INTERGOVERNMENTAL JOINT
CONSTRUCTION AND LEASE AGREEMENT
BETWEEN THE GLEN ELLYN PARK DISTRICT AND
THE WESTERN DUPAGE SPECIAL RECREATION ASSOCIATION

This Intergovernmental Lease Agreement (hereinafter referred to as the “Lease”) is entered into this __ day of __, 20__ by and between the Glen Ellyn Park District, an Illinois Park District with its principal office at 185 Spring Avenue, Glen Ellyn, Illinois 60137 (hereinafter referred to as the “Park District”), and Western DuPage Special Recreation Association, an Illinois special recreation association with its offices at 116 North Schmale Road, Carol Stream, Illinois 60188 (hereinafter referred to as “WDSRA”) (collectively the “Parties”).

WHEREAS, the Park District is an Illinois park district organized and operating under the Illinois Park District Code, 70 ILCS 1205/1 et seq.; and

WHEREAS, WDSRA is organized and operating under an Intergovernmental Agreement as authorized by section 8-10(b) of the Illinois Park District Code and section 11-95-14 of the Illinois Municipal Code, as amended; and

WHEREAS, WDSRA is comprised of nine park districts, for the purpose of providing joint recreational programs for residents with special needs; and

WHEREAS, the Park District is in the process of building a new indoor recreation facility located at Ackerman Park at 800 E. St. Charles Road, Glen Ellyn, Illinois, 60137, hereinafter referred to as the “Sports Complex”; and

WHEREAS, WDSRA currently utilizes numerous and various facilities of its members, in addition to other governmental and private facilities, to provide recreational programs for its disabled participants; and

WHEREAS, WDSRA is in need of office and storage space in connection with its use of the Sports Complex for programming; and

WHEREAS, the Park District is willing to lease office and storage space within the Sports Complex to WDSRA upon the terms and conditions hereinafter set forth; and

WHEREAS, the Illinois Constitution and Statutes, including without limitation the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and Article VII, Section 10 of the 1970 Illinois Constitution, encourage and permit intergovernmental cooperation between units of local government; and

WHEREAS, the Park District is authorized to enter into this Lease pursuant to sections 70 ILCS 1205/8-10b, 1205/8-16 and 1205/8-18 of the Illinois Park District Code; and
WHEREAS, the Parties have determined that it is in their respective best interests, as well as the best interests of the residents and individuals served by the Parties, for the Park District to lease a portion of the space at the Sports Complex to enhance its programming.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, covenant and promise as follows:

1. GRANT AND DESCRIPTION OF PREMISES

Park District hereby leases to WDSRA for the term and upon the covenants hereinafter set forth, approximately 931 total square feet, comprising of 713 square feet of office space and 218 square feet of storage space, in the Ackerman Park Sports Complex, commonly known as 800 East St. Charles Road, Glen Ellyn Illinois 60137 (hereinafter "Sports Complex"). The leased space shall hereinafter be referred to as the "Demised Premises." The Demised Premises are identified on the Site Floor Plan of the Sports Complex attached hereto and made a part hereof as Exhibit A. WDSRA shall have access to the Demised Premises and the Sport Complex’s common area, lobby, bathrooms, and parking lots at all times that the Sports Complex is open for business and at such other times as are approved in advance by the Executive Director of the Park District.

2. TERM

The term of this Lease shall be for a period of ninety-nine (99) years, commencing on January 1, 2010 (the "Commencement Date"). This Lease shall expire at midnight on December 31, 2109 (the "Expiration Date"). For the purposes of this Lease, a "Lease Year" shall be defined as the twelve (12) consecutive calendar months commencing on January 1st of each calendar year that this Lease is in effect. Each subsequent Lease Year shall be for the twelve (12) consecutive calendar months immediately following the expiration of the prior Lease Year.

3. RENT

A. WDSRA shall pay the Park District a total amount of $500,000 for the base rent of the Demised Premises as specified hereunder and as specified in Exhibit B, attached hereto and incorporated herein (hereinafter referred to as the "Rent"): 

   1. WDSRA shall pay $250,000 of the Rent for a proportionate share of the construction costs for the Sports Complex, including all direct and indirect, and hard and soft costs within one hundred and eighty (180) days after execution of this Lease. The Park District shall compile a cost summary for the building and grounds, including the construction contract, architect and engineering costs, permits, all change orders requested by WDSRA, and other project costs. The cost summary shall not include land or financing costs. The total cost will be prorated according to the square footage of the Demised Premises, as described in Section 1, and the total square footage of the Sports Complex. For purposes of this Agreement, the total square footage of the Sports Complex is __________, the total square footage of the Demised Premises is 931; and .
2. WDSRA shall pay an additional $250,000 in Rent over a period of seven (7) years, commencing May 1, 2011, as set forth herein and in Part B of Exhibit B. The first six (6) annual installments of this portion of the Rent shall be $35,000 and the final installment in year seven (7) shall be $40,000. This portion of the Rent is for the prepayment of the cost of utilities as provided in Section 8 of this Lease, maintenance costs, and all other costs associated with WDSRA’s lease of the Demised Premises, excluding any Additional Rent as defined in Section 3.B of this Lease.

B. WDSRA shall pay to Park District, without demand, deductions, set-offs or counterclaims, the Rent, which is hereby defined as the sum of the Annual Rent, and all Additional Rent, when and as the same shall be due and payable hereunder. Unless otherwise stated, all other sums of money or charges payable to Park District from WDSRA by this Lease are defined as "Additional Rent" and are due no later than ninety (90) days after the rendering of an invoice therefore and failure to pay such charges carries the same consequences as WDSRA’s failure to pay rent. All payments and charges required to be made by WDSRA to Park District hereunder shall be payable in funds of the United States of America, at the address indicated herein or as may be amended by Park District. No payment to, or receipt by the Park District of a lesser amount than the then amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Park District may accept such check in payment without prejudice to Park District’s right to recover the balance of any sums owed by WDSRA hereunder, or any other available legal recourse for failure to pay.

C. WDSRA, as a condition of this Lease, is relieved of payment of any deposit.

4. **USE OF PREMISES**

A. The Demised Premises shall be used for the purposes of WDSRA’s business. WDSRA shall restrict its use to such purposes, and shall not use or permit the use of the Demised Premises for any other purpose without the prior, express, and written consent of Park District, or Park District’s authorized agent.

B. WDSRA shall not make any alterations, additions or improvements on the Demised Premises without prior written consent of Park District.

C. Concurrent with the execution of this lease the Parties hereto are entering into an intergovernmental agreement for use of recreational facilities located elsewhere in the Sports Complex for a twenty (20) year term.

5. **RESTRICTIONS ON USE**

A. WDSRA shall not use the Demised Premises in any manner that will increase risks covered by insurance on the Demised Premises and result in an increase in the rate of insurance or a
cancellation of any insurance policy, even if such use may be in furtherance of WDSRA’s business purposes.

B. WDSRA shall not keep, use, or sell anything prohibited by any policy of fire insurance covering the Demised Premises, and shall comply with all requirements of the insurers applicable to the Demised Premises necessary to keep in force the fire and liability insurance.

6. WASTE, NUISANCE, OR UNLAWFUL ACTIVITY

WDSRA shall not allow any waste or nuisance on the Demised Premises, or use or allow the Demised Premises to be used for any unlawful purpose.

7. QUIET ENJOYMENT

WDSRA shall be entitled to quiet enjoyment of the Demised Premises, and Park District shall not interfere with the right as long as WDSRA pays the rent in a timely manner and performs all other obligations under this Lease.

8. UTILITIES AND CUSTODIAL SERVICES

Subject to Section 3.A.2 of this Lease, the Park District shall arrange and pay for all utilities furnished to the Demised Premises for the term of this Lease, including, but not limited to, electricity, gas, water, and sewer. Telephone installation and service and computer installation and service shall be paid and maintained by WDSRA. Except as provided in Section 10.B of this Lease, Park District shall be responsible for custodial services in the Demised Premises and the remainder of the Sports Complex.

9. IMPROVEMENTS, REPAIRS AND MAINTENANCE

A. The Parties understand and agree that, during the duration of this Agreement, the Park District may need to undertake capital repairs and/or replacements. A capital repair is defined as a repair or replacement costing in excess of $10,000. The Park District shall be responsible for all capital improvements at the Sports Complex required to maintain recreational activity at the facility. The Park District will submit plans for said repair and/or replacement to WDSRA for its review and comment. Notwithstanding the foregoing, if damage to the fixtures, furnishings and improvements in the Sports Complex are determined to be a sole and direct result of WDSRA activity, WDSRA agrees that it shall reimburse the Park District for all of its direct cost of necessary repairs and replacements to the fixtures, furnishings and improvements. Any request for reimbursement by the Park District in this regard shall include a complete itemization of all damages sustained and costs incurred to repair or replace the furnishings, fixtures or improvements, including statements and/or bills for materials and services and proof that the Park District’s insurance coverage for the loss was denied. If damage to said furnishings, fixtures or improvements to the Sports Complex is the sole and direct result of Park District activity, the Park District alone shall be responsible for the cost of necessary repairs or replacements.
B. WDSRA shall, at its expense, maintain the Demised and keep the Demised Premises in good repair and condition and shall collect and dispose of any trash accumulated therein, except that side and rear exterior walls, the roof, common areas, and those portions of the mechanical systems serving both the Demised Premises and other areas of the Sports Complex building on the premises will be maintained in good condition by Park District.

10. DELIVERY, ACCEPTANCE, AND SURRENDER OF PREMISES

A. Park District represents that the Demised Premises are in fit condition for use by WDSRA. Acceptance of the Demised Premises by WDSRA shall be construed as recognition that the Demised Premises are in a good state of repair and in sanitary condition.

B. WDSRA shall surrender the Demised Premises at the end of the lease term, or any renewal of such term, in the same condition as when WDSRA took possession, allowing for reasonable use and wear, and damage by acts of God, including fires and storms. Before delivery, WDSRA shall remove all business signs placed on the Demised Premises by WDSRA and restore the portion of the Demised Premises on which they were placed in the same condition as when received.

11. PARTIAL OR COMPLETE DESTRUCTION OF PREMISES

A. Partial destruction of the Demised Premises shall not render this Lease void or voidable, nor terminate it except as specifically provided in this Lease. If the Demised Premises are partially destroyed during the term of this Lease, Park District shall repair them when such repairs can be made in conformity with governmental laws and regulations, within six months of the partial destruction. Written notice of the intention of Park District to repair shall be given to WDSRA within thirty (30) days after any partial destruction. WDSRA if the repairs cannot be made within the time specified above, Park District shall have the option to make them within a reasonable time and continue this Lease in effect with proportional rent rebate to WDSRA as described in Subsection B hereafter. If Park District does not elect to make them within a reasonable time thereafter, either party shall have the option to terminate this Lease with proportional rent rebate to WDSRA as described in Subsection B hereafter.

B. In the event of complete destruction of the Sports Complex, Park District shall file an insurance claim for the entire premises, and shall reimburse WDSRA for its proportionate share of the construction costs, as described in Section Three (A) above, pro-rated for the number of years of occupancy by WDSRA out of this 99-year agreement, and this Agreement shall be null and void. Park District shall have the option to rebuild or not. If Park District chooses to rebuild the Sports Complex, the Parties will negotiate a new Joint Construction and Lease Agreement based on the new building plans.

12. ENTRY ON PREMISES BY PARK DISTRICT

A. WDSRA shall allow Park District free access to the Demised Premises at reasonable times to inspect, perform required maintenance and repairs, or to make additions, alterations, or modifications to any part of the building in which the Demised Premises is located.
B. Upon reasonable prior written notice to WDSRA, Park District may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with making alterations, additions, or repairs.

C. In the event that Park District must make any repairs or alterations to the Demised Premises as contemplated under this Section Thirteen, Park District shall perform such repairs or alterations with due diligence and without unreasonable interference with WDSRA’s operations in the Demises Premises.

13. SIGNS, AWNINGS, AND MARQUEES INSTALLED BY WDSRA

WDSRA shall not construct or place signs, awnings, marquees, or other structures projecting from the exterior of the Demised Premises without the prior, express, and written consent of Park District.

14. LIABILITY AND INDEMNIFICATION

A. Park District shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the Demised Premises by WDSRA, including those arising out of damages or losses occurring on walkways and other areas adjacent to the Demised Premises during the term of this Lease or any extension of such term except as Park District’s own negligence may contribute thereto. WDSRA shall indemnify Park District from any and all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature except to the extent that any such liability, loss or other damage claims or obligations are attributable to the negligence of Park District, its employees, agents or contractors.

B. Park District shall indemnify and hold harmless WDSRA from and against all costs, expenses (including reasonable attorney’s fees), fines, suits, claims, demands, liabilities and actions resulting from any breach, violation or nonperformance of any covenant or condition hereof or from any negligent act or omission of Park District or Park District’s employees, agents or contractors, except to the extent that any such liability, loss or other damage claims or obligations are attributable to the negligence of WDSRA, its employees, agents or contractors.

15. LIABILITY INSURANCE

A. WDSRA shall procure and maintain in force at its expense during the term of this Lease and any extension of such term, public liability insurance with insurers and through brokers approved by Park District. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring in or around the Demised Premises, in a minimum amount of Five Million Dollars ($5,000,000) for each person injured, Five Million Dollars ($5,000,000) for any one accident, and One Million Dollars ($1,000,000) for property damage. The insurance policies shall provide coverage for contingent liability of Park District on any claims or losses. Copies of the insurance policies shall be delivered to Park District for safekeeping. WDSRA shall obtain a written obligation from the insurers to notify Park District in writing at least seven (7) days prior to cancellation or refusal to renew any policy.
B. If the insurance policies required by this section are not kept in force during the entire term of this Lease or any extension of such term, Park District may procure the necessary insurance and pay the premium for it, and the premium shall be repaid to Park District as an additional rent installment for the month following the date on which the premiums were paid by Park District.

16. ASSIGNMENT, SUBLEASE, OR LICENSE

A. WDSRA shall not assign or sublease the Demised Premises, or any right or privilege connected with the Demised Premises, or allow any other person except agents and employees of WDSRA to occupy the Demised Premises or any part of the Demised Premises without first obtaining the written consent of Park District. Consent by Park District shall not be consent to a subsequent assignment, sublease, or occupation by other persons.

B. An unauthorized assignment, sublease, or license to occupy by WDSRA shall be void and shall terminate this Lease at the option of Park District.

C. The interest of WDSRA in this Lease is not assignable by operation of law without the written consent of Park District.

17. BREACH

A. The appointment of a receiver to take possession of the assets of WDSRA, a general assignment for the benefit of the creditors of WDSRA, any action taken or allowed to be taken by WDSRA under any bankruptcy act, or the failure of WDSRA to comply with each term and condition of this Lease shall constitute a breach of this Lease. WDSRA shall have fourteen (14) days after receipt of written notice from Park District of any breach to correct the conditions specified in the notice. If the corrections cannot be made within the fourteen (14) day period, WDSRA shall have a reasonable time to correct the default if action is commenced by WDSRA within thirty (30) days after receipt of the notice.

B. If Park District fails to perform its obligations under this Lease, WDSRA may, on reasonable notice in writing of not less than seven (7) days, terminate this Lease. In such event, Park District shall reimburse WDSRA for its proportionate share of the construction costs, as described in Section Three (A) above, pro-rated for the number of years of occupancy by WDSRA out of this 99-year agreement.

18. DISPUTE RESOLUTION

Any dispute or claim in law or equity arising out of this Lease shall be submitted to neutral, non-binding mediation prior to the commencement of litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation, and to identify a mutually acceptable mediator. If a mediator cannot be agreed upon by the Parties, each party shall designate a mediator and those mediators shall select a third mediator who shall act as the neutral mediator, assisting the Parties in attempting to reach a resolution. All Parties to the mediation shall share equally in its cost. If the dispute or claim is resolved successfully through
the mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution of the dispute or claim, in accordance with the remaining terms of this Lease and other rights and remedies afforded to them by law.

19. ATTORNEY FEES

If either party files an action to enforce any agreement contained in this Lease, or for breach of any covenant or condition against the other, the defaulting party shall pay the non-defaulting party all reasonable attorneys' fees and costs associated with said action.

20. WAIVERS

Waiver by either party of any breach of any covenant or duty of the other under this Lease is not a waiver of a breach of any other covenant or duty of the breaching party, or of any subsequent breach of the same covenant or duty.

21. SEVERABILITY

Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

22. GOVERNING LAW

This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois.

23. ENTIRE AGREEMENT

This Lease shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease.

24. MODIFICATION OF AGREEMENT

Any modification of this Lease or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

25. NOTICES

A. All notices, demands, or other writings that this Lease requires to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in
writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To Park District: Cory Atwell, Executive Director  
Glen Ellyn Park District  
185 Spring Avenue  
Glen Ellyn, Illinois 60187

With a copy to: Steven B. Adams  
Brooks, Adams & Tarulis  
101 N. Washington  
Naperville, Illinois 60540

To WDSRA: Executive Director  
Western DuPage Special Recreation Association  
116 North Schmale Road  
Carol Stream, Illinois 60188

With a copy to: Richard J. Tarulis  
Brooks, Adams & Tarulis  
101 N. Washington  
Naperville, Illinois 60540

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

26. BINDING EFFECT

This Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties.

27. TIME OF THE ESSENCE

It is specifically declared and agreed that time is of the essence of this Lease.

28. PARAGRAPH HEADINGS

The titles to the paragraphs of this Lease are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Lease.

In witness, each party to this Lease has caused it to be executed this 15 day of December, 2009.
GLEN ELLYN PARK DISTRICT

By: [Signature]

Its: [Position]

WESTERN DUPAGE SPECIAL RECREATION ASSOCIATION

By: [Signature]

Its: [Position]

ATTEST:

By: [Signature]

Its: [Position]

By: [Signature]

Its: [Position]
EXHIBIT A

SITE FLOOR PLAN OF DEMISED PREMISES
EXHIBIT B

RENT PAYMENT SCHEDULE

Total Rent due is $500,000 based on the following schedule:

A. $250,000 due within 180 days from execution of the Lease for all construction costs.

B. $250,000 due for all utilities, maintenance and other costs based on the following schedule:

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