

JOINT USE AND LEASE AGREEMENT

THIS JOINT USE AND LEASE AGREEMENT ("Agreement") made as of this ____ day of _____, 2014, by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through its Parks, Recreation and Cultural Services Department (the "City") and Ragain Sports LLC, a Colorado limited liability company, ("Switchbacks FC").

I. GENERAL PROVISIONS

1.1 **Lease/Permit.** In exchange for the performance of Switchbacks FC's obligations hereunder and for other good and valuable consideration, the City hereby grants to Switchbacks FC the non-exclusive right to use ("Lease/Permit") Sand Creek Stadium at Norman "Bulldog" Coleman Park, a City-owned soccer stadium located at 4385 Tutt Avenue, Colorado Springs, Colorado (the "Premises") for the purposes and subject to the terms and conditions provided in this Agreement.

1.2 **Purposes.** The purpose of the Lease/Permit is to provide Switchbacks FC a field of play and a headquarters for Switchbacks FC's United Soccer League Professional Soccer Franchise, the Colorado Springs Switchbacks FC. In accord with Section 10.2(d)(iii)(2) of the City of Colorado Springs Procedures Manual for the Acquisition and Disposition of Real Property, the City Council must find a public purpose in Switchbacks FC's occupation of the Premises at a rental rate below fair market value. Pursuant to Resolution No. _____, Colorado Springs City Council has determined that Switchbacks FC's proposed use of the Premises will contribute substantial social and economic benefit to the City and that the City's grant of the Lease/Permit of the Premises to Switchbacks FC for the purposes and under the terms and conditions provided in this Agreement serves a public purpose.

1.3 **Term.** In accord with City Charter provision 10-60, the term of this Agreement shall begin _____ and continue for a period of ten (10) years, with an automatic termination date of _____, unless earlier terminated or revoked as provided herein.

1.4 **Rent.** Due to the uniqueness of the Premises and the arrangement contemplated herein, there are no comparables from which the City may conclusively determine that the fair market rental value of the Premises; however, the City has determined that the fair market rental value of the Premises for the use contemplated herein could be One Hundred Eighteen Thousand Three Hundred Ten Dollars (\$118,310.00) per year. As rental, Switchbacks FC shall pay to the City One Thousand Two Hundred Dollars (\$1,200.00) per year in equal monthly installments, due on the first day of each month, of One Hundred Dollars (\$100.00) per month. As additional rental, Switchbacks FC shall make certain improvements to the Premises, as provided in Section 2.1 of this Agreement.

1.5 **Notice.** All notices under this Agreement shall be provided in writing to the following persons:

FOR SWITCHBACKS FC: Martin Ragain, Owner
Colorado Springs Switchbacks FC
102 S. Tejon, Suite 860
Colorado Springs, CO. 80903

FOR CITY:
Director
Parks, Recreation and Cultural Services
1401 Recreation Way
Colorado Springs, CO 80905
(719) 385-5940 phone

1.6 City Charter and City Code Authority. Switchbacks FC's non-exclusive use of the Premises is granted by the City in accord with the provisions of Article X of the City Charter of Colorado Springs, § 4.3.101, et seq. of the Code of the City of Colorado Springs, 2001, as amended, and Chapter 10 of the City of Colorado Springs Procedures Manual for the Acquisition and Disposition of Real Property. Pursuant to Section 10-100 of the City Charter, this Agreement is revocable by the City at any time.

1.7 Indemnity. During the term of this Agreement, Switchbacks FC agrees and covenants to be responsible for, and to protect, defend (not excluding the City's right to participate), save harmless and indemnify the City, its officers, officials, agents, and employees (which shall be referred to collectively as the "City" in this provision) for and against any and all liabilities, actions, losses, claims, demands, damages, injuries, death or expenses of whatsoever kind and nature, including without limitation reasonable attorneys' fees and costs, arising out of the occupancy and/or use of the Premises and/or the acts or omissions of each respective party or its members, managers, officers, directors, agents, employees, volunteers, servants, contractors, or subcontractors. It is the specific intention of the parties that the City shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Switchbacks FC from and against any and all claims. It is agreed that Switchbacks FC will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, Switchbacks FC agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Premises.

1.8 Insurance. During the term of this Agreement, Switchbacks FC agrees to provide the insurance coverages for the Premises, themselves and their officers, employees, agents, volunteers, servants and subcontractors and to comply with the additional requirements provided in Exhibit A attached hereto and made a part hereof by reference. The City's Risk Manager may from time to time change the insurance requirements and amend Exhibit A, without the consent or approval of Switchbacks FC, and Switchbacks FC agrees to change their insurance coverages to comply with the requirements of amended Exhibit A within thirty (30) of receiving a copy of the amended Exhibit.

1.9 **Non-Waiver.** The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, et seq., as from time to time amended, or otherwise available to the City, its subsidiary, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.

1.10 **Approval of City Council.** It is understood and agreed between the City and Switchbacks FC that the terms, conditions and provisions of this Agreement are expressly subject to the approval of the City Council of the City of Colorado Springs, which approval shall be evidenced by the signatures of the Mayor and the City Clerk on this document.

1.11 **Lease/Permit Administration.** For purposes of the Lease/Permit, the Director of the City's Parks, Recreation and Cultural Services Department, or the Director's designee, shall be the Lease/Permit Administrator on behalf of the City and Switchbacks FC's President, or the President's designee, shall be the Lease/Permit Administrator for Switchbacks FC. Each party shall handle all matters of mutual concern through its designated Lease/Permit Administrator, unless otherwise set forth in this Agreement or as required by law.

1.12 **Fiscal Obligations.** This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

1.13 **Property Tax Status of the Premises.** The property tax status of the Premises is exempt from property taxation. If Switchbacks FC's use of the Premises creates a property tax obligation for the City, Switchbacks FC agrees to pay all property taxes to or on behalf of the City.

II. CONSTRUCTION OBLIGATIONS

2.1 **Construction.** The parties agree that in order for Switchbacks FC to use the Premises for the purposes provided herein, certain temporary and permanent improvements must be made to the Premises. Switchbacks FC shall construct the improvements identified on the attached Exhibit B upon the Premises, which shall consist of permanent and temporary facilities that are

estimated to cost approximately Two Million Dollars (\$2,000,000.00) (the "Improvements"), of which it is estimated that approximately One Million Four Hundred Thousand Dollars (\$1,400,000.00) will be for the construction of permanent improvements.

Prior to breaking ground, Switchbacks FC shall obtain all necessary permits and provide City with reasonable assurances that Switchbacks FC has sufficient funds earmark for construction of the Improvements. In addition, Switchbacks FC may erect additional additions, erections, improvements, and alterations upon the Premises, provided that the City shall have the right to review and approve the preliminary design drawings and the detailed construction drawings of any proposed additions, erections, improvements and alterations prior to the date of erection thereof. All Improvements, additions, erections, improvements, and alterations upon the Premises shall be solely at the expense of Switchbacks FC and shall only be made upon the prior written approval of the City. The Director of the Colorado Springs Park and Recreation Department, or her designated representative, shall have the authority to grant any such approval on behalf of the City.

The City shall review all drawings submitted in a timely manner. Given the need to complete the construction of the Improvements before the fall of 2014, the City shall not unreasonably withhold or delay its approval of any such drawings. If Switchbacks FC has not received an approval or rejection of any drawings from the City within ten (10) business days after they are submitted, they shall be conclusively presumed to have been approved by the City. Rejected items shall include reasons for rejection. The failure of Switchbacks FC to build the Improvements in compliance with the terms of this Agreement shall be deemed a default under the provisions of this Agreement.

2.2 Permits. Switchbacks FC shall be responsible for obtaining all necessary State, local and national permits or licenses which are required to construct, maintain, operate, or provide any service on or in any building or structure upon the Premises.

2.3 Ownership of Improvements. During the term of this Agreement, all improvements, additions, erections, alterations constructed by Switchbacks FC shall be the property of Switchbacks FC. All improvements, additions, erections, and alterations upon the Premises at the expiration of the term of this Agreement shall, at the option of the City, be and become part of the Premises, and shall, at the option of the City, remain upon and be surrendered with and as a part of the Premises upon termination of this Agreement. Switchbacks FC, at their sole expense, shall remove any improvements, additions, erections, and alterations upon the Premises that the City does not wish to retain and all furniture or fixtures of personal property of any kind. At Switchbacks FC's sole expense, Switchbacks FC shall repair any damage caused by any removal and restore the Premises to a condition deemed acceptable by the City. Should Switchbacks FC fail to remove any improvements, additions, erections, or alterations upon the Premises that the City does not wish to retain, the City shall have the right to have those removed and/or destroyed at Switchbacks FC's sole expense. Should Switchbacks FC fail to remove any furniture or fixtures of personal property of any kind, then the same shall be considered as abandoned and become the property of the City.

2.4

Maintenance, Repair, Alterations, Demolition, and Salvage.

2.4.1 Switchbacks FC agrees to keep in good repair and to maintain all buildings, structures, and facilities upon the Premises, whether currently existing at the time that this Agreement is executed or later erected, including the structural soundness of the same and to keep both the interior and the exterior of the same on the Premises in good repair, including by way of illustration, the interior and exterior of all permanent and temporary structures, plumbing, electrical wiring, lighting systems, irrigation systems, plantings, sidewalks, walkways, bleachers, cement work, handrails, turfgrass, etc., and to be responsible for all casualty damage.

2.4.2 Switchbacks FC shall make no change, alteration or addition to any building or structure located upon the Premises which would impair the structural soundness or diminish or increase the size thereof, or modify the exterior thereof, without the prior written consent of the City. All costs of such work shall be paid promptly by Switchbacks FC so as to prevent the assertion of any liens for material or labor.

2.4.3 There shall be no demolition of any building or structure located upon the Premises without the prior written approval of the City. Demolition of any building or structure by Switchbacks FC shall be at the sole expense of Switchbacks FC.

2.4.4 Switchbacks FC agrees to take the Premises, including any buildings or structures thereon, in their present condition.

2.5 Mechanics' Liens. Switchbacks FC agrees that it will properly pay for any work done in or about the Premises and will not suffer any mechanic's liens or other liens to attach to the Premises and shall properly cause any claim for any such lien to be released immediately upon receiving notice of any such claim or to secure the City to its satisfaction in the event Switchbacks FC desires to contest any such claim. If Switchbacks FC does desire to contest any such claim, Switchbacks FC agrees to defend the City and to pay all reasonable costs incurred along with attorneys' fees and judgments, if applicable.

2.6 Sponsorship of Field. The City grants Switchbacks FC the authority to obtain one or more sponsorships for the field at the Premises and to use the name of any such sponsor(s) in identifying and promoting the field; provided however, that Switchbacks FC shall obtain the City's prior written approval of any such sponsor before Switchbacks FC will enter into any contracts with, receive any payment from, or use the name of any such proposed sponsor. All materials used to identify or market the sponsor at the Premises or in association with the Premises must comply with section 3.4.1.3 of this Agreement

III. USE OF THE PREMISES

3.1 Joint Use of the Premises.

3.1.1 Switchbacks FC shall have the right to use and allow others to use the Premises for the purposes provided in this provision and for any other lawful purpose, subject to the City's prior approval. Switchbacks FC agrees to use the Premises as a facility for the purposes of training and holding competitive events of professional athletes, as well as for the use of members of the community, and for administrative, recreational and related activities associated therewith. The City and Switchbacks FC acknowledge that Switchbacks FC's active use of the Premises contributes substantial social and economic benefit to the City, and Switchbacks FC acknowledge that a condition of the City entering into this Agreement with Switchbacks FC is that Switchbacks FC will use and continue to use the Premises for the purposes provided in this Agreement during the entire term of this Agreement.

3.1.2 The City shall have the right to use and allow others to use the Premises, including all improvements other than those specifically identified as within the exclusive possession and control of Switchbacks FC on Exhibit B, for any public purpose. Although the City shall have the right to charge admission or other fees for any event it presents at the Premises and to charge rent or other fees to its subusers, all uses of the Premises by City or its subusers shall be primarily intended to benefit the public or a group affected with the public interest.

3.1.3 The City and Switchbacks FC understand and agree that Switchbacks FC shall have the first priority for the use of the Premises throughout the term of the Agreement. Both Parties acknowledge that the City has a prior commitment to the adjoining landowner and agree to take reasonable efforts to accommodate the adjoining landowner's scheduling needs as they relate to AAA baseball. In order to harmoniously prioritize the use of the Premises between the City and Switchbacks FC, the Director of Parks, Recreation and Cultural Services or the Director's designee and the Executive Director of Switchbacks FC or a designee shall meet on a quarterly basis to prioritize schedules for the ensuing quarter. When the priority schedule has been completed, both parties shall make every effort to adhere to the schedule, but taking into account that there may be unforeseen circumstances which may require amendments to the schedule during the period. These amendments shall be made with an attempt to equitably retain the original prioritization to the greatest extent possible. The parties shall endeavor to plan their uses as far in advanced as possible so as to minimize scheduling conflicts.

3.1.4 The planned uses of the Premises by Switchbacks FC and the City shall be recorded on a written schedule maintained by the City. Once a party has a scheduled use, that party shall be entitled to the exclusive use of the Premises during the scheduled time and for a reasonable period before and after that time to allow for all necessary set-up, take-down and clean-up activities associated with such use; provided however, during the term of this Agreement, Switchbacks FC shall be entitled to permanently occupy the office and storage areas of the Premises, once constructed. The proposed locations of the

facilities which shall be within the exclusive possession and control of Switchbacks FC is identified on the attached Exhibit B, which is incorporated herein by this reference.

3.1.5 Switchbacks FC understands and agrees that it has primary responsibility for supervision of the operation of the Premises for the purposes provided herein. However, the City will make every effort to coordinate and cooperate with Switchbacks FC in the operation of these various events and activities, as the case may be, and will provide supervision and control of events sponsored by the City. Each party shall be responsible for supervising its own personnel, contractors, agents and any other personnel under their control.

3.1.6 Switchbacks FC understands and agrees that no person shall be prohibited from participating in activities on City property or in any City facility, including the Premises, as a result of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, ancestry, or veteran status.

3.2 Agency or Endorsement. Except as may be specifically provided for herein or in a separate agreement between the City and Switchbacks FC, neither party shall be deemed or held out to be a sponsor or endorser of any event presented in the Premises by the other party.

3.3 Operations Costs. Except as otherwise provided herein, the City shall be responsible for and promptly pay all charges for gas, electricity, water, sewer, and other utilities used or consumed on the Premises, as well as general maintenance of the Premises; provided however, that, on an annual basis, any costs incurred by the City under this provision in excess of the amount budgeted by the City for operations during the City's 2014 fiscal year shall be reimbursed by Switchbacks FC upon receipt of invoice from the City. The amount budgeted by the City for operations costs in the City's 2014 fiscal year is Thirty-One Thousand Dollars (\$31,000.00). Switchbacks FC shall be responsible for and promptly pay all charges for security and cleaning of the Premises. Unless agreed otherwise, equipment costs, salaries and supplies shall be the responsibility of the individual users to accommodate their own needs and use.

3.4 Operations.

3.4.1 Switchbacks FC's Obligations

3.4.1.1 Switchbacks FC shall prepare the Premises in a clean, orderly and sanitary condition prior to any scheduled use of the Premises by the City or its subusers. Switchbacks FC shall have available skilled personnel knowledgeable in the operation of the Premises who may be retained by City as independent contractors to assist in the set-up, conduct, take-down, and clean-up of any event. Except as expressly set forth herein, the Switchbacks FC shall not be required to provide any labor or supplies for any use of the Premises by the City or any of the City's subusers. Switchbacks FC and its subusers shall be responsible and pay for all required police protection and crowd control for all events presented by Switchbacks FC or its subusers.

3.4.1.2 Switchbacks FC or its subusers shall be responsible for hiring and compensating all ground control and operational personnel for events scheduled by Switchbacks FC or any of its subusers, including but not limited to security officers, police, parking lot attendants, ushers, ticket sellers, ticket takers, scorers, public address announcers, and other skilled, semi-skilled and unskilled employees required to conduct an event.

3.4.1.3 Switchbacks FC shall have the right to place permanent or semi-permanent advertising on or around the Premises, provided that such advertising complies with all applicable laws and the following advertising guidelines:

All advertising shall be of a reputable character, shall conform to recognized business standards, and shall not conflict with the laws of the United States, Colorado, and/or Colorado Springs (or subdivisions thereof). Advertisements are expected to be of high quality and of good taste. The City shall have the sole and unquestionable authority to determine what constitutes "high quality and good taste."

Advertisements may not be for X-rated products or services, alcoholic beverages, marijuana, political products or services, or contain any sexual innuendos. Immoral, vulgar, disreputable, or other advertisements that may be offensive to the public will not be accepted. The City also expressly reserves the sole right to refuse, remove, or have removed any advertisements which may be construed to reflect its support for a particular product, service, idea, political or religious point of view.

All advertising production and installation shall be professional and precise. Switchbacks FC shall maintain all displayed advertising so as to ensure its neat appearance and promptly remove all advertising that is defective, worn, or otherwise unsightly in appearance. City reserves the right to require Switchbacks FC to promptly remove, at Switchbacks FC expense, any advertising, which in the opinion of the City, is unsightly in appearance. Switchbacks FC further agrees to remove dated, worn, and/or defective advertising no later than seventy-two (72) hours following the final date of an advertised event or offer.

Switchbacks FC agrees that if the City asks Switchbacks FC to remove any of its advertising for failure to comply with applicable law and/or this provision, that Switchbacks FC will promptly remove such advertising.

3.4.2 The City's Obligations

3.4.2.1 The City shall pay or cause its subusers to pay all costs associated with promotion, set-up, conduct, take-down and clean-up of any event the City schedules at the Premises.

3.4.2.2 The City or its subusers shall be responsible for hiring and compensating all ground control and operational personnel for events scheduled by the City or any of its subusers, including but not limited to security officers, police, parking lot attendants, ushers, ticket sellers, ticket takers, scorers, public address announcers, and other skilled, semi-skilled and unskilled employees required to conduct the event.

3.4.2.3 Fair wear and tear excepted, the City shall pay for all repairs to the Premises occasioned by damage caused by participants in events scheduled by the City or its subusers.

3.4.2.4 The City shall not permit any other full professional sports team to use the Premises without the prior consent of Switchbacks FC.

3.4.2.5 The City shall not permit merchandise normally sold by Switchbacks FC to be given away or otherwise distributed at the Premises without the prior consent of Switchbacks FC.

3.4.2.6 The City shall clean, or cause to be cleaned, the Premises after any use scheduled by City.

3.4.2.7 The City shall place no advertising signs, other than those advertising a specific City-sponsored event to be held at the Premises and for no longer than one (1) week prior to the event, on the Premises without the prior written consent of Switchbacks FC. The City's permitted advertising materials will not cover or obstruct Switchbacks FC's permitted advertisements.

3.5 **Parking**. Switchbacks FC may use all City-owned parking areas located in the vicinity of the Premises for events presented at the Premises by Switchbacks FC and may impose a charge for such parking. In the event Switchbacks FC charges for parking on the City-owned parking areas, Switchbacks FC shall pay to the City One Dollar (\$1.00) for each car from which a parking fee was collected. On or before October 15th of each year, Switchbacks FC shall remit to the City an accounting identifying the total number of cars that paid to park on the City-owned parking areas broken down by event and payment for the City's share of the parking fees for the prior year. All funds received by the City under this provision shall be held in a Gift Trust Account administered by the City solely for the benefit of Norman "Bulldog" Coleman Park maintenance and improvements as determined by the Director of the City's Parks, Recreation and Cultural Services Department.

3.6 **Concessions**. Switchbacks FC shall have exclusive concession rights in the Premises during the times that Switchbacks FC is using the Premises. Without limiting the generality of the foregoing, Switchbacks FC shall have the right to sell food, drink (including malt, vinous, and spirituous liquors, provided that Switchbacks FC or its concessionaires have obtained the appropriate licensure to sell such beverages), other refreshments, scorebooks, programs, novelties, and souvenirs to spectators and participants attending Switchbacks FC events in the Premises. The City shall have exclusive concession rights in the Premises at all other times.

3.7 **Revenues.** Except as otherwise provided in the Section entitled "Parking", each party shall be entitled to retain any and all revenues generated by events presented or staged by it at the Premises.

IV. SWITCHBACKS FC'S ADDITIONAL OBLIGATIONS

4.1 Switchbacks FC agrees that no vehicle of any type, except those authorized by the City, shall be permitted to enter on the grass or other vegetated area of City property. No authorized vehicle shall remain on any turf or vegetated area for any purpose of than to load and unload various items needed for Switchbacks FC's programs, with the exception of medical emergency vehicles.

4.2 As security for the obligations of Switchbacks FC under this Agreement, prior to commencing construction on the Premise, Switchbacks FC shall grant City a security interest in Letter of Credit, in form and substance reasonably satisfactory to City. Switchbacks FC shall provide City with evidence reasonably satisfactory to City reflecting a value for the Premises following completion of construction. Switchbacks FC agrees not use the Premises or Switchbacks FC's interest in this Agreement as security for any financing without the express written permission of the City.

4.3 Switchbacks FC shall comply with all applicable City ordinances, resolutions, rules and regulations, policies and requirements pertaining to the use of Premises. Switchbacks FC shall also comply with all applicable County, State, and Federal laws including but not limited to the Americans with Disabilities Act and any environmental laws

4.4 Switchbacks FC shall be responsible for the overall conduct of participants and guests involved in Switchbacks FC's programs and activities. Switchbacks FC agrees that no noxious or offensive activity shall be carried on upon the Premises nor shall anything be done or kept on the Premises which may become a public or private nuisance, and to neither permit nor suffer any disorderly conduct, excessive noise, or nuisance which may annoy or disturb the persons occupying adjacent properties.

4.5 Switchbacks FC shall be solely responsible for making all applications, paying all fees and for securing any and all necessary permits as required by the City, El Paso County, the State of Colorado, and the federal government, including but not limited to requirements for public health, welfare, safety and fire service.

4.6 Switchbacks FC agrees and acknowledge that the City has and retains the right to have its employees and agents enter upon the Premises at any time for the purpose of inspecting, maintaining, servicing or protecting the property and for City purposes in general.

4.7 Switchbacks FC agrees that no plant material, trees or shrubs, or turf areas shall be damaged on City property during Switchbacks FC's programs or activities. Switchbacks FC shall either repair any damage to the City's satisfaction, or pay to the City the costs of all City repairs

resulting from Switchbacks FC's programs or activities at the rate and value assessed by the Parks, Recreation and Cultural Services Department.

4.8 Switchbacks FC shall notify the City within ten (10) days if any of the following events occurs:

4.8.1 A change in control of Switchbacks FC. A "change in control" shall be deemed to have occurred at such time as (i) any person is or becomes the beneficial owner, directly or indirectly, of voting securities of Switchbacks FC representing more than fifty percent (50%) of Switchbacks FC's outstanding voting securities or rights to acquire such securities; (ii) any sale, lease, exchange, or other transfer (in one transaction or a series of transactions) of all or substantially all of the assets of Switchbacks; (iii) a plan of liquidation of Switchbacks FC or an agreement for the sale or liquidation of Switchbacks FC is approved and completed; or (iv) the City determines in its sole discretion that a change in control has occurred, whether or not any event described above has occurred or is contemplated.

4.8.2 Revocation, termination, expiration, or assignment of the franchise agreement by and between Switchbacks FC and United Soccer Leagues, LLC, or its successor.

4.8.3 Switchbacks FC becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition for bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

4.8.4 Switchbacks FC enters into any other lease, use, license or other similar agreement with a third party for the purposes provided under this Agreement.

4.9 Switchbacks FC shall work with the Colorado Springs Police Department ("CSPD") to determine appropriate security staffing and shall incorporate CSPD security recommendations into its operations.

V. MUTUAL OBLIGATIONS

5.1 **Dangerous Conditions.** Switchbacks FC and the City agree to immediately inform each other of any dangerous or potentially dangerous condition existing at the Premises.

5.2 **Dispute Termination.** It is understood and agreed between the City and Switchbacks FC that the terms, conditions and provisions of this Agreement shall be liberally construed in order to promote a harmonious relationship with regard to the construction, maintenance and operation of the Premises. However, in the event that there is an irreconcilable dispute between the parties with regard to an interpretation of the terms, conditions and provisions of this Agreement, the decision of the Director of the Colorado Springs Parks, Recreation and Cultural Services Department, or the Director's designated representative, on that interpretation shall be final. The

decision of the Director of the Colorado Springs Parks, Recreation and Cultural Services Department or the Director's designated representative shall be in writing.

VI. AGREEMENT INTERPRETATION

5.1 **Governing Law.** This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado. Court jurisdiction shall be exclusively in the El Paso County District Court for Colorado's Fourth Judicial District.

5.2 **Assignment or Subletting.** It is agreed that neither the Premises nor any part thereof shall be sublet, nor shall this Agreement be assigned by Switchbacks FC to any third party without the prior written consent of the City. No assignment for the benefit of creditors, or by operation of law, shall be effective to transfer any rights to an assignee without the prior written consent of the City.

5.3 **Amendment.** No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties in the same manner as the execution of this Agreement.

5.4 **Independent Contractor.** In Switchbacks FC's performance of its obligations under this Agreement, it is understood, acknowledged and agreed between the parties that Switchbacks FC is at all times acting and performing as an independent contractor. The City shall neither have nor exercise any control or direction over the manner and means by which Switchbacks FC performs its obligations under the Agreement other than as stated within the Agreement terms. Switchbacks FC understands and agrees that neither it nor its employees, agents, servants or other personnel are City employees. Switchbacks FC shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Switchbacks FC or any of its employees, agents, servants or other personnel performing services or work under this Agreement, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes, neither Switchbacks FC nor its employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, Workers' Compensation, retirement or any other benefits whatsoever.

5.5 **Third Party Beneficiaries.** Unless otherwise set out specifically in Exhibit C (Franchise USL DOC), it is specifically agreed between the parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions, or provisions of this Agreement. In requiring insurance under this Agreement, the City specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 to 120, as now written or amended in the future.

5.4 **Integration.** This is a completely integrated Agreement and contains the entire agreement between the parties. Any prior written or oral agreements that are different from the

terms, conditions and provisions of this Agreement shall be of no effect and shall not be binding upon any party.

5.5 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors.

5.6 Authority. By signing below, the undersigned represent and warrant that they have been duly authorized to enter into this Agreement on behalf of the respective parties and that no further approval is required to bind the parties hereto.

5.7 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original hereof and all of which together shall constitute a single agreement.

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SIGNATURES ARE ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement this ____ day of _____, 2014.

CITY OF COLORADO SPRINGS

RAGAIN SPORTS LLC

Steve Bach, Mayor

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

Sarah B. Johnson, City Clerk

Title: _____

APPROVED AS TO FORM:

Office of City Attorney

EXHIBIT A
Insurance Specifications

Sand Creek Soccer Stadium

Insurance Requirements:

Switchbacks FC shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Switchbacks FC from liabilities that might arise out of this Agreement. Switchbacks FC is free to purchase such additional insurance as Switchbacks FC determine necessary.

A. Minimum Scope and Limits of Insurance: Switchbacks FC shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Installation Floater

- a. Coverage equal to the initial Contract Amount including labor and expenses, policy shall include the following provisions:
- b. The City, Contractor, subcontractor and any others with an insurable interest in the work shall be Insureds on the policy.
- c. Coverage shall be written on a Covered Cause of Loss-Special Form, replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing.
- d. Policy shall be maintained until whichever of the following shall first occur:
(1) final payment has been made; or, (2) until no person or entity, other than the City has an insurable interest in the property required to be covered.
- e. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.
- f. The Installation Floater must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.
- g. Policy shall contain a waiver of subrogation in favor of the City.
- h. Contractor is responsible for the payment of all deductibles under the Installation Floater policy.

2. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and liability assumed under an Insured Contract including defense costs.

- a. The policy shall be endorsed to include the following additional insured language: "City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of Switchbacks FC".
- b. A Waiver of Subrogation shall apply in favor of the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers.
- c. Policy is to have a liquor liability extension.

Minimum Limits:

General Aggregate	\$	2,000,000
Excess Liability Limit	\$	10,000,000
Products/Completed Operations Aggregate	\$	2,000,000
Each Occurrence Limit	\$	1,000,000
Personal/Advertising Injury	\$	1,000,000
Fire Damage Expense	\$	1,000,000
Premises Medical Expense (Each Person)	\$	5,000

3. Property Insurance

- a. Property insurance shall be written on a Covered Cause of Loss-Special Form, replacement cost coverage, including coverage for flood and earth movement.
- b. The City shall be named as a loss payee on property coverage for tenant improvements and betterments.
- c. For property coverage on the building, "the City shall be named as an Additional Insured-Owner/ loss payee".
- d. A waiver of subrogation applies the City for any Lessor Property.

Coverage for Switchbacks FC's Tenant Improvements, Fixtures	100% replacement cost
Coverage on Stadium	100% replacement cost
Coverage for Loss of Rents	Amount equal to all Minimum Annual Rent and other sums payable under the Agreement

4. Automobile Liability

Minimum Limits:

Bodily Injury/Property Damage (Each Accident) \$ 1,000,000

5. Worker's Compensation and Employers' Liability

Minimum Limits:

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	\$ 100,000
	\$ 500,000

6. Concessionaires

a. Commercial General Liability – Occurrence Form – Including Liquor Liability

The same provisions apply as in #2 above – Commercial General Liability.

- b. Policy is to have a liquor liability extension.
- c. Products coverage must extend to food products.

Minimum Limits:

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000
Personal/Advertising Injury	\$ 1,000,000
Fire Damage Expense	\$ 1,000,000
Premises Medical Expense (Each Person)	\$ 5,000

NOTE: Switchbacks FC is responsible for their own personal property (contents and equipment). The City does not require evidence of personal property insurance from the tenant, however, the Agreement terms and conditions should make it clear that the City is not responsible for loss or damage to the tenant's personal property.

B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

- 1. On insurance policies where the City is named as an additional insured, the City shall be an additional insured to the full limits of liability purchased by Switchbacks FC even if those limits of liability are in excess of those required by this Agreement.
- 2. Switchbacks FC's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except

when cancellation is for non-payment of premium, then notice must be at least ten (10) days prior to cancellation, suspension, or non-renewal. Such notice shall be sent directly to **City Parks & Recreation/Karen Palus, 1401 Recreation Way, Colorado Springs, CO 80905**. If any insurance company refuses to provide the required notice, Switchbacks FC or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect

D. **Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Colorado and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Switchbacks FC from potential insurer insolvency.

E. **Verification of Coverage:** Switchbacks FC shall furnish a certified copy of each of Switchbacks FC's insurance policies, and any endorsements, required under this Agreement to the City and each such policy shall be kept current at all times.

All policies and any required endorsements are to be received and approved by the City before the Agreement commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All policies and endorsements required by this Agreement shall be sent directly to **City Parks & Recreation/Karen Palus, 1401 Recreation Way, Colorado Springs, CO 80905. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DEPARTMENT.**

F. **Approval:** Any modification or variation from the insurance requirements in this Agreement shall be made by Risk Management, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

EXHIBIT B

Construction Plans

Permanent Site Improvements Sand Creek Soccer Stadium

New Grandstand:

12 R 291-6" with 10" rise x 36" tread fully closed deck – 48" elevated above field with each aisle to grade. The grandstands will feature mill finished aluminum tongue and tacking surfaces. Seating will be a clear anodized 2x10 seat plank, with painted backrest rails. All railing will be galvanized chain link. Risers under seats will be painted in color to be determined by owner.

Existing Grandstand:

New anodized 2' x 10' seats mounted to existing concrete with riser mounted L bracket. On sections we have included a painted backrest. 10' x 30' Press box with (4) rooms, baseboard heat. Press box will include an upper level with covering to match lower level, accessed by a ships ladder behind the press box. Press box will include a closet for computer equipment. We have included extending two treads on the top two rows of the end to increase the tread depth to allow a backrest and drink rail at the suites in the outside four rows. In the two suites in the middle section we have included our anodized aluminum drink rail tacking with the seating. In all suites we have included a guardrail at each end to prevent access from aisles into suites and a middle aisle. All aisles, existing and new will include new mid aisle handrails to meet current codes.

Site Stairs:

New 18'-0" wide stair up hill on West side of site up to top of the hill. New 8'-0" wide stair on East side from top of the hill down to player's locker rooms on East side. New 6'-0" wide stair on South end of East side up to top of the hill. All stairs will include mill finished aluminum treads, painted risers, and galvanized chain link fencing mounted on clear anodized aluminum rails. Steel framing will be hot dipped galvanized.

Ground Work:

The existing berms are being widened to accommodate a proper cement concourse. Concrete flatwork will comprise new and extended concourses on both sides to accommodate spectator movement, restroom facilities, apparel sales kiosks, and concessionaire equipment.

Utility Work:

A new fiber optic service is being brought to the site for point of sale systems, public Wi-Fi, live streaming, and administrative needs. Additional water and electrical lines are being extended and terminated or stubbed up to accommodate movable concessions equipment, bathrooms, administrative, and locker room trailers. Additional electrical service is required to add 2 new

light poles with six fixtures each above the existing grandstands and in line with current sports lighting system.

Exclusive Facilities:

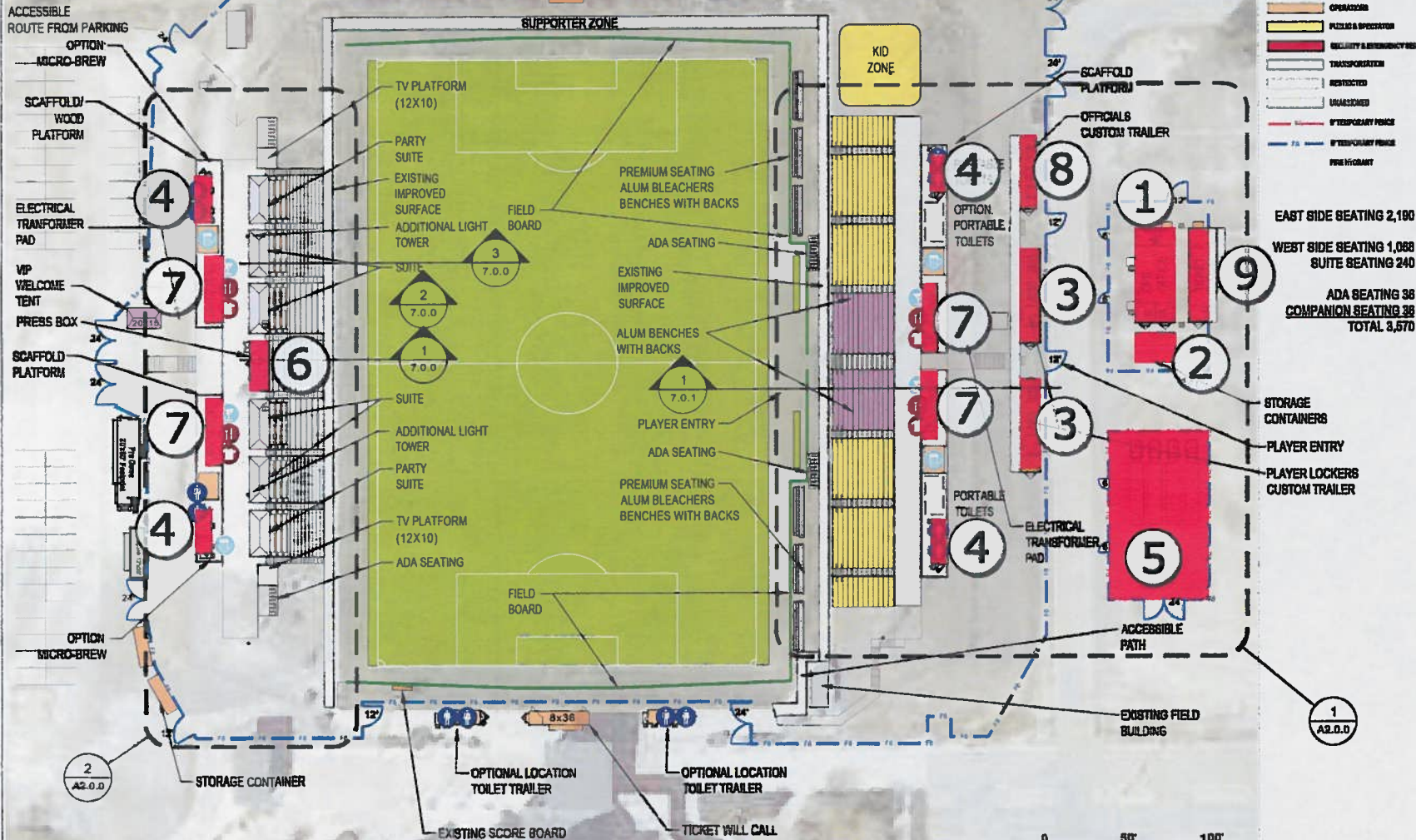
All facilities that have a door and a lock shall remain off limits to general public use unless clearly negotiated between the City, any third party renter, and the Switchbacks FC. This list includes and is the legend for the attached map:

1. Administrative Offices
2. Concessionaire Storage Facilities
3. Locker Rooms
4. Restroom Facilities
5. Equipment & Maintenance Storage
6. Press Box Area
7. Sales Kiosks
8. Officials Locker Rooms
9. Ticket Office

The Parks stadium site policy has been to restrict access to Sand Creek Stadium to those renting the facility. This policy is expected to remain unchanged into the future to protect all equipment and infrastructure on site.

EXHIBIT B

BARNES RD
SCAFFOLD PLATFORM



FUNCTIONAL AREA KEY

- MEDICANT
- COMPETITION & SPORT
- ENTERTAINMENT
- HOSPITALITY
- MEDIA & PRESS OPERATIONS
- OPERATIONS
- BUILD & SPECIATION
- SECURITY & EMERGENCY RESPONSE
- TRANSPORTATION
- RESTRICTED
- UNASSIGNED
- IF TEMPORARY FENCE
- FIRE HYDRANT

EAST SIDE SEATING 2,180
WEST SIDE SEATING 1,068
SUITE SEATING 240
ADA SEATING 38
COMPANION SEATING 38
TOTAL 3,570

Colorado Springs
Switchbacks to
POPULOUS
DENVER
2620 15th Street Suite 200
Denver, CO 80202
P: 303.442.2780

**SAND CREEK
SOCCER**
4385 TUTT BLVD
Colorado Springs, CO

- LEGEND**
- 1 MEN'S REST ROOM
 - 2 WOMEN'S REST ROOM
 - 3 FULLY REST ROOM
 - 4 SEAT
 - 5 ESCALATOR
 - 6 RAMP
 - 7 ELEVATOR
 - 8 FIRST AID
 - 9 CONCESSIONS
 - 10 RETAIL
 - 11 BAR
 - 12 BEER
 - 13 FOOD PORTABLE
 - 14 BEVERAGE PORTABLE
 - 15 CONCESSION PORTABLE
 - 16 RETAIL PORTABLE
 - 17 SUBCONTRACTOR
 - 18 FIRE HYDRANT



COLORADO SPRINGS, CO
DRAWING DATE
MARCH 28, 2014

**Sand Creek Field
Site Plan**
SCALE

SHEET NUMBER
A-1.0.0

EXHIBIT C

USL Lease Addendum

THIS LEASE ADDENDUM (this "Addendum") is made and entered into as of the ____ day of _____, 20__, by and among City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through its Parks, Recreation and Cultural Services Department (the "City"), Ragain Sports LLC, a Colorado limited liability company, ("Switchbacks FC"), and United Soccer Leagues, LLC, a Georgia limited liability company (the "USL").

WITNESSETH:

WHEREAS, the City and Switchbacks FC are parties to that certain Joint Use and Lease Agreement dated _____, 20__ (the "Lease"), for Sand Creek Stadium at Norman "Bulldog" Coleman Park, a City-owned soccer stadium located at 4385 Tutt Avenue, Colorado Springs, Colorado (the "Premises");

WHEREAS, Switchbacks FC and the USL are or will be parties to a USL Franchise Agreement (the "Franchise Agreement"), pursuant to which the USL granted or will grant Switchbacks FC a franchise to operate a soccer team that participates in one of the USL's soccer leagues;

WHEREAS, the City, Switchbacks FC, and the USL desire to provide the USL the opportunity to preserve the Premises as a venue for hosting USL soccer matches, and to assure the City that, if the USL exercises the option herein contained, any defaults of Switchbacks FC under the Lease will be cured by the USL before it takes possession of the Premises; and

WHEREAS, Switchbacks FC and the City desire to amend the Lease for the mutual benefit of both parties, as more specifically set forth herein;

NOW, THEREFORE, for and in consideration of the mutual promises and representations contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Collateral Assignment. The City acknowledges that Switchbacks FC intends to utilize the Premises to host USL-sanctioned soccer matches and other related events, and that Switchbacks FC's rights to operate a soccer team that participates in the USL's soccer leagues and to use the USL name, trademarks and service marks are solely pursuant to the Franchise Agreement. Switchbacks FC's operations at the Premises are independently owned and operated. The City acknowledges that Switchbacks FC alone is responsible for all obligations under the Lease unless and until the USL or another franchisee expressly assumes such obligations and takes actual possession of the Premises. Notwithstanding any provisions of the Lease to the contrary, the City hereby consents, without payment of a fee and without the need for further City consent, to (i) the collateral assignment of the Switchbacks FC's interest in this Lease to the USL to secure Switchbacks FC's obligations to the USL under the Franchise Agreement, and/or (ii) the USL's succeeding to Switchbacks FC's interest in the Lease as a result of the USL's exercise of rights or remedies under such collateral assignment or as a result of the USL's termination of, or exercise of rights or remedies granted in or under, any other agreement between the USL and Switchbacks FC, and/or (iii) Switchbacks FC's, the USL's and/or any other franchisee of the USL's assignment of the Lease to another franchisee of the USL with whom the USL has executed its then-standard franchise agreement. The City, Switchbacks FC, and the USL agree and acknowledge that simultaneously with such assignment pursuant to the immediately preceding sentence, the USL shall be released from all liability under the Lease or otherwise accruing after the date of such assignment (in the

event the USL is acting as the assignor under such assignment), but neither Switchbacks FC nor any other franchisee shall be afforded such release in the event Switchbacks FC or such franchisee is the assignor unless otherwise agreed by the City. The City further agrees that all unexercised renewal or extension rights shall not be terminated in the event of any assignment referenced herein, but shall inure to the benefit of the applicable assignee.

2. Renewal of Lease. Throughout the term of the Franchise Agreement and any renewals thereto, Switchbacks FC agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than 30 days prior to the last day that the option must be exercised, unless the USL otherwise agrees in writing. If the USL does not otherwise agree in writing, and upon failure of Switchbacks FC to so elect to extend or renew the Lease as aforesaid, Switchbacks FC hereby appoints the USL as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Switchbacks FC for the purpose of effecting such extension or renewal; provided, however, that the USL shall have no obligation to renew the Lease, or liability for renewing or failing to renew the Lease.

3. No Further Modification of Lease. Except as otherwise provided for in this Addendum, Switchbacks FC and the City agree that neither party shall renew or extend the term of the Lease or make any other modifications or alterations to the Lease without the prior written consent of the USL.

4. Entry into Premises. Switchbacks FC and the City agree that, with the City's prior permission, the USL shall have the right to enter the Premises to make any reasonable modifications or alterations necessary to protect the USL's interest in the proprietary marks or to cure any default under the Franchise Agreement or under the Lease, and Switchbacks FC and the City agree that the USL shall not be liable for trespass or any other crime or tort. If the Lease or Franchise Agreement expires or is terminated for any reason and the USL fails to exercise the rights under Paragraph 1 above, Switchbacks FC agrees to de-identify the Premises as the home venue of Switchbacks FC's USL team and to promptly remove the USL's trademarks and trade dress from the Premises. With prior coordination with the City, the USL may enter upon the Premises without being guilty of trespass or tort to effect such de-identification if Switchbacks FC fails to effect de-identification within 10 days after receipt of written demand from the USL, following termination or expiration of the Franchise Agreement or Lease. Switchbacks FC shall reimburse the USL for its reasonable costs and expenses in effecting de-identification.

5. Interference. Notwithstanding the provisions of any part of the Lease, the City shall not: (i) interfere with the ingress or egress of the Premises; (ii) disrupt Switchbacks FC's business; (iii) reduce the usable area of the Premises; or (iv) reduce the number of parking spaces that currently exist for the Premises.

6. Force Majeure. The City and Switchbacks FC shall be excused for the period of delay in the performance of any of their respective obligations hereunder or under the Lease, excepting monetary obligations, and shall not be considered in default, when prevented from so performing due to a labor strike, riot, war, fire, flood or other casualty, or Acts of God so extensive as to prevent Switchbacks FC from conducting business or preventing Switchbacks FC or the City from complying with their obligations hereunder or under the Lease.

7. Notices. Notwithstanding anything contained in the Lease to the contrary, all notices and demands required to be delivered hereunder will be deemed so delivered (i) at the time delivered, if delivered by hand; (ii) one business day after being placed on the hands of a commercial courier service for next business day delivery; or (iii) three business days after placement in the United States Mail by registered or certified mail, return receipt request, postage prepaid and must be addressed to the party to

be notified at the following addresses unless and until a different address has been designated by written notice to the other parties.

If directed to Switchbacks FC, the notice shall be addressed to:

Colorado Springs Switchbacks FC
102 S. Tejon, Suite 860
Colorado Springs, CO. 80903
Attention: Martin Ragain, Owner

If directed to the City, the notice shall be addressed to:

City of Colorado Springs
Parks, Recreation and Cultural Services
1401 Recreation Way
Colorado Springs, CO 80905
Attention: Director

If directed to the USL, the notice shall be addressed to:

United Soccer Leagues, LLC
14497 North Dale Mabry Highway
North Building, Grand Plaza, Suite 201
Tampa, Florida 33618
Attention: President

9. Third Party Beneficiary. The City and Switchbacks FC each agree that the USL is an express third party beneficiary of the Lease, and that the USL may enforce its rights as third party beneficiary thereunder against the City and Switchbacks FC.

10. Full Force and Effect. Except as otherwise provided for herein, the terms and conditions of the Lease remain in full force and effect.

11. Binding on Successors. The covenants, agreements, terms, provisions and conditions contained in the Lease, as modified by this Addendum, shall bind and inure to the benefit of all parties hereto, and their respective successors and assigns.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Addendum the day and year first written above.

CITY OF COLORADO SPRINGS

RAGAIN SPORTS LLC

Steve Bach, Mayor

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

Sarah B. Johnson, City Clerk

Title: _____

APPROVED AS TO FORM:

Office of City Attorney

UNITED SOCCER LEAGUES, LLC

By: _____
Name: _____
Title: _____