

LEASE AGREEMENT – PUBLIC PARK AND RECREATION FACILITY

CITY OF YAKIMA TO SOZO SPORTS OF CENTRAL WASHINGTON

This lease agreement (the "Lease"), made and entered 12/31, 2017, by and between the CITY OF YAKIMA, WASHINGTON, a municipal corporation, (the "City") and SOZO SPORTS OF CENTRAL WASHINGTON, a Washington non-profit corporation, or permitted assigns, ("SOZO").

WITNESSETH:

WHEREAS, City owns certain property that is located south and west of Yakima Air Terminal-McAllister Field (the "Airport") and has acquired another parcel of property legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"), that is the subject of this Lease; SOZO desires to develop the Property in accordance with the specific terms and conditions set forth in the Agreement entered by the Parties hereto; and,

WHEREAS, City has approved certain conditions that shall be required elements of this Lease that are memorialized in that certain Public Park and Recreation Facility Development and Maintenance Agreement entered by the parties hereto dated July 12, 2017, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference (the "Agreement").

NOW THEREFORE, in consideration of the provisions set forth in the Agreement and of the mutual covenants contained herein and the benefit to be derived by each party, the parties agree as follows:

1. INTENT OF AGREEMENT:

The intent of this Lease is to allow SOZO to develop and maintain the leasehold from bare land into a public park and recreation area. The development includes the construction of all necessary infrastructure and improvements to include, but not be limited to, utilities, paving, parking area, recreational public use areas, child play area, pathways, restroom facilities, and fencing. These improvements and infrastructure are depicted on Exhibit C, attached hereto and incorporated herein by this reference, at the sole expense of SOZO. SOZO shall apply to the City for leasehold building/development permits no later than six (6) months after the date of entry of this Lease as is set forth above. SOZO's failure to apply for building/development permits required for leasehold development within six (6) months from date of entry of this lease written above and to comply with the specific development provisions set forth in the Agreement shall be grounds for termination

of this Lease, at the sole discretion of the City. It is understood and agreed by the Parties that the Public Park Development and Maintenance Agreement previously entered into by the Parties contains terms and conditions necessarily incorporated by this reference into the Lease as if fully set forth herein. In the event of discrepancy between the terms of this Lease and the Agreement, the Agreement shall prevail.

2. DEMISE OF PROPERTY:

City hereby leases to SOZO and SOZO leases from City the Property, together with all rights of ingress, egress, public road access and utility connections to the Property.

SOZO shall develop the Property as provided in the conceptual site plan attached hereto as Exhibit C as soon as feasible following the Effective Date of this Lease, subject to the terms and conditions set forth elsewhere herein. Failure by SOZO to meet the development deadlines herein contained and as represented in the Agreement shall constitute a material breach of the Lease, in which event City, at its option, may terminate the Lease and the Agreement for cause.

3. TERM – EFFECTIVE DATE:

The tenancy provided by this Lease shall commence on [REDACTED], 201[REDACTED] and shall end on December 31, 205[REDACTED]. SOZO shall have the option to extend its tenancy under this Lease for two (2) additional ten (10) year terms by providing written notice to City at least six (6) months prior to the end of the preceding lease term. The sum of the term provided by the preceding two (2) sentences, but as otherwise potentially terminated pursuant hereto, is the lease term (the "Term"). The Effective Date of this Lease shall be the date upon which SOZO first submits an application for a building/development permit for the subject leasehold with the City.

4. MORTGAGE:

SOZO and its subtenants or assigns shall have, and are hereby given, the right to mortgage the leasehold created by this Lease or by any sublease thereunder or assignment thereof, in whole or part, for a period of time not to exceed the Term. City shall be given written notice of any such mortgage, including the mortgagee's address and loan number. City shall have no right to terminate this Lease or retake possession of the Property unless thirty (30) days' written notice of such default is given by the City to SOZO and the mortgagee at the last address provided in writing by SOZO to City. Mortgagee shall have the authority to effect cure of said default to the same extent as SOZO if said cure is effected as provided in Section 21 hereof.

5. RENT:

In consideration of the demise of the Property, SOZO agrees to pay to City rentals as follows:

Ten dollars (\$10.00) per year, payable entirely in advance, upon execution of this Lease.

Payments shall be made to the City of Yakima at the City Finance Office or at such other place as shall be directed by City. In the event of exercise of Options to Extend this Lease, payments for such renewal terms shall likewise be paid in advance, at commencement of each such extended term.

6. DEPOSIT:

[Not applicable – deposit not required].

7. TAXES AND LIENS:

In addition to the reserved rent as it comes due, SOZO promises and agrees to pay, as the same become due and payable, all governmental fees and taxes, if any, payable by reason of this Lease, the use of the Property, or the construction or ownership of improvements thereto; provided, however, that leasehold excise tax shall be paid by City and not by SOZO. SOZO shall neither suffer nor permit the attachment of any lien or other encumbrance on the Property except as permitted by Section 4 hereof. SOZO agrees to defend, indemnify and hold harmless City from any such fees, taxes or liens.

8. USE:

SOZO shall not commit waste and shall use the Property only for the construction, modification, remodeling and maintenance of a public park and recreation area as described in the Agreement. SOZO's use of the Property shall be subject to the following additional limitations:

A. Use, development and construction on the Property shall be compatible with private and commercial aircraft operations at, to or from the Airport as of the commencement of the Term, inclusive of considerations respecting takeoff and landing from existing runways overflight, avoidance of electrical interference with aircraft or ground control radio communications, lighting that interferes with visual location of the Airport, siding, lighting, or roofing that creates glare that materially affects pilots using the Airport, the creation of dust, smoke or steam that constitutes a danger to aircraft using the Airport, and crops, ground cover, or other improvements that attract wildlife constituting a danger to aircraft using the Airport.

B. The Property shall be used only for public park recreation and community activity and reasonably-related activities and for any other use allowed by the Agreement, the Airport Master Plan and by the specific zoning of the Property in effect at the commencement of the Term or as otherwise approved by the City, such approval not to be unreasonably withheld or delayed.

C. Due to the proximity of the Yakima Air Terminal the Property shall not, at any time, other than with the express written approval of the Yakima Airport Manager, be used for staging, launching, over flight, hovering, performance or exhibition of any kind involving remote control (RC) aircraft, hover craft, drones, helicopters, unmanned aerial vehicles or kites for any purpose whatsoever, including, but not limited to, recreational or commercial uses.

9. UTILITIES:

SOZO shall be responsible for all utility services including, but not limited to, power, natural gas, water, sewer, and garbage over the entire area of the Property.

10. PREMISES CONDITION:

SOZO accepts the Property AS-IS. Nothing contained in the preceding sentence shall affect SOZO's rights to indemnity from City as provided in Section 19 hereof.

11. MAINTENANCE:

SOZO agrees, at its sole cost and expense, to keep the Property clean, and shall provide landscaping maintenance services, lawn care, mowing, fertilizing, irrigation, aeration, sweeping, cleaning, facility and parking lot cleanup, trash and litter collection, portable sanitation cleanup when and as required, such that landscaping on the Property remains healthy, attractive, clean and well-maintained. SOZO shall implement an effective program of weed control, garbage and debris removal, ash removal, snow removal and pavement maintenance.

12. SIGNS:

SOZO shall have all rights to naming of the Property, including advertising and signage, subject to City codes generally applicable to all similarly situated uses. Notwithstanding the foregoing, the reference "Yakima", "City of Yakima", or other reference to "Yakima" as approved by the City shall be incorporated into names on signage when reasonably feasible. Signage shall be provided that states the Property is available for the public benefit and shall be consistent with signage used in other City parks.

13. IMPROVEMENTS:

All structures, recreational paths, restrooms and facilities, trade fixtures and other improvements made to the Property by SOZO shall conform to applicable land use laws and building codes, shall be ADA compliant and shall be performed in accordance with the specific terms set forth in the Agreement. SOZO shall be responsible for procuring all building and other permits therefore. All improvements shall be designed and constructed in accordance with SOZO's development plan, as amended from time to time and as disclosed from time to time by SOZO to City. City shall be entitled to approve such development plan and each material modification thereto before it becomes effective, such approval not to be unreasonably denied or delayed. Approval of such development plan or modifications thereof shall be deemed granted forty-five (45) days after submitting the proposal in writing to City if no specific response has been provided by City to SOZO within that time. City does not represent the feasibility or governmental approval, other than by City of any such development plan or modification thereto. City shall not impose a condition upon the approval of such Development Plan or modifications thereto that violate any applicable law, including conditions and terms applicable to the Airport, or which would be violative of any insurance policy required to be maintained by SOZO.

14. REVERSION OF IMPROVEMENTS:

Upon expiration or termination of this Lease for any reason, unless otherwise agreed to in writing between City and SOZO, all improvements to the Property shall revert to the City without requirement of payment of any type or amount by City to SOZO.

Upon termination or expiration of this Lease, SOZO shall remove all its trade fixtures and repair any damage to the premises caused by removal of trade fixtures to the reasonable satisfaction of the City Manager. Fixtures not removed within sixty (60) days after termination or expiration shall become the property of the City unless other arrangements have been previously approved in writing by the City Manager.

SOZO shall, as additional consideration for grant of this Lease, insure that all liens, security interest and other encumbrances against said improvements and structures except those created or suffered by City, whether consensual or involuntary, shall be paid, discharged or satisfied prior to time for reversion thereof to City; and, in any event, the parties acknowledge that City shall not, by virtue of termination of the leasehold interest nor reversion of the structures or other improvements, be liable for any debt or encumbrance associated therewith, whether now existing or hereafter incurred, levied or attached.

15. REGULATIONS:

SOZO agrees to comply with all applicable laws, ordinances, rules, regulations and policies of the Recreation Conservation Office (RCO), all governmental authorities having jurisdiction over the Property, including policies adopted by City, as such laws, ordinances, rules, regulations and policies apply to the use and operation of the Property.

16. SUBLETTING; PARTIAL ASSIGNMENT:

Subject to the agreement to perform and the performance of the terms hereof by any subtenant or partial assignee of SOZO, City's consent is required for any sublease or partial assignment of the Property by SOZO, which consent shall not be unreasonably withheld or delayed. No sublease or partial assignment shall relieve SOZO of its obligation to perform this Lease in accordance with the terms of the Agreement.

17. ASSIGNMENT:

SOZO shall have the right to assign its interest in this Lease to an affiliated entity owned or controlled by SOZO or in a merger in which SOZO is the surviving entity or to a lender for security purposes, subject to the terms set forth in Articles 7 and 9.7 of the Agreement without City's consent, provided that SOZO shall give City written notice of and opportunity to review such assignment documents. Except as permitted in this paragraph, SOZO shall not assign its rights in this Lease without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. City may withhold consent based upon the financial condition of the proposed assignee and/or any material change in the proposed use of the Property.

Any assignee of this Lease and/or SOZO's rights hereunder shall assume all of SOZO's obligations under this Lease and the Agreement, however said assignment shall not relieve SOZO of its obligation to perform this Lease in every respect. Such assignment shall be in conformance with all City, local, state and federal laws, ordinances, rules, regulations and policies and the assignee shall comply with all laws, ordinances, rules, regulations and policies applicable to the use and operation of the Property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective. Consent to assignment by City shall not be construed to be consent to any subsequent assignment.

18. MISCELLANEOUS PROVISIONS:

A. City may further develop or improve Airport property and facilities regardless of the desire or views of SOZO regarding any such development or improvement, and without interference or hindrance on the part of SOZO and without liability to SOZO.

B. SOZO shall limit the development of structures on the Property to that portion of the Property which is south of the building restriction line as defined by the Airport Layout Plan and to a height not to exceed thirty five (35) feet unless approved by Airport Manager and the Federal Aviation Administration. SOZO shall not erect or build temporary/ permanent objects or structures which could cause a hazard to aircraft operations and/or penetrate the Airport's Part 77 Navigable Airspaces as described on the Airport Layout Plan and 14 Code of Federal Regulation Part 77 (all applicable sections).

C. This Lease shall be subordinate to the provisions of any existing or future agreement between City and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for the development of the Airport.

D. Air space above the property may be exposed to aircraft noise, vibration, fumes, dust and fuel particulates, as may be inherent in the operation of aircraft, now known or hereafter used for aircraft navigation and flight while using said air space for landing at, taking off from, or operating within the Airport area.

E. SOZO shall be responsible for weed control on non-developed portions of the Property, including but not limited (where appropriate) to: mowing; spraying; removal of noxious weeds, etc.

F. SOZO shall post undeveloped portions of the Property against trespass by unauthorized individuals, including no hunting signs, and shall prohibit illegal dumping of debris on the property.

19. INDEMNITY/DUTY TO DEFEND:

A. Except as provided in Paragraph 19(E), SOZO shall defend, indemnify and hold harmless City and its elected and appointed officials, employees and agents, from any and all losses directly suffered by City and from any and all liability, damages, suits, claims, actions, judgments or decrees, made against the City or its elected and appointed officials, employees and agents based on the use or occupancy of the Property during the Term or from default by SOZO or any assignee or subtenant hereunder, in any term or condition of this Lease.

B. Except as provided in Paragraph 19(E), City shall defend, indemnify and hold harmless SOZO and its managers, members, agents, independent contractors, and employees, from any and all losses directly suffered by SOZO, its managers, members, agents, independent contractors and employees, and from any and all liability, damages, suits, claims, actions, judgments or decrees, made against SOZO or its managers, members, agents, independent contractors, or employees based on the use or occupancy of the Property for any time other than during the Term or as a result of City's default in any term or condition of this Lease, excepting any

liability, damage, suit, or claim arising from the occupancy or use of the Property by SOZO or as a result of SOZO's operations on the Property or from any other act or omission of SOZO, its servants, employees, agents, invitees, independent contractors, assignees, subtenants or any other entity, person, firm or corporation acting on behalf of SOZO or under its direction, whether such claim shall be by SOZO or a third party; provided, however, that SOZO shall not be liable for any injury, damage or loss occasioned solely by the sole negligence of City, its agents or employees. City shall give to SOZO prompt and reasonable notice of any such claims or actions and SOZO shall have the right to investigate, compromise and defend the same to the extent of its interest.

C. City shall defend, indemnify, and hold harmless SOZO, its managers, members, agents and employees, from any and all claims and actions, loss, damage, expense or cost, resulting from, arising out of, or caused solely by City and which leads to any liability under the Federal Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Clean Water Act, 42 U.S.C. 1251 et seq.; the Washington Environmental Policy Act, RCW Ch. 43.21C; the Washington Water Pollution Control Act, RCW Ch. 90.48; the Washington Hazardous Waste Management Act, RCW Ch. 70.105; the Washington Model Toxic Control Act, RCW Ch. 70.105D, and the regulations promulgated thereunder, or under any applicable local or state environmental ordinance, statute, law, rule or regulation. The provisions of this Paragraph 19(C) shall survive the termination of this Lease.

D. SOZO shall defend, indemnify, and hold harmless City, its elected and appointed officials, agents and employees, free and harmless from any and all claims and actions, loss, damage, expense or cost, resulting from, arising out of, or caused by SOZO, its assignees and/or subtenants, resulting in any liability under the Federal Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Clean Water Act, 42 U.S.C. 1251 et seq.; the Washington Environmental Policy Act, RCW Ch. 43.21C; the Washington Water Pollution Control Act, RCW Ch. 90.48; the Washington Hazardous Waste Management Act, RCW Ch. 70.105; the Washington Model Toxic Control Act, RCW Ch. 70.105D, and the regulations promulgated thereunder, or under any applicable local or state environmental ordinance, statute, law, rule or regulation. The provisions of this Paragraph 19(D) shall survive the termination of this Lease.

E. The defense, indemnity, and hold harmless provided in Paragraphs 19(A) through 19(D) hereof shall apply only to the extent the party claiming same is not at fault with respect to the event giving rise thereto. If both parties are at fault, such defense, indemnity, and hold harmless shall be applied under principles of comparative fault.

20. INSURANCE:

SOZO agrees that, at all times during the full term of the Lease, it shall, at its own expense, maintain in full force and effect adequate fire and other casualty coverage for the Property and its contents, including all personal property, fixtures and improvements of SOZO. Such policy shall include a replacement cost endorsement. SOZO shall obtain and file with the City's Risk Manager a Certificate of Insurance evidencing such coverage. SOZO shall provide the City with a thirty (30) day cancellation notice prior to any policy cancellation. Adequacy of coverage is defined as insurance sufficient to restore the Property to its pre-casualty condition.

Prior to execution of this Lease, SOZO, at its expense, shall obtain and file with the City's Risk Manager a Certificate of Insurance evidencing commercial general liability insurance coverage ("CGL") providing coverage of at least \$2,000,000 per occurrence and \$2,000,000 general aggregate. This Certificate of Insurance shall be subject to approval by the City's Risk Manager as to company, terms and coverage and said approval shall not be unreasonably withheld. The CGL shall name the City, its elected officials, officers, agents, employees, and volunteers as additional named insureds and must protect the City from any and all claims and risks and losses in connection with any activities or omissions by SOZO by virtue of this Lease or the Agreement. The CGL policy shall remain in full force and effect at SOZO's sole expense for liability for property damage or personal injury that may occur in connection with activities or omissions by SOZO, and provide continuous coverage for the full term of this Lease and the Agreement. SOZO shall ensure that the City's Risk Manager is given thirty (30) calendar days prior written notice, by certified mail, of any cancellation, lapse, reduction or modification of such insurance.

21. DEFAULT; TERMINATION; AND FORFEITURE:

A. The failure by SOZO to comply with any material term, provision or condition of this Lease shall constitute grounds for termination of this Lease. This Lease and tenancy shall terminate for cause as specified above on written notice by City to SOZO stating in detail the manner in which SOZO fails or has failed to comply with this Lease. SOZO shall comply with this Lease in the manner specified in the notice within sixty (60) days (except twenty days with respect to default regarding payment of rent or other monetary obligation) from SOZO's receipt of such notice, provided, however, that if the nature of SOZO's default (other than for monetary defaults) is such that more than sixty (60) days are reasonably required for its cure, then SOZO shall not be deemed to be in default if SOZO commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, otherwise this Lease and tenancy shall be terminated. Such notice shall be given in writing and served on SOZO

by personal delivery or mailed by certified mail with return receipt requested addressed to SOZO at its address stated below or such other address as the parties may advise each other in writing. Notices shall be deemed received three (3) days after mailing. In addition to the provisions hereinabove, and/or as an alternative or cumulative remedy, City may, at its sole election, pursue any other action, redress, or remedy now or hereafter available to City under the laws of the State of Washington, including state Landlord-Tenant laws.

B. As respects land and land improvements only, as additional and not alternative remedy, optional with City and upon sixty (60) days written notice to SOZO, should SOZO be in default hereunder, City may cure or correct the same and the cost of such action by City shall immediately become due and payable from SOZO, together with late fees on said sum at a rate of ten percent (10%) per annum, and the non-payment of said sum by SOZO shall be adequate grounds for City to invoke the other remedies as provided in this Lease.

C. The failure by City to comply with any material term, provision or condition of this Lease shall constitute grounds for termination of this Lease. This Lease and tenancy shall terminate for cause as specified above on written notice by SOZO to City stating in detail the manner in which City fails or has failed to comply with this Lease. City shall comply with this Lease in the manner specified in the notice within sixty (60) days from City's receipt of such notice, provided, however, that if the nature of City's default is such that more than sixty (60) days are reasonably required for its cure, then City shall not be deemed to be in default if City commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, otherwise this Lease and tenancy shall be terminated. Such notice shall be given in writing and served on City by personal delivery or mailed by certified mail with return receipt requested addressed to City at its address stated below or such other address as the parties may advise each other in writing. Notices shall be deemed received three (3) days after mailing. In addition to the provisions hereinabove, and/or as an alternative or cumulate remedy, SOZO may, at its sole election, pursue any other action, redress, or remedy now or hereafter available to it under the laws of the State of Washington, including state Landlord-Tenant laws.

22. VENUE, ATTORNEY FEES:

In the event of litigation to enforce the rights and obligations hereunder, venue shall lie in a court of competent jurisdiction in Yakima County, Washington. The prevailing party shall be entitled to its reasonable attorney fees in addition to court costs.

23. NON-DISCRIMINATION CLAUSE:

To the extent required by law, SOZO, for itself, its personal representatives,

successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

A. No person, on the grounds of race, color, religion, sex, age, marital status, handicap or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in SOZO' personnel policies and practices or in the use or operation of SOZO' services or facilities.

B. SOZO agrees that in the construction of any improvements on, over or under City land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, marital status, handicap, age or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

C. All Federal provisions of Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act shall be fully enforced and complied with during the development and subsequent public enjoyment of the Property that is the subject of this Lease.

24. INTEGRATION:

Exhibits and Recitals are incorporated herein by this reference. This Lease and the Agreement incorporated herein embody the entire agreement between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

25. NOTICE:

All notices allowed or required hereunder shall be effective if given in writing and served by personal delivery or delivered by certified mail, return receipt requested, at the address shown below unless a different address is designated by a party in writing:

If to City: **YAKIMA CITY MANAGER**
129 N. 2nd Street
Yakima, Washington 98901

If to SOZO: **SOZO SPORTS OF CENTRAL WASHINGTON**
1200 Chesterley Drive, Suite 240
Yakima, Washington 98902

26. BINDING EFFECT AND BENEFIT:

This Lease shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns and subtenants.

27. ESTOPPEL CERTIFICATES:

City shall issue estoppel certificates to tenants, assignees, and lenders of SOZO upon request and in forms required by such tenants, assignees, and lenders.

CITY:

CITY OF YAKIMA, WASHINGTON

By: _____
Cliff Moore, City Manager

Date

By: _____
Jeff Cutter, City Attorney

Date

STATE OF WASHINGTON)
) ss
County of Yakima)

I certify that I know or have satisfactory evidence that Cliff Moore and Jeff Cutter signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the City Manager and the City Attorney, respectively, of the City of Yakima, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

By: _____

Notary Public

Appointment Expires _____

SOZO:

SOZO SPORTS OF CENTRAL WASHINGTON

By: Kerry Martin
Kerry Martin, President

11-30-17
Date

By: _____
Date

STATE OF WASHINGTON)
County of Yakima) ss
)



I certify that I know or have satisfactory evidence that Kerry Martin and _____ signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the President and Board of SOZO Sports of Central Washington, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date 11/12/2018
By: Michelle Russell
Notary Public
Appointment Expires 2/10/20

EXHIBIT A

REAL PROPERTY DESCRIPTION

The Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

EXCEPT beginning at the Northwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

thence Easterly along the North line of said subdivision 1,320 feet, more or less, to the Northeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

thence Southerly along the Easterly line of said subdivision 511.03 feet;

thence North 70° 03' West 1,402.4 feet, more or less, to the Westerly line of said subdivision;

thence Northerly along the Westerly line of said subdivision 37.1 feet, more or less, to the point of beginning;

AND EXCEPT that part lying within the County Road, along the North and East sides. Situated in Yakima County, State of Washington.

Exhibit B – Public Park and Recreation Facility Development and Maintenance Agreement

**PUBLIC PARK AND RECREATION FACILITY DEVELOPMENT
AND MAINTENANCE AGREEMENT
CITY OF YAKIMA AND SOZO SPORTS OF CENTRAL WASHINGTON, INC.**

THIS AGREEMENT ("Agreement") is entered into effective the 12th day of July, 2017 (the "Effective Date"), by and between the City of Yakima, a Washington municipal corporation ("City"), and SOZO Sports of Central Washington, Incorporated, a Washington non-profit corporation ("SOZO"). The City and SOZO are referred to collectively as the "Parties."

In consideration of the promises, covenants, and provisions set forth in this Agreement, the Parties agree as follows:

**ARTICLE 1
RECITALS AND FINDINGS**

1.1 Property.

City plans to purchase approximately 31.2 acres of property located south of the Yakima Air Terminal, identified by Yakima County Auditor number 181334-42002 and legally described in **Exhibit A**, attached hereto and incorporated herein by this reference. The property is located within the City of Yakima. The City intends to acquire the property from Congdon. The property described in Exhibit A may be referred to herein as the "property", the "Public Park and Recreation Facility" or the "Congdon property". Upon City's purchase of the property the City will lease the property so purchased and thereafter referred to for purposes of this Agreement and the Lease as the "SOZO Public Park and Recreation Facility", to SOZO and SOZO will develop the Public Park and Recreation Facility as specifically set forth in this Agreement, in addition to developing SOZO's previously acquired parcels. In order to ensure the availability of necessary irrigation water for the proposed SOZO Public Park and Recreation Facility, it is understood and agreed that all water rights appurtenant to the Congdon Property shall remain appurtenant to the SOZO Public Park and Recreation Facility and shall be utilized to support the growth and maintenance of the property, not inconsistent with state law.

1.2 SOZO.

SOZO has the experience, ability, and resources to design, develop and maintain the public park and associated recreational facilities that shall be constructed on the property to provide an area for general public use and enjoyment for individuals of all ages consistent with provisions of the Land and Water Conservation Fund Act and implementing guidelines set forth at 36 CFR 59.

1.3 Facilities.

The Parties intend this Agreement to specifically identify the terms by which SOZO is granted the exclusive rights to lease the Congdon property from the City and to design, develop, construct, maintain and operate the Public Park and Recreational Facilities. SOZO shall provide parking spaces and restroom facilities for individuals utilizing the public park and recreational facilities

without cost to those using said facilities, notwithstanding that the SOZO Public Park and Recreational Facilities and all improvements thereon shall at all times remain the sole property of the City.

1.4 No Partnership.

The Parties agree that no joint venture or partnership is formed as a result of this Agreement.

1.5 Premises.

SOZO shall be responsible for the complete design and construction of the Congdon property, including the parking, restrooms, pathways, irrigation, stormwater retention, playground equipment and associated landscaping. The SOZO Public Park and Recreational Facilities shall be completed and fully available for the public use in accordance with the Recreation Conservation Office (RCO) approved design by no later than three (3) years from RCO's approval of the Congdon property as suitable exchange property for the YMCA's Chesterley Park property development which will convert a portion of property previously acquired and developed with RCO funding under RCO #75-030 and RCO #98-1123. All improvements to the Congdon property shall remain the property of the City at the termination of this Agreement and/or the associated Lease.

1.6 City Police Power.

By entering this Agreement, the City does not waive any of its police power authority and shall retain granting authority over final permits for the Congdon property development, consistent with the intent of this Agreement, approval of which permitting shall not be unreasonably withheld or delayed.

1.7 Access and Parking.

The City will improve the public streets providing access to the SOZO Public Park and Recreation Facility, at City's expense; SOZO will be responsible to provide the required on-site parking identified in the development permit to support the public use of the Congdon property.

1.8 Financing.

1.8.1 SOZO will be responsible for obtaining the necessary financing for the design, development, maintenance and operation of the Public Park and Recreational Facility, subject only to City participation as described in Article 5.10, herein.

1.8.2 It is mutually understood by the Parties that any lender who provides financing to SOZO for the development and operation of the Congdon property will require this Agreement and underlying Lease as protection and security for lender ("lender"). The term "lender" shall also mean the successors and assigns of the lender.

1.8.3 The City will acknowledge and consent to a lender taking a first position security interest in this Agreement, the Lease and the SOZO Public Park and Recreational Facility under mutually agreeable terms; lender taking an assignment of the right, title, claim and interest of SOZO in this Agreement; lender obtaining the right of substitution for SOZO, lender operating the park and recreational facility pursuant to the terms of this Agreement; and/or, lender selling, assigning and/or transferring SOZO's interest in this Agreement and/or the Lease.

ARTICLE 2 GROUND LEASE AND USE GRANT

2.1 Park and Recreational Facility.

2.1.1 City shall by separate lease instrument, forthwith upon gaining title thereto, convey and grant unto SOZO an exclusive lease of the public park and recreational facility (Congdon) property, for the design, development, construction, future maintenance and operation of said property, as described herein. The Lease shall set forth, in substance, the intended outcome, terms and conditions of the operation established in this Agreement. A preliminary site plan is shown in **Exhibit B**, attached hereto and incorporated herein by this reference. Any and all development, construction, and improvements of and to the SOZO Public Park and Recreational Facility property shall be leased to SOZO subject to security interest of lender, if any. At the termination of this Agreement and the Lease, other than as a result of condemnation proceedings, the then existing improvements to the SOZO Public Park and Recreational Facility shall remain the property of and be solely owned by the City.

2.1.2 The common address of the Public Park and Recreation Facility property is 36th Avenue and Spring Creek Road, Yakima, WA 98908.

2.2 Possession, Quiet Enjoyment and Covenants.

SOZO shall be entitled to exclusive possession of the Public Park and Recreation Facility property upon the effective date of the Lease. Upon taking possession of the property, and subject to SOZO's continuing performance under this Agreement and the Lease, SOZO shall peaceably and quietly have, hold, and enjoy the property at all times during the full term of this Agreement and the Lease. Every covenant in this Agreement and the Lease shall be deemed and treated to be a covenant running with the Public Park and Recreation Facility property during the full term of this Agreement and the Lease, and shall extend to the heirs, legal representatives, successors and assigns of the Parties. No change in City's ownership of the SOZO Public Park and Recreational Facility property, or rights to the payments hereunder, however accomplished, shall operate to enlarge the obligations or reduce the rights of SOZO.

No change in City's ownership of the Park and Recreation Facility shall be binding upon SOZO for any purpose until SOZO shall have been given written notice thereof.

ARTICLE 3 TERM OF AGREEMENT

3.1 Term.

The Term of this Agreement and the Lease shall be forty (40) years, commencing upon the Effective Date of the Lease.

3.2 Option to Renew.

So long as SOZO is not then in material, uncured breach of the Lease or this Agreement, it shall have the privilege of extending this Agreement and the Lease for two (2) additional ten (10) year terms upon the same terms and conditions, subject to any modifications as provided in Section 9.13 below. In order to exercise said renewal option(s), SOZO shall provide written notice to City not less than twelve (12) months prior to termination of the then current term of the Lease.

ARTICLE 4 SOZO OBLIGATIONS

4.1 Agreement.

SOZO agrees to the terms and conditions of this Agreement.

4.2 Not-For-Profit.

SOZO will serve as the controlling, authorized entity responsible for design, development, maintenance, enhancement and ongoing operation of the SOZO Public Park and Recreational Facility for the benefit of the general public use and in compliance with RCO grant program requirements. Prior to construction the final design shall be presented to City and RCO for review, comment and approval, which approval shall not be unreasonably withheld or delayed.

4.3 Investment.

SOZO will raise and invest the financial resources necessary for the design, development, construction and ongoing maintenance of the Public Park and Recreation Facility to be located on the Congdon parcel.

4.4 SOZO Sports Campus and Yakima Sports Complex.

From and after the effective date of the Lease, SOZO will be responsible for all costs of improvement, operation and maintenance of the SOZO Public Park and Recreation Facility unless otherwise stated within this Agreement.

4.5 Operating Hours – Activities.

The availability of recreational opportunities for City residents is a material consideration for this Agreement. SOZO and the CITY intend to generate active and passive uses for the Public Park and Recreation Facility to serve the general public. SOZO recognizes that the Public Park and

Recreation Facility's primary purpose is to provide community enjoyment and recreational opportunities consistent with other City parks and RCO grant program requirements. The public park and recreation property may also provide a support opportunity for individuals and children making use of the associated soccer and sport facilities, as well as opportunities for the general public to enjoy the park and recreation amenities offered by the Congdon property. The Public Park and Recreation Facilities shall be made available to the youth and adults from the City and surrounding areas. The general public shall retain access during customary City park hours to the SOZO Public Park and Recreation Facility, which access may include, but is not limited to playground attendance, walking, jogging, general park use and pick up game opportunities. Accordingly, throughout the full term of this Agreement SOZO shall continuously conduct and carry on SOZO's permitted uses in a manner consistent with RCO grant program requirements and shall keep the Public Park and Recreation Facilities open for public enjoyment within the same generally applicable guidelines, rules and regulations as apply to other parks within the City.

4.6 Entry by City and RCO.

City may, during normal operating hours, enter the property at all times to inspect, provide services required hereunder and to post notices of SOZO's noncompliance with the provisions of this Agreement or the Lease, all without being deemed a constructive eviction. Any person or persons who may have an interest in the purpose of City's visit may accompany City. City has the right to use any and all means that City deems proper to open doors and gates in an emergency in order to obtain entry to the property. RCO also may, during normal operating hours, enter the property to determine whether the intended uses and purposes required for this RCO exchange property are being realized.

4.7 Health Inspections.

SOZO shall not knowingly commit or willfully permit to be committed any negligent act or thing contrary to the rules and regulations prescribed by the local board of health, or which shall be contrary to the laws, rules or regulations of any federal, state or municipal authority. SOZO shall allow the Yakima County Health Department to make regular and ordinary inspections of the park and recreation facilities as said health department may deem proper.

4.8 Maintenance, Repair, Improvements.

4.8.1 Maintenance.

SOZO shall, at its sole cost and expense, clean and maintain the Public Park and Recreation Facility and make repairs, restorations, and replacements to the property and associated equipment and facilities, including without limitation the irrigation, mechanical, electrical, and plumbing systems, structures erected thereon including associated roof, walls, and foundations, roof coverings, sprinkling and irrigation systems, and the fixtures and appurtenances to the public park and recreation property as and when needed to preserve them in condition and repair consistent with other City parks (less normal wear from use) throughout the full term of the Lease. SOZO shall further keep in repair and maintain as necessary all machinery, equipment and facilities necessary for maintaining the property and associated facilities during customary City park months

of operation and as provided in other City-maintained parks. SOZO shall paint the exterior of buildings on the property (except the metal) with such frequency as may be required to maintain their safety and good, clean appearance. All such repairs, restorations, and replacements shall be performed and provided in quality and workmanship at least equal to the original work or installations. If SOZO fails to make such repairs, restorations, or replacements to equipment, improvements or buildings on the property within ninety (90) days of written notice by City, City may, but shall not be obligated to, make them at the expense of SOZO and such expense will be paid by SOZO within fifteen (15) days after delivery of an invoice for such expense.

4.8.2 Sidewalk Maintenance.

At its sole cost and expense, SOZO shall maintain any sidewalks and pathways on the Public Park and Recreation Facility in good, safe and presentable condition during the full term of this Agreement, shall be responsible for correcting any unsafe sidewalk and pathway conditions and shall be responsible for the removal of ice and snow from the sidewalks, all as is consistent with state and local laws and ordinances, to the extent typically provided in other City-maintained parks.

4.8.3 Janitorial and Landscaping Services.

At its sole cost and expense, SOZO shall keep the restroom facilities on the Public Park and Recreation Facility clean during the months of normal operation for City park and recreation facilities, and shall provide sufficient maintenance and janitorial services to maintain a tidy appearance on and about the property. SOZO shall provide landscaping maintenance services, lawn care, mowing, fertilizing, irrigation, aeration, sweeping, cleaning, parking lot cleanup and snow plowing and trash and litter collection, when and as required, such that landscaping on the property remains healthy, attractive, clean and well maintained.

4.8.4 Repair of Damage.

In the event any material damage shall occur to the Public Park and Recreation Facility of any kind or nature whatsoever, SOZO shall promptly cause said damage to be reasonably repaired or replaced, as is reasonably necessary, at SOZO's own cost and expense. In the event SOZO fails to accomplish such repair or replacement within forty-five (45) days of receipt of written notice by the City, then in that event City may, but is not required to, enter the property and accomplish such repairs and thereafter bill SOZO who will pay the bill within fifteen (15) days after City sends an invoice for such expense.

4.8.5 Improvements.

SOZO shall be solely responsible for providing adequate funding for all alterations and improvements to the Public Park and Recreation Facility as provided in this Agreement and such alterations or improvements shall be made without cost to the City, except as provided in Section 5.2, 5.3, 5.4 and 5.8. All alterations and/or improvements made upon the Public Park and Recreation Facility shall be subject to compliance with all required permits, inspections and codes

applicable to the actions performed and shall be accomplished in accordance with generally accepted construction methods and means and with RCO grant program requirements.

4.8.6 Alterations of Premises After Construction.

After such time as the Public Park and Recreation Facility has been completed and accepted as defined above, SOZO shall not make any material alteration to the property, including any changes to the landscaping, without the City's prior written consent, such consent to not be unreasonably withheld or delayed. For purposes of this subsection, a "material alteration" shall be deemed alterations not to exceed the cost to SOZO of \$20,000 in any calendar year, adjusted annually on each Lease commencement date to a sum equivalent to one hundred five percent (105%) of the sum of the previous year's monetary limit. The Public Park and Recreation Facilities must be maintained in compliance with all terms of operation and purpose as approved by RCO in accordance with grant program requirements.

4.9 Signs.

SOZO shall place and maintain signs upon the Premises in accordance with the City sign ordinance that indicate the Public Park and Recreation Facility is owned by the City of Yakima and is open to the public at all times consistent with City park operation. Signage shall include specific reference to the funding involvement of the Land Water Conservation Fund in the park project and shall also warn of aircraft operations in the area and prohibit activities such as drone and kite flying that may pose a threat to local aircraft operations and safety.

4.10 Utilities.

4.10.1 Utility Services and Expense.

Except as otherwise provided in this Agreement or in the Lease, SOZO will pay for all domestic and irrigation water, gas, garbage, sewage, stormwater, electricity and other utilities necessary and installed upon the SOZO Public Park and Recreation Facility property, whether or not such services are billed directly to SOZO. SOZO will also procure, or cause to be procured, without cost to the City, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the property of utility appurtenances and appliances for use in supplying such utilities and services to and upon the property. The City, upon request of SOZO, and at the sole expense and liability of SOZO, will join with SOZO in any application required for obtaining or continuing any such services, provided that such services do not violate any other applicable provision of this Agreement. The City shall not be held liable for any injury, loss, or damage caused by or resulting from any interruption or failure of utility services due to any cause whatsoever, unless and to the extent such interruption or failure is the result of the City's negligence. SOZO shall not be entitled to any offset, reduction, or return of consideration as a result of any interruption or failure of services.

4.10.2 Trash & Garbage.

SOZO shall place all trash and garbage from the Public Park and Recreation Facility into such areas and containers as are designed and intended to accommodate the trash and garbage generated within or on the property. SOZO shall not allow trash and/or garbage to accumulate such that a nuisance or health hazard results or attracts wildlife that could cause potential hazards to aircraft operations at the Yakima Air Terminal.

4.11 Hazardous Substances.

4.11.1 Definition.

As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste, or material, which is or later becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in affect pertaining to environmental protection, contamination, or cleanup.

4.11.2 Access to Environmental Information.

SOZO shall keep upon the Public Park and Recreation Facility, in a location accessible to City on request during normal business hours, copies of all reports regarding hazardous or toxic materials in or upon the property that SOZO has provided to any governmental agency in the previous quarter. SOZO shall, upon request by City and at SOZO's expense, provide City with a copy of any such report. In the event of any accident, spill, or other incident involving hazardous or toxic matter that SOZO is required to report to any governmental agency, SOZO shall immediately report the same to the City and supply City with all information and reports with respect to the same, together with SOZO's clean-up or remediation plan and schedule. If such clean-up or remediation plan is not acceptable to City in City's discretion, City may so notify SOZO and, upon 48 hours prior written notice (or without notice if so required by an emergency) may enter on the property to conduct the cleanup or remediation and charge SOZO the cost thereof. All information described herein shall be provided to City regardless of any claim by SOZO that it is confidential or privileged, provided that the City shall not publish or disclose the information to any third party except as required by and pursuant to Chapter 42.56 RCW.

4.11.3 Environmental Indemnification.

SOZO agrees to hold harmless, protect, indemnify, and defend City from and against any damage, loss, claim, or liability, including reasonable attorney's fees and costs, resulting from SOZO's use, disbursement, disposal, transportation, generation, and/or sale of any Hazardous Substances. The City agrees to hold harmless, protect, indemnify, and defend SOZO from and against any damage, loss, claim, or liability, including reasonable attorney's fees and costs, resulting from (a) Hazardous Substances existing on the Park and Recreation Facility as of the Effective Date of the Lease; or (b) Hazardous Substances thereafter used, disposed of, or generated on the property by the City. These indemnities will survive the termination of this Agreement, whether by expiration of the Term or otherwise.

4.12 Risk of Loss.

All SOZO's personal property of any kind or description whatsoever on the Public Park and Recreation Facility shall be at SOZO's sole risk, and City shall not be liable for any damage done to, or loss of, such personal property.

ARTICLE 5 CITY OBLIGATIONS

5.1 Agreement.

City agrees to the terms and conditions of this Agreement.

5.2 Off-Premises Street Access, Parking and Stormwater.

5.2.1 The City will maintain all existing public access areas serving the Public Park and Recreation Facility that are not part of the SOZO property and leaseholds consistent with such standards applicable to municipal parks owned and operated by the City.

5.2.2 The City will maintain all streets and parking areas that are not part of the Yakima Sports Complex and Public Park and Recreation Facility property, including landscaping associated therewith, located adjacent to or providing access to and egress from the Yakima Sports Complex and Public Park and Recreation Facility, consistent with applicable City standards.

5.2.3 The City will extend to exterior boundary lines of the Yakima Sports Complex and Public Park and Recreation Facility such utility services, roads, sidewalks, gutters and lighting as are reasonably necessary to gain approval for zoning modification and/or development of the Public Park and Recreation Facility property, or to operate the Public Park and Recreation Facility property, as part of City's Investment set forth in Section 5.8.

5.3 Naming Rights – Signs – Zoning.

5.3.1 The City grants to SOZO all rights to Public Park and Recreation Facility naming. Provided, however, the City shall be identified as the owner of the property and reference to "Yakima," "City of Yakima", or other reference to "Yakima" as approved by the City shall be incorporated into names and signage.

5.3.2 The City will install directional signage to the Public Park and Recreation Facility as appropriate in various locations throughout the City, and signage shall clearly identify the Public Park and Recreation Facility as an area open to the public under the same conditions as apply to other park areas within the City.

5.4 Public Safety.

The City will provide police and fire services to the park and recreational facility consistent with applicable City standards. The City shall also provide public transportation service to the Public Park and Recreation Facilities.

5.5 Permitting.

The City will make its best effort to expedite all permits, licenses and other municipal approvals required for completion and operation of the Public Park and Recreation Facility.

5.6 City Liaison.

The City will provide a dedicated contact person and liaison with SOZO for all permit and license applications, changes, and variances to complete the Public Park and Recreation Facilities in an expedited manner.

5.7 Fees and Charges.

SOZO agrees that there shall be no cost to individuals utilizing the public parking and Public Park and Recreation Facilities associated with this Agreement. The use of the Public Park and Recreation Facilities shall be available to all members of the public free of charge, to the extent consistent with other City parks. Notwithstanding the foregoing, nor any other provision of this Agreement, SOZO shall be entitled to apply for a City Park Use Permit to allow SOZO to utilize the Public Park and Recreation Facilities in conjunction with its nearby fields with priority over public use up to a maximum of six weekends each calendar year, in accordance with the provisions of the permit issued.

5.8 Investment.

The City has approximately Nine Hundred Thousand Dollars (\$900,000.00) to contribute toward the purchase of the Congdon parcel so long as said purchase can be agreed upon with Congdon within the value established by valid yellow book appraisal. City shall lease the property acquired from Congdon back to SOZO to design, develop, construct and maintain a Public Park and Recreation Facility that will be available to the general public in accordance with the same terms and conditions as apply to other City parks and consistent with RCO grant program requirements. The City shall have no other obligation, financial or otherwise, beyond the purchase of this property and as otherwise set forth in this Agreement.

ARTICLE 6 DESIGN AND CONSTRUCTION OF PREMISES

6.1 Design.

6.1.1 SOZO shall retain a Washington State licensed architect or professional engineer to design the Public Park and Recreation Facility, including parking, walking paths, sidewalks, restroom facilities, playground equipment and other associated accessories. These facilities shall visually blend with the general area setting. The City shall have the right to review, comment on and

approve the final design of the Public Park and Recreation Facility to be certain the design meets the terms and conditions required by RCO, which design shall also be consistent with established City zoning and/or design code.

6.1.2 Where required by applicable provisions of law, SOZO shall comply with the Americans with Disabilities Act of 1990 (ADA) in the design, construction, and operation of the Public Park and Recreation Facility.

6.2 Building and Site Plans.

SOZO shall retain a Washington State licensed architect or professional engineer, registered in the State of Washington, to prepare site plans for the Public Park and Recreation Facility, which shall depict and describe the structures, utilities, and landscape plan. The City shall have the right to approve the final construction and site plans comprising the Public Park and Recreation Facility, such approvals to not be unreasonably withheld or delayed.

6.3 Construction/Site Work/Fencing.

SOZO shall be solely responsible for the development and construction of the Public Park and Recreation Facility within its exterior boundaries and shall be responsible for the site work, utility installation, all required permits (including construction stormwater control) and surface grading. Permits may also be required from Washington Department of Ecology for construction work carried on in close proximity to wetland areas. SOZO shall properly barricade the work area and install signage restricting unauthorized persons from entering onto the construction site during any phase of development or construction. Unless otherwise specifically agreed by the City in writing, fencing shall be placed around the entire building or structure during construction. In addition, the building site shall be kept in a clean and organized condition during development periods. SOZO shall take the necessary steps to protect and preserve any wetland areas that must be preserved in accordance with Department of Ecology direction, and shall not develop any pathways, sidewalks or use areas in a way that would interfere with said preservation. SOZO shall be responsible for site security, traffic and pedestrian signage, warnings and control at the site during the development and construction phases.

6.4 Construction Deadlines.

6.4.1 SOZO shall be required to complete the development and construction of the SOZO Public Park and Recreation Facility property as designed and in accordance with RCO grant program requirements within three (3) years of RCO's approval of the property as an acceptable exchange for the Chesterley Park property that may be subject to construction by the YMCA. Completion of the development and construction of the Public Park and Recreation Facility is defined as that date upon which all final occupancy permits are obtained by SOZO for public use of the property consistent with Exhibit B and the terms of this Agreement.

6.5 Failure to Meet Construction Deadlines/Time of Essence.

6.5.1 Except as provided in Section 9.15 herein, it is mutually understood and agreed that failure by SOZO to meet the development and construction deadlines shall constitute a material breach of the Lease and this Agreement by SOZO, in which event the City, at its option, can terminate the Lease and this Agreement for cause pursuant to Article 8. Time is of the essence with this Agreement.

6.5.2 Notwithstanding Section 6.4 and 6.5.1, SOZO's obligation to commence construction shall not begin until the City has issued building/construction permit(s) for the Public Park and Recreation Facility.

6.6 Stormwater Drainage, Sewer, Irrigation and Water Lines.

SOZO shall be responsible for installing all required storm drains, stormwater facilities, sewers, water and irrigation lines within the exterior boundary lines of the property to all required use points within the Public Park and Recreation Facility, as required to complete development and construction of the property, it being understood the City will bring such necessary utility infrastructure to the exterior boundaries of the Public Park and Recreation Facility at City expense.

6.7 Development and Construction Fees and Expenses.

6.7.1 SOZO shall be responsible for obtaining and paying for necessary permits, fees and expenses associated with the development and construction of the Public Park and Recreation Facility. In addition, SOZO shall be responsible for any additional costs for inspections billed to the City by any government agency, including but not limited to the City of Yakima, Yakima County, or the State of Washington.

6.7.2 Notwithstanding Section 6.7.1, SOZO shall not be obligated to pay permit fees, City utility connection charges (if any), including any transportation impact or environmental mitigation fees, in an aggregate amount in excess of One Hundred Thousand Dollars (\$100,000.00), excluding utility meter fees, to any portion of the Yakima Sports Park, the SOZO Public Park and Recreation Facility, and the 58 acre Sozo Sports Complex. City shall be responsible for any such fees in excess of the One Hundred Thousand Dollars set forth in this Section 6.7.2.

6.8 Public Works Project.

6.8.1 The development and construction of the Public Park and Recreation Facility constructed on the City owned property shall not be constructed as a public works project requiring the payment of prevailing wages. SOZO is the developer and the City is the property owner but the City shall not be participating in the construction or sharing the construction costs of the Public Park and Recreation Facility constructed on the City owned property in accordance with the terms and conditions set forth herein. This provision is a material part of the consideration for this Agreement.

6.8.2 The project signage and all literature and advertising by either the City or SOZO shall indicate that the development of the publicly owned property is a private project and as such is not subject to a City public work contract.

6.9 No Liens.

Except encumbrances of any lender pursuant to Article 6 herein, it is mutually understood and agreed that SOZO shall have no authority, express or implied, to create or place any encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of the City in the fee interest in the Public Park and Recreation Facility, or to charge the rentals payable hereunder for any claim in favor of any person dealing with SOZO, including those who may furnish materials or perform labor for any construction or repairs, and each such claim shall affect and each such lien shall attach to, if at all, only the right and interest granted to SOZO by this Agreement. If any such liens are filed, City may, without waiving its rights and remedies for breach, and without releasing SOZO from its obligations hereunder, require SOZO to post security in form and amount reasonably satisfactory to City or cause such liens to be released by any means City deems proper, including payment in satisfaction of the claim giving rise to the lien. SOZO shall pay to City, upon demand, any sum paid by City to remove the liens. Further, SOZO agrees that it will save and hold the City harmless from any and all actual costs or expenses based on or arising out of the asserted claims or liens, except those of the lender, against this Agreement or against the right, title, and interest of the City in the City owned property or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by City in removing such liens, and in enforcing this paragraph. Additionally, it is mutually understood and agreed that this paragraph is intended to be a continuing provision applicable to future repairs and improvements after the initial construction phase.

6.10 Insurance and Indemnification Requirements During Construction.

6.10.1 Indemnification/Hold Harmless

SOZO shall require its construction contractors and subcontractors to defend, indemnify and hold the City, its officers, elected officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including reasonable attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

6.10.2 Commercial General Liability Insurance

SOZO shall require its construction contractors to procure and maintain, for the duration of construction of the Public Park and Recreation Facility, commercial general liability insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the construction contractors and subcontractors, their agents, representatives, employees or subcontractors. All said policies shall name the City of Yakima, its elected officials, officers, agents, employees, and volunteers as additional named insureds and shall include a provision prohibiting cancellation or reduction in the amount of said policies except upon thirty (30) days prior written notice to the City. SOZO shall require its construction contractors to maintain minimum commercial general liability insurance limits of no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

6.10.3 Builders Risk Insurance.

SOZO shall require its construction contractors to procure and maintain, for the duration of construction of the Public Park and Recreation Facility, Builders Risk insurance covering interests of the City and the construction contractor in the work. Builders Risk Insurance shall be on all-risk policy forms and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. The Builders Risk insurance covering the work will have a maximum deductible of Five Thousand Dollars (\$5,000) for each occurrence, payment of which will be the responsibility of the construction contractor. Higher deductibles for flood perils may be accepted by the City upon written request by SOZO and written acceptance of the specific terms by the City. Any increased deductibles accepted by the City that are in excess of the Five Thousand Dollars (\$5,000) maximum deductible will remain the responsibility of the construction contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by SOZO. SOZO shall require its construction contractors to maintain Builders Risk insurance in the amount of the completed value of the project, with no coinsurance provisions.

6.10.4 Subcontractors.

SOZO shall require its construction contractors to include all subcontractors as insureds under its policies or shall furnish separate certificate and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the same insurance requirements as stated herein for the construction contractor.

6.10.5 Verification of Coverage.

SOZO shall furnish the City with original certificates and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Commercial General Liability insurance of the construction contractor before commencement of the work. Before any exposure to loss may occur, SOZO shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

ARTICLE 7 FINANCING AND SECURITY INTERESTS

7.1 Financing – City Obligation.

City shall not share in the financing of construction improvements carried out upon, to, or with respect to any portions of the Public Park and Recreation Facility. Costs of improvements to the Public Park and Recreation Facility, including design, development, construction and infrastructure shall be solely SOZO's responsibility. The City shall be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Public Park and Recreation Facility. SOZO shall, when applying for and obtaining financing, inform any lender

that the City has no financial obligations associated with the construction, maintenance, repairs or subsequent improvements to the City owned property subject to this Agreement.

7.2 Mortgages – Generally.

SOZO, and its successors and assigns, shall have the unrestricted right to mortgage its interests under this Agreement and the Lease, subject, however, to the limitations set forth herein. As used herein, "Leasehold Mortgage" shall include any such mortgage(s) or deed(s) of trust on the Estate to be created by this Agreement; "Purchase Money Mortgage" shall include any Mortgage granted to SOZO (or SOZO's successors) in connection with the sale of the interest in this Agreement and/or the Lease; and "Estate" shall mean the estate of SOZO created by this Agreement and the Lease *upon and subject to all the terms and conditions of this Agreement and the Lease*. Any such Mortgage shall be subject to the rights of City hereunder in accordance with all the terms and conditions of this Agreement and the Lease. *In no circumstances and under no condition shall City's fee interest in the Park and Recreation Facility property be encumbered by, subject to or subordinate to a Mortgage.*

7.3 Security Interest in Premises and Agreement/Consent.

Subject to the terms set forth in Section 7.2 the City consents to the grant, transfer, pledge and assignment of any and all right, title, claim or interest of SOZO in and to this Agreement and in the Lease for the Public Park and Recreation Facility ("Collateral") to lender for financing purposes. The City shall recognize lender's first priority security interest in the SOZO Collateral and the City hereby subordinates any and all interest of the City in said *SOZO-owned non-fixed Collateral* to lender. SOZO acknowledges that the City will not grant any security interest to any lender in any City property nor will the City allow any encumbrance of any kind or nature whatsoever upon, or in any manner on its title to any City property. In the event of default by SOZO to lender, in addition to all its rights and remedies available at law and equity, lender may enforce and/or foreclose its security interest/interests in the non-fixed Collateral. City agrees that in connection with any such default, and all without further consent of City, lender may:

7.3.1 Acquire SOZO's interest in the non-fixed Collateral either by a deed in lieu of foreclosure or actual foreclosure;

7.3.2 Rent and/or grant a ground lease of the Public Park and Recreation Facility subject to this Agreement pending foreclosure of the Collateral by lender;

7.3.3 Assign, sell and/or transfer the non-fixed Collateral in whole or in part to any person or entity;

7.3.4 Take possession of any or all of the non-fixed Collateral, obtain right of substitution for SOZO and operate said non-fixed Collateral; and/or

7.3.5 Appoint a receiver.

7.4 Lender's Reliance on Term.

The City acknowledges that SOZO, in making application for financing, may be required to have an assurance that the terms of this Agreement will extend beyond the term of the financing term. By its signature to this Agreement, the City confirms its authority to provide the forty (40) year Lease term conditioned solely upon SOZO maintaining current payments and remaining in full compliance with the terms and conditions of this Agreement and the Lease. Additionally, the City acknowledges that, after any original financial commitments by SOZO have been satisfied, these financing provisions shall be applicable to all future advances or financing required by SOZO and used for the improvements and repairs of the Public Park and Recreation Facility.

7.5 Surrender of the Collateral.

No surrender of non-fixed Collateral or of the property subject to this Agreement or any other act of SOZO shall be deemed to terminate this Agreement. City will not terminate this Agreement voluntarily by agreement with SOZO unless lender has been previously notified in writing and has consented to the termination in writing. This Agreement shall not be amended or modified unless lender has been previously notified in writing and has consented to such amendment or modification in writing.

7.6 Notice of Default and Lender's Rights.

7.6.1 Notice of Default.

If SOZO materially defaults under this Agreement or the Lease, or if any event occurs which would give City the right to terminate, modify, amend or shorten the term of this Agreement or the Lease, City shall take no steps to exercise any right it may have under this Agreement without first giving lender written notice of such default in accordance with Article 7.12 below. A copy of each and every written notice of default served or sent by City or its agent to or upon SOZO pursuant to this Agreement shall be sent contemporaneously to lender in accordance with Article 7.12 below. Such notice of default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

7.6.2 Termination for Monetary Default.

If the written notice of default given by City to lender relates to a monetary default and SOZO has not cured such monetary default within thirty (30) days after lender receives the notice and SOZO's failure to cure results in City desiring to terminate this Agreement or the Lease, City may terminate this Agreement and the Lease if such monetary default is not cured by either SOZO or lender within forty-five (45) days after lender receives the notice of default.

7.6.3 Termination for Non-Monetary Default.

If the written notice of default given by City to lender relates to a non-monetary default and SOZO has not cured or diligently pursued curing such non-monetary default within thirty (30) days after lender receives the notice, City shall take no action to terminate this Agreement and/or the Lease if:

- Within sixty (60) days after City's notice to lender regarding SOZO's failure to cure (or failure to diligently pursue a cure) lender notifies City of its intent to realize upon its security interest and commences realization within sixty (60) days thereafter, and diligently pursues realization; and
- Lender pays City at time of notification all monies or performances due that may be in default up to the day lender notifies City of lender's intent and further pays or performs all consideration that accrues during the period after lender so notifies City and completes such other performances that may be required or that come due under this Agreement.

City shall not terminate this Agreement nor the Lease because of SOZO's breach of any terms of this Agreement or the Lease relating to the solvency of SOZO or the institution of any bankruptcy, insolvency, receivership or related action by or against SOZO as long as lender cures any default under this Agreement by SOZO as provided herein, except that lender shall not be required to cure any defaults relating to solvency of SOZO.

7.7. Right to Assign.

Lender shall have the right to assign its interest in the non-fixed Collateral. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and be bound by all of the terms of this Agreement and the Lease, lender shall be relieved from further liability under this Agreement and the Lease. If a lender finances the purchaser, assignee or transferee, said lender shall be subject to all obligations as set forth in this Agreement and the Lease.

7.8 Disposition of Insurance.

Should the non-fixed Collateral suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by SOZO, City agrees that SOZO and lender shall have the right to such proceeds so long as none of the City's property, utilities or other services therein are damaged or all such damages are repaired to City's reasonable satisfaction. In the event the City's land is substantially damaged and SOZO's improvements have been repaired, City shall only participate in the insurance proceeds to the extent necessary to repair and restore City's land and any of the City's improvements on or in the ground to the same condition as existed at the time of the casualty. Other than as described herein, City shall have no claim to insurance proceeds that are attributable to SOZO's interest in the Collateral.

7.9 Right to Participate in Litigation.

Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the non-fixed Collateral or interest of SOZO or lender therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. City, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify lender of the same.

7.10 Right to Remove Collateral.

In the event lender exercises its rights under its identified non-fixed Collateral, as provided in this Agreement, and realizes upon the non-fixed Collateral, City agrees that lender is entitled to remove the non-fixed Collateral, including but not limited to trade fixtures and identified non-fixed equipment, from the Public Park and Recreation Facility at any reasonable time and that the non-fixed Collateral shall remain personal property. In the event lender so realizes on its non-fixed Collateral, City waives any right, title, claim, lien or interest in the non-fixed Collateral.

7.12 Notices.

All notices, copies of notices, demands, consents or other communications to lender given under this Agreement to lender must be in writing and shall be effective when received by personal delivery or as of the third business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar next business-day delivery system. Such communications shall be given to an officer of lender in a manner recognized by law as legal notification, addressed to lender at an address as provided by lender.

ARTICLE 8 TERMINATION

8.1 Obligation to Perform.

Nothing herein shall imply any duty upon City to do any work, which under any provision of this Agreement SOZO may be required to perform, and the performance thereof by City shall not constitute a waiver or SOZO's default in performance of the terms of this Agreement.

8.1.2 Payments to Other Parties.

Except as otherwise expressly provided hereunder, all obligations of SOZO under this Agreement or the Lease will be performed by SOZO at SOZO's sole cost and expense. If SOZO fails to pay any sum of money owed to any party other than City for which SOZO is liable hereunder, or if SOZO fails to perform any other act on its part to be performed hereunder, and such failure continues for thirty (30) days after written notice thereof by City, City may, without waiving or releasing SOZO from its obligations, make any such payment or perform any such other act to be made or performed by SOZO. SOZO shall pay City, on demand, all sums so paid by City and all necessary incidental costs, together with interest accruing thereon at the lesser of one percent (1%) per month, or the maximum rate permissible by law from the date of such payment by City.

8.2 Default.

8.2.1 City's Default.

City will not be in default unless City fails to perform an obligation required under this Agreement or the Lease within sixty (60) days after written notice by SOZO, which notice must specify the

alleged breach; provided that if the nature of City's obligation is such that more than sixty (60) days are reasonably required for cure, then City will not be in default if City commences to cure within sixty (60) days of SOZO's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

8.2.2 SOZO's Default.

The occurrence of any one or more of the following events constitutes a default under this Agreement and the Lease by SOZO: (1) SOZO shall be in default of the performance of any covenants, conditions, or provisions of this Agreement, other than the covenants for the payment of consideration required by this Agreement or the Lease, where such failure continues for a period of sixty (60) days after written notice by City provided that if the nature of SOZO's obligations is such that more than sixty (60) days are reasonably required for cure, SOZO will not be in default if SOZO commences to cure within sixty (60) days of City's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or (2) SOZO shall be adjudged a bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy shall be appointed for SOZO's estate and such appointment is not vacated within sixty (60) days; or (3) if this Agreement or the Lease shall be assigned, or any portion of the Public Park and Recreation Facility be sublet other than in accordance with the terms of this Agreement or the Lease and such default is not cured within thirty (30) days after written notice to SOZO; or (4) SOZO shall fail to make any payment when due, or fail to make any other payment required hereunder or by the Lease when due, when that failure is not cured within thirty (30) days after mailing written notice thereof by City.

8.2.3 Default for Other Cause.

This Agreement and the Lease may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement or the Lease, through no fault of the terminating party, and the non-performing party does not commence correction of the failure of performance within sixty (60) days of the terminating party's sending notice of the default to the non-performing party.

8.3 Remedies are Cumulative.

Remedies under this Agreement and the Lease are cumulative; the failure to exercise on any occasion any right provided by this Agreement or the Lease shall not operate to forfeit such remedy or right.

8.4 Destruction of Premises and Use of Insurance Proceeds.

8.4.1 Unless otherwise mutually agreed by the Parties, in the event the Public Park and Recreation Facility is destroyed or damaged by fire or other casualty, then SOZO shall proceed to rebuild and restore the property, or such part thereof as may be damaged as aforesaid. In the event of any loss covered by the insurance policies described and required pursuant to Article 9.5.1 herein, and unless this Agreement or the Lease shall be terminated as a result of said loss, as

provided herein, then the proceeds of such insurance policies shall be applied by SOZO first to rebuild and restore the public park and recreation property and replace the improvements, fixtures, and equipment, which may be damaged or destroyed by such casualty. All restoration work must be completed in accordance with the original design to maintain compliance with Washington Recreation and Conservation Office grant program and project agreement requirements and conditions.

8.4.2 Notwithstanding the forgoing, in the event the public park and recreation property is destroyed by fire or other casualty SOZO may elect to restore the public park and recreation property to a condition equivalent to or better as existed as of the date of the casualty, and terminate the Agreement and Lease without further obligation except as otherwise provided in this Agreement and the Lease.

8.5 Duties Upon Termination.

Upon termination of this Agreement and the Lease, and unless otherwise arranged in writing by the Parties, SOZO shall remove all its non-fixed personal property, goods, and effects from the Public Park and Recreation Facility. In the event that SOZO fails to perform this duty at termination, the City may cause such removal to be made and said non-fixed personal property, goods, and effects to be stored, the actual cost and expense to be paid by SOZO. It is agreed that improvements that are attached to the property, such as restroom facilities, pathways, signage and playground equipment shall remain with the property as permanent fixed improvements thereto. It is further mutually understood and agreed that all permanent fixed improvements to the public park and recreation property shall revert to the City at the termination of this Agreement.

ARTICLE 9 GENERAL CONDITIONS

9.1 Relationship to Parties.

9.1.1 Independent Status.

The Parties intend that an independent relationship shall be created by this Agreement and the Lease. Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the parties hereto, and neither the method of computation of consideration nor any other provision contained herein shall be deemed to create any relationship between the Parties thereto other than the relationship of City granting a ground lease to SOZO for development of Public Park and Recreation Facilities for the general public's use and enjoyment. SOZO has the experience, ability, and resources to develop, maintain and operate the park and recreation property and is performing independent functions and responsibilities within its field of expertise. SOZO, its personnel and agents are independent contractors and not employees of the City. No agent, employee, servant, or representative of SOZO shall be deemed to be an employee, agent, servant or representative of the City. SOZO and its personnel have no authority to bind the City or to control the City's employees. As an independent contractor, SOZO is responsible for its own management. The City's administration and enforcement of this

SOZO shall possess a current Yakima Business License and shall obtain all regulatory licenses and permits, including all construction and building permits, necessary to fulfill SOZO's obligations under this Agreement and the Lease at SOZO's sole expense. Each party agrees to execute such additional or other documents as may be required to fully implement the intent of this Agreement and the Lease.

9.4.2 Taxes and Fees.

As an independent contractor, SOZO shall be solely responsible for its taxes, fees and charges incurred, including but not limited to license fees, business and occupation taxes, workers' compensation and unemployment benefits, its federal, state, regional, county and local taxes and fees, including income taxes, property taxes, permit fees, operating fees, surcharges of any kind that apply to any and all persons, facilities, property, income, equipment, materials, supplies or activities arising from SOZO's property ownership and operations under this Agreement and the Lease.

9.4.3 Leasehold Excise.

City shall be responsible for payment of leasehold excise tax, if any, under this Agreement and the Lease.

9.4.4 Admissions Tax.

The City acknowledges that SOZO, as a non-profit entity, is not subject to the City's admissions tax. In the event the City's admissions tax is made applicable to non-profit entities, including SOZO, all amounts collected and paid by SOZO to City as admissions taxes shall be a credit against (i.e., deducted from) amounts otherwise payable by SOZO to City under this Agreement and the Lease.

9.5 Insurance.

9.5.1 Fire and Casualty Insurance.

SOZO agrees that, at all times during the full term of this Agreement and the Lease, SOZO shall, at its sole cost and expense, maintain in full force and effect adequate fire, flood and other casualty coverage covering the public park and recreation property and its contents, including all non-fixed personal property, fixtures and improvements. Such policy shall include a replacement cost endorsement. SOZO shall obtain and file with the City's Risk Manager a Certificate of Insurance evidencing such coverage. SOZO shall provide the City with a thirty (30) day cancellation notice prior to any policy cancellation. Adequacy of coverage is defined as insurance sufficient to restore the public park and recreation property to its pre-casualty condition.

9.5.2 Liability Insurance During Term of Lease.

Prior to the Effective Date of the Lease, SOZO, at its own expense, shall obtain and file with the City's Risk Manager a Certificate of Insurance evidencing commercial general liability insurance coverage ("CGL") providing coverage of at least \$2,000,000 per occurrence and \$2,000,000 general aggregate. This Certificate of Insurance shall be subject to approval by the City's Risk Manager as to company, terms and coverage and said approval shall not be unreasonably withheld. The CGL shall name the City, its elected officials, officers, agents, employees, and volunteers as additional named insureds and must fully protect the City from any and all claims and risks and

losses in connection with any activities or omissions by SOZO by virtue of this Agreement and the Lease. The CGL policy shall remain in full force and effect at SOZO's sole expense for liability for property damage or personal injury that may occur in connection with activities or omissions by SOZO, and provide continuous coverage for the full term of this Agreement and the Lease. SOZO shall insure that the City's Risk Manager is given thirty (30) calendar days prior written notice, by certified mail, of any cancellation, lapse, reduction or modification of such insurance.

9.5.3 Release and Waiver of Subrogation.

Any policy of insurance carried by either City or SOZO pursuant to any obligation under this Agreement or the Lease shall, to the extent available, contain a waiver of subrogation clause on the part of the insurer. Such waiver shall apply to damages to adjacent property owned by either Party. Notwithstanding any other provision of this Agreement or the Lease, neither City nor SOZO shall be liable to the other party or to any insurance company (by subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the public park and recreation property, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if such loss or damage is covered by property insurance issued by an insurance carrier authorized or licensed by the Insurance Commissioner of the State of Washington to issue lines of insurance benefiting the party suffering such loss or damage or was required under the terms of this Agreement or the Lease to be covered by insurance by the party covering the loss.

9.6 Hold Harmless, Indemnification, and Industrial Insurance.

9.6.1 Hold Harmless and Indemnification.

Each Party hereto agrees to be responsible for and assumes liability for its own wrongful or negligent acts or omissions, or those of its elected officials, officers, agents, volunteers or employees to the fullest extent required by law. Each Party agrees to save, indemnify, defend, or hold the other Party harmless against all liability, loss, damages and expenses, including costs and reasonable attorney's fees, resulting from actions, claims and lawsuits arising or alleged to have arisen in whole or in part, out of or in consequence of the acts or failures to act by the other Party, its elected officials, officers, employees, subcontractors, agents, volunteers or its assigns, which arise in any way out of the performance of this Agreement or the Lease. In the case of negligence of both the City and SOZO, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other Party in proportion to the percentage of negligence attributable to the other Party.

9.6.2 Industrial Insurance.

The Parties have specifically negotiated SOZO's waiver of its immunity under Title 51 RCW, which is hereby waived for purposes of SOZO's indemnification and hold harmless of the City, including the duty to defend. This provision shall be inapplicable to the extent such action, claim, or lawsuit is judicially found to arise solely from the acts or failures to act by the City.

9.7 Successors and Assigns.

9.7.1 The City and SOZO each agree to be bound to the other party in respect to all covenants, agreements, and obligations contained in this Agreement and the Lease. In recognition of SOZO's expertise and experience in park facility management, SOZO may not assign its rights under this Agreement nor the Lease without City's prior written consent to said assignment, which consent may be withheld in the City's sole and absolute discretion. Except as provided in Article 7 and Section 9.7.2 herein, neither party shall assign the Agreement in part or as a whole, without the written consent of the other. Except as otherwise provided in this Agreement, SOZO shall not sublease any of the park and recreation property, without written notice to and approval from the City and full compliance with RCO grant program requirements.

9.7.2 The City acknowledges that SOZO is authorized under another Agreement and its accessory Lease, without further City approval, to enter into space leases, rental agreements, and/or grant sub-concessions within the Yakima Sports Park for individual facility operations, food and beverage services; athletic equipment operation, sales and service; and similar supporting entities. The Parties hereto specifically acknowledge that no such permission is authorized under this Agreement for purposes of the use of the SOZO Public Park and Recreation Facility, which shall remain free and clear of any commercial enterprise activities.

9.7.3 When requested, City's approval of a subcontract or sublease shall not be unreasonably withheld or delayed, subject to the specific provision of Section 9.7.2, above.

9.7.4 In the event of an assignment, subcontracting, or delegation of duties, SOZO shall remain solely responsible for the full and faithful performance of all terms and conditions of SOZO's obligations under this Agreement and the Lease; any assignee, subcontractor or other obligor shall also become responsible to the City for the satisfactory performance of the services, facilities, or equipment assumed. The City may condition approval of subcontractors and assignees upon the delivery by the assignee, subcontractor, or other obligor of its covenant to the City to fully and faithfully complete the requirements or responsibility undertaken under this Agreement and/or the Lease.

9.7.5 Notwithstanding the foregoing, provided SOZO is not in default, SOZO may assign its interest in this Agreement and/or the Lease to a parent, affiliate or subsidiary with City's written consent and RCO review, which consent will not be unreasonably withheld or delayed. Except as otherwise provided herein, all of the covenants, conditions, and provisions of this Agreement are binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

9.8 Bankruptcy.

Except as provided in Article 7 herein, Parties agree that if SOZO is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement and the Lease, at the option of the City may be terminated if the bankruptcy is not timely cured in accordance with Section 8.2.2.

9.9 Compliance with Laws.

SOZO, its officers, employees, and agents shall comply with the applicable federal, state, county and local laws, statutes, rules, regulations, and ordinances, in performing its obligations under this Agreement and the Lease. Such compliance shall include abiding by all applicable federal, state and local policies to ensure equal employment opportunity based on ability and fitness to all persons regardless of race, creed, color, national origin, religion, sex, physical handicaps, or age. SOZO shall comply with applicable laws pertaining to employment practices and employee treatment. Conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and standards and regulations issued under these Acts must be complied. SOZO agrees to indemnify and hold harmless the City from all damages assessed for SOZO's failure to comply with the Acts and Standards issued thereunder. SOZO is also responsible for meeting all pertinent local, state and federal health and environmental regulations and standards applying to any operation in the performance of this Agreement and the Lease. SOZO shall also operate the Public Park and Recreation Facility in compliance with provisions of the Land and Water Conservation Fund Act and implementation guidelines in accordance with 36 CFR 59.

9.10 Nondiscrimination.

Parties shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status or disability, except for employment actions based on bona fide occupational qualification.

9.11 Choice of Law and Venue.

This Agreement and the Lease shall be interpreted according to the laws of the State of Washington. Any action necessary to enforce the terms of this Agreement and the Lease or to resolve disputes arising out of this Agreement or the Lease shall be brought in a court of competent jurisdiction in Yakima County, Washington.

9.12 Costs and Attorney's Fees.

In any action brought to enforce any provision of this Agreement or the Lease, including actions to recover sums due or for the breach of any covenant or condition of this Agreement or the Lease, or for the restitution of the public park and recreation facilities to the City or eviction of SOZO during the term or after expiration thereof, the substantially prevailing party shall be entitled to recover from the other party all reasonable costs and reasonable attorneys' fee(s) incurred, including the fees of accountants, appraisers, and other professionals, at trial or on appeal, and without resort to suit.

9.13 Modification.

This Agreement and/or the Lease may only be modified by written instrument signed by both Parties and in a manner consistent with RCO grant program requirements.

9.14 Change in Law/Renegotiation.

The Parties agree that changes in federal, state or local laws or regulations that materially modify the terms and conditions of the Agreement or the Lease and result in a detrimental change in circumstances or a material hardship for either Party in performing this Agreement or the Lease may be the subject of a request by a Party to renegotiate this Agreement or the Lease, or negotiate amendments thereto and the responding Party agrees to renegotiate fairly with the requesting Party.

9.15 Force Majeure.

Provided that all other requirements of this Agreement and the Lease are met, either Party shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement nor the Lease if that Party's performance is prevented or delayed by acts of God including but not limited to landslides, lightning, forest fires, storms, floods, freezing, earthquakes, volcanic ash, civil disturbances, strikes or labor interference, acts of the public enemy, wars, blockades, public riots, breakage, explosions, accident to machinery, equipment or materials, unavailability of required materials, governmental restraint or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of that obligated Party ("Force Majeure"). If as a result of a Force Majeure event, an obligated Party is unable wholly or partially to meet its obligations under this Agreement or the Lease, it shall give the other Party promptly written notice of the Force Majeure event, describing it in reasonable detail. The obligated Party's obligations under this Agreement and/or the Lease shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists.

9.16 Waiver.

Failure to enforce any provision of this Agreement or the Lease shall not be deemed a waiver of that provision. No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. Waiver of any right or power arising out of this Agreement or the Lease shall not be deemed waiver of any other right or power.

9.17 Illegal Provisions – Severability.

Should any part of this Agreement or the Lease be found void, illegal or unenforceable the offending provision(s) shall be stricken and the balance of the Agreement or the Lease shall remain in full force and effect.

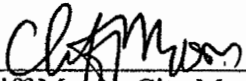
9.18 Article Headings, Gender and Number.

Article paragraph headings are not to be construed as binding provisions of this Agreement; they are of the convenience of the Parties only. The masculine, feminine, singular and plural of any

IN WITNESS WHEREOF, this Agreement has been entered into between the City of Yakima and SOZO Sports of Central Washington as of this ____ day of _____, 2017.

CITY OF YAKIMA

A Washington Municipal Corporation

By 
Cliff Moore, City Manager

Date: 7/12/17

APPROVED AS TO FORM:

By 
Jeff Cutler, City Attorney

ATTEST:

By 
Sonya Claar-Tee, City Clerk

City Contract No.: 2017-102

Resolution No.: R-2017-085

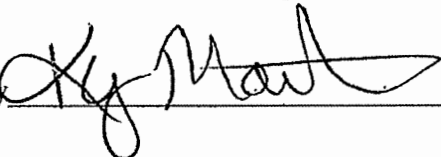
Exhibit A – Legal Description of Park and
Recreation Facility

Exhibit B – Preliminary Site and
Development Plans

Exhibit C – ~~Park and Recreation Facility~~
~~Model~~

**SOZO SPORTS OF CENTRAL
WASHINGTON, INC.**

A Not-for-Profit Washington Corporation

By 

Date: 5-14-17

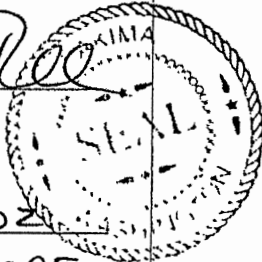


EXHIBIT A

REAL PROPERTY DESCRIPTION

The Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

EXCEPT beginning at the Northwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

thence Easterly along the North line of said subdivision 1,320 feet, more or less, to the Northeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 34, Township 13 North, Range 18, E.W.M.;

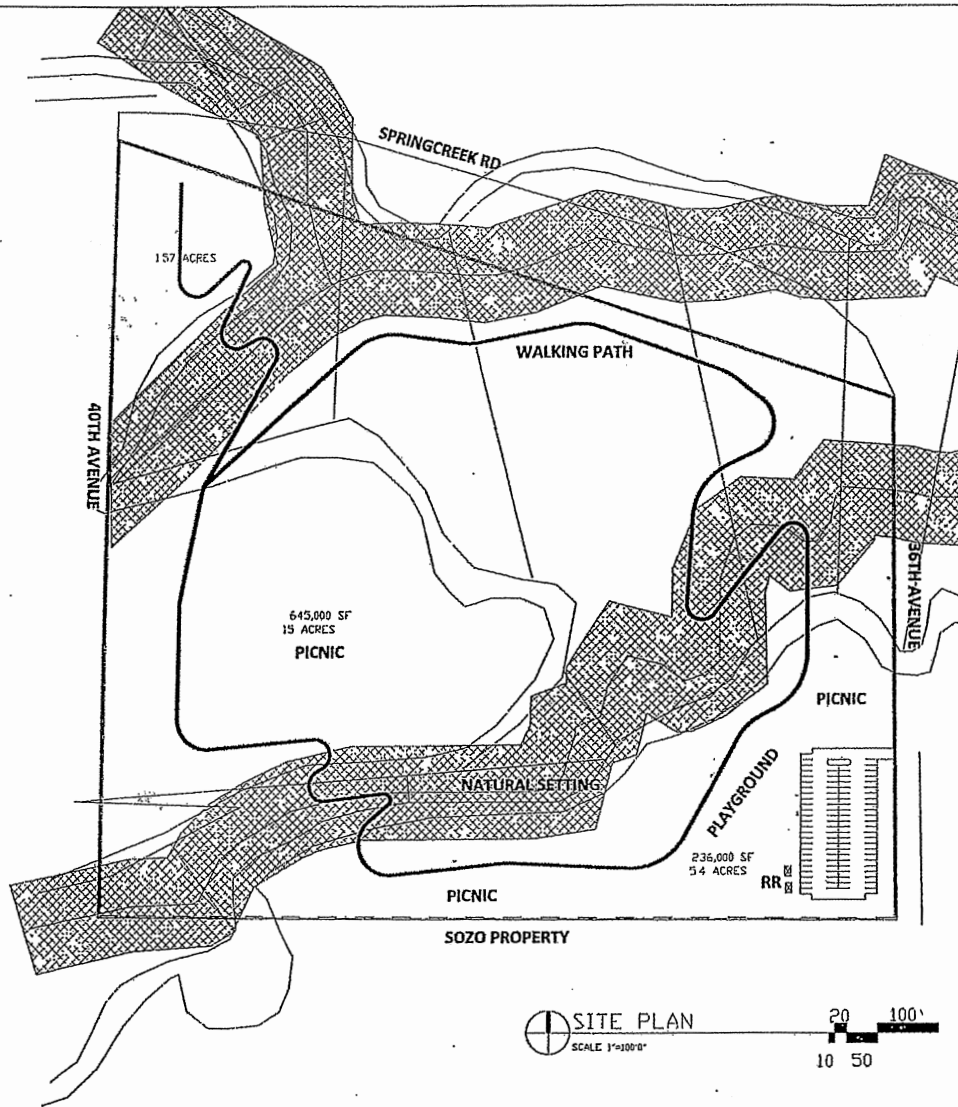
thence Southerly along the Easterly line of said subdivision 511.03 feet;

thence North 70° 03' West 1,402.4 feet, more or less, to the Westerly line of said subdivision;

thence Northerly along the Westerly line of said subdivision 37.1 feet, more or less, to the point of beginning;

AND EXCEPT that part lying within the County Road, along the North and East sides. Situated in Yakima County, State of Washington.

EXHIBIT B



PROPOSED
32 ACRES - RCD - STUDY
YAKIMA, WASHINGTON

Design Development
SITE STUDY

Drawing Date
7/1/04
1:00

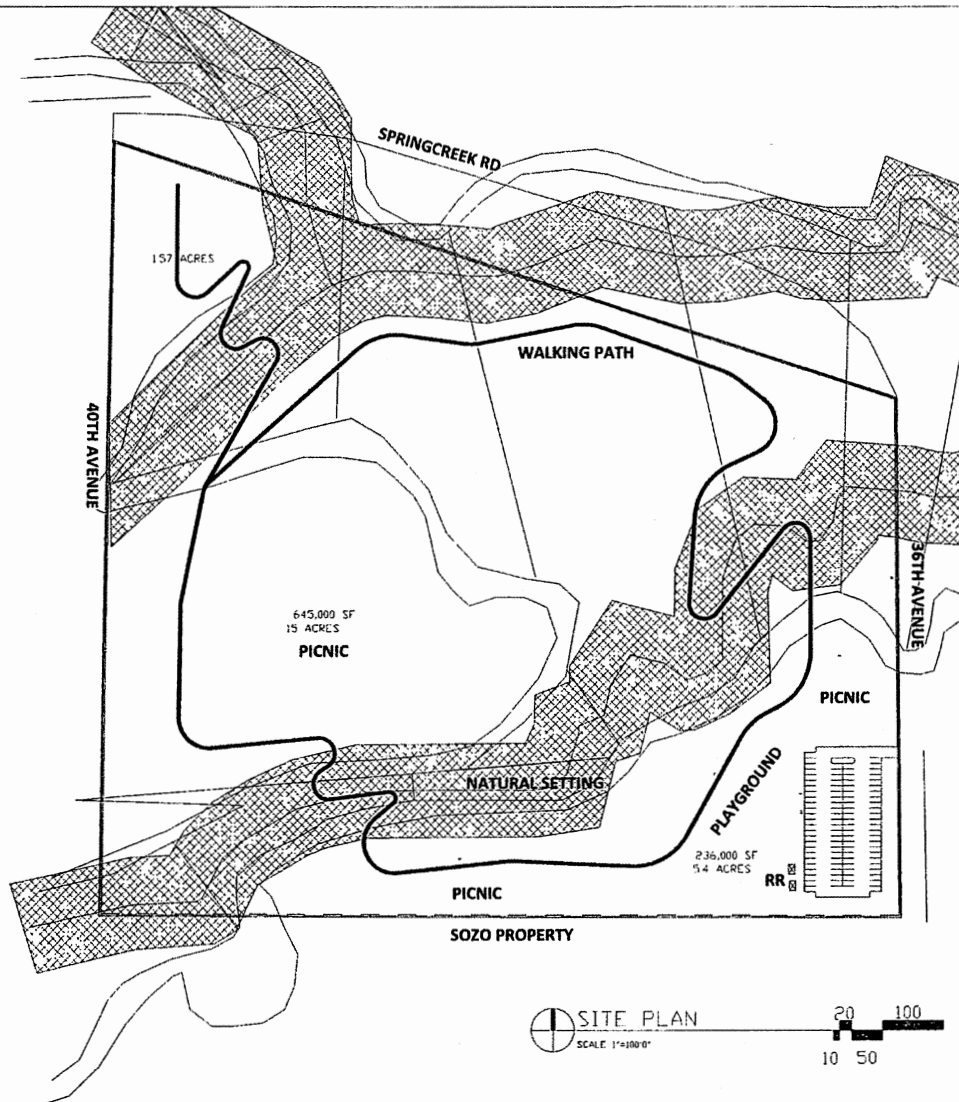
VERSION V.1

North Arrow
SCALE 1"=100'
PAPER SIZE 24" x 36"
Sheet Number

C.1

Exhibit C – Property Site Plan

EXHIBIT C



DIGITAL DESIGN
& DEVELOPMENT, LLC
1000 1st Ave.
Yakima, WA 98901
509.423.1100
1111 1st Ave. S.W.
© 2004 Digital Design & Development, LLC

PROPOSED
32 ACRES - RCD - STUDY
YAKIMA, WASHINGTON

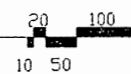
Design Development
SITE STUDY

Drawing Date
10/1/04
10/1/04

Version V.1

GRAPHIC SCALE: 1"=100'
PAPER SIZE: 24" x 36"
Sheet Number

SITE PLAN
SCALE: 1"=100'



C.1