

Repl. pgs #36

MAY 12 2011



Chandler + Arizona  
Where Values Make The Difference

**DATE:** May 12, 2011

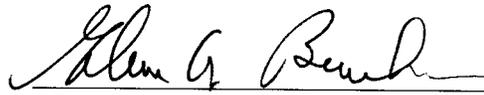
**MEMO TO:** Mayor and City Council

**FROM:** Glenn A. Brockman, Assistant City Attorney *GA*

**SUBJECT:** Resolution No. 4506 replacement pages

The Narrative Summary that is attached as an exhibit to Resolution No. 4506 has been modified this morning after some additional negotiations concerning insurance coverage were completed last night.

Please replace pages 10 and 11 of the Narrative Summary with the attached redline copy of pages 10 and 11, which are marked in red to denote changes made to the Narrative Summary as originally provided to you.

  
\_\_\_\_\_  
Glenn A. Brockman  
Assistant City Attorney

12. Tenant covenants and agrees that, if one or more major cable wakeboard events is held at a cable wakeboard park or facility owned or operated by Tenant during each lease year, or any affiliate of Tenant, in the Phoenix Metropolitan area, Tenant shall cause at least one such event per lease year shall to be held at the Premises. Major events shall be defined as a World Wakeboard Association sanctioned championship or championship series, such as the current King of Wake series. In the event of a default by Tenant of this provision, in addition to any other remedy available to City, Tenant shall be obligated to pay, as liquidated damages, an amount equal to \$20,000.00, which shall be due and payable on or before the next annual total rent payment is due under the Lease.
13. There shall be no assignment or subleasing without the prior written consent of Landlord, but the Lease shall provide that:
  - (a) Landlord will approve the assignment of the leasehold interest to the person from whom Tenant acquires construction financing for the Improvements; and
  - (b) Landlord will approve subleases for operation of the bar/lounge and/or restaurant/food service areas.
14. Tenant shall indemnify, defend and hold Landlord harmless from liabilities arising from the construction of the Improvements and subsequent operation and maintenance of the Premises.
15. Tenant shall provide or obtain the following Insurance:
  - (a) General liability insurance of \$21,000,000 per occurrence and \$2,000,000 in the aggregate combined single limit;
  - (b) Insurance covering the full replacement value of the improvements to the Premises, including all improvement thereon, against hazards of fire, extended coverage, vandalism and malicious mischief, flood and other property-related losses (flood insurance will be limited to the maximum insurance that can be obtained through the National Flood Insurance Program-);
  - (c) Property insurance providing full replacement value for loss of personal property and equipment on the Premises;
  - (ed) Worker's Comp Insurance, which shall cover obligations imposed by federal and state statutes having jurisdiction; and
  - (de) Builder's Risk (all risk) Insurance coverage during the Construction

Period:

- (f) Auto liability insurance having combined single limit coverage for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired and non-owned vehicles.
- (g) Liquor liability insurance of \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and
- (h) Excess liability insurance of \$6,000,000 with an aggregate of \$6,000,000.

For all insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this agreement, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form G00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- J. Both the Development Agreement and the Lease will include several standard or basic provisions relating to damage or destruction of the Premises, termination, default and remedy provisions, environmental hazard provisions, and other miscellaneous matters.



\* #30

MAY 12 2011

Chandler



**MEMORANDUM**

**Economic Development - Council Memo No. ED11-015**

**DATE:** APRIL 29, 2011

**TO:** MAYOR AND CITY COUNCIL

**THRU:** RICH DLUGAS, ACTING CITY MANAGER *RD*  
PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*  
CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR

**FROM:** JAMES SMITH, ECONOMIC DEVELOPMENT SPECIALIST *JS*

**SUBJECT:** 1440 CABLE FACTORY DEVELOPMENT AND LEASE AGREEMENTS

RECOMMENDATION: Staff recommends that the Council adopt Resolution No. 4506 and authorize the Mayor to sign all necessary documents.

BACKGROUND/DISCUSSION: Resolution No. 4506 approves and empowers the Mayor to execute both a Development and Land Lease Agreement between the City of Chandler and 1440 Cable Factory, LLC (1440) at Tumbleweed Park, located at the SWC of Germann and McQueen Roads.

These agreements will allow 1440 to lease land at Tumbleweed Park and develop a cable wakeboarding facility, providing a significant recreational opportunity for both the residents of Chandler and those throughout the region. The facility will also enable the City to host major regional and national events that will bring visitors to Chandler.

A wakeboarding facility in Chandler would be one of only 11 in the country, and one of only 5 west of the Mississippi River, with the closest existing facility located over 800 miles from Chandler. The facility is expected to bring positive exposure for the City nationally, and perhaps internationally, during the marketing and media coverage of major tournament events. Wakeboarding is among the top 10 most popular extreme sports with approximately 3.5 million participants annually.

The terms of the lease include a 25-year lease term and an option to extend the lease term for an additional 25 years. The lease payments to be made by 1440 represent a fair market rate for the land based on an independent appraisal commissioned by the City, and provide funds to assist with the future development of Hamilton Road within the park from Pioneer Parkway to Ryan Road.

Some of the important deal points included in the development agreement with 1440 Cable Factory include:

- The City will not provide any incentives for the project, and will, in fact, collect \$180,000 annually in lease payments for the first 10-years of the 25-year lease. After 10 years, lease payments will increase by 14% during the next 5-year interval, with 3% increases built in over the additional 5-year intervals.
- The development will include construction of an approximately 30,000 square foot clubhouse, which will substantially match the architecture of the Tumbleweed Recreation Center. The building will accommodate space for ticket and equipment sales, a restaurant/sports bar, office space and storage. It is envisioned that 1440 will, at a later date, seek the required zoning approval to display and sell boats in the clubhouse space.
- Two lakes will be constructed - approximately 10 and 6 acres in size - allowing for participation at both the competitive/advanced and beginner/training levels.
- The developer will be required to deposit with City the sum of \$180,000 as security for performance of the terms and conditions of the lease.
- 1440 will be solely responsible for securing the necessary water from Salt River Project (SRP) and/or Central Arizona Project (CAP), and operation of the park will not affect the City's water supplies or allocations in any way.
- Appropriate levels of parking to cover the daily operations of the facility will be provided by 1440. However, this lot will be considered shared, making spaces open and available to other users of Tumbleweed Park. The operator will be responsible for presenting a parking/transportation plan to the City for accommodating significant events.
- 1440 has agreed to provide up to 200 pre-paid admissions or to conduct two events annually at no charge for non-profits that are focused on providing assistance and/or opportunities for our City's youth.
- Tumbleweed's Master Plan Architect has determined that the anticipated softball fields planned for Tumbleweed Park can still be accommodated adjacent to the wakeboarding facility, and will be built at a later date.
- 1440 as part of their marketing plans will seek to partner with local colleges and universities – including Arizona State University's Wake Devils - to host practices and events as well as elective courses to be offered through the schools.

Staff recommends approval of Resolution No. 4506

ECONOMIC IMPLICATIONS: The City commissioned an independent economic analysis of the impacts of the development of the proposed 1440 wakeboarding facility. The estimates are based on the facility hosting two major events annually, and highlights of the study include:

- An estimated total of over 4,000 room nights in Year 1, increasing to nearly 6,600 room nights in Year 5

- An estimated total of \$4.96 million in direct spending and a total of \$9.6 million in total output, supporting 170 jobs in Year 1. With estimated Year 5 totals of \$7.86 million in direct spending, \$15.2 million in total output and support of 270 jobs.
- The above activity is estimated to create \$78,000 in City taxes in Year 1, increasing to \$124,000 in Year 5.

FINANCIAL IMPLICATIONS: There are no additional costs to the City as a result of entering into these agreements. The City will collect \$180,000 annually in lease payments from 1440 during the first 10 years of the lease agreement. These payments represent the fair market value of the land and funding to complete Hamilton Road when the City deems it appropriate, likely coinciding with construction of new softball fields in the park.

PROPOSED MOTION: Move to adopt Resolution No. 4506 approving the Development and Lease Agreements between the City of Chandler and 1440 and authorizing the Mayor to sign all necessary documents related to the Development Agreement.

Attachments: Resolution No. 4506  
Exhibit A - Narrative Summary

## RESOLUTION NO. 4506

### **A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER AND 1440 CABLE FACTORY, LLC, FOR A CABLE WAKEBOARD PARK ON LAND AT TUMBLEWEED PARK.**

WHEREAS, the City of Chandler has desired to have a unique commercial recreation and/or entertainment venue be developed on an approximately 26-acre portion of Tumbleweed Park and issued a request for proposals (RFP) for such purpose in May 2010; and

WHEREAS, in June 2010, 1440 Cable Factory, LLC (“Developer”) submitted its proposal for development of the site for a cable wakeboarding park, consisting of two lakes and associated facilities, which was the proposal selected through the RFP process; and

WHEREAS, City, at its request, has received and reviewed an economic analysis from Convention Sports and Leisure, an independent economic consulting firm, that describes the anticipated municipal benefits to be derived from the development of a cable wakeboarding park at its proposed location within Tumbleweed Park; and

WHEREAS, the City has determined that the proposed cable wakeboarding park is a use that is consistent with the regional park purposes for which Tumbleweed Park was acquired and is being developed; will be a regional destination that will enhance the economic viability of City by increasing its national profile so as to encourage tourism, increase transient occupancy and sales tax revenues, and create jobs; and, since wakeboarding is one of the top 10 extreme sports in terms of participation, will provide a unique recreational facility that would not otherwise be available to the citizens of Chandler; and

WHEREAS, prior to development of the cable wakeboarding facility, the proposed location for the facility will be leased to Developer with terms and conditions that provide for City to receive annual lease payments during the lease term at an amount representing the fair rental value of the land, as determined by an independent appraisal by Sells & Associates; and

WHEREAS, City and Developer agree to enter into a Development Agreement that contains the material terms set out in Exhibit “A”, attached hereto and incorporated herein by this reference;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. Council hereby approves the City of Chandler entering into a Development Agreement with Developer relating to the Project, which shall contain only the material terms set out in attached Exhibit “A”, and no other material terms.

Section 2. The Development Agreement shall be in writing and in a form approved by the Chandler City Attorney. The Mayor of the City of Chandler is authorized to execute the written Development Agreement and related documents for and on behalf of the City of Chandler in the form as approved by the Chandler City Attorney.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_ day of May, 2011.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
Chandler City Attorney *GAB*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4506 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_ day of May, 2011, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

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**NARRATIVE SUMMARY FOR CABLE WAKEBOARD PARK  
CITY OF CHANDLER RESOLUTION AUTHORIZING  
ADOPTION OF DEVELOPMENT AGREEMENT**

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May 10, 2011

- A. Developer, at Developer's expense, shall construct and develop all of the required Improvements (defined below) for a cable wakeboard facility on an approximately 26-acre portion of Tumbleweed Park leased by City to Developer and which is described and shown in attached Exhibits 1 and 2 (the "Property").
1. The Improvements shall consist of: (i) a main wakeboard lake designed and built to competition standards; (ii) a training lake; (iii) a wakeboard cable system; and (iv) a main building of approximately 30,000 square feet for use as administrative offices, a wakeboard and equipment rental area, a pro shop, a bar/lounge area, a restaurant/food service area, a rock climbing wall area, a VIP/clubhouse room, and a boat display area; onsite parking; miscellaneous hardscape and landscape features; and necessary pipes, lines, appurtenances and infrastructure for all required utility services.
    - (a) The Improvements will also include those additional improvements required as part of the Plans approval process described in paragraphs A.3 and A.4 below. Such Improvements are likely to include:
      - (1) A decorative wall or view fencing on the perimeter of the Property;
      - (2) Tiling or removal of the irrigation ditch running along the west side of Hamilton Street from Germann Road to the Property; and
      - (3) A sidewalk running along the south end of the Park & Ride facility located immediately north of the Property.
    - (b) The Improvements will not include public street improvements and certain other offsite work described in paragraph B.3 below.
  2. Construction of the Improvements and development of the Property shall be consistent with the conceptual design attached hereto as Exhibit 3.
  3. Prior to actual construction, Developer shall prepare plans and specification, including, without limitation, grading and drainage plans (collectively, the "Plans"), which shall be submitted to City for approval in accordance with City's customary and standard plan review and development approval process.
  4. City and Developer will reasonably cooperate in processing the Plans and shall work together using reasonable efforts throughout the process to resolve any City comments regarding the Plans so that approval of the Plans will not be

unreasonably withheld, conditioned or delayed. Further, City shall conduct all required inspections of the site or the inspection of the Improvements as expeditiously as reasonably possible. No unusual or extraordinary review or inspection requirements will be imposed by City. Notwithstanding the foregoing, the following shall apply:

- (a) Developer shall obtain all approvals required by the Maricopa County Flood Control District prior to City approving grading and drainage plans or issuing grading permits.
- (b) Developer shall obtain all approvals required by the Maricopa County Department of Health Services (or equivalent County department) with respect to the two lakes prior to City approval of the Plans and issuance of any building or grading permits.
- (c) Subject to paragraph E below related to the handling of “excess runoff,” all storm water runoff from the Property and runoff from any public roadway abutting the Property shall be retained on the Property to the extent reasonably possible.
- (d) Access to and from the Property shall be solely from Hamilton Street at its intersection with Pioneer Parkway, unless additional or alternative access is required as a condition of development approval during the processing of the Plans. The Parties understand that Hamilton Street is a public roadway (as defined in ARS 28-7201), but Pioneer Parkway, while available as a means for the public to access Tumbleweed Park, is not a public roadway and is subject to such regulations and restrictions as may be established from time to time by City’s Community Services Department.

5. Construction of the Improvements shall commence within 2 years of the effective date of the lease for the Property and shall be completed within 3 years of said lease effective date. Completion is deemed to have occurred when a Certificate of Occupancy (or comparable certificate, document or instrument) is issued by the City Building Official.

B. City shall have no responsibility for construction of the Improvements or the expense of doing so, but City shall be responsible for the following matters that may affect the development and use of the Property for a cable wakeboard facility:

- 1. City, at its expense, shall construct and install the pipes, lines and appurtenances necessary for delivery of City-operated water, wastewater (sewer) and reclaimed water services to the Property up to the point of meter installation on the Property. Developer is responsible for all other utility improvements, on or off the Property, required for the development of the Property.

2. Prior to Developer completing the Project, City, at City's expense, shall complete the construction of Hamilton Street from Germann Road to Pioneer Parkway.
  3. At such time as City completes the development of those undeveloped portions of Tumbleweed Park located south and/or southeast of the Property, City shall complete the design and construction of Hamilton Street from the intersection of Hamilton Street and Pioneer Parkway to Ryan Road. There is no time by which such construction will commence or be completed.
- C. City and Developer have addressed water issues related to the construction, development, operation and maintenance of the Property as follows:
1. Developer is solely responsible for obtaining all water needed for use and operation of the lakes for the cable wakeboard facility. Developer represents that water for the lakes will be provided from SRP via an existing delivery system at or near Tumbleweed Park pursuant to an agreement Developer has reached with SRP.
    - (a) City shall have no obligations of any kind under the provisions of Developer's agreement with SRP and said agreement shall not run with the land that is the Property or otherwise encumber the Property or any other City real property in any way whatsoever.
    - (b) Developer shall provide to City on or before execution of the lease for the Property a copy of the agreement between Developer and SRP for delivery of water for the lakes.
  2. City shall have no obligation to provide water for said lakes and no obligation to provide any alternative or "back-up" water source for the lakes in the event that SRP fails or is unable to provide sufficient water for the lakes to be safely used because of drought conditions or any other reason. The Parties understand and acknowledge that City services supply only potable water or reclaimed water to customers and that neither water type is to be used for supplying the two lakes.
  3. Developer shall take all necessary precautions in the maintenance and use of the Property to prevent any harm to patrons of either the cable wakeboard facility or any remaining portion of the Property from waterborne bacteria or other water quality issues associated with the lakes, which, without limitation, includes avoidance of cross-contamination between the lake water and any other water not appropriate for lake use.
  4. Developer will comply with all regulations and requirements as may be imposed by any Applicable Laws related to water quality and safety.
  5. The Parties understand and acknowledge that one or more groundwater injection wells are located on or near the Property. City makes no representation as to

whether the presence of such wells will adversely affect the use or operation of the cable wakeboarding facility or the effect their presence may have in obtaining necessary approvals from the Maricopa County Flood Control District, the Maricopa County Department of Health Services, or any other County department.

6. In no event shall Developer drain the water or any portion of the water from the lakes onto any portion of Tumbleweed Park or any other City property without the prior written consent of City.
- D. The Property shall be used solely for the operation of a cable wakeboard facility and related activities in compliance with City's zoning code and any other Applicable Laws. If Developer desires to use the Property for any purpose not currently allowed under the zoning code, Developer will first have to apply for and obtain a rezoning of the Property for such additional or other use. Notwithstanding the foregoing, the Property shall not be used for any purpose that might otherwise be allowed by the zoning code, but that is not permitted or authorized by the terms of the lease for the Property.
- E. If the Plans require a portion of the Property's storm water runoff to be retained off the Property (the "excess runoff"), City will provide a location for such a retention basin in an area of the Park located south and/or southeast of the Property. Developer shall construct a temporary retention basin in the designated area that will have sufficient capacity to accept the excess runoff. A permanent retention area will be designated and retention basin constructed as part of the City's final plans for and development of this area of the Park, including the future street development described in paragraph B.3 above. City will maintain the retention area. Developer shall reimburse City for Developer's proportionate share of the maintenance costs, which shall be included as an additional payment to be paid by Developer under the lease for the Property.
- F. Parking Issues are addressed as follows:
1. The parking facilities located on the Property, now or in the future, excluding certain limited areas designated for use by Developer's employees, shall be available for general public use.
  2. The parking facilities located, now or in the future, in or upon portions of Tumbleweed Park, excluding the Property, the Park & Ride facility at the southwest corner of Germann Road and Hamilton Street and certain limited areas designated for use by City employees, shall be available for general public use, including, without limitation, patrons of the cable wakeboard facility.
  3. The Park & Ride facility is intended for the use of those members of the general public who utilize Maricopa County public transit service, and such members shall have priority for use of the facility.
  4. In accordance with the lease for the Property, Developer shall maintain the

parking facility on the Property, including, without limitation, any parking lot lighting, landscaping or other on-site improvements, in good order, condition and repair. City shall maintain in good order, condition and repair the other parking facilities located within or upon Tumbleweed Park, including the Park & Ride facility at the southwest corner of Germann Road and Hamilton Street and certain limited areas designated for use by City employees.

5. Notwithstanding the above, from time to time, Developer or City may have occasion to hold a major or special event, such as (by way of example only and not as an exclusive list of such events): Wake Park Worlds, Monster's Triple Crown, World Wakeboard Association World Championship; Fourth of July; Ostrich Festival. Subject to paragraphs F.6 and F.7 below, during the occurrence of any such major or special event, the Parties, as needed, will allow their respective parking facilities to be made available for overflow parking for patrons of the event. This provision shall not apply to the Park & Ride facility if doing so is determined or claimed to be a violation of the terms and conditions imposed on City as part of the financing for the acquisition and development of the site for the Park & Ride facility.
6. Developer and City shall mutually cooperate in resolving any issues related to use of parking facilities, calendaring and scheduling special or major events, and calendaring or scheduling other planned activities at either the Property or other portions of Tumbleweed Park. In no event shall the Parties both hold a major or special event on the same dates or on dates not previously agreed to by the Parties unless and until written consent is obtained from the other Party.
7. As part of the mutual cooperation described in paragraph F.6 above, the parties shall mutually develop an operational plan to (a) address parking, security and other matters that arise or may arise in connection with special or major events occurring on the Property or the remaining portions of Tumbleweed Park; (b) establish a calendar and/or schedule for major or special events and for other planned activities occurring on either the Property or the remaining portions of Tumbleweed Park; and (c) establish procedures the Parties determine are needed for the fair and efficient functioning of both the Property and the remaining portions of Tumbleweed Park.
  - (a) For this purpose, representatives of the Parties shall meet periodically while the lease for the Property is in effect; and
  - (b) In the event any impasse or dispute arises in either completing the operational plan, developing the schedule or calendar for major or special events and for other planned activities, or in following the procedures mentioned above, then, upon the written request of either Party, the matter will be referred to the City Manager or a designee to attempt to informally mediate a resolution of the matter at issue within thirty (30) days following receipt of the written request; and

- (c) The operational plan, and any subsequent amendments thereto, shall be put into a writing signed by the Parties and filed with the Chandler City Clerk.

G. Additional miscellaneous matters to be addressed in the Development Agreement are as follows:

1. During the first 15 years of the term of the Lease (described below), Developer shall provide annually, at the discretion of the City, either (a) 200 pre-paid admissions/tickets to City non-profits targeting youth (in the form of tickets or similar forms of admission as may be utilized by Developer) or (b) at least two (2) all-day events at no cost to participants that allow these non-profits the use of the Facility for the youth they serve.
2. Developer agrees that in the promotion of the cable wakeboard facility, associated events and recommendation of accommodations related to the above that Chandler establishments (hotels, restaurants and retail) will be recommended and highlighted on Developer's website. Developer will also use its best efforts to promote City of Chandler establishments in its social media, and, in Developer's discretion, in its local marketing materials and efforts.
3. Developer will seek partnerships with universities and colleges in the area for the purpose of partnering with wakeboarding teams, providing educational recreation opportunities and to further grow the sport of wakeboarding.
4. City understands and is supportive of Developer's plan to sell the naming rights for the Facility (buildings, lakes and/or other ancillary structures) to a corporate sponsor, realizing that it is an important part of Developer's business plan. It is understood that the corporate sponsor is likely to be one associated with the wakeboarding industry, such as an equipment manufacturer or a sponsor of various tours. Upon Developer's agreement with a corporate sponsor, Developer shall submit in writing information about the corporation selected and the details of the agreement (i.e. signage required, etc.) to the City of Chandler's Economic Development Division. The City Manager or a representative shall have the right to approve or reject the corporate partner based on the compatibility of the company with a City entity.

H. Upon the Parties executing the Development Agreement and the Development Agreement being recorded with the Maricopa County Recorder, which is anticipated to occur on or before June 1, 2011, City will issue written notice to the tenant under certain agricultural leases for early termination of those leases as they affect the Property no later than three (3) business days after the execution of the Development Agreement, and such notice shall provide that Developer shall have access to the Property to begin construction no later than forty-five (45) days after the execution of the Development Agreement. On or before June 30, 2011, City will enter into a lease of the Property with

Developer (the "Lease").

I. The Lease will contain the following material terms and conditions:

1. The "Effective Date" of the Lease shall be July 15, 2011. The "Premises" leased to Developer shall include the Property and the Improvements to be constructed thereon for the use and operation of the Premises for a cable wakeboard facility.
2. The first 3 years period running from the Effective Date shall be the Construction Period during which Tenant (Developer) shall undertake and complete the design and construction of the Improvements. Construction shall commence within the first 2 years of the Construction Period and shall be completed at the end of year 3 of the Construction Period.
3. The Term of the Lease is 25 years commencing on the earlier of the date a certificate of occupancy issues or, regardless of whether or not a certificate of occupancy has issued, on the first calendar day following the end of the Construction Period (the "Commencement Date"). Tenant, if not in default under the Lease or the Development Agreement, shall have the option of extending the Term for an additional 25 years upon 180 days written notice to Landlord (City).
4. Total Rent shall be paid annually by Tenant on the Commencement Date and on each 1-year anniversary of the Commencement Date during each year of the Term. The initial net rent payment shall be \$180,000.00. Thereafter, the annual net rent shall be increased during the Term in accordance with the following schedule:

<u>Years</u>	<u>Annual Base Rent</u>
2 - 10	\$180,000.00
11 - 15	\$205,200.00
16 - 20	\$211,356.00
21 - 25	\$217,697.00
26 - 50	An increase of 5% over the prior rent rate every 5 years.

5. Tenant shall pay all taxes, assessments, liens or charges, or other impositions as they become due so as to keep the Property and the leasehold interest in the Property unencumbered. Additional Payments will also include expenses incurred by Landlord on behalf of Tenant and any late charges. A late charge of 2.5% will be imposed on any payment required from Developer and not received by City within 10 days after such payment is due. Additional Payments will be due and payable on the first day of each calendar month following the date that such tax, charge or other imposition or expense is incurred.
6. On or before the Commencement Date, Tenant shall deposit with City the sum of

\$180,000.00 as security for performance by Tenant of the terms and conditions of the Lease, including, but not limited to, rental payments and continuous operation of the cable wakeboard facility. This security deposit can be in the form of cash, an irrevocable letter of credit or other form of security acceptable to the Chandler City Attorney.

7. The Premises shall be used solely for the design, construction, operation, repair and maintenance of the cable wakeboard facility. The Premises shall not be used for any other purpose without prior written consent of Landlord.
  - (a) Retail sales that are not consistent with the recreational purpose of Tumbleweed Park are prohibited. This includes onsite boat sales, but the display of a boat available for purchase at a site off the Premises is permitted.
  - (b) Food and beverage service may be provided during business days and hours. Liquor sales and service shall only be allowed in the bar/lounge or the restaurant portions of the main building on the Premises, and only upon any required liquor license and/or liquor use permit being obtained.
  - (c) Tenant shall operate a first-class cable wakeboarding facility and shall comply with all Applicable Laws.
  - (d) The name of the cable wakeboard facility shall be "1440 Cable Factory;" however, such name may be changed as per paragraph G.4 above.
8. Tenant shall construct the Improvements. Tenant shall provide surety bonds (both a payment bond and a performance bond) for the total cost of the Improvements.
  - (a) Tenant shall keep Premises free of all liens and claims of liens for labor, services, materials, supplies or equipment.
  - (b) Tenant shall notify Landlord in writing at least 10 days prior to commencement of construction.
  - (c) Title to the Improvements, other than utility improvements, shall remain the property of Tenant during the Lease, but shall pass to Landlord at the end of the Lease.
9. Tenant shall not encumber the premises without prior written consent of Landlord. However, Tenant may encumber the leasehold interest in the Premises to finance the initial development and construction of the Improvements.
10. Tenant shall not demolish, remove, alter, modify, replace or add to the Improvements without prior written approval of Landlord.

11. Tenant shall operate the cable wakeboarding facility subject to the following:
  - (a) Tenant shall provide competent management and adequate staff.
  - (b) The facility will be available for general public use.
  - (c) Tenant shall exercise reasonable efforts to cause prompt removal of any unreasonably loud, boisterous or disorderly persons.
  - (d) Tenant shall not knowingly allow any illegal activities to be conducted upon the Premises.
  - (e) Tenant shall have the right to erect and maintain signs or advertising matter in or upon the Premises or the Improvements thereon, provided that the same shall comply with all Applicable Laws. However, all such signs or advertising matter must have the prior written approval of Landlord, which shall not be unreasonably withheld or delayed so long as such proposed signs or advertising matter relates to Tenant's operation of the cable wakeboard facility.
  - (f) Tenant shall provide and pay for all utilities needed for Tenant's use of the Premises.
  - (g) Tenant shall not knowingly permit offensive matter or refuse or substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health to remain on the Premises.
  - (h) Tenant shall immediately correct any unsafe condition of the Premises.
  - (i) The Premises shall not be used for human habitation.
  - (j) Tenant shall continuously operate the cable wakeboard facility and fully utilize the Premises for such purpose. For purposes of the Lease, the definition of continually operating shall be having the park open to the public (or open for corporate events or special events) seven (7) days per week, throughout at least ten (10) months per calendar year, excluding reasonable closures for maintenance, repair, unacceptable weather conditions, and/or holidays.
  - (k) Tenant shall make the Premises available for public use during schedule hours that commence no earlier than 6:00 a.m., and which shall be no later than 10:30 p.m., Sunday through Thursday, and no later than 12:00 a.m., Friday and Saturday. Corporate events or special events may also be held on the Premises until 12:00 a.m. with the prior written consent of the Community Services Director or the Director's designee.

12. Tenant covenants and agrees that, if one or more major cable wakeboard events is held at a cable wakeboard park or facility owned or operated by Tenant during each lease year, or any affiliate of Tenant, in the Phoenix Metropolitan area, Tenant shall cause at least one such event per lease year shall to be held at the Premises. Major events shall be defined as a World Wakeboard Association sanctioned championship or championship series, such as the current King of Wake series. In the event of a default by Tenant of this provision, in addition to any other remedy available to City, Tenant shall be obligated to pay, as liquidated damages, an amount equal to \$20,000.00, which shall be due and payable on or before the next annual total rent payment is due under the Lease.
  13. There shall be no assignment or subleasing without the prior written consent of Landlord, but the Lease shall provide that:
    - (a) Landlord will approve the assignment of the leasehold interest to the person from whom Tenant acquires construction financing for the Improvements; and
    - (b) Landlord will approve subleases for operation of the bar/lounge and/or restaurant/food service areas.
  14. Tenant shall indemnify, defend and Landlord harmless from liabilities arising from the construction of the Improvements and subsequent operation and maintenance of the Premises.
  15. Tenant shall provide or obtain the following Insurance:
    - (a) General liability insurance of \$2,000,000 combined single limit;
    - (b) Insurance covering the full replacement value of the Premises, including all improvement thereon, against hazards of fire, extended coverage, vandalism and malicious mischief, flood and other property-related losses.
    - (c) Property insurance providing full replacement value for loss of personal property and equipment on the Premises;
    - (c) Worker's Comp Insurance; and
    - (d) Builder's Risk (all risk) Insurance coverage during the Construction Period.
- J. Both the Development Agreement and the Lease will include several standard or basic provisions relating to damage or destruction of the Premises, termination, default and remedy provisions, environmental hazard provisions, and other miscellaneous matters.

**Exhibit 1 to Narrative Summary  
(Legal Description)**

The Property consists of portions of the following tax parcels: 303-33-015A, -016, and -007V.

The Property is generally located west of the intersection of Hamilton Street and Pioneer Parkway, and south of the Park & Ride lot at the southwest corner of Germann Road and Hamilton Street.

A SURVEYED LEGAL DESCRIPTION WILL BE COMPLETED PRIOR TO THE EXECUTION AND RECORDING OF THE DEVELOPMENT AGREEMENT ON OR ABOUT JUNE 1, 2011.

**Exhibit 2 to Narrative Summary  
(Drawing)**

AT THE TIME THE SUREVEYED LEGAL DESCRIPTION IS COMPLETED A DRAWING OF THE EXTERIOR OF THE PROPERTY WILL ALSO BE COMPLETED.

**Exhibit 3 to Narrative Summary  
(Concept Design)**

E GERMANN ROAD

UNION PACIFIC RAILROAD

S McQUEEN ROAD



EAST RYAN ROAD



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CABLE FACTORY

# Tumbleweed Park - MASTER PLAN



© JUNE 2009



*East Elevation*

*Streetview*

-30,000 Square Foot Facility

- Boat Show Room

-Rock Climbing Wall

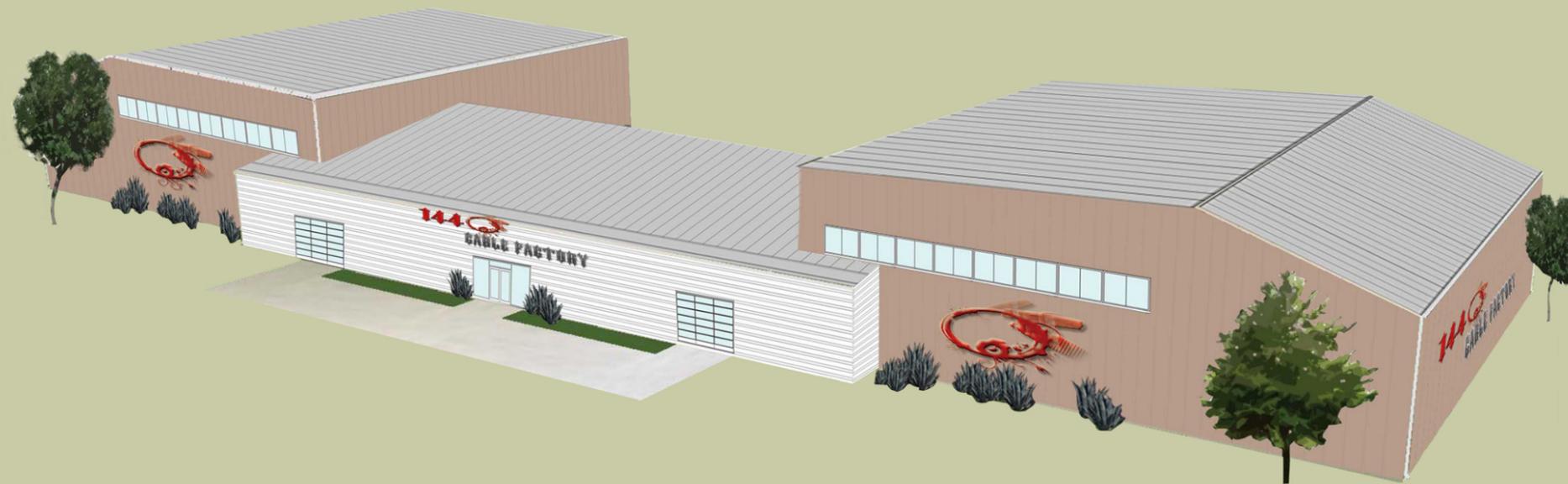
-Restaurant

-Rental Shop / Ticket Sales

-Executive Offices

-ProShop

-VIP Club



*3/4 AerialView*



*Tumbleweed Park*