CITY CLERK ORIGINAL

C-9917
04/14/2015

TEMPORARY PARKING AGREEMENT

THIS TEMPORARY PARKING AGREEMENT (this "Agreement") is made and entered into effective as of APRIL 14, 2015, by and between the CITY OF GLENDALE, an Arizona municipal corporation (the "City"), and THE NEW WESTGATE LLC, a Delaware limited liability company ("TNW").

RECITALS

A. The City and Coyote Center Development, LLC, a Delaware limited liability company ("CCD") are parties to that certain Mixed-Use Development Agreement (the "MUDA") dated as of November 29, 2001, and recorded with the Maricopa County, Arizona Recorder as Instrument No. 2001-1155422, by and among the City, CCD and Glendale-101 Development, LLC, a Delaware limited liability company ("101"). Pursuant to an Assignment and Assumption Agreement dated as of September 26, 2006, CCD succeeded to the duties, rights, obligations and interest of 101 under the MUDA. The MUDA was amended by a First Amendment to Mixed-Use Development Agreement dated January 25, 2011 and recorded with the Maricopa County, Arizona Recorder as Instrument No. 20110086619 (the "First Amendment").

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

C. Certain portions of Westgate have been previously conveyed by CCD to and developed by third parties in accordance with the MUDA.

D. By reason of certain foreclosures of deeds of trust by its constituent member entities, TNW has succeeded to the remaining interests of CCD in Westgate including, without limitation, its rights and interests under the MUDA and First Amendment.

E. The City and CCD entered into an Agreement for the Replacement of Temporary Parking dated as of July 1, 2008 (the "2008 Temporary Parking Agreement"), which agreement was superseded in its entirety by an Amended and Restated Agreement for the Replacement of

Temporary Parking effective as of January 25, 2011 (the "Restated Temporary Parking Agreement").

F. Other parties to the 2008 Temporary Parking Agreement were Coyotes Hockey, LLC, a Delaware limited liability company (the "Team"), Arena Management Group, LLC, a Delaware limited liability company ("Arena Manager"), and Glendale Garage LLC, an Arizona limited liability company ("Garage Developer"). The Team and the Arena Manager had the right to use and occupy the Arena pursuant to an Arena Management, Use and Lease Agreement dated as of November 29, 2001 (the "Arena Lease"). Pursuant to actions taken in the United States Bankruptcy Court, District of Arizona in connection with the voluntary petitions for relief under Chapter 11 of the Bankruptcy Code filed by the Team and Arena Manager on May 5, 2009 (Case Nos. 2:09-bk-09491-RTB and 2:09-bk- 09495-RTB, which cases are being jointly administered with the Chapter 11 bankruptcy proceedings of Dewey Ranch Hockey, LLC (Case No. 2:09-bk 09488-RTBP) and Coyotes Holdings, LLC (Case No. 2:09-bk-09500-RTB) under Case No.2:09-bk-09488-RTBP), the Team and Arena Manager rejected the Arena Lease and the 2008 Temporary Parking Agreement and no longer have any right, title or interest in, or liability under, either such agreement. Garage Developer was never created as a legal entity, and accordingly the 2008 Temporary Parking Agreement never became effective as to Garage Developer.

G. The City has requested that TNW enter into this Agreement so that the City may comply with certain obligations it has with non-parties to this Agreement.

H. TNW has agreed to enter into this Agreement with the City for certain temporary parking rights and obligations in consideration of the agreements, acknowledgements, obligations and covenants being made by the City under this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, agreements and obligations contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals and Defined Terms**. The City and TNW confirm the accuracy of the foregoing Recitals, which are incorporated into and comprise part of this Agreement. In addition to the terms defined in other sections of this Agreement, for the purposes of this Agreement the following terms shall be defined as follows:

(a) "Arena Events" means any revenue or non-revenue producing sports, entertainment, cultural or civic event or other activity (including related event set-up and take down) which is either (i) presented or held in the bowl (main seating) portion of the inside Arena facility, or (ii) presented or held in any other portion of the inside Arena facility in a manner that precludes the use of the bowl (main seating) portion of the inside Arena facility for other events or activities.

(b) "Mega Event" means a Super Bowl game, a Fiesta Bowl game, any other college bowl game including the College Football Playoff Championship Game scheduled to be played on January 11, 2016, an NCAA Final Four basketball tournament game, a World Cup soccer game or a national political party convention.

(c) "Stadium" means the University of Phoenix Stadium where the Arizona Cardinals home football games are played.

(d) "Large Stadium Non-Mega Event" means an event at the Stadium that the Stadium manager anticipates attendance will be greater than 40,000.

(e) "Stadium Events" means any professional football game, Mega Event or Large Stadium Non-Mega Event at the Stadium.

2. **Council Approval; and Conditions Precedent**. This Agreement shall be effective and binding upon the parties and irrevocable only upon execution by all parties, and final approval by the City Council. The parties acknowledge and agree that City Council approval of this Agreement is within the sole and absolute discretion of the City Council.

3. Term. This term of this Agreement shall commence on July 1, 2015 and shall expire on June 30, 2016.

4. **Parking**.

a. **Generally**. TNW will provide a total of 1679 temporary parking spaces (the "1679 Temporary Spaces") to the City at no charge to the City for Arena Events and Stadium Events. The 1679 Temporary Spaces will be located on the property identified on the attached Exhibit A (the "Property") in the as-is condition and layout as it exists as of the date of this Agreement.

b. **Lighting**. TNW shall provide and maintain the lighting, including the provision of fuel for such lighting, for the 1679 Temporary Spaces via the portable temporary lighting equipment that currently exists on the Property. No permanent lighting, landscaping or signage will be required by the City or provided by TNW as part of the 1679 Temporary Spaces and/or this Agreement.

c. **Maintenance**. Subject to the City's obligations set forth in Sections 4.d. below, TNW shall have the right to use and be responsible for repair, maintenance and operation of the 1679 Temporary Spaces.

d. **Operations**.

i. *Parking Revenue*. The City, or entities associated with Arena Events (the "Arena Entities") or entities associated with Stadium Events (the "Stadium Entities"), shall be entitled to impose parking charges and retain the revenue therefrom for the

use of the 1679 Temporary Spaces during Arena Events or Stadium Events, as applicable. The City, Arena Entities or Stadium Entities (as applicable) may contract with a parking operator to collect such revenue on these entities behalf. Notwithstanding the foregoing, TNW may charge parking charges and retain all of the revenue therefrom for any parking and/or other events on the Property that is not otherwise exclusively dedicated to Arena Events or Stadium Events. TNW also may impose parking charges and retain all of the revenue therefrom at any and all times on any other property owned by TNW.

ii. *Event Parking Support.* City shall be, or shall cause the Arena Entities or Stadium Entities (as applicable) to be, responsible to provide, at its cost and coordination, all traffic control, parking control, security, portable restroom facilities and any other necessary services or equipment for Arena Events and Stadium Events and to support the parking for such games/events. During the term of this Agreement, the City shall, at no cost or expense to TNW, obtain and maintain (or cause to be obtained and maintained) in full force and effect with respect to such temporary parking spaces, parking operator liability insurance meeting the requirements set forth on Exhibit B attached hereto with respect to the use of the 1679 Temporary Spaces by the City whether or not in accordance with the Agreement.

iii. *Refuse and clean up.* City shall, or shall cause the Arena Entities or Stadium Entities (as applicable) to, provide and pay for all refuse services and clean-up of the Property after Arena Events and Stadium Events.

iv. *Access to Glendale Avenue frontage lots.* If TNW desires to provide access to employees or staff of other TNW property to the lots north of the Property (and known as Westgate Lots 5B, 5C, 5D, and 5E), which such lots are established as temporary dirt parking areas as the of the date of this Agreement, the City will require Arena Parties or Stadium Parties to cooperate with TNW for access across the Property as necessary to such TNW Lots 5B, 5C, 5D, and 5E. It is understood that TNW is likely to exercise this right for the College Football Playoff Championship Game on January 11, 2016, in addition to potential other dates.

e. **Intentionally omitted.**

f. **Intentionally omitted.**

g. **Intentionally omitted.**

5. **City Acknowledgements of TNW Parking Obligations During Arena Events**. If and to the extent any of the various agreements relating to parking at Westgate are enforceable against TNW (which TNW does not concede), TNW and City hereby acknowledge and agree that;

a. **TNW is in compliance with Agreements**. Notwithstanding anything to the contrary contained in any previous agreements involving Westgate, TNW and its predecessors in interest have through the date of this Agreement fully and completely satisfied any and all requirements under such agreements and there exists no breach, default or event of default by TNW or its predecessors in interest, or any event or condition which, with notice or

passage of time or both, would constitute a breach, default or event of default by TNW or its predecessors in interest under any previous parking agreements involving Westgate.

b. **Temporary Permissible Parking Areas**. The temporary permissible parking areas as addressed under the MUDA as amended by the First Amendment, and/or as addressed by any other agreement related to Westgate, are hereby defined as follows: Any area south of Glendale Avenue, west of 91st Avenue, east of the 101 Freeway, and north of Maryland Avenue. This Section 5 (b) shall survive the expiration or earlier termination of this Agreement.

c. **Event Overlap**. On those dates during the Term, if any, when an Arena Event and a Stadium Event is occurring on the same date (a "Dual Event Date"), the 1679 Temporary Spaces are dedicated to the Arena Event only and TNW shall have no requirement or obligation to provide any parking spaces for the Stadium Event. Notwithstanding the foregoing, for a Dual Event Date, to the extent that TNW has then-available dirt or temporary parking lots on other property that TNW owns (and such lots are not anticipated to be at the time of the Dual Event Date under development, improvement, and/or hosting another activity or event), TNW will allow the City to utilize such parking areas as TNW determines can be made available to the City at no cost to the City, subject to the terms of this Agreement. Alternatively, to the extent TNW decides to make paved parking spaces available to the City on other property that TNW owns for a Dual Event Date, TNW will allow the City to utilize such parking areas as TNW determines can be made available to the City at no cost to the City, subject to the terms of this Agreement.

d. **TNW Parking Charges**. TNW may or may not impose, at its sole and absolute discretion, parking charges for parking on any of its property that is not otherwise exclusively dedicated for Arena Events or Stadium Events at the Stadium in accordance with this Agreement. All such parking revenues shall belong exclusively to TNW. This Section 5 (d) shall survive the expiration or earlier termination of this Agreement.

e. **TNW Rights**. Other than during Arena Events or professional football games and Mega Events at the Stadium, TNW has full control of the Property including any use for revenue-generating events at any time except during Stadium Events and Arena Events. At all times, TNW shall have full control of all Westgate property owned by TNW (other than the Property), including any use for revenue-generating events. Notwithstanding the foregoing, TNW may not charge revenue for parking spaces on Westgate property owned by TNW (other than the Property) during Arena Events except to the extent parking charges are pursuant to any tenant leases within Westgate.

f. Parking Negotiations and Agreements. City shall promptly notify TNW of any negotiations with any potential buyer of the Arizona Coyotes, the arena management company, the Arizona Cardinals, the Arizona Sports and Tourism Authority or any other entity that refers or relates to any parking rights within Westgate. In addition, the City shall promptly provide TNW with a copy of any parking agreement that refers or relates to Westgate and that is being considered by the City prior to the City approving and/or executing such parking agreement.

The City agrees and covenants that it will not take any action contrary to the above agreements and acknowledgements and that such agreements and acknowledgements are a material part of the consideration for TNW to enter into this Agreement.

6. **Intentionally omitted.**

7. **Enforcement.** This Agreement shall be governed by, and construed and enforced in all respects in accordance with, the laws of the State of Arizona. The parties hereto hereby consent to the exclusive jurisdiction of any state or federal court located within Maricopa County, Arizona in any suit, action or proceeding based hereon or arising out of, under or in connection with this Agreement. The parties hereto waive (a) the defense of *forum non conveniens* with respect to any matter arising in connection with this Agreement and (b) any defense or claim of sovereign immunity or any similar defense or claim.

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

9. **Amendment; Waiver**. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties with the same formality as this Agreement. The failure of any party to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, and the same shall continue in full force and effect. No waiver by either party of any covenant, agreement, term, provision or condition shall be deemed to have been made unless set forth in writing and signed by the appropriate official or officer of such party.

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

11. **Binding Effect; Assignment**. This Agreement shall be binding upon and inure to the benefit of the City and TNW and their respective successors and assigns.

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

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

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

With copy to:
City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

To TNW:
The New Westgate LLC
c/o iStar Financial
10960 Wilshire Boulevard, Suite 1260
Los Angeles, CA 90024
Attention: David Sotolov

With copies to:
Wendy Riddell
Berry Riddell & Rosensteel LLC
6750 East Camelback Road Suite 100
Scottsdale, Arizona 85251

Jeff Teetsel
Teetsel Properties, LLC
2415 East Camelback Road, Suite 700
Phoenix, AZ 85016

Any party may from time-to-time, by written notice to the other parties given in the manner described in this Section 12, change the address to which communications to such party pursuant to this Agreement are to be sent, or designate one or more persons to whom such communications are to be sent.

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

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

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

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

18. **Interpretation**. Each of the parties has been represented by legal counsel in the negotiation of this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its provisions and terms, and shall not be construed in favor of, or against, either party, regardless of which party may have proposed or drafted any of its provisions or terms.

19. **Governmental Authority**. Nothing in this Agreement is intended to limit the City's government authority in the exercise its police powers and, unless expressly waived herein, all City ordinances and regulations remain fully applicable.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY:

CITY OF GLENDALE, a municipal corporation Dated: APRIL 14, 2015

By: _____
Name: Richard A. Bowers
Title: Acting City Manager

Approved as to form:

_____
Michael D Bailey City Attorney

Attestation:

_____
Pam Hanna, City Clerk

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TNW:

THE NEW WESTGATE LLC, a Delaware limited liability company

Dated: 3/27/15

By: SFI Westgate City Center – Glendale LLC, a Delaware limited liability company
Its: Managing Member

By: _____
Name: David Sotolov
Title: Senior Vice President

EXHIBIT A

Temporary Parking Property

(1) **Lot 5(a) of Westgate Plat. APN 102-01-022. Approximately 498,191 Square Feet of land area**

(2) **Lot 5(f) of Westgate Plat. APN 102-01-027. Approximately 29,060 Square Feet of land area**

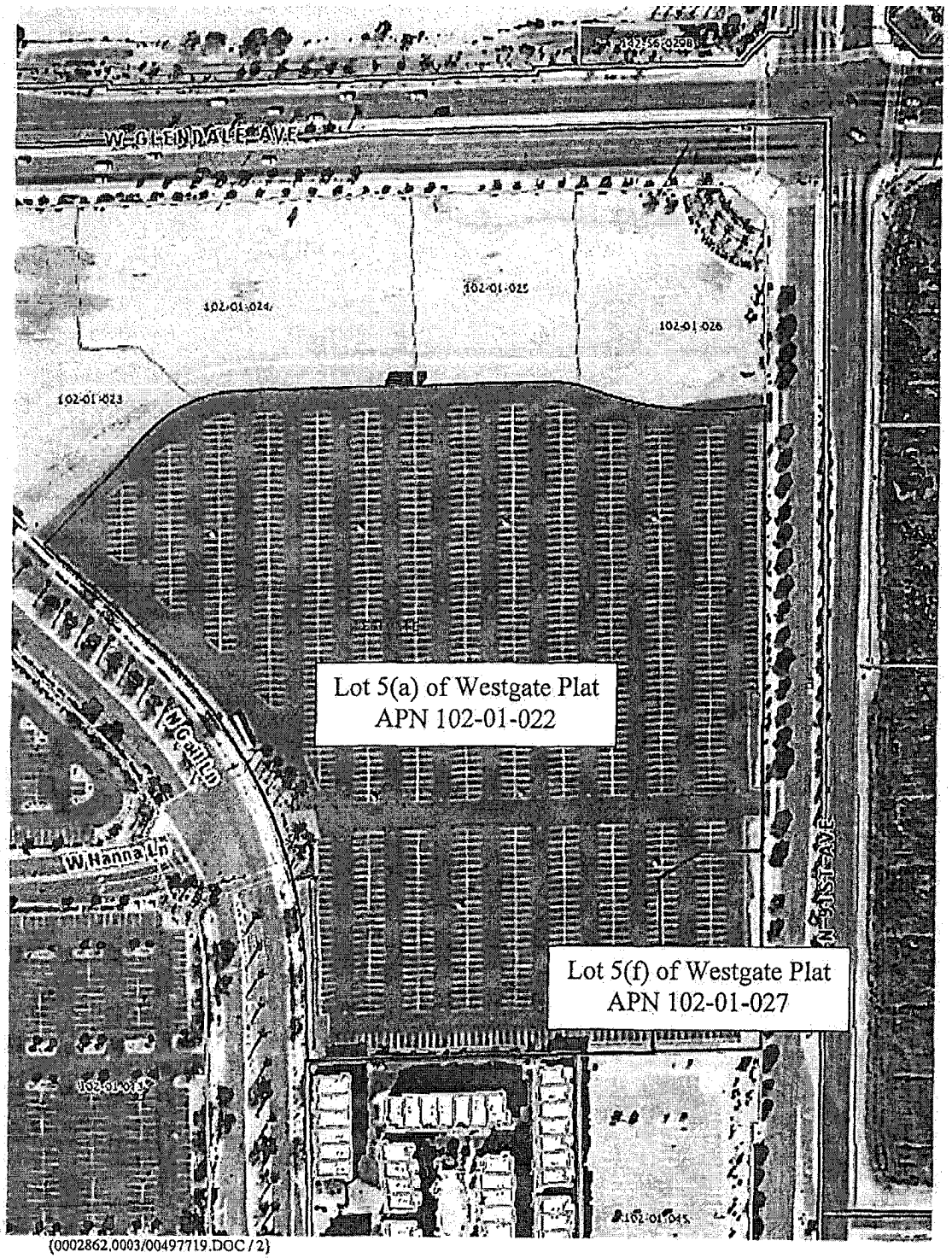

EXHIBIT B
Insurance Requirements

City shall maintain, at its sole expense, the following types of insurance coverage.

1. Workers' Compensation Insurance as required by law.

2. Commercial General liability Insurance against any and all damages and liability, including attorneys' fees on account of or arising out of injuries to or the death of any person or damages to the property, however occasioned arising out of or in any way related to City's use of the Property with at least a single combined liability and property damage limit of One Million and No/100 Dollars ($1,000,000.00),which policy maintained by City shall name TNW as an additional insured.

Each policy shall (a) be issued by insurance companies licensed to do business in the State of Arizona, and acceptable to TNW, (b) name the parties listed below and their respective affiliates, officers, directors, employees, agents and assigns as additional insured's, (c) be primary and noncontributing with respect to any coverage that TNW may carry and the Certificate of Insurance must contain the following statement (by attachment, if necessary): 'This insurance shall be primary and non-contributing with respect to any coverage that Licensor may carry for losses arising out of the Named Insured's operations.", (d) provide that it shall not be canceled or materially changed without thirty (30) days prior written notice to the other party, and (e) be endorsed to provide that Licensee's and Licensor's underwriters and insurance companies shall not have any right of subrogation against the other party. An original copy of the insurance certificate shall be given to Licensor prior to the commencement of the License Term. The obligations contained in this Exhibit are separate and distinct from all other obligations set forth in this Agreement, and are in no way intended to merely support Licensee's duty to indemnify set forth in this Agreement.

3. Each requirement above may be satisfied by the City's self-insurance reserve.

Additional Insured Parties:

1) The New Westgate LLC
10960 Wilshire Boulevard, Suite 1260
Los Angeles, CA 90024

2) SFI Westgate City Center- Glendale LLC
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040

3) iStar Financial Inc., and its subsidiaries, successors & assigns
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040

4) Teetsel Properties, LLC
2415 East Camelback Road
Suite 700
Phoenix, Arizona
85016

5) Vestar Properties, Inc.
2425 East Camelback Road
Suite 750
Phoenix, Arizona
85016

6) CCD Equity Partners LLC
c/o Solus Alternative Asset Management LP
410 Park Avenue
New York, NY 10022
Attn: Francis Blair