



MEMORANDUM

May 10, 2023

Utah Tech University – Facility/Ground Lease with Black Desert Resort

Board Policy [R705, Leased Space](#), requires the Board to approve institutional requests to enter into a new lease of capital facilities space for programs of instruction, research, or service when contracts for leasing such facilities: ... *exceed \$250,000 per year regardless of the funding source for all other USHE institutions*; ... Utah Tech University is informing the Board of a long-term facility/ground lease for the Utah Tech Athletics Golf Program located at the Black Desert Resort. Black Desert Resort will become the new home of the Trailblazer Athletics Golf Program. Terms of the practice facility/ground lease:

- 20-year initial lease term with an additional 5-year term of auto-renewals
- UTU may terminate the agreement on or before a date 60 days prior to the expiration of each term.
- \$500,000 up-front payment (donated funds) for a 20-year lease of the facility
- \$1 per year after the initial 20-year term

All contracts and agreements associated with this arrangement will be reviewed by the Office of the Attorney General to ensure compliance with state law and Board policy. The UTU Board of Trustees reviewed and approved this request in their March 10, 2023, Board meeting. Additional information on this leasing arrangement is included in the attached letter and maps from the institution.

Commissioner's Recommendation

This is an information item only; no action is required.

Attachments

Paul Morris
Vice President of Administrative Affairs
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April 14, 2023

Commissioner Dave Woolstenhulme
Utah Board of Higher Education
60 South 400 West
Salt Lake City, Utah 84101

Subject: Black Desert Resort Lease Agreement

Dear Commissioner Woolstenhulme:

Purpose

Utah Tech University (UT) is requesting Utah Board of Higher Education approval to lease a golf practice facility located at the Black Desert Resort Golf Course in Ivins, Utah, to support the UT men's and women's golf teams.

Background

The Utah Tech Athletics Golf Program has been in discussions with Black Desert Resort owners about the possibility of Black Desert Resort becoming the new home of the Trailblazer Athletics Golf Program. This location will be an outdoor short game practice facility. Thus far, Coach Brad Sutterfield has raised \$500,000 for the purpose of securing the use of an outdoor practice facility at Black Desert.

Lease Details

The Lessor, Black Desert Resort, will construct the outdoor practice facility. Utah Athletics will lease the outdoor practice facility under the terms detailed below:

Practice Facility Ground Lease

- 20-year initial lease term with additional 5-year term auto renewals
- UT may terminate the agreement on or before a date 60 days prior to expiration of each term
- \$500,000 up-front payment (Donated Funds) for 20-year lease of facility
- \$1 per year thereafter after initial 20-year term
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Practice Facility Maintenance

- \$35,000 per year payable monthly (\$2,917) for first 10 years
- 3% annual price escalation each year after 10th year
- Black Desert (Lessor) to maintain outdoor golf facility, grounds, sidewalks, landscape, and parking lots

Summary

This new home of the Trailblazer Athletics Golf Program will improve the recruiting of student athletes, provide a state-of-the-art practice facility, and elevate the image of the UT Athletics Golf Program.

Sincerely,



Paul C. Morris

cc: Richard Williams, Sherry Ruesch

Attachment 1: Black Desert Resort Lease Agreement

Attachment 2: Outdoor Golf Facility Site Plan

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered into as of [REDACTED], by and between BD Resort Center LLC, a Utah limited liability company, hereinafter referred to as “Lessor”, and Utah Tech University, a Utah nonprofit corporation, hereinafter referred to as the “Lessee”. Lessor and Lessee are each a “Party” and collectively, the “Parties”.

RECITALS:

- A. Lessor owns certain land that it is developing into a golf course known as Black Desert Resort (“Black Desert Resort”).
- B. Lessee is an institution in the state system of higher education and has need of a designated facility for its student athletes to utilize for the purpose of training and practicing golf.
- C. Lessor is constructing a golf practice facility on Black Desert Resort and Lessee desires to lease the golf practice facility after it is constructed.
- D. The parties desire to enter into a long-term lease of the completed golf practice facility under the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually consent and agree to the following terms and conditions:

ARTICLE I.

DEMISE, TERM AND RENTAL

SECTION 1.1. **The Demise.** Lessor does hereby lease unto Lessee and Lessee does hereby lease from Lessor the outdoor golf practice facility (“Practice Facility”) that Landlord shall construct under the terms of this Lease on the following described tract of land located within the boundaries of the Black Desert Resort, hereinafter collectively referred to as the “Leased Premises.” The interest of Lessee created pursuant to this Lease is also referred to as the “Leasehold Estate.” The Leased Premises are designated on the site plan attached hereto as EXHIBIT “A.” Upon establishment of a legal description for the Leased Premises, such legal description shall be incorporated herein. In addition, Lessee shall have the non-exclusive right to use in common with the Lessor any common areas necessary for Lessee to have reasonable access and use of the Leased Premises.

Nothing in this Lease shall be deemed to include as any part of the Leased Premises a fee title interest in the Practice Facility or land itself. It is understood and agreed that Lessor cannot and shall not alienate or encumber its fee title interest in the land.

SECTION 1.2. **Term.** The term of this Lease shall be twenty (20) years (“Initial Term”), commencing on the 1st day of the month immediately following Lessor’s written notice to Lessee of Lessor’s Substantial Completion of the Practice Facility (the “Commencement Date”), and terminating upon expiration of the term if not terminated earlier pursuant to the terms herein. “Substantial Completion” is defined as the point in time when Lessee may use the Leased Premises for its intended purpose.

SECTION 1.3. **Rent.** Upon the execution of this Lease, Lessor shall commence, or cause third parties to commence, planning and preparations for the construction of the Practice Facility upon the Leased Premises, and Lessor shall complete or cause to be completed, the construction of the Practice Facility as expeditiously as good and proper business practice will permit. In any event, such construction shall be completed by [REDACTED], (the “Completion Date”); provided that if construction is delayed because of changes, deletions, or additions in construction, strikes, lockouts, casualties, acts of God, war, pandemic, material or labor shortages, governmental regulation or control or other like or unlike causes beyond the control of Lessor, the construction time period shall be extended for the amount of time construction is delayed.

SECTION 4.4. **Waste.** Lessee agrees that, except for construction of alterations and refurbishment of improvements as contemplated by this Lease, Lessee shall not commit or permit waste upon the Leased Premises.

ARTICLE V.

CONSTRUCTION OF IMPROVEMENTS

SECTION 5.1. **Construction of Practice Facility.** Lessor shall construct or cause to be constructed the Practice Facility upon the Leased Premises, at the Lessor's sole cost and expense. The Practice Facility, including the buildings and/or auxiliary structures, shall be constructed as agreed to by the Parties and in compliance with any and all applicable federal, state, county or municipal laws, rules and regulations that are applicable to the Leased Premises; and in accordance with plans and specifications that are approved by Lessee in writing. The Prepaid Rent is intended to cover the costs of constructing the Practice Facilities, but to the extent that the costs of construction the Practice Facilities exceed the Prepaid Rent such amounts shall, at the reasonable discretion of Lessor, be paid by Lessor and treated as a charitable donation to Lessee.

SECTION 5.2. **Ownership of Building(s).** All buildings, structures and improvements constructed by Lessor upon the Leased Premises shall be the property of Lessor.

SECTION 5.3 **Name of Building(s)/Facility.** For the duration of this Lease, Lessee shall have the right to select names for the Practice Facility, including building(s) and/or other improvements, subject to Lessor's approval, which shall not be unreasonably withheld.

ARTICLE VI.

ALTERATIONS, AND ADDITIONS

SECTION 6.1. **Lessor's Consent to Alterations.** Lessee may not make any improvements, alterations, additions or changes to the Leased Premises without first obtaining the prior written consent of Lessor to such alterations, which consent shall be requested by Lessee not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Lessor, provided it shall be deemed reasonable for Lessor to withhold its consent to any alteration which adversely affects the structural portions or the systems or equipment of any building. Notwithstanding the foregoing, Lessee shall be permitted to make alterations following ten (10) business days' notice to Lessor, but without Lessor's prior consent, to the extent that such alterations (i) do not affect a building's structure, systems or equipment, (ii) are not visible from the exterior of the building, and (iii) cost less than \$25,000.00 for a particular job of work.

SECTION 6.2. **Manner of Construction.** Lessor may impose, as a condition of its consent to any and all alterations or repairs of the Leased Premises or about the Leased Premises, such requirements as Lessor in its reasonable discretion may deem desirable, including, but not limited to, the requirement that upon Lessor's request, Lessee shall, at Lessee's expense, remove such alterations upon the expiration or any early termination of the Term. Lessee shall construct such alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit, issued by the city in which the Leased Premises is located (or other applicable governmental authority). Upon completion of any Alterations (or repairs), Lessee shall deliver to Lessor final lien waivers from all contractors, subcontractors and materialmen who performed such work.

SECTION 6.3. **Construction Insurance.** In the event that Lessee makes any alterations to the Leased Premises, it is understood and agreed that Lessee's contractors and subcontractors shall be required to carry commercial general liability insurance in an amount required by the State of Utah.

SECTION 6.4. **Landlord's Property.** All alterations, improvements, fixtures, and/or appurtenances which may be installed or placed in or about the Leased Premises, from time to time, shall be at the sole cost of Lessee and shall be and become the property of Lessor and remain in place at the Leased Premises following the expiration or earlier termination of this Lease. Lessee shall be responsible for all costs associated with the initial expenses relating to the installation or placement, of any such alterations, improvements, and/or fixtures in, on or

Lehi, UT 84043

or at such other place as Lessor may from time to time designate to Lessee in writing.

SECTION 8.2. **Maintenance Fee Escalation Clause.** On the "Adjustment Date", and on the same month and day annually thereafter, the Maintenance Fee shall increase by 3% based on the prior year's Maintenance Fee. (For clarity, "prior year" in this Section refers to the preceding twelve (12) months.)

ARTICLE IX.

HAZARDOUS MATERIAL

SECTION 9.1. **Compliance; Indemnification.** Lessee shall comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, regulations, and judicial and administrative orders relating to the protection of human health and safety, the environment, Hazardous Material (as defined in this Section 9.1.), and waste storage and disposal except where such compliance obligation arises with respect to facts regarding the Leased Premises in existence prior to the commencement of the term of this Lease or results from migrating of Hazardous Waste from property not part of the Leased Premises. Lessee shall also manage all Hazardous Material so as to avoid any unreasonable risk of contamination to the Leased Premises. If Lessee breaches any of the obligations, warranties or representations of this Lease, including the obligations contained in this Section 9.1, or if the presence of Hazardous Material on or about the Leased Premises caused by Lessee or on the Leased Premises permitted by Lessee violates any applicable law, order, or regulation or results in contamination of the Leased Premises, or if contamination of the Leased Premises or surrounding area by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, Lessee and its successors, assigns and guarantors shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable attorneys' fees, reasonable consultant fees, and reasonable expert fees) that arise during or after the term of this Lease as a result of that contamination or violation. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, or restoration work required by any federal, state, or local government agency or political subdivision because of Hazardous Material present in the soil or ground water on, under or about the Leased Premises or migrating or threatening to migrate to or from the Leased Premises resulting from the acts of Lessee, or its tenants, subtenants, licensees, contractors, or employees. Without limiting the foregoing, if the presence of any Hazardous Material on or about the Leased Premises caused by Lessee or on the Leased Premises permitted by Lessee, results in any contamination of the Leased Premises or surrounding area, or causes the Leased Premises or surrounding area to be in violation of any laws, rules, statutes, or ordinances, Lessee shall promptly take all actions at its sole expense as are necessary to bring the Leased Premises and surrounding area into compliance with applicable laws, codes, ordinances and regulations; provided that Lessor's approval of those actions shall first be obtained, which approval shall not be unreasonably withheld so long as those actions would not potentially have any material adverse long-term or short-term effect on the Leased Premises or surrounding area.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, chemical, material, or waste, which is or becomes regulated by any local governmental authority, the state of Utah, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste" or "hazardous substance" under Utah law; (ii) petroleum, (iii) asbestos; (iv) defined as a hazardous chemical regulated under the OSHA Hazard Communications Standard; (v) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903) as it from time to time may be amended or (vi) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 43 U.S.C. Section 9601 *et. seq.*, as it from time to time may be amended.

SECTION 9.2. **Notification.** If Lessee shall become aware or receive notice or other communication concerning (1) any actual, alleged, suspected or threatened violation of laws or regulations governing the environment, the release, investigation, cleanup, remediation or abatement of Hazardous Material, health and safety, or waste disposal; or (2) liability or potential liability of Lessee for any damages in connection with the Leased

Lessor under this Lease, or applicable law, immediately implement that plan and proceed to clean up the Hazardous Material in accordance with all applicable laws and as required by that plan and this Lease.

SECTION 9.6. **Survival.** The provisions of this Lease including, without limitation, the indemnification provisions set forth herein, shall survive any termination of this Lease.

SECTION 9.7. **Lessor's Indemnity.** Lessor shall indemnify, defend, and hold Lessee harmless from and against any claims, judgments, damages, penalties, fines, costs, liabilities, and loss (including reasonable attorneys' fees), subject to the limits and conditions of the Utah Governmental Immunity Act, for death of or injury to any person or damage to any property whatsoever relating to the presence of Hazardous Material in, on, under, or about the Leased Premises where the presence existed prior to the Commencement Date or was caused or permitted by Lessor or persons claiming under Lessor and not caused by Lessee.

ARTICLE X.

DAMAGE AND DESTRUCTION SECTION

10.1 **Repair of Damage to Premises by Lessor.** Lessee shall promptly notify Lessor of any damage to the Leased Premises resulting from fire or any other casualty. If the Leased Premises or any common areas serving or providing access to the Leased Premises shall be damaged by fire or other casualty, Lessor shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Lessor's reasonable control, and subject to all other terms of this Article IX, restore the Leased Premises and such common areas. Such restoration shall be to substantially the same condition of the Leased Premises and the common areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the building or any other modifications to the common areas deemed desirable by Lessor, which are consistent with the character of the Leased Premises, provided that access to the Leased Premises shall not be materially impaired. Upon the occurrence of any damage to the Leased Premises, upon notice (the "Lessor's Repair Notice") to Lessee from Lessor, Lessee shall assign to Lessor (or to any party designated by Lessor) a reasonable portion of insurance proceeds payable to Lessee under Lessee's insurance required under Section XVII of this Lease, and Lessor shall repair any injury or damage to the Leased Premises and shall return the Leased Premises to its original condition; provided that if the cost of such repair by Lessor exceeds the amount of insurance proceeds received by Lessor from Lessee's or any other insurance carrier, the cost of such repairs shall be paid by Lessee to Lessor prior to Lessor's commencement of repair of the damage. In the event that Lessor does not deliver the Lessor's Repair Notice within fifteen (15) days following the date the casualty becomes known to Lessor, Lessee may, at its sole cost and expense, repair any injury or damage to the Leased Premises and may return such Leased Premises to its original condition. Whether or not Lessee delivers a Lessor's Repair Notice, prior to the commencement of construction, Lessee shall submit to Lessor, for Lessor's review and approval, all plans, specifications and working drawings relating thereto. Lessor shall not be liable for any inconvenience or annoyance to Lessee or its visitors, or injury to Lessee's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Leased Premises or common areas necessary to Lessee's occupancy, and the Leased Premises are not occupied by Lessee as a result thereof, then during the time and to the extent the Leased Premises are unfit for occupancy, the Rent shall be abated in proportion to the amount of rentable square feet of the Leased Premises which is unfit for occupancy for the purposes permitted under this Lease.

SECTION 10.2 **Lessor's Option to Repair.** Notwithstanding the terms of Section 10.1, Lessor may elect not to rebuild and/or restore the Leased Premises, and instead terminate this Lease, by notifying Lessor in writing of such termination within fifteen (15) days after the date of discovery of the damage, such notice to include a termination date giving Lessee sixty (60) days to vacate the Premises, but Landlord may so elect only if the Leased Premises shall be damaged by fire or other casualty or cause, and one or more of the following conditions is present: (i) in Lessor's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the building or ground lessor with respect to the building shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Lessor's insurance policies; (iv) Lessor decides to rebuild the Leased Premises or common areas so that they will be substantially different structurally or

SECTION 13.1. **Utilities.** Per separate agreement to be executed by the Parties and incorporated herein as EXHIBIT "B," Lessor shall install, or cause to be installed, utilities for the Leased Premises. Notwithstanding the foregoing, Lessor shall not be liable for any service outage or other failure of any such service. Upon installation of the utilities, Lessee shall pay all charges for such utility services for the Leased Premises and shall indemnify Lessor against any liability on account thereof.

ARTICLE XIV.

UTILITY EASEMENT AND IMPROVEMENTS

SECTION 14.1. **Right to Enter.** Lessor expressly reserves the right of itself and/or any public utility to enter upon those portions of the Leased Premises which are not occupied by buildings or other improvements for the purposes of installing, using, maintaining, renewing and replacing such underground water, oil, gas, steam, sewer and other pipe lines and telephone, electric, power and other lines and conduits as Lessor and/or such public utility may deem desirable in connection with the development or use of any other property in the neighborhood of the Leased Premises, provided that such entry and such work shall not interfere with Lessee's use and development of the Leased Premises or any building, structure or improvements thereon and provided that except for emergencies requiring immediate actions, Lessee will receive thirty (30) days' written notice of any such entry. In the event that this right is exercised, Lessor and/or the public utility shall restore the land and all improvements, including landscaping, to their condition prior to such entry and work.

ARTICLE XV.

MECHANICS' AND OTHER LIENS

SECTION 15.1. **Mechanics' Lien Claims.** Except for mechanics' liens arising from work performed by or through Lessor pursuant to Section 12.1 or otherwise explicitly set forth herein or agreed to in writing by the parties, Lessee covenants and agrees to keep all of the Leased Premises and every part thereof and all buildings and other improvements thereon free and clear of and from any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, steam or power contributed, used or furnished or to be used in or about the Leased Premises for or in connection with any operations of Lessee, any alterations, improvements or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by, for or permitted by Lessee on or about the Leased Premises, and at all times promptly and fully to pay and discharge any and all claims upon which any such lien may or could be based, and to save and hold Lessor and all of the Leased Premises and all buildings and improvements thereon free and harmless of and from any and all liens and claims of liens and suits or other proceedings pertaining thereto.

SECTION 15.2. **Interest of Lessor.** No mechanics' or materialmen's liens or mortgages, or deeds of trust (other than Mortgages on Lessee's interest in the Leased Premises and the buildings and other improvements thereon) or other liens of any character whatsoever created or suffered by Lessee shall in any way, or to any extent, affect the interest or right of Lessor in any building or other improvements on the Leased Premises, or attach to or affect Lessor's title to or right in the Leased Premises, except as might be specifically provided under the terms and conditions of this Lease.

SECTION 15.3. **Contesting Claims.** Lessee shall not be required to pay or discharge any mechanics' or other lien so long as Lessee shall in good faith proceed to contest the same by appropriate proceedings; provided, however, that Lessee shall give notice in writing to Lessor of its intention to contest the validity of such lien.

ARTICLE XVI.

INDEMNITY

SECTION 16.1. **Indemnity of Lessor.** Lessee shall only indemnify, defend, hold and save harmless Lessor and its employees, agents, occupants, subtenants and its visitors or the visitors of any subtenant, from and against any and all claims, liabilities, losses or damages on account of loss, injury, death or damage to such indemnified

SECTION 17.5. **Risk Management Fund of Utah.** Notwithstanding the foregoing provisions of this Article XV, Lessee is insured through its participation in the Risk Management Fund of the State of Utah, see Utah Code 63A-4-101 et seq. Nothing in this Article XV or other provisions of this Lease shall require Lessee to carry different or additional insurance than that provided through the Risk Management Fund. If Lessee is required to defend, indemnify or hold harmless Lessor, a defense shall be provided by the State of Utah Division of Risk Management through its contracted Assistant Attorneys General.

ARTICLE XVIII.

ASSIGNMENT AND SUBLEASES

SECTION 18.1. **Sublease, Assignment, Successors and Assigns.**

(a) **Voluntary Assignment.** Lessee agrees not to sublet the whole or any part of the Leased Premises or to sell, assign or transfer this Lease or any part or portion of the term hereby created or any interest therein or to permit the use of the Leased Premises except for Lessee's own purposes without having first obtained the consent in writing of Lessor, which consent Lessor agrees shall not be unreasonably withheld, and in case such consent is given no subsequent similar transaction shall be entered into by Lessee without again obtaining the written consent of Lessor.

A true copy of the documents evidencing such assignment shall be delivered to Lessor and any Mortgagee within ten (10) days after the recording thereof with the Washington County Recorder, together with the address of such assignee.

Lessee covenants that it will not make any assignment of this Lease, except in the manner and upon the conditions set forth above.

(b) **Involuntary Assignment.** Except as expressly permitted by this Lease, neither this Lease nor the Leasehold Estate nor any interest of Lessee hereunder in the Leased Premises or any buildings or improvements thereon shall be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect.

Without limiting the generality of the provisions of the preceding paragraph, Lessee covenants and agrees that (i) in the event any proceedings under the Bankruptcy Act or any amendment thereto be commenced by or against Lessee, and, if against Lessee, said proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement or plan of reorganization, or (ii) in the event Lessee shall admit to being or be adjudged insolvent or make an assignment for the benefit of its creditors, or (iii) if a writ of attachment or execution be levied on the Leasehold Estate hereby created and be not released or satisfied within forty-five (45) days thereafter, or (iv) if a receiver be appointed in any proceeding or action to which Lessee is a party with authority to take possession or control of the Leased Premises or the business conducted thereon by Lessee, and such receiver be not discharged within a period of ninety (90) days after its appointment, any such event or any involuntary assignment shall be deemed to constitute an Event of Default.

SECTION 18.2. **Release of Lessee's Liability.** If an assignment shall be made by Lessee or any successor of Lessee after complying with the conditions and in the manner set forth in Section 15.1 (a), the assignee shall be subject to the same terms and conditions as to future assignments, and to all the covenants, agreements, provisions and conditions contained in this Lease, and Lessee or any successor herein so assigning and conveying shall thereafter be forever released and discharged from this Lease and from the agreements and covenants contained in this Lease.

SECTION 18.3. **Limitations on Sublease.** All subleases entered into demising all or any part of the improvements or the Leased Premises shall be expressly subject and subordinate to this Lease.

immediately upon such purchaser's or assignee's succeeding to the interest or estate of Lessor. If Lessor should grant, mortgage or assign its interest in the Leased Premises for security purposes (a "Mortgage") and such Mortgage is either: (1) foreclosed for any reason and Lessor's interest or estate is sold as upon execution in the manner provided by law or (2) Lessor's interest or estate is sold at public or private sale by the holder of the Mortgage ("Mortgage"), Lessee shall be bound to the purchaser at such sale under all of the covenants, terms and conditions of this Lease for the balance of such term to the purchaser at such sale under all of the covenants, terms and conditions of this Lease for the balance of such term hereof remaining with the same force an effect as if such purchaser was the Lessor under the Lease, with the purchaser also being similarly bound. Specifically, on receipt of a notice from Mortgagee that Rents should be paid to Mortgagee, Lessee shall pay all Rents to Mortgagee or its designee directly. Lessee, however, has no obligation to pay Mortgagee or any other party any Rents from the lump sum payment of \$500,000 that was paid as prepaid rent under Section 1.3(a). If the Mortgagee succeeds to the interest of Lessor under the Lease, Mortgage shall not be: (i) liable for any act of omission of Lessor or any prior landlord; (ii) liable for the return of any Security Amount unless such security has been delivered to Mortgagee by Lessor or is in an escrow fund available to Mortgagee; (iii) subject to any offsets or defenses that Lessee might have against any prior landlord (including Lessor); (iv) bound by any rent or additional rent that Lessee might have paid for more than the current month or installment period to any prior landlord (including Lessor) unless such rent or additional rent has been delivered to Mortgagee by Lessor or is in an escrow fund available to Lessor; (v) bound by any amendment, modification, or termination of the Lease made without Mortgagee's consent (provided Lessee was given notice of such Mortgage and such Mortgagee's address at least thirty (30) days prior to entering into same and provided further that Mortgagee's consent shall not be required for an amendment which documents the exercise of a right granted to Lessee hereunder); (vi) personally liable under the Lease, Mortgagee's liability hereunder being limited to its interest in the Leased Premises; (vii) bound by any notice of termination given by Lessor to Lessee without Mortgagee's prior written consent thereto (provided Lessee was given notice of such Mortgage and such Mortgagee's address at least thirty (30) days prior to giving same). If during the pendency of foreclosure proceedings or otherwise, there is appointed by the court a receiver for the property of which the Leased Premises are a part, Lessee hereby attorns to the receiver as its landlord during the pendency of such foreclosure proceeding so long as such receiver recognizes this Lease and Lessee's rights hereunder, such attornment to be effective and self-operative without the execution of any further instrument on the part of either party.

SECTION 22.3 **Mortgage Opportunity to Cure**. If requested by any Mortgagee, or any ground lessor, Lessee will agree to give Mortgagee, or ground lessor, a reasonable opportunity to cure any Default by Lessor under this Lease.

ARTICLE XXIII.

DEFAULT PROVISIONS

SECTION 23.1. **Events of Default**. The following events are hereby defined as "Events of Default":

(a) **Late Rent**. The failure of Lessee to pay any installment of rent, or any other payments or deposits of money as herein provided or required, when due and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Lessor to Lessee.

(b) **Failure to Perform**. The failure of either Party to perform any of the covenants, conditions and agreements of this Lease and the continuance of such failure for a period of sixty (60) days after notice in writing thereof from the complaining party (which notice shall specify the respects in which the non-defaulting Party contends that the defaulting party has failed to perform any of such covenants, conditions and agreements) unless, with respect to any default which cannot be cured within sixty (60) days, the defaulting Party, or any person holding by, through or under that party, in good faith, promptly after receipt of such written notice, shall have commenced and thereafter continue diligently to prosecute all action necessary to cure such default.

(c) **Default Under 16.1 (Prohibited Transfers)**. The Event of Default described in Section 16.1 of this Lease.

- i. **Past Due Amounts.** Any Rent, Fees, and late charges due under the Lease as of the date of termination, together with interest thereon at the Interest Rate from the date each sum became due through the date of termination;
- ii. **Present Value of Future Obligations.** Any excess of the value of all of Lessee's obligations under this Lease, including the obligation to pay Rent and Fees, from the date of termination until the end of the Term remaining immediately prior to such Termination, over the reasonable rental value of the Leased Premises for the same period figured as of the date of termination, plus the loss of reasonable rental value of the Leased Premises as of the end of the Term resulting from Lessee's Default, the net result to be discounted to the date of termination at the rate of five percent (5%) per annum;
- iii. **Reentry and Reletting Costs.** The reasonable costs of re-entry and re-letting including, without limitation, the cost of any clean-up, refurbishing, removal of Lessee's property and fixtures, and any other expense occasioned by Lessee's failure to quit the Leased Premises upon termination or to leave them in the required condition, and any remodeling costs, broker commissions and advertising costs, together with interest thereon at the Interest Rate from the date such costs are incurred by Lessor until paid; and
- iv. **Other Permissible Damages.** Any other damages recoverable at law, in equity or under this Lease, provided, however, in no event shall Lessee be responsible for lost profits (except for present value of future rent pursuant), or for consequential, special or punitive damages.

The foregoing damages shall bear interest at the Default Interest Rate (12%) from the date of default until paid.

SECTION 23.3. **Limitation on Termination of Lease.** Notwithstanding any other provision of this Lease, in the event a party claims that an Event of Default or other breach of this Lease shall have occurred and such claim becomes the subject of litigation or other binding alternative method of dispute resolution including, without limitation, binding arbitration, all periods to cure granted to the other party or any Mortgagee pursuant to this Lease shall be tolled and this Lease may not be terminated by the party until:

(a) All such litigation or other proceedings are final and all appeal or rehearing periods have expired; and

(b) All cure periods granted to the party and Mortgagee under this Lease (which periods shall be deemed to commence to run anew only as of the date described in subsection (a) of this Section 21.3) shall have expired.

SECTION 23.4 **Lessor's Rights Cumulative.** The party's rights and remedies shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon the Parties under this Lease shall not be deemed to be exclusive of any other right or remedy it may have. In the event of a Default in the payment of Additional Charges, Lessor shall have all the rights and remedies provided at law, in equity or in this Lease for a Default in the payment of Rent.

SECTION 23.5 **Re-Entry.** Upon the termination of this Lease, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, as aforesaid, Lessee will at once surrender possession of the Leased Premises to Lessor and remove all effects therefrom; and if such possession be not immediately surrendered, Lessor may forthwith re-enter the Leased Premises and repossess itself thereof as in its former estate and remove all persons and their effects, using such force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer.

ARTICLE XXIV.

QUIET ENJOYMENT

holds over after the expiration or sooner termination of this Lease, the resulting tenancy shall be on a month-to-month basis, upon agreed upon Rent terms. Lessee shall continue to be bound by all other pertinent provisions of this Lease.

ARTICLE XXX.

SURRENDER OF PREMISES

SECTION 30.1 **Surrender of Leased Premises.** Upon expiration or earlier termination of this Lease, Lessee shall promptly surrender possession of the Leased Premises, and shall deliver all keys that it may have to any and all parts of the Leased Premises. The Leased Premises, along with all Improvements and Alterations made pursuant to this Lease, shall be surrendered to Lessor in good condition, reasonable wear and tear excepted, and in the state of repair and maintenance required by the terms of this Lease, provided, that, in the event of destruction, Lessee will surrender the Leased Premises and Alterations in the condition required under Article X of the Lease.

ARTICLE XXXI.

SIGNAGE

SECTION 31.1 **Signage.** Any sign, decoration, awning or canopy, or advertising matter to be installed by Lessee shall comply with all regulation requirements of the State of Utah, Washington County, City (or any other appropriate governmental agency). In addition, Lessee shall not install any sign, decoration, awning or canopy, or advertising matter without prior written approval by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall submit a written and graphic description of the proposed sign, decoration, awning or canopy, or advertising matter to Lessor in requesting approval and shall be responsible for obtaining any permits required for such installation.

ARTICLE XXXII.

GENERAL PROVISIONS

SECTION 32.1. **General Provisions.**

(a) Time. Time is of the essence of this Lease and of each and every covenant, term, condition and provision thereof.

(b) Notices. Any notice or other communication in connection with this Lease shall be in writing and shall be sent by United States Certified Mail, return receipt requested, postage prepaid, by nationally recognized overnight courier guaranteed next day delivery, or by personal delivery, properly addressed as set forth below. Notice is deemed to have been given upon the date of mailing or upon the date of personal delivery:

LESSOR: BD RESORT CENTER LLC

 2600 North Ashton Blvd, Suite 200
 Lehi, UT 84043
 Attn: Patrick Manning

LESSEE: Attn: VP of Administrative Affairs
 Utah Tech University
 225 S 700 E
 St. George, UT 84770

With a copy to:

(o) Gender and Number. Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular number shall include the plural.

(p) Benefit. This Lease shall be binding upon and inure to the benefit of the parties and their successors, assigns and legal representatives.

(q) Limitation on Recourse. Notwithstanding any other provision of this Lease, neither Lessee nor any of its permitted successors or assigns shall be personally liable in respect of the obligations of Lessee pursuant to this Lease and the sole recourse of Lessor shall be to the interest of Lessee in the Leased Premises and any improvements constructed on the Leased Premises. Lessor shall neither seek nor obtain any judgment or attachment against Lessee or its permitted successors and assigns which shall be enforceable against the separate assets of Lessee or its permitted successors or assigns.

[Signatures on Following Page]

EXHIBIT A

LEGAL DESCRIPTION

[Insert site plan with designation and boundary of Leased Premises]



NORTH
 1
 SHEET

| | |
|-------------|-------------------|
| DATE | 11-11-10 |
| PROJECT | PHIL SMITH DESIGN |
| CLIENT | PHIL SMITH DESIGN |
| SCALE | AS SHOWN |
| PROJECT NO. | 10101 |
| DATE | 11-11-10 |

**DIXIE STATE SHORT GAME PRACTICE AREA
 AT BLACK DESERT RESORT**

PHIL SMITH DESIGN
 SCHEMATIC LAYOUT PLAN - OPTION-1

Prepared By:
 PSD Consulting LLC
 10782 E. Meadowhill Dr.
 Scottsdale, AZ 85255
 480.206.3925
www.philsmithdesign.net

