

COMMERCIAL LEASE OF REAL & IMPROVED PROPERTY

This Lease is executed by the Parties hereto to be effective as of _____, 20____
(the "Effective Date").

1. PARTIES: The Parties to this Commercial Lease ("Lease") are:

Landlord: City of San Marcos
City Hall, 630 E Hopkins Street
San Marcos, TX 78666

Tenant: SM Baseball Investments, LLC
415 N. Guadalupe Street, Suite 400
San Marcos, TX 78666

Collectively, the Landlord and the Tenant shall be referred to as the "Parties".

2. LEASED PREMISES:

- A. Land: As of the Effective Date hereof, Landlord is the owner of fee simple title in that certain tract of land depicted in Exhibit "A" (the "Land").
- B. Lease: Landlord hereby agrees to lease to Tenant, and Tenant agrees to lease from Landlord, subject to the terms contained herein, an athletic field complex generally consisting of eight (8) multi-purpose, fully synthetic turf fields, concession areas and parking stalls ("Outdoor Premises") constructed on the Land.
- C. Intentionally Left Blank.
- D. Landlord Obligations to Tenant: Landlord shall deliver the Outdoor Premises to the Tenant in good condition, with the improvements constructed in accordance with the final approved plans and specifications for the Outdoor Premises.
- E. Tenant Obligations to Landlord: Tenant shall manage and operate the Outdoor Premises, as specified herein, in a first class manner consistent with industry standards for the operation of similar types of first class facilities.
- F. Access to Outdoor Premises: Subject to Section 12 below, Tenant, through its employees or agents, shall have the primary responsibility for access to the Outdoor Premises by unlocking and locking the access points. Tenant further agrees that the Landlord's police and fire departments will be provided with duplicate keys to the access points of the Outdoor Premises for use in obtaining access to the Outdoor Premises for security patrols and in the case of emergencies.

3. TERM:

- A. Initial Term: The initial term of this Lease is 25 years, which will begin on the Commencement Date as defined in paragraph 3.D (“Initial Term”).
- B. Option Period: Tenant will have two (2) option periods of five (5) years each (“Option Period(s)”) in length immediately following the Initial Term and under the same terms and conditions as set forth in this Lease. Tenant shall give Landlord written notice of its intention to exercise an Option Period at least 180 days before the Initial Term expires and at least 180 days before the first Option Period expires if the second Option Period is to be exercised.
- C. Certificate of Occupancy: The Landlord will deliver the Outdoor Premises to the Tenant under a fully approved and final certificate of occupancy.
- D. Commencement Date: The Commencement Date will be the date that is ten (10) business days following the Effective Date. The Parties shall execute the Commencement Date Declaration attached hereto as Exhibit “B”, setting forth the Commencement Date and expiration date of the Initial Term.

4. RENT AND EXPENSES:

- A. Base Monthly Rent: Within ten (10) days following the first day of each month during the Lease, Tenant shall pay Landlord the monthly rent due, if any. However, the Landlord and Tenant agree that following the Commencement Date, the initial 24 months of the Lease will have a monthly rent of \$0.00 (“Initial Period Rent”). Beginning on the 1st day of the 1st full month following the expiration of the Initial Period Rent, the monthly rent will be calculated based upon the demonstrated number of Tournaments or number of Teams, whichever is greater, participating in events at the Outdoor Premises from the immediately prior 12 months as outlined in the table below:

# of Tournaments		# of Teams		Monthly Base Rent as % of Annual Debt Service	Monthly Base Rent in \$ based on ADS of \$_____
FROM	TO	FROM	TO		
0	4	0	80	75%	\$
5	7	81	140	50%	\$
8	10	141	200	25%	\$
11	19	201	399	10%	\$
20+		400+		0%	\$

For example, if there were 10 Tournaments and 210 Teams during months 13-24, then the monthly base rent for month 25 would be an amount equal to 1/12th of the product of 10% of the annual debt service. The term “Tournaments” as used herein shall mean a sporting or recreation event conducted by the Tenant of any age group consisting of a minimum of 20 teams or 200 participants. A “Team” shall be defined as a minimum number of 10 participants per team playing in the event within San Marcos, TX.

- B. Debt Service Escrow: Starting on the first full month following the Initial Period Rent and continuing through the Initial Term and any Option Period(s), if the Tenant has failed or fails to achieve the top level of traffic volume as outlined in the table in Section 4.A (e.g. generate an average of 20 or more Tournaments or host more than 400 Teams annually for the prior two (2) years), an escrow deposit equal to \$_____ (which amount is equal to 25% of the Landlord’s annual debt service related to the Outdoor Premises) shall be made. If such deposit is required to be made, then within thirty (30) days following the achievement of the top level of traffic (either number of Tournaments or number of Teams) outlined in the table in Section 4.A for the prior 12 consecutive months, ½ of such deposit shall be returned to Tenant; and upon the earlier of (a) the expiration or earlier termination of the Lease or (b) achievement of the top level of traffic outlined in the table in Section 4.A annually for two (2) years, the balance of the escrow deposit, if any, shall be returned to Tenant.
- C. Place of Payment: Tenant shall remit any and all amounts due to Landlord under this Lease to the following person at the place stated or to such other person or place as Landlord may designate in writing:

City Manager
City of San Marcos
City Hall, 630 E Hopkins Street
San Marcos, TX 78666

- D. Method of Payment: Tenant shall pay any rent charges owed and due under this Lease by check and Landlord will provide receipt upon request. Tenant shall pay all rent timely without demand, deduction, or offset, except as permitted by law or this Lease.
- E. Late Charges: If Landlord does not receive the applicable rent payment at the designated place of payment within 15 days after the date it is due, Tenant shall pay Landlord a late charge equal to 10% of the monthly payment amount. The late charge is a cost associated with the collection of rent and

Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under the section pertaining to Tenant Default.

- F. Returned Checks: Tenant shall pay Landlord the applicable fee for each check that Tenant tenders to Landlord that is returned by the institution on which it is drawn for any reason, plus any late charges, until Landlord receives payment. Such fee and late charges will be set by the City of San Marcos at the rate in effect as of the Effective Date of this Lease by adoption of its fee schedule.
- G. Records and Audit: Tenant shall maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to its revenues, which as used here means tournament team entries, showcase entries, tournament team entry fees and showcase player entry fees, which books and records Tenant shall keep and maintain in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying, audit and examination by Landlord or by properly designated employees or agents of Landlord. Landlord has the right, such right not to be exercised more frequently than once every year, to audit the books and records of Tenant.
 - i. Hotel Occupancy Tax Tracking: Tenant, with assistance from the Landlord and Convention and Visitors Bureau for the City of San Marcos, shall work to provide to Landlord periodic, but no less than semi-annually, estimates of hotel occupancy impact generated from events hosted by Tenant's efforts. The methodology of creating such estimates and form of reports shall be collaborated on between Tenant, Convention and Visitors Bureau, and Landlord (or its designated representative for oversight of this Lease).
- H. All Charges Deemed Rent: Rent and all other amounts becoming payable by Tenant under this Lease constitute rent payable hereunder, and in the event Tenant fails to pay any such amount when due according to the provisions of this Lease, Landlord has all remedies available hereunder or at law or in equity for failure to pay rent. Other than an event of Force Majeure or Casualty or as otherwise expressly set forth in this Lease, no happening, event, occurrence, or situation during the Initial Term or Option Period(s), whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay rent and other charges payable by Tenant under this Lease or relieve Tenant from any of its other obligations under this Lease.
- I. Landlord Costs. Landlord agrees to pay all of the following expenses: (a) any expenses expressly agreed to be paid by Landlord in this Lease, (b) debt service and other payments with respect to any Fee Mortgage (defined below), (c) expenses incurred by Landlord to monitor and administer this Lease,

unless otherwise expressly provided in this Lease, (d) expenses incurred by Landlord in the ownership, leasing, management, operation, maintenance, repair, use or occupancy of the Premises with respect to periods prior to the Commencement Date (subject to adjustment of Impositions as provided in Section 5 below), (e) direct expenses incurred in connection with City Sponsored Uses (as defined below), including maintenance and repair costs and expenses payable to vendors providing services to Landlord for City Sponsored Uses, and (f) other expenses that are personal to the Landlord, including Landlord's income taxes, if any.

5. TAXES AND OWNERSHIP BY LANDLORD:

- A. Tenant is responsible for and shall pay, or cause to be paid, directly to the applicable governmental authority charged with collection thereof, all applicable state, local, and use taxes for its use, sales, and services of or conducted upon the Outdoor Premises ("Impositions"). The term Impositions as used herein shall not include (i) any tax imposed on Landlord's income or receipts (whether net or gross), or (ii) any mortgage recording tax imposed with respect to any Fee Mortgage, or (iii) any ad valorem property taxes on the Project Site (such ad valorem taxes, if any, to be handled in the manner set forth in Section 5.B below). Tenant shall deliver to Landlord photostatic copies of the receipted bills or other evidence reasonably satisfactory to Landlord showing the payment of such Impositions promptly upon request. If a Leasehold Mortgage (defined below) requires escrow payments of any of the Impositions to the holder of such Leasehold Mortgage, Tenant may pay such Impositions to such holder; provided that the foregoing shall not relieve Tenant of its obligation to cause all Impositions to be timely paid to the applicable governmental authorities or to provide Landlord with proof of timely payment following receipt of written request.
- B. Landlord and Tenant understand, acknowledge, and agree that title to the Land and the Outdoor Premises (collectively referred to as the "Project Site") shall at all times during the Lease be vested in Landlord and pursuant to Texas Tax Code Section 25.07(b)(4)(B), the Parties believe that the Lease and operation of the Outdoor Premises by Tenant will not render the Project Site subject to any ad valorem property taxes. In the event all or any portion of the Project Site is deemed taxable, Landlord shall promptly notify Tenant in writing (the date of such notice being referred to herein as the "Tax Notification Date") of such event; and Landlord and Tenant shall have 90 days from the Tax Notification Date to negotiate, in good faith, for possible amendments to the terms of this Lease to permit the Project Site to be considered tax exempt in the future and/or to address the future responsibility for payment of ad valorem property taxes in subsequent years, together with any associated modifications to the rent structure and other terms of this Lease to account for such taxes (the "Negotiation Period"). If the parties are unable to reach agreement regarding amendments to this Lease or Landlord does not elect to

assume responsibility for payment of the ad valorem taxes during the Negotiation Period, Tenant may, by delivering written notice to Landlord within ten (10) days following the end of such Negotiation Period, either (i) elect to pay such ad valorem taxes, in which event the Lease shall remain in effect, or (ii) terminate this Lease, in which event the Lease shall terminate on the last day of the 12th calendar month following the date of such notice from Tenant (the “Wind-Down Period”), unless extended as set forth below. Tenant shall have the right to extend the Wind-Down Period by up to an additional 12 months (the “Wind-Down Extension Period”) by giving written notice of such election to Landlord (which notice must state the number of months by which Tenant desires to extend the Wind-Down Period) and which notice must be given on or before the date that is 180 days prior to the expiration of the Wind Down Period. If Tenant timely delivers such notice, then this Lease shall terminate as of the expiration of the Wind-Down Extension Period. Landlord shall be responsible for the payment of any ad valorem taxes due for any calendar year in which the Negotiation Period and/or Wind-Down Period (if any) occurs; and Landlord and Tenant shall each be responsible for 50% of any ad valorem taxes due for the Wind-Down Extension Period (if any).

- C. Based upon Landlord’s continued ownership of the Project Site and public use, Tenant shall cooperate with Landlord in any efforts by Landlord to obtain a determination regarding the tax-exempt status and to defend the tax exempt status of the Project Site. For so long as such tax-exempt status remains in effect, Tenant shall make every effort to continue management and operation of the Outdoor Premises in the manner described herein so as to maintain such tax exempt status.

6. UTILITIES:

- A. Except as provided herein, Tenant shall pay all charges with respect to utilities serving the Outdoor Premises to include water, sewer, electric, gas, telephone, internet, television and trash. Tenant shall make such payments directly to each applicable utility provider. Prior to occupancy, Landlord shall have meters installed for the applicable utilities and Tenant shall set up accounts in its name for all utilities within 30 days from the Commencement Date. Notwithstanding the foregoing, Landlord shall be responsible for its share of utilities for the Outdoor Premises during any City Sponsored Uses (including SMYBSA events), to the extent such utility usage is in excess of reasonable and customary usage.
- B. Landlord is not liable for any interruption in utility services to the Outdoor Premises, and in no event, other than interruptions directly caused by the actions of Landlord or events of Force Majeure or Casualty, shall any payments required under this Lease be modified, adjusted, reduced, or abated as a result of the interruption of utility services. Landlord, however, shall not

be liable for any direct, indirect, or consequential damages, or lost profits arising from such interruption in utility services.

7. INSURANCE

A. Tenant shall maintain in full force and effect the following type of insurance:

- i. Commercial general liability insurance for bodily injury, death or property damage, insuring Tenant and naming Landlord as an additional insured, against claims, demands, or actions relating to the Outdoor Premises on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use.
- ii. Worker's Compensation and Employer's Liability insurance in the minimum amounts required by state law.

B. Before the Commencement Date, Tenant shall provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this Lease is in effect, Tenant shall, not later than 30 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.

C. If Tenant fails to maintain the required insurance in full force and effect at all times this Lease is in effect, Landlord may: (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant shall immediately reimburse Landlord for such expense; or (2) exercise Landlord's remedies under the section pertaining to Tenant Default.

D. Landlord shall maintain in full force and effect the following types of insurance: (1) special form property insurance in an amount to cover the reasonable replacement cost of the improvements of the Outdoor Premises; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate. If the Outdoor Premises are not encumbered by a Leasehold Mortgage: (a) the property insurance policy must expressly provide that any losses thereunder will be adjusted with Landlord, Tenant, and any Fee Lender; (b) include a standard Texas mortgagee endorsement with respect to each Fee Lender; and (c) all proceeds paid under such policies must be applied in accordance with the requirements of this Lease. If the Premises are encumbered by a Leasehold Mortgage, the provisions of Section 38 govern with respect to loss payee status and application of mortgage proceeds.

8. USE AND HOURS; TENANT OPERATION OF ADJACENT D-BAT FACILITY:

- A. Tenant may use the Outdoor Premises for events associated with sports and recreation, sales of equipment and concessions, the scheduling, marketing and managing of sports and recreation events along with other outdoor activities.
- B. Tenant may use or allow the use of the field lights until 12:00 AM subject on occasion to a reasonable extension of such times due to weather events, field maintenance, or other circumstances. Where Tenant wishes to use the lights beyond these times for Tournaments and similar events, it must receive prior written approval from Landlord, such approval not to be unreasonably withheld, conditioned, or delayed.
- C. The operating hours of the Outdoor Premises shall be at Tenant's discretion, provided that Tenant continues to meet all other terms and conditions for the management and operation of the Outdoor Premises contained herein.
- D. It is anticipated by the Parties hereto that Tenant (or its affiliate) shall construct an indoor sports training facility, that is officially franchised by D-BAT and legally authorized to use the "D-BAT" moniker, consisting of approximately 30,000 square feet of indoor space, anticipated to feature up to 12 retractable training "cages", indoor practice spaces, weight training facility, cross-functional speed and agility drill area, a yoga/personal wellness room, a computer resource center and individual study rooms for after-school programs and tutoring sessions for the youth of the community (defined as the "D-BAT Facility"), or a similar sports, recreation, or entertainment facility that complements or enhances the Outdoor Premises (referred to herein as the "Alternative Facility"), on that certain real property containing approximately 1.5 acres of land located adjacent to the Outdoor Premises (the "D-Bat Land"). Once such D-Bat Facility or Alternative Facility is constructed and during the remainder of the term of this Lease, Tenant (or an affiliate of Tenant) shall continue to operate such D-Bat Facility or Alternative Facility on the D-Bat Land. Any change in the franchise under which Tenant operates the D-Bat Facility or the Alternative Facility or change in the primary use and operation of the D-Bat Land to something other than sports, recreation, or entertain facilities shall be subject to approval of the Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed so long as the Landlord determines that such change continues to complement or enhance the purposes of this Lease.

9. ADVERTISING

- A. Prior to the Effective Date, the Parties shall have mutually agreed upon the naming rights and terms for the Outdoor Premises ("Outdoor Premises Name"). Tenant shall make an annual payment to the Landlord equal to

20.00% of the annual revenue received by Tenant through the sale of the Outdoor Premises Name. If such Outdoor Premises Name has not been agreed upon prior to the Effective Date, then no later than 180 days from the Commencement Date, the Landlord and Tenant shall have mutually agreed upon the Outdoor Premises Name.

- B. Other than the Outdoor Premises Name, Tenant shall have sole right to negotiate, execute, and perform all contracts concerning the sale, promotion, marketing, and the use of all names, trademarks, trade names, logos, and similar intellectual property rights related to the Outdoor Premises.
- C. Tenant has the right to display advertising relevant to its services and products.
- D. In connection with any advertising or promotional material relative to the Outdoor Premises, Tenant shall use reasonable, good faith efforts to include therein the use of the words "San Marcos, Texas". In connection therewith, Landlord does hereby grant to Tenant the personal and nontransferable right and license to use the service mark of the City of San Marcos (which service mark and any updates thereto shall be provided by Landlord to Tenant) in the development and promotion of the Outdoor Premises. The right granted to Tenant herein shall not be assigned, transferred, or otherwise conveyed without Landlord's prior written consent. Tenant acknowledges Landlord's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Tenant shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Tenant acknowledges that use of the service mark shall not create in Tenant's favor any right, title, or interest in or to the service mark, but all uses of the service mark by Tenant shall inure to the benefit of Landlord. Upon termination of this Lease, Tenant will cease and desist from all use of the service mark in any way (and will, at Landlord's written request, deliver up to Landlord, or its duly authorized representatives, all material and papers upon which the service mark appears), and Tenant shall at no time adopt or use, without Landlord's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.
- E. Notwithstanding the foregoing, nothing in this section shall prevent the San Marcos Youth Baseball/Softball Association ("SMYBSA") from conducting marketing and advertising campaigns during the SMYBSA Season, as defined in Section 12, and from displaying banners or other advertisements paid for by SMYBSA league sponsors on fields being used by SMYBSA during SMYBSA games and tournaments, at no cost to Tenant. Any such signage, marketing or advertising by SMYBSA must be reasonably acceptable to Tenant, including, size, format, materials, location, method of

installation and removal. Banners are acceptable format of advertising. Tenant reserves the right to remove or to require SMYBSA, to remove any such advertising during any such time that the applicable field is not be used by SMYBSA or for an SMYBSA event.

10. CONCESSIONS:

- A. Concessions, concessions equipment, labor, menu scheduling, product pricing, receipt of revenues and payment of expenses are the responsibility of Tenant. Tenant shall be responsible for all licenses or permits required for concession operation and for maintaining all health standards required by law to operate concessions.
- B. Tenant may provide and operate mobile and/or temporary concession carts and/or kiosks during tournaments and similar events.
- C. Tenant has the right to enter into contracts with Tenant's choice of vendors for the concessions.
- D. Tenant shall be allowed to sell, serve, distribute, give away, or store alcoholic beverages at the Outdoor Premises, except as otherwise reasonably determined by the Landlord for City Sponsored Uses pursuant to Section 12.

11. MERCHANDISE: Tenant has the sole right to sell merchandise. All merchandise revenue is the property of the Tenant, except as otherwise reasonably determined by the Landlord for City Sponsored Uses pursuant to Section 12.

12. SCHEDULING, FEES AND CITY SPONSORED USE:

- A. For 183 days per year (or more with Tenant' approval as reflected by the Approved Schedule, as defined below), Landlord shall have the right to the use and possession of the Outdoor Premises, or any portion thereof in accordance with the Approved Schedule for sports leagues, recreation and entertainment activities sponsored by the City of San Marcos and the City's parks and recreation programs (including SMYBSA) and for other de minimus uses (collectively, the "City Sponsored Uses"). In the case of City Sponsored Uses proposed to be held at the Project Site by the City of San Marcos, the Landlord will, first, coordinate with Tenant to ensure that the proposed event will not compromise the integrity of any fields or artificial turf, adversely affect the improvements located at the Project Site, result in excess wear and tear on the Outdoor Premises, cause an increase in maintenance or repairs, or interfere with the uses of Tenant under Lease. All City Sponsored Uses shall be scheduled in advance with Tenant in accordance with the terms of this Lease. For each City Sponsored Use activity included in the Approved Schedule, Landlord shall provide a written determination to Tenant at least 180 days in advance of the event whether it

will require security, concessions, janitorial services, or other management/operational services, and/or the use of Tenant's staff for operations and management of the Outdoor Premises during the event and Tenant shall provide a cost estimate for such services. Unless Landlord engages Tenant's staff for operations and management of the Outdoor Premises during the applicable City Sponsored Use event, or unless Tenant has an event that is commencing prior to, or ending later than, the City Sponsored Use event, Landlord shall be responsible for opening and closing the Outdoor Premises at the beginning and end of such event. If Landlord agrees with the cost estimate provided by Tenant, it shall notify Tenant in writing within fifteen (15) days after receipt of such cost estimate and Landlord shall pay such costs within 30 days after conclusion of the event. If Landlord does not agree with the cost estimate, Landlord shall notify Tenant in writing within fifteen (15) days after receipt of such cost estimate and, if such notice is timely provided, Landlord shall provide, at Landlord's expense, all, or just the components objected to, of the foregoing services directly or through third parties and shall provide Tenant evidence that Landlord has engaged third parties or has personnel to provide the foregoing services. Any vendors engaged by Landlord for City Sponsored Uses shall provide proof of insurance (in amounts and types as required to be carried by Tenant hereunder and naming Tenant as an additional insured) and shall not interfere with any events or operations at the Outdoor Premises. SMYBSA events shall be considered City Sponsored Uses for purposes of this paragraph. However, the manner of scheduling, charging fees and other operational matters related to such SMYBSA events are modified as set forth in subsection 12.B. below.

Subject to the foregoing and the remainder of this Section 12, Tenant shall have the sole right to schedule events at the Outdoor Premises, including charging and collecting a fee for the use of the Outdoor Premises.

B. SMYBSA Use.

- i.** Tenant shall work closely with SMYBSA for the scheduling of SMYBSA's regular season practices and games, which are held each year between March 1st and June 30th ("Peak Season" or "SMYBSA Season"). On or before September 30 of each year, Landlord shall provide to Tenant a tentative written schedule of the upcoming SMYBSA Season, which must include dates, times, and number of fields requested (not to exceed six) on such dates and times, plus potential make-up dates for weather related cancellations, as well as the proposed fee schedule. Subsequently, and on or before October 31 of each year, Landlord and Tenant shall agree on a final written schedule of the SMYBSA Season, to include dates, times, number of fields requested (not to exceed six) on such dates and times, and make-up dates for weather related

cancellations, which schedule shall be part of the Approved Schedule for such year.

- ii. Tenant shall permit SMYBSA's use of the Outdoor Premises on the specified number of fields (not to exceed six) set forth in the Approved Schedule from 5:00 PM to 10:00 PM each Monday, Tuesday, Wednesday and Thursday during the SMYBSA Season. Tenant shall also permit SMYBSA's use of the Outdoor Premises, on two fields, on two weekends (i.e., a consecutive Saturday and Sunday) during the SMYBSA Season, if requested and as set forth in Approved Schedule pursuant to Section 12.B.i. above.
 - iii. SMYBSA shall be responsible for providing any umpires, referees, or officials for SMYBSA events, as well as scoreboard operators. SMYBSA shall be responsible for cleaning dugouts, seating areas, etc. at the end of each day after using the Outdoor Premises.
- C. Scheduling of City Sponsored Uses. Tenant shall coordinate with Landlord for the scheduling of City Sponsored Uses (other than SMYBSA use, which shall be scheduled as set forth in Subsection 12.B. above). On or before September 30 of each year, Landlord shall provide to Tenant a tentative written schedule of City Sponsored Uses of the Outdoor Premises for the upcoming calendar year, which must include dates, times, and number of fields requested on such dates and times, plus potential make-up dates for weather related cancellations. City Sponsored Uses shall be concentrated primarily on Monday-Thursday, subject to the Approved Schedule. On or before October 31 of each year, Landlord and Tenant shall agree on a final written schedule of the City Sponsored Uses for the upcoming calendar year, to include dates, times, number of fields requested on such dates and times, and make-up dates for weather related cancellations (herein referred to as the "Approved Schedule"), as well as the fee schedule for such use. Such Approved Schedule shall, at a minimum, permit Tenant to use the Outdoor Premises at least one (1) full calendar week during Peak Season, as well as holidays and weekends (Friday-Sunday) during non-Peak Season to enable Tenant to promote sports tourism.
- D. Where available and subject to any applicable fees, ordinances, policies and regulations of Landlord, Landlord agrees to provide the use of Landlord-owned and operated sports and recreation fields to the Tenant as needed for approved uses.
- E. Tenant shall provide exclusive use of indoor storage space containing approximately 200 square feet of space dedicated for use by SMYBSA at the Outdoor Premises (or alternate space agreed to by SMYBSA) for the purpose of storing equipment such as baseballs, helmets, bats and other necessary equipment. Tenant shall have no liability for any property stored at the

Outdoor Premises, including without limit any liability for any damage to such property or theft thereof. SMYBSA or the Landlord shall be responsible for insuring its property stored at the Outdoor Premises.

- F. In addition to the foregoing City Sponsored Uses, Tenant shall reasonably cooperate in partnership with Landlord to promote and showcase the Outdoor Premises for economic development prospects, visiting dignitaries and non-profit groups. Upon receipt of written request from Landlord, Tenant, at no out-of-pocket cost to Tenant, shall reasonably cooperate in good faith with Landlord to obtain discounted or free tickets to events at the Project Site (subject to availability) for such economic development prospects, visiting dignitaries or non-profit groups.

13. RESTRICTED USES: Tenant may not use or permit any part of the Outdoor Premises to be used for:

- A. any activity which is a nuisance or dangerous;
- B. any activity that violates any applicable law, regulation, zoning ordinance, governmental order, or this Lease;
- C. any hazardous activity that would require any insurance premium on the Outdoor Premises to increase or that would void any such insurance;
- D. to cut timber, conduct mining operations, remove sand, gravel, or kindred substances from the ground, commit waste of any kind, nor in any manner substantially change the contour or condition of the Land; and
- E. outdoor storage except for the customary items that are normally stored outside under normal operating procedures

14. SPECIFIC COVENANTS REGARDING ENVIRONMENTAL MATTERS:

- A. Tenant and Landlord each covenant that (i) it shall not cause any toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law), to be generated, treated, stored, or disposed of, or otherwise deposited in or located on, or released on or to the Outdoor Premises; (ii) it will not engage in and will not permit any other party to engage in any activity on the Outdoor Premises which would cause (a) the Outdoor Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Outdoor Premises within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S.C. § 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (b) a release or threatened release of a hazardous substance from or to the Outdoor

Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601–9657, as amended, or any similar state law or local ordinance or any other environmental law, or (c) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which would require a permit under the Federal Water Pollution control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. §§ 7401, et seq., or any similar state law or local ordinance or any other environmental law; (iii) it will not permit any substance or conditions in or on the Outdoor Premises which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements. As used herein, the terms “Hazardous Waste” and “Hazardous Materials” shall mean hazardous substances; and the terms “hazardous substance” and “release” shall have the meanings specified in CERCLA; and the terms “solid waste” and “disposal” (or “disposed”) shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided, further, to the extent that the laws of the State of Texas establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- B. In the event Tenant or Landlord is obligated by any applicable federal, state, or local law, ordinance, or regulation or otherwise directed by any governmental agency or authority, to clean up, remove, or encapsulate or cause the clean up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Outdoor Premises and provided Tenant caused such condition, Tenant hereby agrees to Landlord that Tenant (i) shall promptly undertake to arrange for such clean up, removal, and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Outdoor Premises prior to the Commencement Date or has resulted from Landlord’s activities, in which case, Landlord shall be responsible for, and shall assume the obligations set forth in (i)-(iii) above, including without limit the cost and expense of such cleanup. The above obligation of Tenant contained in this section shall only apply to any act or omission of Tenant or Tenant’s officers, principals, employees, agents, contractors or subcontractors.
- C. In the event that any lien is recorded or filed against the Outdoor Premises with respect to Tenant’s activities and pursuant to any governmental regulations regarding hazardous materials, hazardous wastes, or asbestos,

Tenant hereby guarantees to Landlord that Tenant shall, not later than 30 days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record or bonded around, unless such condition is determined to have existed on the Outdoor Premises prior to the Commencement Date or has resulted from Landlord's activities in which case, Landlord shall be responsible for, and shall assume the cost and expense of, satisfying the claim or causing the lien to be discharged.

- D. IN ADDITION TO THE FOREGOING, TENANT SHALL, WITH RESPECT TO ITS USE ONLY, PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, AND LANDLORD'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ALL LOSS, COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY, OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE OUTDOOR PREMISES), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS BY REASON OF: (i) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AND/OR HAZARDOUS WASTES ON, FROM, OR AFFECTING THE OUTDOOR PREMISES; (ii) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE OR DESTRUCTION (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (iii) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS, OR ASBESTOS; OR (iv) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENTAL AUTHORITIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMEDIAL ACTION, ATTORNEY AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS IN CONNECTION WITH ANY ACTUAL LOSS, COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES FOR

INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE OUTDOOR PREMISES), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES BY REASON OF SUBPARTS (i) THROUGH (iv) OF THIS SECTION AND FOR WHICH SUCH CONDITION WAS NOT A PRE-EXISTING CONDITION OF THE OUTDOOR PREMISES PRIOR TO THE COMMENCEMENT DATE.

- 15. SIGNS:** Subject to Section 9, Tenant has the sole right to install signage throughout the Outdoor Premises, which signage shall be in compliance with all applicable laws and ordinances. Other than revenue related to the Outdoor Premises Name, all revenue related to signage and other advertising is the property of the Tenant.
- 16. MOVE-IN CONDITION:** Tenant has the right to inspect the Outdoor Premises prior to the Commencement Date.
- 17. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:**
- A. At the time this Lease ends, Tenant shall surrender the Outdoor Premises in good and clean condition, subject to normal wear and tear and damage by casualty. Tenant shall leave the Outdoor Premises in a clean condition free of all trash, debris, personal property, hazardous materials and environmental contaminants.
 - B. If Tenant leaves any personal property in the Outdoor Premises after Tenant surrenders possession of the Outdoor Premises, Landlord may: (1) require Tenant to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
 - C. "Surrender" means vacating the Outdoor Premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
 - D. By providing 60 days written notice to Tenant before this Lease ends, Landlord may require Tenant, upon move-out to remove, without damage to the Outdoor Premises, any or all fixtures that were placed on the Outdoor Premises by the Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and will be automatically surrendered to Landlord at the time this Lease terminates.
- 18. MAINTENANCE AND REPAIRS OF OUTDOOR PREMISES:**

- A. Repairs of Conditions Caused by a Party: Tenant shall repair a condition in need of reasonable repair on the Outdoor Premises. Where Tenant knows or believes that the conditions were caused, either intentionally or negligently, by a City Sponsored Use, or by Landlord or Landlord's guests, patrons, invitees, contractors or employees, Tenant will submit a bill to Landlord for payment, and Landlord shall pay such invoice within 30 days of receipt of same. Landlord shall leave the Outdoor Premises in good and clean condition following any City Sponsored Uses, and Landlord shall be responsible for any costs incurred by Tenant in repairing any damage to the Outdoor Premises caused by City Sponsored Uses.
- B. Maintenance and Repair by Tenant: Tenant shall maintain and repair the Outdoor Premises and shall maintain, clean and/or repair the following list of items in a healthy and safe operable condition:
- i. Eight (8) multi-purpose fields, common areas and landscaping;
 - ii. All sidewalks and parking areas;
 - iii. All permanent fencing;
 - iv. All lighting;
 - v. Striping and preparation of all fields for play;
 - vi. Restrooms;
 - vii. Heating and cooling systems.
- C. Manner of Maintenance and Repair by Tenant: In performing the maintenance, cleaning and repairs of the Outdoor Premises, the Tenant shall:
- i. Maintain all landscaping;
 - ii. Provide trash pickup and collection.
- D. Cleaning: Tenant shall keep the Outdoor Premises clean and sanitary and dispose of all garbage in appropriate receptacles in a reasonably timely manner. Landlord shall ensure that City Sponsored Use activities cooperate with this effort by placing trash in appropriate containers and leaving the Outdoor Premises in a good and clean condition.
- E. Failure to Repair: Subject to the Dispute Resolutions section contained herein, Tenant shall make a repair for which Tenant is responsible within a reasonable period of time after Landlord provides Tenant written notice of the reasonably needed repair or maintenance. If Tenant fails to repair or maintain an item for which Tenant is responsible within 60 days after Landlord provides Tenant written notice of the reasonably needed repair or maintenance, Landlord may (1) repair or maintain the item, without liability for any damage or loss to Tenant and Tenant shall immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under the section pertaining to Tenant Default.

19. ALTERATIONS

- A. Tenant shall not alter, including making any penetrations to the roof or foundation, improve, or add, including temporary or permanently installed buildings, to the Outdoor Premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable, nonstructural alterations, modifications, or improvements to the Outdoor Premises.
 - B. If a governmental order requires alteration or modification to the Outdoor Premises, the Landlord shall perform any such necessary improvements.
 - C. Any alterations, improvements, fixtures, or additions that are attached to the Outdoor Premises and cannot be removed without damage to the Land or improvements installed by either party during the term of this Lease will become Landlord's property and must be surrendered to Landlord at the time this Lease ends, except for those fixtures Landlord requires Tenant to remove under this Lease or if the parties agree otherwise in writing. Notwithstanding the foregoing, Tenant shall be permitted to remove all trade fixtures and personal property, including without limit, signage, satellite dishes, TVs, radar guns, and other similar equipment.
 - D. All alterations must be made in a good and workmanlike manner, in compliance with all applicable laws, and in compliance with the requirements of any Leasehold Mortgage and Fee Mortgage and will conform in all material respects with the plans and specifications approved by the building department and, if applicable, the Landlord.
- 20. LIENS:** Except for the Leasehold Mortgage, Tenant shall not take any action that will cause the title of the Outdoor Premises to be encumbered in any way. If a lien is filed against the Outdoor Premises related with Tenant's use, Tenant shall, within 30 days after its notice thereof or Landlord's written demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien or bond around such lien. Tenant shall provide Landlord with a copy of any release Tenant obtains.
- 21. LIABILITY:** Landlord is NOT responsible or liable to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by an act, omission, or neglect of: Tenant, or Tenant's employees, agents, vendors, guests, patrons, or invitees.
- 22. INDEMNITY:** LANDLORD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM TENANT'S USE OF THE OUTDOOR PREMISES. TENANT, FOR ITSELF AND ITS AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, LICENSEES, CONCESSIONAIRES, INVITEES, SUCCESSORS, AND ASSIGNS, EXPRESSLY ASSUMES ALL RISKS OF INJURY OR DAMAGE TO PERSON OR PROPERTY, EITHER PROXIMATE OR REMOTE, RESULTING FROM THE CONDITION OF THE

OUTDOOR PREMISES OR ANY PART THEREOF. TO THE FULL EXTENT PERMITTED BY LAW, TENANT AGREES TO INDEMNIFY AND SAVE HARMLESS LANDLORD AND ITS AGENTS, OFFICERS, AND EMPLOYEES (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEY'S FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING ON, IN OR ABOUT THE OUTDOOR PREMISES OR BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED BY ANY ACT OR OMISSION ON THE PART OF TENANT OR ANY OFFICER, DIRECTOR, SERVANT, AGENT, EMPLOYEE, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, CONCESSIONAIRE, INVITEE, SUCCESSOR OR ASSIGN, OR BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF TENANT UNDER THIS LEASE, WHETHER SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, TENANT, ON NOTICE FROM LANDLORD, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT TENANT'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LANDLORD. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL ACTIVITIES OF TENANT WITH RESPECT TO THE OUTDOOR PREMISES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION SHALL ONLY APPLY TO ANY ACT OR OMISSION OF TENANT OR TENANT'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS. TENANT'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY TENANT UNDER THIS LEASE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

23. DEFAULT:

- A. Default by Tenant. The occurrence of any one or more of the following events shall constitute a Tenant Default (herein so called) of Tenant under this Lease:
 - i. If Tenant fails to pay rent or any other amount payable by Tenant hereunder as and when same becomes due and such failure continues for more than 10 days after Landlord gives Tenant written notice of past due rent;

- ii.** If Tenant attempts to make an unpermitted assignment or sublease of this Lease;
- iii.** If Tenant fails to maintain in force all policies of insurance required by this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant notice of such failure;
- iv.** If any petition is filed by or against Tenant or any guarantor of this Lease under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within 90 days of commencement), or if any order for relief shall be entered against Tenant or any guarantor of this Lease in any such proceedings;
- v.** If Tenant becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;
- vi.** If a receiver, custodian, or trustee is appointed for the Tenant or for all or substantially all of the assets of Tenant, which appointment is not vacated within 90 days following the date of such appointment;
- vii.** If Tenant fails to perform or observe any provision of this Lease and such failure shall continue for more than 30 days after Landlord gives Tenant written notice of such failure, or, if such failure cannot be corrected within such 30 day period, if Tenant does not commence to correct such default within said 30 day period and thereafter diligently prosecute the correction of same to completion within 90 days after written notice is sent by Landlord;
- viii.** If Tenant fails to pay any taxes or other charges it owes to any local or state or federal government;
- ix.** If a final judgment for the payment of money in any material amount in excess of One Million Dollars (\$1,000,000.00) and which is not covered by any insurance insuring the interest of Tenant shall be rendered against Tenant, and within 60 days after the entry thereof such judgment shall not have been discharged or execution thereof stayed pending appeal or if within 60 days after the expiration of such stay, such judgment shall not have been discharged;
- x.** If Tenant abandons the Outdoor Premises (failure to occupy and operate the Outdoor Premises for 10 consecutive days, for reasons

other than because of adverse weather conditions, Force Majeure or Casualty, shall be deemed an abandonment); or

- xi.** Except pursuant to the Leasehold Mortgage, the interest of Tenant in this Lease or the rents from the Outdoor Premises is sold under execution or other legal process.

B. Landlord Remedies. Upon the occurrence of any Tenant Default, Landlord shall have the right, at Landlord's option, to elect to do any one or more of the following by providing written notice or demand to Tenant:

- i.** Terminate this Lease, in which event Tenant shall immediately surrender the Outdoor Premises to Landlord, and, if Tenant fails to so surrender, Landlord shall have the right, without notice and without resorting to legal process, to enter upon and take possession of the Outdoor Premises and to expel or remove Tenant and its effects without being liable for prosecution or any claim for damages therefore; and Tenant shall, and hereby agrees to indemnify Landlord for all actual loss and damage which Landlord suffers by reason of such termination, including without limitation, actual damages in an amount equal to the total of (a) the costs of recovering the Outdoor Premises and all other expenses incurred by Landlord in connection with such Tenant Default and (b) the unpaid rent through the date of termination;
- ii.** Enter upon and take possession of the Outdoor Premises without terminating this Lease and without being liable for prosecution of any claim for damages therefore, and, if Landlord elects, relet the Outdoor Premises on such terms as Landlord deems advisable, in which event Tenant shall pay to Landlord on demand the actual cost of repossession, repairing, and altering the Outdoor Premises for similar outdoor sports and recreational uses for a new tenant or tenants and any deficiency between the rent payable hereunder and the rent paid under such reletting; provided, however, that Tenant shall not be entitled to any excess payments received by Landlord from such reletting. Landlord's failure to relet the Outdoor Premises shall not release or affect Tenant's liability for rent or for damages; or
- iii.** Enter the Outdoor Premises without terminating this Lease and without being liable for prosecution of any claim for damages therefore and maintain the Outdoor Premises and repair or replace any damage thereto or do anything for which Tenant is responsible hereunder. Tenant shall reimburse Landlord immediately upon demand for any actual expenses that Landlord incurs in thus

effecting Tenant's compliance under this Lease, and Landlord shall not be liable to Tenant for any damages with respect thereto.

- C. Remedies Cumulative. The rights granted to Landlord in this section are cumulative of every other right or remedy provided in this Lease or which Landlord may otherwise have at law or in equity or by statute, and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies or constitute a forfeiture or waiver of rent or damages accruing to Landlord by reason of any Event of Default under this Lease.
- D. Landlord Default and Tenant Remedies. Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after Tenant gives written notice stating that Landlord is in breach of this Lease and stating the breach with specificity to Landlord, provided that if such failure cannot reasonably be cured within such thirty (30) day period, Landlord shall not be in default hereunder if the curative action is commenced within such thirty (30) day period and is thereafter diligently pursued until cured. Tenant's exclusive remedies for a Landlord default shall be (i) an action for damages or equitable relief, and/or (ii) a right to cure such default on behalf of Landlord, in which event Landlord shall reimburse Tenant within thirty (30) days of receipt of an invoice evidencing the actual costs incurred by Tenant in curing such default, and if Landlord fails to timely reimburse Tenant, Tenant shall have the right to offset such amount against any rent or other payments next coming due to Landlord.
- 24. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code does not apply.
- 25. HOLDOVER:** If Tenant fails to vacate the Outdoor Premises at the time this Lease ends, Tenant will become a tenant-at-will and shall vacate the Outdoor Premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the written consent of Landlord, will extend this Lease. Tenant shall indemnify Landlord for any and all actual damages caused by the holdover. Rent for any holdover period will be 110% of the base monthly rent calculated on a daily basis for each day Tenant holds over, and will be immediately due and payable without notice or demand.
- 26. LANDLORD'S LIEN AND SECURITY INTEREST:** In consideration of the mutual benefits arising under this Lease and to secure Tenant's performance, Tenant grants to Landlord a lien and security interest against all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Outdoor Premises by Tenant (and owned by Tenant), together

with the proceeds from the disposition of those items (the "Collateral"), now or hereafter placed in or upon the Outdoor Premises by Tenant (and owned by Tenant), as security for payment of all rent and other sums agreed to be paid by Tenant herein. Notwithstanding the foregoing, "Collateral" shall exclude any equipment, machinery or personal property that is owned and operated as part of the D-Bat Facility, but which is used by Tenant from time to time at the Outdoor Premises (e.g., a pitching machine, radar gun, baseballs, softballs, etc.). The provisions of this section constitute a security agreement under the Texas Uniform Commercial Code and Landlord has and may enforce a security interest in the Collateral. Except on account of replacement, removal, or substitution in the ordinary course of business, the Collateral may not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder have been paid and discharged. Following written request from Landlord, Tenant shall execute, as debtor, one or more financing statements, to perfect this security interest pursuant to the Texas Uniform Commercial Code. Landlord at any time may file a copy of this Lease as a Financing Statement. Landlord, as secured party, has all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Notwithstanding the foregoing, Landlord's lien is subordinate to (i) any purchase money lien, (ii) any line-of-credit lien secured by the assets, inventory, or accounts receivable of Tenant's business, (iii) any Small Business Administration Note, conventional bank note, and/or related security agreements, and (iv) any Leasehold Mortgage.

- 27. ASSIGNMENT AND SUBLETTING:** Landlord may assign this Lease to another governmental agency (so as to maintain the tax exempt status for the Project Site) provided that the assignor shall not be relieved of any liability or obligation under this Lease. Except as permitted by Section 38 where Tenant is permitted to enter into a Leasehold Mortgage and except for an assignment of this Lease or a sublease of all or a part of the Outdoor Premises to an affiliate of Tenant (each a "Permitted Transfer"), Tenant may not assign this Lease or sublet any part of the Outdoor Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or substantially all of its interest in the Lease or the Outdoor Premises without Landlord's prior written consent. Except for a Permitted Transfer, an assignment of this Lease or subletting of the Outdoor Premises without Landlord's reasonable written consent is void. If Tenant assigns this Lease or sublets any part of the Outdoor Premises, the new tenant shall remain liable for all of the obligations under this Lease.
- 28. RELOCATION:** Landlord may not require Tenant to relocate to another location without Tenant's prior written consent.
- 29. SUBORDINATION:** Landlord's security interest and lien rights shall at all times remain subordinate to the rights of any Tenant lender(s) that holds a senior lien on Tenant's goods, wares, inventory, accounts, chattel paper, deposit accounts, and receivables. If required and after receiving written notification from Tenant,

Landlord agrees to execute an agreement subordinating the security interest granted in this Lease to Tenant's lender(s) within 30 days of a mutually acceptable subordination agreement as presented by Tenant's lender(s) and agreed to by Landlord.

30. CASUALTY LOSS:

- A. Tenant shall immediately notify Landlord of any casualty loss in the Outdoor Premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the Outdoor Premises is less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the Outdoor Premises within 150 days after Tenant notifies Landlord of the casualty loss.
- B. If the Outdoor Premises is less than 50% unusable and Landlord can substantially restore the Outdoor Premises within 150 days after Tenant notifies Landlord of the casualty, Landlord will restore the Outdoor Premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this Lease.
- C. If the Outdoor Premises is more than 50% unusable and Landlord can substantially restore the Outdoor Premises within 150 days after Tenant notifies Landlord of the casualty, Landlord will restore the Outdoor Premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this Lease.
- D. If Landlord notifies Tenant that Landlord cannot substantially restore the Outdoor Premises within 150 days after Tenant notifies Landlord of the casualty loss, Landlord and Tenant shall mutually agree on the schedule to substantially restore the Outdoor Premises. If Landlord fails to substantially restore within the time period set forth in the mutually agreed schedule, Tenant may terminate this Lease.
- E. If this Lease does not terminate because of a casualty loss, rent will be abated from the date Tenant notifies Landlord of the casualty loss to the date the Outdoor Premises is substantially restored by an amount proportionate to the extent the Outdoor Premises is unusable.

31. CONDEMNATION:

- A. Tenant, at Landlord's cost, shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any award or compensation on account of any actual or threatened condemnation or eminent domain proceedings or other action by any person having the

power of eminent domain or condemnation (each, a “Condemnation”) and shall take all appropriate action in connection with any such Condemnation; provided, however, that Landlord shall have the right to participate in the same and neither party shall settle or resolve any such proceeding without the other party’s prior written consent in its sole discretion.

- B. During the Term, if title to and possession of all or more than 20% of the Project Site is taken by Condemnation, or if the remaining portion of the Project Site cannot reasonably be used (as determined by Tenant) for the intended use hereunder, then Tenant shall have the option to terminate this Lease by written notice to Landlord, such termination to be effective on the day of the earlier to occur of the vesting of legal title to the Project Site in the entity exercising the power of Condemnation or the taking of actual physical possession of the Project Site (or portion thereof) by the entity exercising such power. After such termination, both Landlord and Tenant are released from all obligations under this Lease; except for the provisions of this Lease that expressly survive termination of this Lease. Any compensation or damages awarded or payable under this Section 31.B will be distributed as provided in Section 31.E. below.
- C. If a Condemnation of less than 20% of the Project Site occurs or Tenant determines that the remaining Project Site after the Condemnation can continue to be used for the intended use hereunder, then in that event, this Lease will not terminate and all Condemnation awards payable as a result of said Condemnation will be distributed as provided in Section 31.E. below.
- D. If the whole or any portion of the Project Site shall be taken for temporary use or occupancy, (i) the Term shall not be reduced, (ii) Tenant shall not be obligated to satisfy any monetary or other obligations for the period of such temporary taking (and any rent calculations for periods after such temporary taking shall be prorated accordingly to take into account the temporary taking), and (iii) Tenant shall be entitled to receive the entire award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award shall be apportioned between Landlord and Tenant in the same ratio that the part of the period for which such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.
- E. Distribution of Proceeds. In any Condemnation proceeding, the parties will request that the condemning authority grant separate awards for value of the Fee Estate taken and the Leasehold Estate taken.
 - i. If the condemning authority grants separate awards, then Landlord shall be entitled to the award for the Value of the Fee Estate and

Tenant shall be entitled to the award for the Value of the Leasehold Estate (but without duplication). The term “Value of the Fee Estate” means the fair market value of Landlord’s fee estate in the Project Site, determined as if (i) the Project Site were unimproved, encumbered by this Lease, and unencumbered by any lien representing a monetary obligation (such as a Fee Mortgage), and (ii) all extension options, if any, had been exercised, and (iii) no Condemnation was pending, threatened or under consideration. The Value of the Fee Estate will be determined immediately prior to title vesting in the condemning authority or its designee. The term “Value of the Leasehold Estate” means the fair market value of the Outdoor Premises, determined as if (i) the Outdoor Premises were encumbered by this Lease, and unencumbered by any lien representing a monetary obligation (such as a Fee Mortgage), and (ii) all extension options had been exercised, and (iii) no Condemnation was pending, threatened or under consideration. The Value of the Leasehold Estate must be determined immediately prior to title vesting in the condemning authority or its designee.

- ii. If the condemning authority refuses to grant separate awards, then the parties shall use good faith efforts to agree on the percentage of any award that should be attributed to the Fee Estate (the “Fee Estate Percentage”) and the percentage of any award that should be attributed to the Leasehold Estate (the “Leasehold Estate Percentage”) (and the aggregate of such percentages must equal one hundred percent [100%]). If the parties are unable to agree within thirty (30) days of the condemning authority’s refusal to grant separate awards, then, within twenty (20) days following the end of such 30-day negotiation period, the parties shall mutually select an appraiser and have the Project Site that is being taken appraised and valued as if the condemnation had not occurred. If Landlord and Tenant shall fail to timely agree on an appraiser, then either party may submit a request to the American Arbitration Association and have the American Arbitration Association designate an appraiser. Such designated appraiser will determine the Fee Estate Percentage and the Leasehold Estate Percentage. Such appraisal process will determine the Fee Estate Percentage and the Leasehold Estate Percentage. Landlord shall be entitled to the Fee Estate Percentage of any award and Tenant shall be entitled to the Leasehold Estate Percentage of any award. If either party disputes the appraiser’s determination, then the dispute shall be submitted to dispute resolution procedures described in the Lease.

- iii. If this Lease is not terminated as a result of the Condemnation as expressly permitted above, any Condemnation proceeds received by either Landlord or Tenant, shall first be used to restore the improvements, and, to the extent possible given the nature of the Condemnation, to substantially the same or better condition as existed immediately prior to such taking, and second in the proportions as provided in clauses (i) and (ii) of this Section 31.E. With respect to such restoration, there shall be no Landlord approval or consent rights on development that is partially subject to such Condemnation, which shall be subject only to applicable legal requirements. Any Condemnation proceeds shall be held and disbursed in the same manner as proceeds from a Casualty as set forth in Section 30 above, if applicable. As between Tenant and its Leasehold Mortgagees or subtenants, all condemnation proceeds that belong to Tenant pursuant to this Section 31 shall be disbursed in accordance with the terms of the Leasehold Mortgage.
- iv. To the extent any Condemnation award is allocated to reimbursement for real estate taxes and assessments that have been paid, if any, with respect to periods after the date title vests in the condemning authority or its designee, it will be paid to the party who paid the taxes and assessments as required under the Lease. To the extent any Condemnation award is allocated to reimbursement of prepayment penalties, such portion will be paid to (a) Tenant with respect to any Leasehold Mortgage, and (b) Landlord with respect to any Fee Mortgage.

F. If Landlord or Tenant receives notice of any proposed or pending Condemnation proceeding affecting the Property, the party receiving such notice shall promptly notify the other party, the Fee Mortgagee (if it shall have given to such party notice of the address of such Fee Mortgagee), and any Leasehold Mortgagee.

G. Landlord shall not pursue or support any proposed Condemnation by any governmental or quasi-governmental authority.

32. ATTORNEY FEES: Any person or party who is a prevailing party in any legal proceeding brought under or related to the transaction described in this Lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other actual costs of litigation from the non-prevailing party.

33. REPRESENTATIONS:

- A. Landlord's and Tenant's statements in this Lease are material representations relied upon by the other party. Each party signing this Lease represents that he or she is of legal age to enter into a binding contract and is authorized to

sign the Lease. If Landlord or Tenant makes any misrepresentation in this Lease, such mis-representing party is in default.

- B. As of the Commencement Date, Landlord shall not be aware of any material defect on the Project Site that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Project Site that would affect the health or safety of an ordinary person.
- C. Each party and each signatory to this Lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this Lease or any transaction related to this Lease for a Specially Designated and Blocked Person. Any party or any signatory to this Lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

34. BROKERS: There are no brokers to this Lease.

35. ADDENDA: The following Exhibits are incorporated into this Lease:

- A. Exhibit A - Land
- B. Exhibit B – Commencement Date Certification

36. NOTICES: All notices and other communications required or permitted hereunder shall be in writing and shall be mailed, or sent by Federal Express, UPS or other recognized overnight courier service for next business day delivery, or sent by electronic mail, to the parties as follows:

Landlord: City Manager
City of San Marcos
City Hall, 630 E Hopkins Street
San Marcos, TX 78666
Email: _citymanagerinfo@sanmarcostx.gov

Tenant: SM Baseball Investments, LLC
415 N. Guadalupe Street, Suite 400
San Marcos, TX 78666
Attn: Tyler Sibley
Email: Tylersibley1@gmail.com

37. MISCELLANEOUS PROVISIONS

- A. Entire Agreement: This Lease (including the Exhibits) contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement between the Parties.
- B. Binding Effect: This Lease is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Controlling Law and Venue: The laws of the State of Texas govern the interpretation, performance and enforcement of this Lease. Venue for any dispute between the Parties concerning this Lease shall be in a state court having appropriate jurisdiction over the matter within Hays County, Texas or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.
- D. Severable Clauses: In the event that any provision of this Lease shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Lease, as circumstances require, and this Lease shall be construed as if said provision had been incorporated herein as so limited, or as if said provision has not been included herein, as the case may be.
- E. Waiver: No waiver of any provision or condition of this Lease by either the Landlord or Tenant shall be valid unless in writing signed by both Parties. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.
- F. Quiet Enjoyment: Provided that there is no Tenant Default, Landlord covenants that Tenant will enjoy possession and use of the Outdoor Premises free from material interference or disturbance of Landlord or any person acting through Landlord, subject to the covenants, agreements, terms, provisions and conditions of this Lease.
- G. Force Majeure: Should Tenant be hindered or delayed in the performance of this Lease by an event of Force Majeure—which shall mean and include, without limitation, fire, flood, earthquake, hurricane or other natural disaster, abnormally adverse weather conditions not reasonably anticipatable, unavoidable casualties, war, invasion, act of foreign enemies, terrorist activities, nationalization, government sanction, blockage or embargo, labor dispute, strike, lockout, interruption of utilities, unusual delays in delivery, delays in approval by any applicable governmental authority, delays by Landlord, environmental matters, or other events or circumstances beyond the control of Tenant, then Tenant shall be entitled to reasonable exceptions to the provisions of this Lease impacted from the Force Majeure. In the event the Tenant wishes to make a claim of Force Majeure, Tenant shall formally notify the Landlord of such claim in writing.

- H. Dispute Resolution: The Parties commit to use best efforts to cooperate and resolve in good faith all issues and disputes which may arise under this Lease. The Parties covenant not to institute litigation against each other without first submitting the subject thereof to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. The highest officer or executive officer of each Party shall represent that Party in the mediation and shall attend and take part throughout the proceedings, with full authority to settle the matter in controversy, subject in the case of the Landlord to City Council approval where required by law. If any controversy or claim is not resolved within sixty (60) days after initiation of mediation, either party may file suit in a court of competent jurisdiction for such remedies as are available at law or in equity.
- I. Time: Time is of the essence. The Parties require strict compliance with the times for performance.
- J. Prior Agreements Superseded: This Lease constitutes the sole and only agreement of the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the within subject matter.
- K. No Warranty: Landlord makes no warranty as to the marketability, habitability, or fitness for any particular purpose of the Land or the Outdoor Premises.
- L. Memorandum of Lease: The Parties shall, upon request of either Party, execute, acknowledge, and deliver a mutually acceptable form of Memorandum of Lease (which shall, among other things, memorialize the Commencement Date), contemporaneously with the execution and delivery of this Lease, and any such Memorandum of Lease shall be recorded in the real property records of Hays County, Texas.
- M. Further Documents: Landlord agrees that it will from time to time and at any reasonable time execute and deliver to Tenant such other and further instruments and assurances as Tenant may reasonably request approving, ratifying, and confirming this Lease and the leasehold estate created hereby and certifying that the same is in full force and effect and that no Tenant Default exists, or if any such Tenant Default does exist, Landlord shall specify in said certificate each such Tenant Default.
- N. Tenant Representations: The Tenant represents and covenants that: (i) Tenant is a duly organized and validly existing limited liability company under the laws of the State of Texas and has the power and authority to transact the business in which it is now engaged or proposed to engage; (ii) Tenant has the power and authority to execute, deliver, and carry out the terms and

provisions of this Lease and all other instruments to be executed and delivered by the Tenant in connection with its obligations hereunder; (iii) the execution, delivery, and performance by the Tenant of this Lease have been duly authorized by all requisite action by the Tenant, and this Lease is a valid and binding obligation of the Tenant enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (iv) the Tenant is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any evidence of indebtedness of the Tenant or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (v) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which the Tenant is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) the Tenant is not a party to any litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Tenant's ability to perform its obligations under this Lease.

- O. Landlord Representations. The Landlord represents and covenants that: (i) Landlord has the power and authority to transact the business in which it is now engaged or proposed to engage; (ii) Landlord has the power and authority to execute, deliver, and carry out the terms and provisions of this Lease and all other instruments to be executed and delivered by the Landlord in connection with its obligations hereunder; (iii) the execution, delivery, and performance by the Landlord of this Lease have been duly authorized by all requisite action by the Landlord, and this Lease is a valid and binding obligation of the Landlord enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (iv) the Landlord is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any evidence of indebtedness of the Landlord or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (v) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which the Landlord is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) the Landlord is not a party to any

litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Landlord's ability to perform its obligations under this Lease.

- P. Limit of Liability. In no event shall Landlord or Tenant be liable for consequential, special, or punitive damages.

38. MORTGAGES:

- A. Fee Mortgages. Landlord may mortgage its fee interest in the Project Site subject to the provisions of this Section 38 (a "Fee Mortgage"). The Fee Mortgage shall not encumber the leasehold estate. Landlord confirms there currently exists no Fee Mortgage. The parties hereby acknowledge and agree that this Lease shall therefore be prior in time and superior to the lien of any future Fee Mortgage. Upon Landlord entering into a Fee Mortgage, the holder of such Fee Mortgage (such holder being referred to herein as the "Fee Lender") shall deliver a subordination, non-disturbance and attornment agreement to Leasehold Lender (defined below) to confirm each Lender's rights relative to the other.
- B. Protective Provisions. If Landlord encumbers its fee interest with a Fee Mortgage in compliance with this Section, then Landlord shall provide Tenant written notice thereof, providing with such notice the name and mailing address of the Fee Lender in question, and Tenant shall, upon request, acknowledge receipt of such notice. Nothing contained in this Section shall prevent Tenant from pursuing Tenant's rights and remedies relating to Landlord's default as permitted under this Lease.
- C. Leasehold Mortgages. Tenant may, from time to time, without having to obtain the Landlord's consent, grant to any lender providing financing or refinancing to Tenant with respect to the Outdoor Premises a mortgage or deed of trust lien encumbering Tenant's leasehold interest in the Outdoor Premises and its rights, title and interest in, to and under this Lease, together with an assignment of leases and rents and a security interest in any personal property owned by Tenant, in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants and agreements on the Tenant's part to be performed or observed under all agreements executed in connection with such financing or refinancing (collectively, a "Leasehold Mortgage"; and each holder of a Leasehold Mortgage, a "Leasehold Lender", and such term includes Leasehold Lender's agents, servicers, receivers, trustees and anyone claiming by, through or under such Leasehold Lender, including its purchaser at foreclosure). No Leasehold Mortgage, lien or security interest attaches to Landlord's interest in this Lease or the Outdoor

Premises or to any personal property owned by Landlord nor does any such assignment affect Landlord's interest in this Lease, or in any leases and rents or other proceeds from the Outdoor Premises. Tenant may have one or more Leasehold Mortgages at any time.

D. If Tenant encumbers its interest in this Lease and the leasehold estate hereby created with liens as above provided, then the following applies for so long as the Leasehold Mortgage in question remains in effect:

- i.** Landlord will give the Leasehold Lender a duplicate copy of any notice that Landlord gives to Tenant pursuant to the terms hereof, including notices of default.
- ii.** There shall be no cancellation, surrender, termination, amendment, modification or other change of this Lease by joint action of Landlord and Tenant without the prior written consent of the Leasehold Lender.
- iii.** if a Tenant Default should occur hereunder, then Landlord specifically agrees that:

- 1.** Landlord shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Lease or Tenant's right to possession hereunder, until a notice specifying the event giving rise to such Tenant Default has been delivered to Leasehold Lender, in the manner provided in Section 36, and if the Leasehold Lender gives notice that it intends to cure the Tenant Default and proceeds to cure the Tenant Default within a period of ninety (90) days after delivery of such notice or, as to Tenant Defaults which by their very nature cannot be cured within such time period or if Leasehold Lender is obtaining possession of the Outdoor Premises (including possession by a receiver), the Leasehold Lender, to the extent it is able to do so, commences curing such Tenant Default within the ninety (90) day period and thereafter diligently pursues such cure to completion and pays all Rent as it becomes due, then any payments made and all things done by the Leasehold Lender to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by Landlord as if done by Tenant. Additionally, the Leasehold Lender shall be entitled to remedy any default under this Lease in the manner and on the same terms as granted to Tenant in this Lease;

2. if the Tenant Default is a non-monetary default that a Leasehold Lender cannot reasonably cure without being in possession of the Outdoor Premises, then for so long as the Leasehold Lender is diligently and with continuity attempting to secure possession of the Outdoor Premises (whether by foreclosure or other procedures), provided the Leasehold Lender cures any monetary Tenant Default as well as any other Tenant Default that are reasonably susceptible of then being cured by the Leasehold Lender and continues to pay all Rent as it becomes due and payable under the terms of this Lease, then Landlord shall allow the Leasehold Lender such time as Leasehold Lender reasonably determines is reasonably necessary under the circumstances to obtain possession of the Outdoor Premises in order to cure such Tenant Default, and during such time Landlord shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder;
3. if the Tenant Default is a non-monetary default of such a nature that it is not reasonably susceptible of being cured by the Leasehold Lender (as, for example, a non-permitted assignment by Tenant), then Landlord shall not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Leasehold Lender pays all Rent then due and thereafter keeps the monetary obligations of Tenant hereunder current and complies with those other provisions of this Lease which, by their nature, Leasehold Lender may then reasonably comply with;
4. Should (i) Landlord re-enter or repossess the Outdoor Premises, or (ii) the Lease be terminated for any reason other than expiration of the stated Term, (A) the Landlord shall deliver written notice to the Leasehold Lender indicating the completion of the Landlord's re-entry and repossession of the Outdoor Premises or termination of this Lease and (B) Landlord shall enter into a new lease with Leasehold Lender or its nominee or assignee, within ten (10) days' following written request from the Leasehold Lender, for the unexpired balance of the Term on the same terms and conditions set out in this Lease (except for any requirements that have been fulfilled by Tenant prior to termination and any requirements that are personal to Tenant), having the same priority as this Lease and for the same permitted uses as in this Lease, and Landlord agrees to execute such new lease provided such Leasehold Lender shall undertake forthwith to remedy any then uncured

Tenant Default reasonably susceptible by its nature of being remedied by such Leasehold Lender, including the payment of any amount due hereunder. Leasehold Lender shall not be required to cure or commence to cure any default that is personal to Tenant (e.g., bankruptcy);

5. No Leasehold Lender shall be or become liable to Landlord as an assignee of this Lease or be liable for the performance of Tenant's obligations hereunder unless and until such time as such Leasehold Lender, by foreclosure or other assignment or transfer in lieu thereof, shall either acquire the rights and interests of Tenant under this Lease or shall actually take possession of the Outdoor Premises. Any Leasehold Lender acquiring Tenant's rights and interests in this Lease shall be free to assign such rights and interests to any person, partnership, joint venture, or other entity controlling, controlled by or under common control with such Leasehold Lender without Landlord's consent, provided that the succeeding entity may not change the permitted use of the Outdoor Premises and must pay all Rent as it is due and payable. In the event that Leasehold Lender so acquires Tenant's rights and interest, the liability of Leasehold Lender, its successors and assigns, shall be limited to its leasehold interest in this Lease, and then only for obligations which arise during the period of such ownership. Neither Leasehold Lender nor its successors or assigns, nor any agent, partner, officer, trustee, director, shareholder or principal (disclosed or undisclosed) of Leasehold Lender, its successors or assigns, shall have any personal liability hereunder. The Leasehold Lender shall be released from any obligations hereunder upon transfer of its leasehold interest; and
6. If Landlord has given Leasehold Lender notice of Tenant's Default under Section 38.D.i. and Leasehold Lender desires to cure Tenant's Default but is unable to do so while Tenant is in possession of the Outdoor Premises, or if the Landlord has elected to repossess the Outdoor Premises or terminate this Lease and Leasehold Lender desires to obtain a new lease pursuant to Section 38.D.iii.4. but has not yet acquired Tenant's rights, title and interest in this Lease, then Leasehold Lender shall have the right to postpone the specified date for effecting a cure or obtaining a new lease for a period reasonably sufficient to enable Leasehold Lender or its designee to acquire Tenant's rights, title and interest in this Lease by foreclosure of its Leasehold

Mortgage or otherwise, as long as Leasehold Lender pays the Landlord the rent and any other sums due under this Lease during the postponement. Leasehold Lender shall exercise the right to extend the cure period or the date for obtaining a new lease by giving the Landlord notice prior to the last date that the Landlord would otherwise be entitled to elect a cure or obtain a new lease and by tendering to the Landlord any rent and other charges or other sums then in default.

- iv. Modifications. If any prospective Leasehold Lender requires modifications to this Lease as a condition to granting a Leasehold Mortgage, Landlord shall not unreasonably withhold, condition or delay its consent to such modifications, provided that Landlord shall not be required to consent to any such modification pertaining to Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease Landlord's rights or increase its burdens or obligations hereunder.
- v. Consent to Leasehold Mortgage. Landlord, upon receipt of a written request from Leasehold Lender will enter into a Consent to Leasehold Deed of Trust in a form to be reasonably approved by Landlord which will (i) acknowledge, if true, that the Lease, to the best of Landlord's knowledge, on the date the consent is given, that Tenant is not in default; (ii) not prevent the Leasehold Lender reasonable access to the Premises, and permit the Leasehold Lender to access and remove Tenant's personal property and otherwise enforce its security interest; and (iii) reaffirm those matters set forth in Section 38.D. above.
- vi. A Leasehold Lender shall have the absolute right (i) to assign its security interest; (ii) to enforce its lien and acquire title to Tenant's rights, title and interest in this Lease (and all other collateral) by any lawful means; (iii) to take possession of and operate the Outdoor Premises or any portion thereof and to perform all obligations to be performed by Tenant hereunder, or to cause a receiver to be appointed to do so; and (iv) to acquire Tenant's rights, title and interest in this Lease (and all other collateral) by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such right, title and interest (and other collateral) to a third party. The Landlord's consent shall not be required for the acquisition of the Tenant's rights, title and interest in this Lease by a third party who acquires the same by virtue of foreclosure or assignment in lieu of foreclosure. The Landlord shall recognize such Leasehold Lender or such third parties as the successor to Tenant under this Lease.

- vii.** The Leasehold Lender shall have the right at any time to pay any rent due hereunder and to perform or cause to be performed any other obligation of Tenant at or within the time such payment or performance is required under this Lease and the Landlord shall accept the same. Nothing in this Lease shall be construed to obligate the Leasehold Lender to cure any default of Tenant.
- viii.** Notwithstanding anything herein to the contrary: (i) any Leasehold Lender shall be permitted to remove some or all of the improvements or other personal property of Tenant from the Outdoor Premises, provided that the Leasehold Lender agrees to repair any damage to the Outdoor Premises caused by such removal in a commercially reasonable manner and in accordance with applicable law (including the removal of all debris); (ii) if this Lease is terminated, the Landlord shall provide any Leasehold Lender with notice of such termination and a period of not less than one hundred eighty (180) days following the Leasehold Lender's receipt of such notice ("Time Period to Remove Property") to remove some or all of the improvements and other personal property of Tenant from the Outdoor Premises in a commercially reasonable manner and in accordance with applicable law (including the removal of all debris); and (iii) any Leasehold Lender shall be permitted access to the Outdoor Premises for the purposes of inspecting, assembling, dismantling, repossessing, removing, organizing or selling some or all of the improvements or other personal property of Tenant from the Outdoor Premises. If Leasehold Lender leaves some or all of the improvements and other personal property of Tenant from the Outdoor Premises after the Time Period to Remove Property, then such improvements and other personal property of Tenant shall be considered abandoned and the Landlord may dispose of or retain such improvements and other personal property as it determines in its discretion.
- ix.** If at any time there shall be more than one Leasehold Lender, each Leasehold Lender shall be entitled to the benefits of this provision, but to the extent of any conflicts between the Leasehold Lenders the holder of the Leasehold Mortgage prior in lien shall be vested with the rights of this Paragraph to the exclusion of the holder of any junior Leasehold Lender.
- x.** All notices from the Landlord to Leasehold Lender and from Leasehold Lender to Landlord hereunder shall be in writing and given in the manner specified in Section 36 hereof. The address

for notices to Leasehold Lender shall be the address furnished to Landlord by Tenant or the Leasehold Lender.

- xi.** Leasehold Lenders are expressly third party beneficiaries of this Section 38.D.
- xii.** At the request of Tenant or any Leasehold Lender, the Landlord, without cost to Tenant or Leasehold Lender, shall sign and execute a recognition agreement and/or procure from any Fee Lender and/or ground lessor of the fee estate, any agreement as may be reasonably requested by Tenant or any Leasehold Lender(s) recognizing the rights of the Leasehold Lender hereunder, including, without limitation, those rights set forth in this Section 38.D.

39. OPTION TO PURCHASE D-BAT LAND. In the event (a) this Lease is terminated prior the expiration of the Term due to a Tenant Default or (b) during the term of the Lease, Tenant (or its Affiliate) fails to continuously operate the D-Bat Facility or Alternative Facility for a continuous period of six (6) months (except due to repairs or restoration caused by casualty or condemnation events), Landlord shall have the option to purchase the D-Bat Land and any improvements located thereon, in accordance with the terms set forth in that certain Option Contract attached hereto as Exhibit "C". Upon written request of either Party, a memorandum of the Option Contract shall be executed by the Parties and may be recorded of record in the Official Public Records of Hays County, Texas.

40. RIGHT OF FIRST OFFER. Upon the expiration of this Lease at the end of the Term (including any renewals or extensions thereof), Landlord shall have the option to notify Tenant of Landlord's desire to purchase the D-Bat Land and any improvements located thereon, which notice must be given, if at all, within thirty (30) days following the expiration of the Lease Term. If Landlord fails to timely give such notice, then Landlord's rights under this Section 40 shall terminate. If Landlord timely delivers such notice, then Landlord and Tenant shall discuss the terms of such potential purchase and sale for the D-Bat Land and improvements thereon, including the proposed purchase price and terms associated therewith for such D-Bat Land and improvements. In the event Landlord and Tenant fail to reach agreement on such terms, in each Party's sole discretion, and enter into a mutually acceptable purchase and sale agreement for the sale of such D-Bat Land and improvements thereon within ninety (90) days of the expiration of the Lease Term, then this option shall terminate and be of no further force and effect. The rights and obligations set forth in this Section 40 shall survive the expiration of the Lease Term for a period of ninety (90) days.

[SIGNATURE PAGE FOLLOWS]

LANDLORD:
CITY OF SAN MARCOS, TX,
a home rule municipality

BY: _____

NAME: _____

ITS: _____

TENANT:

SM BASEBALL INVESTMENTS, LLC
a Texas limited liability company

BY: _____

NAME: _____

ITS: _____

EXHIBIT “A”
LAND

[TO BE INSERTED AT OR PRIOR TO EFFECTIVE DATE OF LEASE]

EXHIBIT “B”
COMMENCEMENT DATE CERTIFICATION

CERTIFICATE CONFIRMING LEASE DATES & MONTHLY BASE RENT

This Certificate Confirming Lease Dates and Monthly Base Rent is attached to and made a part of the Lease dated [REDACTED], by and between City of San Marcos, as Landlord, and SM Baseball Investments, LLC, as Tenant.

The undersigned hereby agree and confirm that the Commencement Date, Expiration Date, and Monthly Base Rent schedule are revised as stated below:

The Commencement Date (as defined in Section 3.D. of the Lease) is [REDACTED], and the expiration date of the Initial Term of the Lease (as defined in Section 3.A. of the Lease) is [REDACTED]. If the first Option Period (as defined in Section 3.B. of the Lease) is exercised, the expiration date of the Lease will be [REDACTED]. If the second Option Period is exercised, the expiration date of the Lease will be [REDACTED].

The Monthly Base Rent schedule set forth in Section 4.A. of the Lease is as follows:

# of Tournaments		# of Teams		Monthly Base Rent as % of Annual Debt Service	Monthly Base Rent in \$ based on ADS of \$_____
FROM	TO	FROM	TO		
0	4	0	80	75%	\$
5	7	81	140	50%	\$
8	10	141	200	25%	\$
11	19	201	399	10%	\$
20+		400+		0%	\$

Landlord:
City of San Marcos, TX,
a home-rule municipality

Tenant:
SM Baseball Investments, LLC
a Texas limited liability company

By: _____

Name: _____

By: _____

Name: _____

Its: _____ Its: _____

EXHIBIT “C”
PURCHASE OPTION CONTRACT FOR D-BAT LAND

[See attached]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

OPTION CONTRACT

Date: _____

Grantor: SM Baseball Investments, LLC, its successors, or assigns

Grantee: City of San Marcos, Texas, 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Term: Commencing on the Commencement Date (as defined in the Lease) of the Lease and continuing until a) terminated as provided herein; or b) Closing on Grantee's purchase of the Property hereunder.

Property (includes all or any portion thereof): Approximately 1.5 acres of land as more fully described in Exhibit A, attached hereto and made a part hereof for all purposes and all improvements located thereon. The Property shall not include any tangible or intangible personal property owned or used by any tenant or occupant of the Property.

Lease: That certain Commercial Lease of Real and Improved Property between SM Baseball Investments, LLC and the City of San Marcos dated _____ concerning that approximately 30-acre tract of land adjacent to the Property improved with an athletic facility containing eight fields.

Title Company: Corridor Title Company, San Marcos, Texas, unless otherwise mutually agreed to by the parties in writing.

Consideration: \$10.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual benefits to and obligations of the parties under the Lease.

1. Option Granted. Grantor grants to Grantee an exclusive right and option to Purchase the Property (the "Option") upon the occurrence of either of the following events: a) if the Lease is terminated due to a Tenant Default (as defined in the Lease); or b) if, during the term of the Lease, Grantee fails to continuously operate the D-Bat Facility or Alternative Facility (each as defined in the Lease) for a continuous period of six (6) months (except due to repairs or restoration caused by casualty or condemnation events). Grantee may exercise the Option by providing written notice of Grantee's election to Grantor within 30 days after

the effective date of either of the foregoing events. The date on which Grantor receives such notice shall be the "Notice Date". If Grantee does not exercise the Option as provided above, then this Option Contract shall automatically terminate and Grantee shall have no further rights or obligations hereunder except those that expressly survive the termination of this Contract. Within seven days after the Notice Date, Grantee shall deliver a copy of this Option Contract to the Title Company, together with a copy of the Grantee's election notice.

2. Inspection Period; Reports. For a period of time beginning on the Notice Date and continuing for a period of 30 days thereafter (the "Inspection Period"), Grantee (and its agents, contractors and consultants) shall have a right of access to the Property during regular business hours to conduct non-invasive inspections, investigations and surveys of the Property, provided Grantee shall provide at least 24 hours' advance notice of its intent to enter the Property and such activities shall not unduly interfere with Grantor's business activities on the Property. Prior to any entry onto the Property, Grantee shall maintain, and shall cause any contractor or consultant entering the Property to maintain, a commercial general liability insurance with the combined single limited not less than \$1,000,000.00 per occurrence and general aggregate limit of not less than \$3,000,000.00 for bodily injury and property damage, covering all claims which may arise out of or from the inspections and investigations of the Property. Such liability insurance maintained by Grantee and/or its contractors and consultants shall name Grantor as an additional insured. Any contractor will carry workman's compensation insurance Grantee shall repair any damage to the Property and improvements thereon resulting from Grantee's activities. Within 15 days after the commencement of the Inspection Period, Grantor shall provide to Grantee copies of all leases, environmental assessments, reports, studies, surveys and other non-proprietary matters concerning the condition of Property in Grantor's possession not previously provided to Grantee. Such reports shall be provided "as-is" and without any representations or warranties by Grantor as to the completeness or accuracy thereof.

3. Appraisal. The "Purchase Price" for the Property shall be the fair market value of the Property, using the sales comparison approach to value, which fair market value shall be determined as follows:

(a) **First Appraisal.** Within 30 days after the Notice Date, Grantee shall provide to Grantor an appraisal of the fair market value of the Property as of the Notice Date from a third-party independent MAI certified real estate appraiser (the "First Appraisal"). Within fifteen (15) days of Grantor's receipt of the First Appraisal, Grantor shall notify Grantee in writing as to whether Grantor agrees with or disputes the fair market value set forth in the First Appraisal. If Grantor does not dispute the fair market value as determined by the First Appraisal within such 15-day time period, then the First Appraisal shall be final and binding on all parties to establish the Purchase Price for the Property. If Grantee does not receive the First Appraisal within such 45-day time period, then Grantee's election to exercise its Option will be deemed withdrawn, in which event this Option

Contract shall terminate and Grantee shall have no further rights or obligations hereunder except those obligations that expressly survive termination hereof.

(b) **Second Appraisal.** If Grantor timely disputes the fair market value determined by the First Appraisal, Grantor shall employ a third-party independent MAI certified real estate appraiser to conduct a second appraisal of the fair market value of the Property (the “Second Appraisal”). The Second Appraisal must be completed and sent to Grantee not later than the 30th day after the date Grantor notifies Grantee that Grantor disputes the First Appraisal.

(c) **Negotiation Period.** Within fifteen (15) days of Grantee’s receipt of the Second Appraisal, Grantee shall notify Grantor in writing as to whether Grantee agrees with or disputes the fair market value determined by the Second Appraisal. If Grantee does not dispute the fair market value as determined by the Second Appraisal within this 15-day time period, then the Second Appraisal shall be final and binding on all parties to establish the Purchase Price for the Property. If Grantee timely disputes the fair market value determined by the Second Appraisal, then Grantor and Grantee shall meet and attempt to reach an agreement on the fair market value of the Property within 20 days following Grantee’s dispute of the Second Appraisal. If Grantor and Grantee reach an agreement on the fair market value, then such agreed amount shall be final and binding on all Parties to establish the Purchase Price for the Property.

(d) **Third Appraisal.** If the Parties fail to reach agreement within such 20-day period, then Grantor and Grantee shall notify the first two appraisers of such failure and, within 10 days of the expiration of such 20-day period, the two appraisers shall appoint a disinterested independent MAI certified real estate appraiser to determine the fair market value of the Property (the “Third Appraisal”). The Third Appraisal must be completed on or before the 30th day after the date of the third appraiser's appointment. Upon receipt of the Third Appraisal, the fair market value shall be the average of the two closest Appraisal values; provided that if the difference between the lowest and middle appraisal values is the same difference as between the middle and highest appraisal values, then the fair market value shall be the middle appraisal value; and such amount shall be final and binding on all Parties to establish the Purchase Price for the Property. The date that the Purchase Price is finally determined is referred to herein as the “Acceptance Date”.

(e) **Right to Establish Purchase Price.** Notwithstanding the appraisal process set forth herein, the Parties may, but shall not be obligated to, enter into an agreement on the fair market value of the Property, provided that (i) any such independent agreement shall be determined prior to the Purchase Price being determined as final and binding through the appraisal process, and (ii) any such independent negotiation shall not extend or negate any timeframes set forth herein for disputing any appraisal or obtaining any such appraisal, unless the parties mutually agree, in writing, to extend any such timeframes.

(f) **Appraisal Costs.** The appraisal costs must be paid by the party who requests the appraisal, except that Grantor and Grantee shall each pay one-half of the cost of the Third Appraisal if a Third Appraisal is necessary, provided that if Grantee withdraws its exercise of its option after the Third Appraisal has been requested, then Grantee shall pay the full cost of such Third Appraisal. The foregoing obligation shall survive the expiration or termination of this Contract.

(g) **Time Periods.** The timelines established in the appraisal process set forth in this Section 3 may be extended on joint agreement of Grantor and Grantee.

(h) **Grantee's Right to Withdraw Option Notice.** Notwithstanding anything to the contrary set forth in this Section 3, Grantee, at any time prior to the Purchase Price being established as set forth above and becoming final and binding on the Parties hereto, may deliver written notice to Grantor that Grantee elects to withdraw its election to exercise its Option as set forth in this Option Contract, in which event this Contract shall terminate and Grantee shall have no further obligations hereunder, except those that expressly survive the expiration or termination of the Contract.

(i) **Casualty; Condemnation.** It is further agreed and understood that the Purchase Price is based upon the condition of the Property as of the Notice Date. If, after the Notice Date but prior to the Closing Date, (i) any portion of the Property becomes subject to a taking by virtue of eminent domain or (ii) the condition of the Property should change due to fire, or other casualty event, Grantee shall have the option of either (i) proceeding to close the sale and accepting an assignment of any condemnation award or insurance proceeds applicable to the Property, as applicable, (provided that such award or insurance proceeds assigned to Grantee shall not exceed the Purchase Price) or (ii) terminating this Contract by delivery of written notice of termination to Grantor within ten (10) days of the date Grantor notifies Grantee in writing of such eminent domain or casualty event, as applicable. In the event Grantee timely elects to terminate this Option Contract, Grantee shall have no further rights or obligations hereunder except those that expressly survive termination of this Contract.

4. Closing. The Title Company shall act as escrow agent for the closing of the Purchase of the Property.

a. Title Commitment. Within 10 days after a copy of this Option Contract is delivered to the Title Company along with Grantee's election notice, the Title Company shall issue a title commitment concerning the Property (the "Title Commitment"), together with the documents referenced on Schedule B of the Title Commitment (collectively, the "Title Materials"). Grantee shall have until the expiration of the Inspection Period in which to provide Grantor with written notice of any objections to such items which Grantee might have. Any item contained in the Title Commitment or any matter shown on any survey to which Grantee does not object in

writing prior to the expiration of the Inspection Period shall be deemed accepted by Grantee and shall be a Permitted Exception under this Contract. Grantor may, but shall have no obligation to, elect to cure any such objections timely raised by Grantee or to incur any expenses in trying to cure any such objections. Within ten (10) days after receipt of Grantee's notice of objections, Grantor shall notify Grantee in writing whether Grantor elects to attempt to cure such objections. Grantor's failure to respond within said 10-day period shall be deemed to be Grantor's election not to cure any such objections. In the event Grantor is unwilling to cure any of Grantee's objections, or in the event Grantor elects to attempt to cure such objections but is unable to do so prior to the Closing Date, then Grantee may either (a) accept the Title Commitment subject to the objections raised and close this transaction without any adjustment of the Purchase Price (and any title objections remaining uncured will be deemed waived) and each of such title objections shall be deemed to be Permitted Exceptions; or (b) terminate this Contract (in which event Grantee shall have no further rights or obligations hereunder except those that expressly survive the termination hereof), in each case by giving written notice thereof to Grantor within 10-days following Grantor's notice that it will not cure (or the Closing Date if Grantor attempts to cure but is unable to do so). If Grantee fails to timely give Grantor written notice of termination of this Contract as set forth above, Grantee shall be deemed to have waived any title objections then remaining uncured.

b. Title Policy. Grantor shall cause the Title Company to furnish to Grantee at Closing, or within a reasonable time thereafter, but in no case greater than thirty (30) days, an Owner Policy of Title Insurance (the "Title Policy") (on a form prescribed by the State Board of Insurance of the State of Texas) issued through the Title Company, insuring title to the Property in Grantee in the full amount of the Purchase Price, and containing only the Permitted Exceptions and the following standard printed exceptions: (i) the standard printed exception for taxes for the year of the Closing and subsequent years, not yet due and payable; (ii) the standard printed boundary and encroachments exception and exception for shortages in area (provided, however, that Grantor will, at Grantee's option and expense, cause the Title Company to delete, to the extent permitted by applicable regulations, the survey exception from the Title Policy without qualification or condition except as to "any shortages in area"); (iii) the rights of tenants, as tenants only, under any lease for space at the Property; (iv) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property; and (v) any Covenants, Conditions and Restrictions affecting both the Property and the land that was part of the Premises under the Lease.

c. Closing Date. The Closing of this transaction shall take place through escrow with the Title Company (it being agreed the Parties do not have to be physically present) on or before the seventh (7th) business day following the Acceptance Date. The date the Closing actually occurs shall be the "Closing Date."

Following the Acceptance Date and delivery of all required closing documents as described below and Title Company's receipt of the Purchase Price from Grantee, Grantor shall direct the Title Company (and Escrow Agent, as applicable) to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Grantor and Grantee. Time is of the essence with respect to the Closing Date, and the delivery at the Closing of the Purchase Price.

d. Grantor's Closing Documents. Five (5) business days following the Acceptance Date, Grantor, at Grantor's expense, shall deliver or cause to be delivered to the Title Company each of the following:

- i. Deed of Conveyance.* A duly executed and acknowledged special warranty deed, in a form consistent with the State Bar of Texas form of special warranty deed and reflecting the Permitted Exceptions, but free and clear of all liens.
- ii. Tax Certificates.* Tax certificates shall be available at the Title Company from appropriate authorities showing that all taxes then due on the Property have been paid or the amount payable, if applicable.
- iii. Evidence of Authority.* Evidence of authority reasonably acceptable to Grantee and the Title Company, reflecting that the person who has signed this Option Contract on behalf of Grantor has been duly authorized to execute this Option Contract and identifying the person or persons who are authorized to execute all of Grantor's closing documents on Grantor's behalf and showing approval of the sale of the under the terms and provisions of this Option Contract.
- iv. Non-Foreign Certificate.* A certificate stating that Grantor is not a "foreign person" as defined in the federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended.
- iv. Other Documents.* Any other documents required by this Option Contract to be delivered by Grantor at the Closing or otherwise reasonably necessary to carry out the terms and conditions hereof.
- v. Assignment of Leases and Service Contracts.* To the extent applicable, a duly executed assignment of any leases, security deposits, and service contracts ("Assignment of Leases and Service Contracts"), assigning to Grantee all of Grantor's right, title and interest in and to such leases, security deposits and service contracts.

e. City's Closing Documents. Five (5) business days following the Acceptance Date, Grantee, at Grantee's expense, shall deliver to the Title Company the following:

- i. Payment.* Payment of the Purchase Price, subject to adjustment as set forth below and any additional sums provided for in this Option Contract.
- ii. Evidence of Authority.* Evidence of authority reasonably acceptable to Grantor and the Title Company, reflecting that the person who has signed this Option Contract on behalf of Grantee has been duly authorized to execute this Option Contract and identifying the person or persons who are authorized to execute all of Grantee's closing documents on Grantee's behalf and showing approval of the purchase of the Property under the terms and provisions of this Option Contract.
- iii. Other Documents.* Any other documents or instruments required by this Option Contract to be delivered by Grantee at the Closing or otherwise reasonably necessary to carry out the terms and conditions hereof.
- iv. Assignment of Leases and Service Contracts.* To the extent applicable, a duly executed Assignment of Leases and Service Contracts.

f. Adjustments at Closing. The following prorations and adjustments shall be made at the Closing and, as the case may be, deducted from or added to the amount Grantee is required to pay at the Closing:

- i. Taxes.* Ad valorem taxes shall be prorated through the Closing Date. If the Closing shall occur before the tax rate or tax assessed value is fixed for the then current year, the apportionment of taxes shall be on the basis of the latest tax rate applied to the latest assessed valuation. Subsequent to the Closing, when the assessed value and the tax rate are determined for the year in which the Closing occurs and the actual taxes become known, Grantor and Grantee covenant and agree to adjust the proration of taxes and, if necessary, refund or pay such sums as shall be necessary to effect such adjustment. If the Closing occurs, Grantee shall be responsible for paying, and agrees to indemnify Grantor from the payment of, all assessments accruing against the Property, after the Closing Date. The provisions of this Paragraph shall survive the Closing.
- ii. Rents; Expenses; Utilities; Security Deposits.* To the extent applicable, any income and expenses shall be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date, such that Grantee

shall be treated as the owner of the Property for purposes of the prorations of income and expense on and after the Closing Date. To the extent applicable, any refundable security deposits in Grantor's possession as of the Closing Date under any leases shall be credited against the Purchase Price. Any proration which cannot be ascertained with certainty as of Closing shall be prorated on the basis of Grantor's reasonable estimates of such amount, and shall be the subject of a final proration ninety (90) days after Closing, or as soon thereafter as the precise amounts can be ascertained. Except as set forth herein, income and expenses shall be received and paid, or prorated as applicable, by the parties on an accrual basis with respect to their period of ownership. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice.

- iii. *Title Insurance and Other Closing Expenses.* Except as is otherwise provided herein, each party shall pay its own attorney's fees and customary closing expenses. Grantor shall pay one-half of the base premium for the Title Policy (excluding endorsements), one-half of the escrow fee charged by the Title Company and one-half of all recording fees (other than for liens created by Grantee at Closing). Grantee shall pay one-half of the base premium for the Title Policy, the entire premium for any Title Policy endorsements and/or extended coverage(s), one-half of the escrow fee charged by the Title Company, one-half of all recording fees (other than recording fees for any liens created by Grantee at Closing, which Grantee shall pay in full).

5. Property Conveyed "AS-IS. AS A MATERIAL PART OF THE CONSIDERATION FOR THE TRANSACTION CONTEMPLATED UNDER THIS OPTION CONTRACT, EXCEPT AS MAY BE SPECIFICALLY SET FORTH HEREIN, THE PARTIES EXPRESSLY STIPULATE AND AGREE THAT GRANTEE SHALL ACCEPT THE PROPERTY "AS-IS" AND "WITH ALL FAULTS," WITH ANY AND ALL LATENT AND PATENT DEFECTS, AND GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT GRANTOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PROPERTY, THE FITNESS OF THE PROPERTY FOR ANY INTENDED USE OR PURPOSE, THE EXISTENCE OF ANY HAZARDOUS OR TOXIC MATERIALS IN OR ON THE PROPERTY OR ANY OTHER ENVIRONMENTAL CONDITION OF THE PROPERTY, OR THE PRESENT OR FUTURE INCOME THAT MAY BE GENERATED FROM THE PROPERTY, OTHER THAN WITH RESPECT TO THE WARRANTY OF TITLE GRANTOR AGREES TO DELIVER IN THE DEED REQUIRED UNDER THE PROVISIONS OF THIS OPTION CONTRACT. GRANTEE ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO INSPECT THE PROPERTY AND RELATED REPORTS AND IS NOT RELYING UPON ANY REPRESENTATIONS, STATEMENTS, ASSERTIONS OR NON-ASSERTIONS BY GRANTOR WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING SOLELY

UPON ITS INVESTIGATION AND EXAMINATION OF THE PROPERTY. THE PROVISIONS OF THIS SHALL SURVIVE THE CLOSING AND THE DELIVERY OF SUCH DEED.

6. Miscellaneous.

a. Release of Option Contract. If Grantee does not exercise the Option, or if this Option Contract is otherwise terminated without Closing, then Grantee, at the request of Grantor, shall execute such forms as reasonably requested by Grantor releasing the Property from this Option Contract and otherwise providing notice that this Option Agreement has been terminated. Such forms shall meet the requisites for recording in the Official Public Records of Hays County, Texas.

b. Subject to Applicable Laws. All terms and conditions of any agreement for the sale of the Property between the Parties shall be subject to any and all requirements under applicable laws, including, but not limited to, the requirements of the Texas Local Government Code, the Texas Public Information Act, the Texas Open Meetings Act and similar laws.

c. Notice. All notices required herein may be provided by certified mail, return receipt requested, e-mail or hand-delivery with signed confirmation receipt to:

Grantor:

Pursuant Ventures Development, LLC
Attn: Tyler Sibley
415 N. Guadalupe St., #400
San Marcos, TX 78666
Phone: (214) 282-8970
Email: tylersibley1@gmail.com

Grantee:

City of San Marcos
Attn: City Manager
630 East Hopkins
San Marcos, Texas 78666
Fax: (855)759-2844
Email: *citymanagerinfo@sanmarcostx.gov*

Either party may change the location, fax number or address for delivery of notice by providing written notice of such change to the other.

d. Binding on Successors. This Option Contract is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

e. Bankruptcy. This Option Contract may not be altered by Grantor in bankruptcy.

f. Applicable Law and Venue. This Option Contract will be construed under the laws of the State of Texas. This Option Contract is performable in Hays County, Texas. Mandatory venue for any action under this Option Contract will be in

the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

g. Assignment. Neither party may assign this Option Contract without the written consent of the other party, except that Grantor may assign this Option Contract in connection with an authorized assignment of the Lease to the same assignee under the Lease. Such assignment shall not be effective until Grantee receives notice thereof.

h. Severability. If any provision of this Option Contract is held to be illegal, invalid or unenforceable under present or future laws while this Option Contract is in effect, such provision shall be automatically deleted from this Option Contract and the legality, validity and enforceability of the remaining provisions of this Option Contract shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Option Contract a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

i. Sole Agreement. This Option Contract constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Option Contract, and supersedes any prior understandings or written or oral agreements between the Parties.

j. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and duly executed by the Parties hereto.

k. LIMITED WAIVER OF IMMUNITY. SUBJECT TO THE FOLLOWING, GRANTEE, IN ENTERING INTO THIS CONTRACT DOES NOT WAIVE ITS IMMUNITY FROM SUIT OR ANY OTHER LIMITATIONS ON ITS LIABILITY, CONTRACTUAL OR OTHERWISE, AS GRANTED BY THE TEXAS CONSTITUTION OR APPLICABLE LAWS OF THE STATE OF TEXAS. NOTWITHSTANDING THE FOREGOING, GRANTOR SHALL HAVE THE RIGHT TO SEEK ANY REMEDIES SPECIFIED HEREIN OR AVAILABLE AT LAW OR IN EQUITY DUE TO A DEFAULT OF GRANTEE HEREUNDER, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, GRANTEE WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY IN RESPONSE TO AN ACTION BY GRANTOR SEEKING SUCH REMEDIES.

l. Defined Terms. Terms used but not defined herein shall have the meaning set forth in the Lease.

m. No Brokers. Grantor and Grantee represent and warrant to each other that they have dealt with no broker, finder or similar agent in connection with the transaction provided for in this Option Contract. Grantor agrees to hold Grantee harmless from and against any claim made by any person claiming to have dealt with Grantor in connection with this transaction, including reasonable attorney's fees incurred in the defense of such a claim. Grantee agrees to hold Grantor harmless from and against any claim made by any person claiming to have dealt with Grantee in connection with this transaction, including reasonable attorneys' fees incurred in the defense of such a claim.

n. Counterparts. The Contract can be executed in counterparts, each of which shall be an original and, upon the delivery to the Title Company of one or more of the Contracts signed by all Parties, together will constitute a fully executed and binding Contract.

[Signature Page Follows]

EXECUTED to be effective as of the date first written above.

GRANTOR:

SM Baseball Investments, LLC

By: _____
[Insert name and title]

GRANTEE:

City of San Marcos

By: _____
Bert Lumbreras, City Manager

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on _____ by
_____, _____ of SM Baseball Investments, LLC in such capacity on behalf
of said entity.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

 This instrument was acknowledged before me on _____ by Bert
Lumbreras, City Manager of the City of San Marcos, Texas, in such capacity on behalf of said
municipality.

Notary Public, State of Texas

EXHIBIT A TO OPTION CONTRACT
Legal Description of Property

[To be attached upon execution of Option Contract]