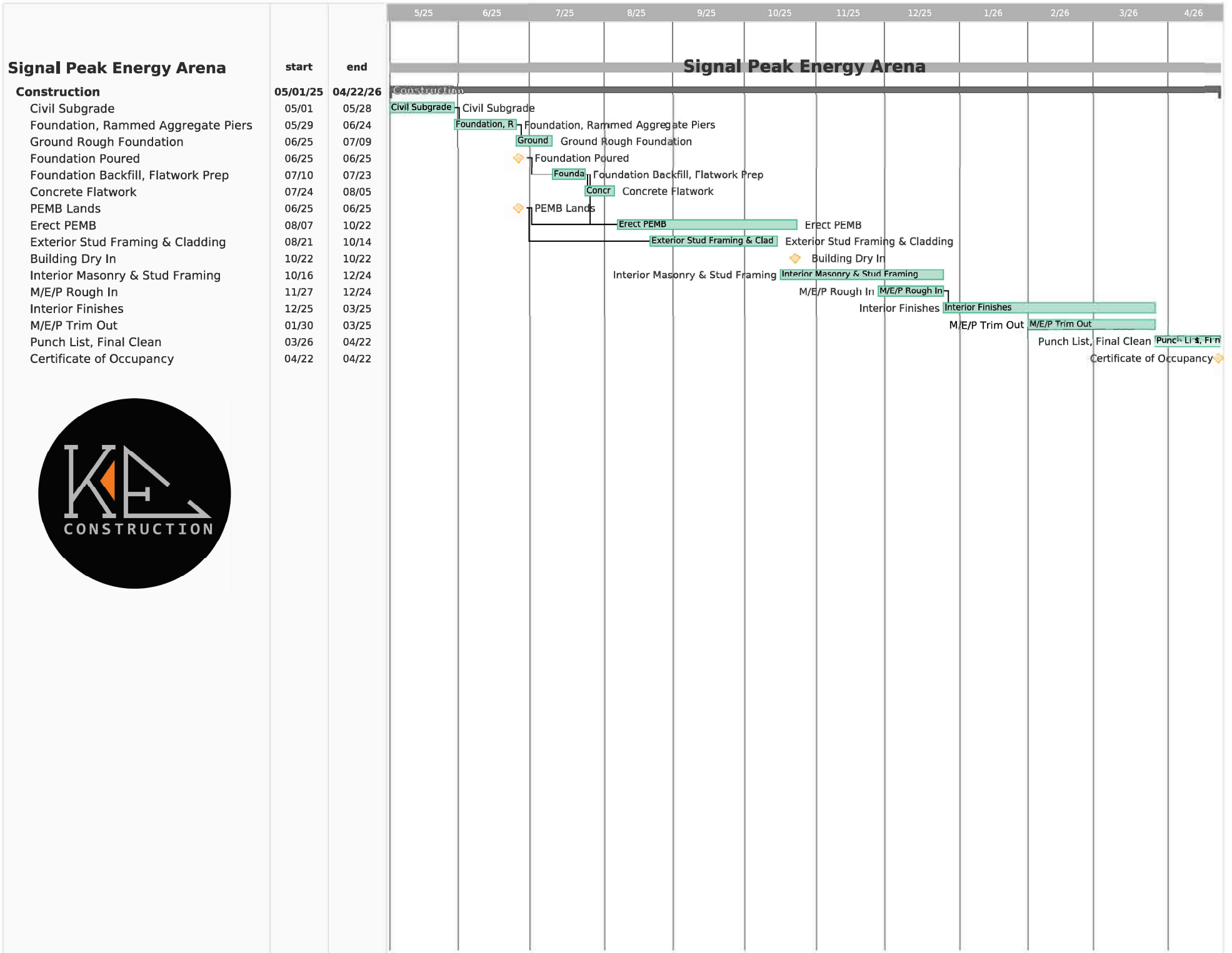
**EXHIBIT C. AMEND RECREATION CENTER CAMPUS**

[Proposed]

**EXHIBIT D. CONSTRUCTION SCHEDULE.**

[construction schedule]

# EXHIBIT D - CONSTRUCTION SCHEDULE



**EXHIBIT E. MEMORANDUM OF GROUND LEASE.**

[form of memorandum of ground lease]