

Meeting Date: 12/16/2014

Report Type: Consent

Report ID: 2014-00929

Title: Memorandum of Understanding and Ground Lease Agreement with Sacramento International Baseball Association, LLC, for the Renovation and Reconstruction of Harry Renfree Baseball Field

Location: 3565-3615 Auburn Boulevard, District 2

Recommendation: Pass a Motion: 1) authorizing the City Manager or the City Manager's designee to execute a Memorandum of Understanding (MOU) with Sacramento International Baseball Association, LLC (SIBA), for the renovation and reconstruction of Harry Renfree Baseball Field (Renfree Field); 2) finding that it is in the best interest of the City to execute a ground lease with SIBA for Renfree Field and surrounding property within Del Paso Regional Park without competitive bidding as authorized by City Code Section 3.68.110 C; and 3) authorizing the City Manager or the City Manager's designee, after SIBA obtains the necessary entitlements and financing as described in the MOU, and after budget authorization is obtained for \$50,000 in City financing for reimbursement of SIBA's construction expenses as described in the Ground Lease Agreement, to execute the Ground Lease Agreement with SIBA, which a) waives rent in consideration of the improvements to be constructed, b) is for an initial term of 20 years with two 10-year extension options, and c) provides an option to purchase the property at fair market value.

Contact: Elizabeth Anderson, Operations Manager, (916) 808-6076, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Recreation Administration

Dept ID: 19001411

Attachments:

- 1-Description/Analysis
- 2-Summary of Significant Provisions
- 3-Memorandum of Understanding (MOU)
- 4-Ground Lease Agreement (Lease)

City Attorney Review

Approved as to Form
Sheryl Patterson
12/8/2014 12:12:14 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 11/26/2014 2:30:59 PM

Description/Analysis

Issue Detail: Harry Renfree Baseball Field (Renfree Field) in Del Paso Regional Park was opened in 1967 and had been in use for several decades until it fell into disrepair due to vandalism and was closed in 2011. The Department of Parks and Recreation does not have the funds to renovate the facility or the funds to properly operate it.

Sacramento International Baseball Association, LLC (SIBA), is prepared to undertake a complete renovation of Renfree Field and operate it, requesting a lease for a minimum of 20 years, in exchange for making more than \$3 million in improvements to the property. The lease would be at no cost in consideration for maintaining and operating the property.

Council is requested to authorize the execution of a Memorandum of Understanding (MOU) with SIBA so that it may properly investigate the condition of Renfree Field, determine what other uses might be operated on the property, generate construction and improvement plans, prepare a budget, obtain financing commitments, and obtain required environmental, planning and zoning entitlements. The MOU is shown in Attachment 3.

The MOU would be in effect for six months, unless extended by mutual agreement, during which time SIBA would perform its due diligence in developing plans and obtaining financing and entitlements. The MOU would give SIBA permission to enter the property for its investigations and to install security fencing to protect the property from further vandalism. During the term of the MOU the City would negotiate exclusively with SIBA over the final terms of a Ground Lease Agreement (Lease). The proposed form of the Lease is shown in Attachment 4.

Once the City has approved SIBA's plans and budget and confirmed that the financial commitments are binding, SIBA may submit its plans to the Community Development Department to obtain all environmental, planning and zoning entitlements. Once all permits have been obtained, the City and SIBA would execute the Lease, subject to Council approval of any substantive changes to the Lease terms.

The Lease provides for a construction phase of up to one year and an initial occupancy period of 20 years. SIBA may request two ten-year extensions of the Lease term. During the term of the Lease, after the improvements have been constructed and the field is in operation, SIBA would have the option to purchase the property at fair market value based on an independent appraisal of the land. In lieu of rent, SIBA will construct the improvements contained in their plans; pay for all routine maintenance; set funds aside for repairs, system replacements and improvements; pay for all utilities; pay for any necessary security services; and pay any taxes or assessments. Improvements will include the renovation of the baseball field and irrigation system, new bleachers, the repair and construction of several buildings, replacement of lighting, new utility lines, a new source for potable water, new plumbing fixtures, new fencing, new landscaping, and paving of parking areas.

Council approval of the MOU includes a commitment to execute the Lease if SIBA performs, giving SIBA greater certainty before they spend a substantial amount of money preparing their construction and improvement plans and obtaining entitlements. A summary of significant provisions in the MOU and Lease can be found in Attachment 2.

Policy Considerations: Approving the MOU and contingent approval of the Ground Lease Agreement would continue the policy of City recreational facilities being operated by non-profit or private entities to leverage their funding. Approval would allow for no rent to be collected in

exchange for the tenant undertaking a significant amount of construction, paying for all maintenance and utilities, and keeping all revenue generated on the site. SIBA would rent the field to schools and baseball leagues, thereby benefitting the public.

Economic Impacts: The indicated economic impacts are estimates calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). CSER utilized the IMPLAN input-output model (2009 coefficients) to quantify the economic impacts of a hypothetical \$1 million of spending in various construction categories within the City of Sacramento in an average one-year period. Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

Assuming that SIBA does spend \$3.8 million on this project and that 70% of that amount (\$2.66 million) is spent on construction, this project is expected to create 18.1 total jobs (10.9 direct jobs and 7.20 additional jobs through indirect and induced activities). Furthermore, it will create \$1,642,377 in total economic output (\$1,035,203 of direct output and another \$601,174 of output through indirect and induced activities).

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by Sections 15061(b)(3) and 15378(b)(2) of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.). The proposed renovation of the field and any other improvements and uses of the property would be subject to environmental review as part of the entitlement process.

Sustainability Considerations: Not applicable.

Commission/Committee Action: None

Rationale for Recommendation: Approval of the MOU and Lease would allow for the rehabilitation, reconstruction and reopening of Harry Renfree Baseball Field. The Department of Parks and Recreation has been seeking a partner to take on this project for several years.

In April 2012 the Department of Parks and Recreation released a Request for Letters of Interest for the renovation and operation of Renfree Field. Renfree Field had been in use for several decades until it fell into disrepair due to vandalism and was closed in 2011. The Department did not have the funds to renovate the facility or the funds to properly operate it, so a decision was made to identify a non-profit or for-profit entity that was willing and able to take on this project to reopen the field to baseball leagues and tournaments.

In November 2012 City Council authorized an Exclusive Right to Negotiate agreement with Hobo Sports Inc. so the City could determine if Hobo Sports Inc. had the capacity to renovate and operate Renfree Field. That Exclusive Right to Negotiate agreement was terminated by the City in December 2013.

Subsequently the Department talked with many interested parties. Finally, earlier this year, the group that recently formed SIBA expressed interest and willingness to develop preliminary plans, made a commitment to secure financing, and requested the MOU and Lease with the City to proceed with predevelopment work to undertake the project.

Financial Considerations: Under the terms of the Ground Lease, the Parks and Recreation Department is committing up to \$31,000 toward repair of a water well at Renfree Field, with funds coming from the Renfree/Del Paso Regional Park Project (L19003504) that was created in 2011 for the well repair. The Department will either contract for repairs to the well or will reimburse SIBA for their cost of repairing the well, up to the \$31,000 that is available in L19003504. In addition, the Ground Lease contains a commitment of \$50,000 in City funds to reimburse SIBA for other capital improvement expenses. The Ground Lease will not be executed until the source of funds is identified and, if necessary, funds are appropriated by the City Council. No other City funds are intended to be used for this project.

Any improvements made to Renfree Field and surrounding area in Del Paso Regional Park become part of the City property. Once the lease ends the City would have full use of the property in an improved condition. Should SIBA exercise its option to purchase the property at fair market value, the revenue would come to the City and the City Council would decide how the funds would be allocated.

Local Business Enterprise (LBE): Not applicable.

Summary of Significant Provisions

Memorandum of Understanding (MOU)

- The property being considered for lease includes the existing baseball field, an unpaved overflow parking area to the west, and additional land to the east. Excluded is an existing playground that was funded in part by the 2000 Parks Bond Act created by Proposition 12, existing bridle trails, and any area identified as “natural habitat area” in the 1985 revised park master plan.
- Within 30 days of the effective date, SIBA is to erect temporary security fencing around the baseball field to prevent further vandalism.
- Within 60 days of the effective date, SIBA is to identify the boundary of the property proposed to be leased and all of the planned uses and improvements over the 20-year initial term and the two optional 10-year extensions.
- The MOU expires in six months unless extended by mutual agreement.
- During the term of the MOU the parties will negotiate any changes to the Ground Lease Agreement.
- SIBA is to prepare a site plan describing all proposed uses; a building repair and improvement plan; a landscaping plan; a marketing and operations plan; a budget showing all sources and uses of funds; and obtain binding financial commitments of at least \$3 million to fund the project.
- The City shall have 30 days to review the preliminary and final plans and budget.
- Once the final plans and budget are approved and the financing commitment has been determined to be binding, SIBA may submit its application for environmental, planning and zoning approvals and entitlements.
- The City will evaluate SIBA permit applications as it would for any other applicant.
- Once the permits are ready to be issued, SIBA will enter into construction contracts.
- Once the permits are issued and the source of funding for a City contribution of \$50,000 is identified, the Ground Lease Agreement will be executed.
- SIBA may sell naming rights to any of the facilities, except that the baseball field shall continue to be called Harry Renfree Field.
- Should the MOU be terminated for lack of progress, the City is under no obligation to provide any additional funding to SIBA to reimburse SIBA for any expenses incurred.

Ground Lease Agreement (Lease)

- After execution, there is a construction phase of up to one year during which SIBA constructs the improvements. This phase ends when a certificate of occupancy or final inspection approval is received.
- After the construction phase is a 20-year occupancy period.
- SIBA may request two extensions of the lease for up to an additional 10-year period each.
- SIBA may request to purchase the property at fair market value as determined by independent appraisals.

- During the construction phase and initial 20-year occupancy period, SIBA will pay no rent. Instead, SIBA will set aside and use part of its revenues for routine maintenance, repairs, system replacement, and improvements. The improvements will include the renovation of the baseball field and irrigation system, new bleachers, the repair and construction of several buildings, replacement of lighting, new utility lines, a new source for potable water, new plumbing fixtures, new fencing, new landscaping, and paving of parking areas.
- SIBA will pay all utilities costs, including those necessary to install the utilities on the property.
- SIBA will pay all security costs.
- SIBA will pay any taxes and assessments.
- The City will contribute up to \$31,000 from a capital improvement project to repair a water well, either by contracting for the work or by reimbursing SIBA for their expense.
- The City will also contribute \$50,000 on a reimbursement basis for construction work performed.
- In performing work that will be reimbursed by the City's up to \$31,000 for the water well and the \$50,000 for other improvements, SIBA must pay prevailing wages subject to verification by the City.
- The existing public playground must remain open and in the same location unless SIBA receives City approval to relocate it at SIBA's expense to a suitable nearby location in Del Paso Regional Park.
- Any improvements made become the property of the City.
- SIBA must operate the property in compliance with all laws using qualified and experienced personnel.
- Amplified sound or music may not disturb occupants of adjacent properties.
- SIBA may sublease a portion of the property, with the City's approval, to those who provide goods or services that are ancillary to the sports use operated by SIBA.
- SIBA's operation of the property is subject to the City's "Non-Discrimination in Employee Benefits by City Contractors" ordinance.
- The property is to be maintained in a first class condition and in accordance with all laws. In addition to routine maintenance, the interior and exterior of buildings shall be painted every 10 years; parking lots, driveways, and walkways are to be repaired and resurfaced every 5 years; deteriorated landscaping is to be replaced annually; the irrigation system is to be replaced at least every 10 years; and deteriorated fencing is to be replaced annually.
- Adequate insurance shall be maintained at all times.
- The lease may not be assigned without the City's approval.

MEMORANDUM OF UNDERSTANDING

FOR

**RENFREE FIELD GROUND LEASE
AT 3565 - 3615 AUBURN BOULEVARD**

Between

CITY OF SACRAMENTO

and

SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC

Approved on:

**RENFREE FIELD GROUND LEASE
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (“MOU”), is made and entered into as of this _____ day of _____, 201____ (“Effective Date”), by and between the CITY OF SACRAMENTO, a California municipal corporation (“CITY”), and SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC, a California limited liability company (“SIBA”). CITY and SIBA hereinafter may be referred to collectively as the “Parties” or in the singular as “Party,” as the context requires.

RECITALS

- A. Renfree Field. The Harry Renfree Baseball Field was built in 1967 as a premier baseball facility for use by youth, adults, and semi-professional baseball leagues. This baseball complex is within a portion of the Del Paso Regional Park and located at 3565-3615 Auburn Boulevard. This recreational facility has one baseball field, bleachers to seat 300 persons, a press box, score board, locker rooms and restrooms, a concession stand, a paved parking lot that can accommodate 100 vehicles, and some fencing. A small park with a children’s playground is next to the complex.

- B. Field Condition. The field and facilities were renovated in 2000 and were last used during the 2010-11 baseball season. Due to copper wiring theft and vandalism since 2011, the electrical and irrigation systems are non-functional and parts are missing. The field is in disrepair due to the lack of irrigation and the turf needs to be replaced and the field reconditioned. The existing water well for field irrigation is inoperable and does not produce potable water. Improvements to the well, as well as a water line extension or other means to supply potable water, would be needed to operate the facility. The buildings are old and antiquated, and the concession stand and the restrooms no longer have fixtures or plumbing equipment. A fire destroyed the locker room building and press box. The buildings and facilities do not meet current accessibility requirements. The adjacent Arcade Creek has in the past overflowed its banks and flooded the electrical equipment building. The electrical system is inoperable and needs to be replaced, and some lighting fixtures may need to be replaced. CITY has no funding to undertake the necessary repairs and improvements.

- C. Purpose. The purpose of this MOU is to set out the business terms for the Parties to jointly plan for the renovation and reconstruction of the Harry Renfree Baseball Field, both the baseball field and the ancillary facilities and buildings (collectively the “Field”) for use by competitive youth and adult baseball organizations. This MOU sets out the CITY’s commitment to cooperate in the planning and design of the Field renovation and reconstruction, provide some very limited financial assistance for the costs to repair the irrigation well and other improvements, and offer a nominal rental rate under the terms of the Ground Lease to facilitate financing the costs of the necessary improvements required before the Field can

again be used by the public.

- D. SIBA. SIBA has been formed to undertake the renovation and reconstruction of the Field, at an estimated cost of \$3.8 million, in consideration for a long-term lease at a nominal rate to allow for recoupment of the improvement costs with the revenues derived from rentals, ticket sales, advertising, parking, and concession sales.
- E. Predevelopment Work. Before the Ground Lease (Attachment C) can take effect, SIBA needs to prepare plans and specifications, obtain financing commitments, and obtain the necessary planning, building and environmental management department approvals and permits for the Field renovation and reconstruction work. This MOU sets out the roles of the Parties in preparing and reviewing such plans and specifications. This MOU also serves as the right-of-entry permit to allow SIBA to undertake site investigations, surveying, soil sampling and related activities, and to install security fencing to protect the Field from further vandalism of the facilities and buildings in the interim period until construction commences.
- F. Leased Premises. During this preconstruction phase, the Parties need to define the specific boundary of the leased area, whether additional sports fields will be added, and what other buildings and/or other uses will be added. The Parties also need to address whether the existing Field may be used for events other than athletic games, and whether the existing playground is to be part of the leased area and maintained by SIBA or relocated. Any expansion of the existing complex and additional uses of the Field will require environmental review and planning entitlements. This MOU does not guarantee that such legislative land use entitlements and approvals will be issued.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Memorandum of Understanding, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. MOU Obligations.

As described in the Recitals, the purpose of this MOU is to establish the parameters for the Parties to plan for the renovation and reconstruction of the Field, referred to as the "Project," and the proposed lease terms for this CITY property located at 3565-3615 Auburn Boulevard. The Parties shall negotiate exclusively with each other and in good faith regarding the scope of the Project and the terms for the lease of the Field. It is the CITY's interest that the Project be completed as soon as is reasonably feasible so that the Field will again be available for rental by baseball leagues and an attractive asset for the community, and the operation will benefit the public.

2. Leased Premises.

The portion of Del Paso Regional Park ("Park") that is proposed to be leased by CITY to SIBA is depicted in Attachment A, which is attached and incorporated in this MOU. The "Property" is proposed to include the existing baseball field and adjacent facilities, the unpaved overflow parking area west of Bridge Road, and a portion of undeveloped area east of the existing Field that was identified as "day-use play field" and "open play area" in the 1985 revised park master plan, but excludes the existing playground area, the existing bridle trails that may be within the included area, and any area identified as "natural habitat area" in the 1985 revised park master plan. As set out in the Ground Lease, the form of which is provided as Attachment C, the area of the leased premises may be adjusted in the future by mutual agreement. Such adjustment may include the playground area, but only if that recreational facility is relocated at SIBA's expense to another acceptable area within the Park boundary that is not riparian habitat area to accommodate Future Uses as defined below.

3. Scope of Project.

Within sixty (60) days from the Effective Date, SIBA shall identify the area and boundaries of the CITY property proposed to be leased and all of the planned uses and improvements over the initial 20-year term and the subsequent two 10-year extensions. CITY, in its sole discretion, may limit the leased premises to the boundaries of the existing Field and may reject uses other than baseball and soccer games for considerations including, without limitation, compatibility with the surrounding park areas and land uses, and potential environmental impacts.

4. MOU Term.

The term of this MOU is for a period not to exceed six months from the Effective Date, unless extended by mutual agreement. During this period, the Parties will define the scope of the Project based on the Plans and Budget and the Permit requirements, as defined below, the Project cost and financial commitments, and finalize the terms of the Ground Lease.

5. Predevelopment Work.

During the term of the MOU, SIBA shall undertake the following tasks:

- (i) develop a site plan identifying and describing all proposed uses and improvements of the Property;
- (ii) develop building repair and improvement plans, including improvements to lighting and other utilities;
- (iii) develop a scope of work for repair of the turf and other landscaping;
- (iv) develop a marketing and operations plan;

(v) prepare a budget showing all of the sources and uses of the funds for the renovation and construction work (the “Budget”); and

(vi) obtain binding financial commitments of not less than \$3 million to fund the Project.

Tasks (i) through (iv) shall be known collectively as the “Plans.”

The site plan shall identify the location of the driveways, parking areas, walkways, buildings, bleachers, press box, score board, locker rooms, restrooms, concession stand, the baseball field, fencing, lighting and all other site improvements. The site plan shall specify the size and type of all proposed improvements to the Property, establish property lines and boundaries, and address compliance with accessibility requirements under the Americans with Disabilities Act (ADA). If construction of the improvements is to be phased, the site plan shall include a phasing plan.

The building repair and improvement plans shall identify the availability and adequacy of all existing utilities and infrastructure, and all utility and infrastructure improvements required to meet current building and fire codes and the County Environmental Management Department standards. The building repair and improvement plans shall address whether the existing buildings and facilities will be repaired or rebuilt, the use of any temporary facilities, and the phasing of the improvements. The plans shall also include a proposed construction schedule, and whether the adjacent playground may need to be closed temporarily during construction for public safety reasons.

The marketing and operations plan will identify the teams, leagues, and other entities anticipated to rent the Field, the projected rental rates, and the anticipated food, beverages, and other items expected to be sold at the Field.

The Budget shall set out the costs to prepare the Plans and obtain the Permits, a breakdown of the Project construction costs, including all soft costs, hard costs and contingency, the estimated annual costs to operate and maintain the Field, and the projected revenues. The operation and maintenance costs shall include utilities, janitorial and security services, landscaping, taxes and assessments, insurance, and preventative maintenance requirements to comply with the Ground Lease obligations.

During the MOU term, SIBA shall secure binding commitments from a lender to finance the Project and submit same to CITY for its approval. CITY shall not be obligated to enter into the Ground Lease if CITY disapproves the preconditions set out in the lender commitment letters or agreements. CITY will allow the lender to assume the Ground Lease in the event of default of the loans issued to SIBA in accordance with the terms set out therein.

CITY shall have thirty (30) days to review the preliminary and final Plans and Budget, and may reasonably require additional information and, if necessary, revision of the Plans and corrections of the Budget. Once CITY has approved the Plans and Budget and confirmed that the financial commitments are binding, SIBA may submit an application to the CITY’s Community Development Department (CDD) to obtain all

required planning and zoning entitlements for the Project, which may require undertaking environmental review for compliance with CEQA, and submit the Plans for the building and utility improvements (collectively “Permits”).

Once the Project is “permit ready,” in that the permits for the building and utility improvements are ready to be issued by CDD, SIBA will enter into a contract to construct the improvements. SIBA shall require the contractor to provide insurance and performance and payment bonds to secure completion of the work and payment of all workers and subcontractors. The contractor’s insurance shall include an endorsement naming the CITY as an additional insured and the CITY shall be named on the bonds as an additional obligee.

SIBA shall be solely responsible to prepare the Plans and pay for all required Permits and approvals. SIBA shall bear all predevelopment costs relating to actions and obligations of SIBA under this MOU, including, without limitation, costs for planning, environmental, architectural, engineering and legal services, and other costs associated with preparation of the plans, studies, cost estimates and negotiating and drafting the Ground Lease. CITY’s only obligation during the predevelopment phase is to review and approve the Plans and Budget prepared by SIBA, and such approvals shall not be unreasonably withheld or conditioned.

6. CITY as Government Entity.

Notwithstanding CITY’s approval of this MOU, CITY has not made any pre-commitments to approve the Project. CITY, acting as a governmental entity in evaluating the application for permits for the Project, will be acting in its capacity as a municipal land use regulatory authority and shall have no obligation whatsoever to exercise its discretion in any particular manner.

The terms of this MOU and the Ground Lease also do not restrict the legislative authority of the CITY in any manner, whatsoever, regarding its review of any other uses of the Property, including, without limitation, the development of a restaurant or other commercial activities, and any uses other than operation of the Field as an athletic field complex (the “Future Uses”). CITY retains the right in connection with its review of the Project and any Future Uses to: (i) approve or disapprove any required Permits; (ii) consider the environmental impacts of the proposed development pursuant to CEQA; (iii) adopt measures to require the mitigation of potentially significant impacts; (iv) impose conditions that may modify the scope of the Project and Future Uses which could require changes to Plans; and (v) elect not to approve the Project and the Permits and not to proceed with any further actions to implement the MOU and the Ground Lease.

This MOU and the Ground Lease shall not be construed as a development agreement within the meaning of Government Code Section 65864 *et seq.* CITY shall not be liable, in any respect, to SIBA or any third party beneficiary of this MOU and the Ground Lease for CITY’s approval or disapproval of the Plans or Permits.

7. Protection of the Property.

Within thirty (30) days after execution of this MOU, SIBA shall erect temporary security fencing around the Field to protect the existing improvements from further damage and vandalism until Project construction can commence. If the fencing is insufficient to prevent trespassing, then SIBA shall also provide a security guard to protect the CITY property during the predevelopment phase.

8. Insurance.

Prior to entering the Property for any purpose, SIBA shall provide to CITY evidence of minimum insurance coverages and add CITY as an additional insured on the general liability and automobile policy as set forth in Attachment B.

9. Term of Ground Lease.

In accordance with City Code Section 3.68.110 C, the Ground Lease term is proposed for an initial 20 years, with two 10-year extension periods if SIBA properly maintains the Field and improvements and complies with all of the Permit and Ground Lease conditions, for a maximum period of 40 years (the "Term"), which is the useful life of the improvements. CITY will negotiate in good faith the conditions and any changes required to the Ground Lease for each 10-year extension period, and City Council approval will be required for each Ground Lease extension per the requirements of the City Code.

10. Ownership of Improvements.

After the end of the Term of the Ground Lease, all of the improvements to the Property become part of the CITY property and the CITY is under no obligation to further extend the lease or make any payments for the improvements made by SIBA.

11. Rent.

No rent shall be due during the initial 20-year period of the Ground Lease. CITY will negotiate in good faith the terms for each 10-year extension, and shall not impose rent as a condition of the extension unless CITY has granted SBIA the right to build commercial activities beyond the scope of the sports field nature of the Project. In that event, CITY shall nonetheless not impose rent if the revenue from all of the Future Uses does not exceed the operating and maintenance costs, including overhead and a reasonable profit margin, of the Field and such Future Uses; or if the excess revenues are applied to fund additional capital improvements or replacements on the CITY Property.

12. Naming Rights and Signage.

CITY agrees that SIBA may sell naming rights for the new or rebuilt facilities to sponsors donating funds, materials and/or labor for the Project, and may place the

names of the sponsors on signs along the fencing around the athletic field(s), provided, however, that the baseball field shall continue to be named Harry Renfree Field. Any signage that constitutes business or outdoor advertising visible from a public street must comply with the City's Sign Code.

13. Ground Lease Terms.

This MOU is not an approval of the Ground Lease, and the Parties will review and negotiate any changes to the Ground Lease after completion and approval of the Plans and Permits. The Project development costs and related financial terms as set out in this MOU are preliminary estimates and are subject to change. The Parties intend that their specific rights and obligations be determined by the provisions in the Ground Lease, with the exception of those financial commitments that are expressly stated as binding in this MOU. The Parties agree to use all due diligence and good faith to perform the tasks assigned to them under this MOU and to negotiate in good faith any changes necessary to the terms of the draft Ground Lease. Once SIBA has obtained the Permits necessary for construction of the Project, then the Ground Lease can be approved and executed by both Parties and the Term of the Ground Lease will commence.

14. Default and Termination.

Neither CITY nor SIBA shall be in default of this MOU unless it: (i) fails to fulfill its obligations when due, which failure is not caused by the other Party, (ii) does not negotiate the Ground Lease terms in good faith and subject to the preconditions stated in this MOU, or (iii) does not reasonably cooperate with the other Party in fulfilling the other Party's obligations under this MOU. The defaulting Party shall have thirty (30) days to cure the default. Should the defaulting Party fail to cure the default within the thirty (30) days, the nondefaulting Party may terminate this MOU by written notice to the defaulting Party, and may pursue equitable remedies available to it for such default. The remedies contained in this Section 15 are the sole exclusive remedies for default of this MOU, and neither Party may claim, as a result of a default of this MOU, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

After termination or expiration of this MOU, CITY shall have the right to rely on and use the Plans and Budget submitted by SIBA, but excluding confidential information regarding SIBA's financial capacity, in any manner it deems appropriate. CITY's use of the Plans and Budget shall be without any obligation to reimburse SIBA for the costs of preparation of such submittals as long as CITY has acted in good faith in negotiating the Ground Lease terms with SIBA.

15. Indemnification.

SIBA shall indemnify, defend, protect, and hold CITY and its officers, employees, agents, and contractors harmless from all liabilities, claims, demands, damages, and costs (including attorneys' fees and litigation costs through final appeal) that arise out of or are in any way related to, caused by, or based upon SIBA and its officers,

employees, agents, and contractors inspection of the Field or contracts with third parties for preparation of the Plans and Budget. In particular and without limiting the foregoing, SIBA's indemnification obligation to CITY shall apply in the event of any disputes among the entities that comprise SIBA's legal entity related to their respective obligations and rights under this MOU and under the Ground Lease.

16. Notices.

Any notice, delivery, or other communication under this MOU must be in writing and will be considered properly given when delivered or mailed to the following persons:

CITY: Elizabeth Anderson, Operations Manager
City of Sacramento
Department of Parks and Recreation
915 I Street, 3rd Floor, Sacramento CA 95814
Phone: (916) 808-6076
Email: eanderson@cityofsacramento.org

SIBA: Leon Lee, Chief Executive Officer
Vujadin Jovic, Chief Financial Officer
Sacramento International Baseball Association, LLC
1430 Watt Avenue, Sacramento CA 95864
Phone: (916) 952-6579
Email: LeonLee452@gmail.com, SacramentoVuja@yahoo.com

Any Party may change its address for these purposes by giving written notice of the change to the other Party in the manner provided in this Section 17. If sent by mail, a notice, delivery, or other communication will be considered to have been given forty-eight (48) hours after it has been deposited in the United States Mail, addressed as set forth above, with postage prepaid (registered or certified mail, return receipt requested).

17. Interpretation and Venue.

This MOU is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court.

18. Waiver.

A Party's failure to insist on strict performance of this MOU or to exercise any right or remedy upon the other Party's breach of this MOU will not constitute a waiver of the performance, right, or remedy. A Party's waiver of the other Party's breach of any term or provision in this MOU will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

19. Assignment.

This MOU is not assignable by either Party in whole or in part without the prior written consent of the other Party.

20. No Joint Venture.

This MOU does not create a joint venture, partnership, or any other legal relationship of association among the Parties. Each Party is an independent legal entity and is not acting as an agent of the other Party in any respect.

21. Third Party Beneficiary.

Nothing contained herein is intended, nor shall this MOU be construed, as an agreement to benefit any third parties.

22. Amendments.

Any amendment or modification of this MOU shall be effective only if set forth in a written document that has been approved by the governing board of each Party and executed by a duly authorized officer of each of the Parties.

23. Ambiguities.

This MOU shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes. Captions on sections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this MOU. The Parties have each carefully reviewed this MOU and have agreed to each term herein. No ambiguity shall be presumed to be construed against either Party.

24. Entire Agreement.

This MOU sets forth the Parties' entire understanding regarding the matters set forth. It supersedes all prior or contemporaneous agreements, representations, and negotiations and no other understanding whether verbal, written or otherwise exists among the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the CITY and SIBA have executed this Memorandum of Understanding as of the Effective Date.

CITY OF SACRAMENTO
a municipal corporation

By: _____
James L. Combs
Director, Parks and Recreation Department
For: John F. Shirey, City Manager

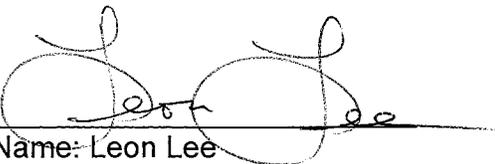
APPROVED AS TO FORM:

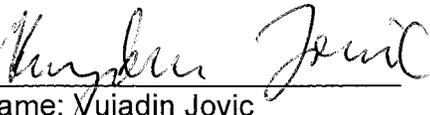
By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC
a limited liability company

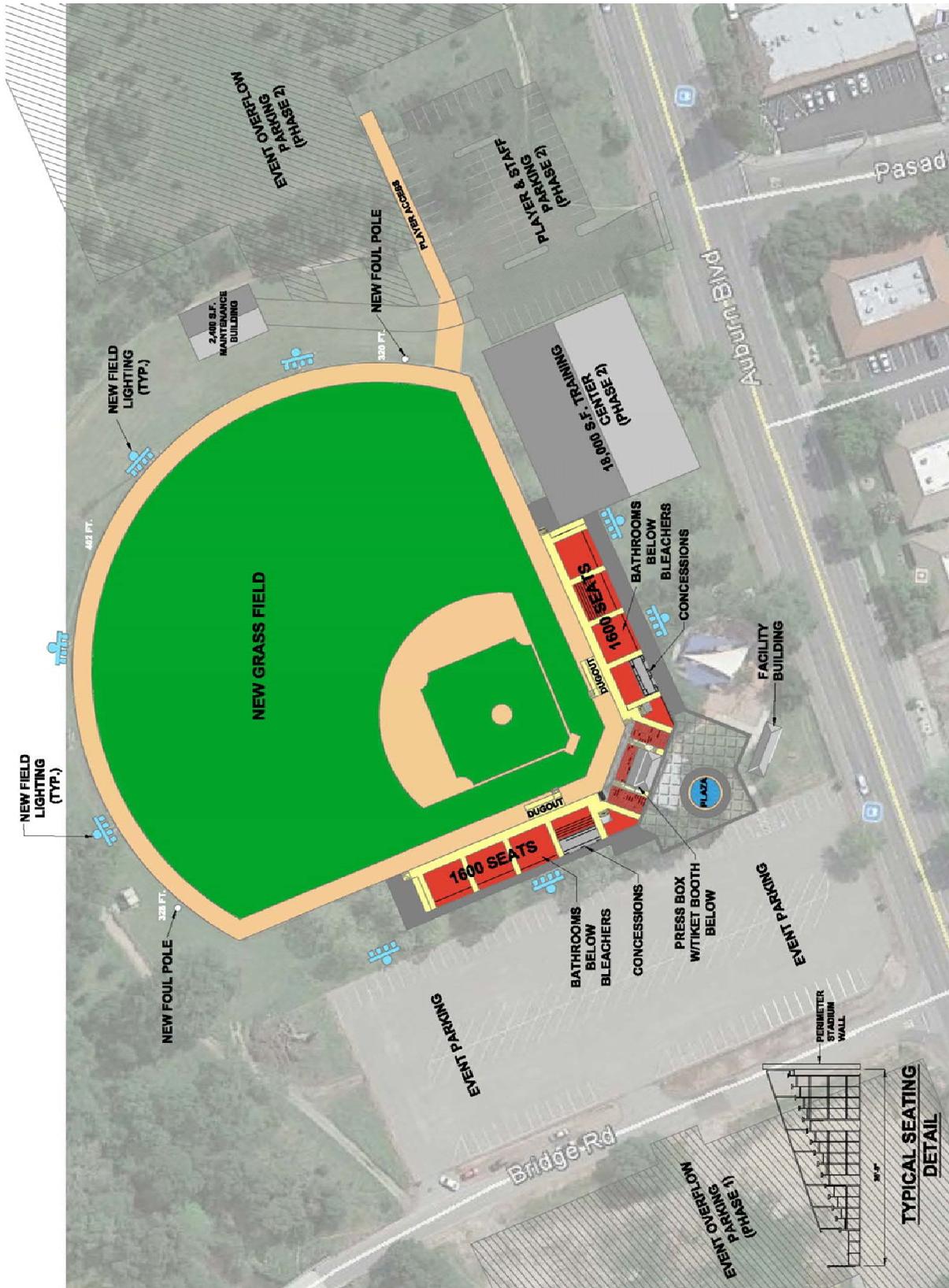
By: 
Name: Leon Lee
Title: Chief Executive Officer

By: 
Name: Yujadin Jovic
Title: Chief Financial Officer

Attachment A
Renfree Field – Proposed Leased Premises



Attachment A Renfree Field – Proposed Field Layout



Attachment B Insurance Requirements

Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

Workers' Compensation Insurance within statutory limits, and Employers' Liability Insurance, with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation in favor of the City is required for the performance of services under this Agreement.

Automobile Liability Insurance, providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of SIBA.

Additional Insured Coverage: The City and its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects to the commercial general liability coverage. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

- (1) SIBA's insurance coverage shall be primary insurance as respects the City and its officials, employees and volunteers. Any insurance or self-insurance maintained by the City or its officials, employees or volunteers, shall be in excess of SIBA's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City or its officials, employees or volunteers.
- (3) Coverage shall state that SIBA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

Acceptability of Insurance: Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with these requirements must be declared to and approved by the City's Risk Management Division in writing prior to execution of the MOU.

Verification of Coverage: SIBA shall furnish the City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the

City's Risk Management Division, 915 "I" Street, 4th Floor, Sacramento, CA 95814, not less than ten (10) days prior to entering the Premises. Copies of policies shall also be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier. The City may withdraw its offer of contract or cancel the MOU if the certificates of insurance and endorsements required have not been provided prior to execution of the MOU. The City may cancel the MOU if the insurance is canceled or SIBA otherwise ceases to be insured as required herein.

Subcontractors: SIBA shall request and verify that all of its contractors and any subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified above.

Attachment C to MOU

GROUND LEASE AGREEMENT

FOR

**RENFREE FIELD
AT 3565 - 3615 AUBURN BOULEVARD**

Between

CITY OF SACRAMENTO

and

SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC

Approved on:

RENFREE FIELD GROUND LEASE

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EXHIBIT A - Legal Description of Property

EXHIBIT B - Premises Site Plan

EXHIBIT C - Improvement Plans

EXHIBIT D - Equal Benefits Ordinance

EXHIBIT E - Memorandum of LEASE

RENFREE FIELD GROUND LEASE

This Ground Lease ("LEASE"), is made and entered into as of this _____ day of _____, 2015 ("Effective Date"), by and between the CITY OF SACRAMENTO, a California municipal corporation ("LANDLORD"), and SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC, a California limited liability company ("TENANT"). LANDLORD and TENANT hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

BACKGROUND

This LEASE is entered into on the basis of the following facts, understandings and intention of the Parties. This Background is intended to explain the purpose for some of the terms of this LEASE; however, the LEASE is expressed below with particularity and the Parties intend that their specific rights and obligations be determined by those provisions and not by the terms in this Background. In the event of an ambiguity, this Background may be used as an aid in interpretation of the intentions of the Parties.

- A. **Definitions.** This Background uses certain capitalized terms that are defined in Article I of this LEASE. The Parties intend to refer to those definitions when a capitalized term is used but is not defined in this Background.
- B. **Baseball Complex.** LANDLORD desires that its Renfree Field be renovated as a premier baseball facility for use by youth, adult, and semi-professional baseball leagues.
- C. **TENANT's Costs.** TENANT will have to incur substantial costs to improve the Property so that it is suitable for baseball operations and will need to secure financing for development of the Property. LANDLORD has agreed to assist in funding a portion of the Improvements. At the expiration or termination of this LEASE, LANDLORD will own the Improvements constructed and maintained by TENANT under this LEASE. The term of this LEASE and the rental rate have been set to provide for TENANT's recoupment of such costs and related expenses.

AGREEMENT

NOW, THEREFORE, based on the Background, the mutual promises and covenants of the Parties contained in this LEASE, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

For purposes of this LEASE and all Exhibits, the capitalized terms shall have the meanings set forth below, unless the context otherwise requires or if the capitalized term is defined in a particular section. Words not defined in this LEASE shall be given their common and ordinary meaning. The word "shall" is always mandatory.

The documents which are attached to this LEASE and labeled as exhibits (Exhibits) are incorporated herein.

1.01 “Effective Date” shall mean the date first set out above, which is after the last date that both LANDLORD and TENANT have signed this LEASE, as indicated by the dates on the signature page date, following approval of this LEASE by the governing board of LANDLORD.

1.02 “Event of Default” shall have the meaning set forth in Section 10.01.

1.03 “Environmental Contamination” shall mean the presence of one or more Hazardous Materials in or on the Premises or otherwise in the ground, air, water or other parts of the environment that is not allowed by Environmental Laws or which is not in compliance with Environmental Laws or this LEASE.

1.04 “Environmental Laws” shall mean any statute, law, rule, regulation, ordinance, code, policy or rule of common law of any Governmental Entity now in effect and in each case as amended to date and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, human health or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. section 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. section 6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. section 1251 et seq.); the Toxic Substances Control Act (TSCA) (15 U.S.C. section 2601 et seq.); the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. section 1801 et seq.); the Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136 et seq.); the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. section 6901 et seq.); the Clean Air Act (42 U.S.C. section 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. section 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. section 6901 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. section 11001 et seq.); the Occupational Safety and Health Act (OSHA) (29 U.S.C. section 655 and 657); the California Underground Storage of Hazardous Substance Act (Health & Saf. Code, section 25280 et seq.); the California Hazardous Waste Control Act (Health & Saf. Code, section 25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (Health & Saf. Code, section 24249.5 et seq.); and the Porter-Cologne Water Quality Act (Water Code, section 13000 et seq.), together with any amendments of these statutes and regulations promulgated under them (whether enacted or promulgated before, on, or after the Effective Date).

1.05 “Environmental Liabilities” shall mean any and all administrative, regulatory, or judicial actions, suits, allegations, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations, liabilities, losses, costs (including remedial, investigative and/or monitoring costs), settlements, assessments, penalties, interest, legal, accounting and consultant fees and costs of court relating in any way to any Hazardous Materials or Environmental Laws incurred by or asserted against LANDLORD based on or caused by acts or omissions of TENANT and its respective

agents, employees, directors, officers, shareholders, contractors, invitees, licensees, representatives, successors or assigns, including, without limitation: (a) any and all claims by any Governmental Entity for enforcement, cleanup, removal, response, remedial, or other actions or damages pursuant to any applicable Environmental Laws, and (b) any and all claims, brought under common law or statute, by any party seeking damages, contribution, indemnification, cost recovery, compensation, or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, property, safety, or the environment.

1.06 “Field” shall mean the existing, renovated and/or replaced baseball field, bleachers, press box, score board, locker rooms, restrooms, concession stand, and paved parking lot as depicted in **Exhibit B**, the Premises Site Plan.

1.07 “Force Majeure” shall mean any flood, tornado, other acts of God, fire, shortages of labor or materials, strikes, riot, war, or other similar or dissimilar conditions or events beyond the reasonable control of the Party claiming such occurrence.

1.08 “Governmental Entity” shall mean any court or any federal, state, or local legislative body or governmental municipality, department, commission, board, bureau, agency or authority, and includes the City of Sacramento.

1.09 “Hazardous Materials” shall mean: (a) any petroleum or petroleum products, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls (PCBs), and radon gas; (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Laws; and (c) any other chemical, material or substance which is in any way regulated by any Governmental Entity.

1.10 “Improvements” means all improvements to the Property as required or permitted under this LEASE during the Term.

1.11 “Lease Year” shall mean the period from the Effective Date to the commencement date of the Occupancy Term, as defined in Section 2.02(b), and each succeeding 12 month period thereafter extending to the Termination Date.

1.12 “Lenders” shall mean each and all of the lenders providing the Loans to TENANT for the Improvements as set forth in Section 6.10.

1.13 “Loan Documents” shall mean any documents between TENANT and Lenders with regard to the Improvements.

1.14 “Loan(s)” shall mean the proceeds of the loans from Lenders which are used by TENANT to construct the Improvements and provide long term financing for the Improvements, as further described in Section 6.10.

1.15 “Memorandum of Lease” shall mean the memorandum that summarizes the terms of this LEASE, which shall be recorded in the official records of the County of Sacramento as specified in Section 2.02(b), a copy of which is to be attached to this LEASE as **Exhibit E**.

1.16 “Mortgage Liens” shall mean all LANDLORD approved mortgages, deeds of trust, liens, security interests, pledges, conditional sale contracts, claims, rights of first refusal, options, charges, liabilities, obligations, easements, rights-of-way, limitations, reservations, restrictions and other encumbrances of any kind that may be placed against the leasehold estate by Lenders as provided in Section 6.09.

1.17 “Permits” shall mean all permits, licenses, registrations, franchises, concessions, orders, certificates, consents, accreditations, authorizations and approvals of any Governmental Entity to undertake the Improvements and for TENANT to occupy and operate its business at the Premises.

1.18 “Person” shall mean an individual, partnership, joint venture, limited liability company, corporation, bank, trust, unincorporated organization or a Governmental Entity.

1.19 “Plans” shall mean the approved site plan, a copy of which is attached to this LEASE as **Exhibit B**, and the approved building repair and improvement plans, a copy of which is attached to this LEASE as **Exhibit C**.

1.20 “Premises” shall mean all of the following: the Property in its condition as of the Effective Date, all rights and easements appurtenant to the Property, and all Improvements TENANT and LANDLORD will undertake to the Property under the terms of this LEASE. For purposes of identification, the Premises is depicted on the site map attached as **Exhibit B**.

1.21 “Project” shall mean the development of the Property as an athletic complex in accordance with the terms of this LEASE.

1.22 “Property” means the parcel of land of approximately ___ gross acres encompassing a portion of Assessor Parcel No. 240-0342-011, as more particularly described in **Exhibit A**.

1.23 “Rent” shall mean the Base Rent as defined in Section 3.01, plus any and all other sums payable by TENANT either to LANDLORD or on behalf of LANDLORD as Additional Rent pursuant to the terms of this LEASE.

1.24 “Replacement Cost” shall mean the amount required to rebuild or replace (including cost of debris removal) all of the Improvements to be located on the Premises during the Term of this LEASE as if all of such Improvements had been destroyed as a result of a casualty.

1.25 “Taxes” shall mean all real or personal property or other special or general

taxes, assessments, fees, levies, duties (including customs duties and similar charges), deductions or other charges of any nature whatsoever (including interest and penalties) imposed by any law, rule or regulation.

1.26 “Term” shall mean the period from the Effective Date to the Termination Date, subject to earlier termination as provided in Section 10.05.

1.27 “Termination Date” shall mean twenty (20) years from the date the certificate of occupancy for the Field is issued as specified in Section 2.02.

ARTICLE II

LEASE OF PREMISES AND TERM OF LEASE

2.01 LEASE OF PREMISES. LANDLORD hereby leases the Premises to TENANT, and TENANT hereby leases the Premises from LANDLORD, on the terms and conditions set forth in this LEASE.

2.02 TERM OF LEASE. The Term of this LEASE includes all of the following periods:

(a) **Initial Term.** The “Initial Term” of this LEASE consists of the “Construction Phase,” which begins on the Effective Date and ends on the date when LANDLORD, acting as a Governmental Entity, has issued TENANT either final permit inspection approval or a certificate of occupancy for the buildings, whichever date occurs last. However, the Construction Phase shall not extend longer than one year without LANDLORD’s written consent.

(b) **Occupancy Term.** The “Occupancy Term” of this LEASE begins at the end of the Construction Phase, and shall extend for a period of twenty (20) years and end on the Termination Date, unless sooner terminated or extended as provided herein.

(c) **Memorandum of Lease.** Within thirty (30) days after TENANT commences operations at the Premises, LANDLORD and TENANT shall execute, and LANDLORD shall record, the Memorandum of Lease to establish the specified dates of the Term of this LEASE, among other matters.

2.03 LEASE EXTENSIONS. No later than one hundred and eighty (180) days prior to the Termination Date, TENANT may give LANDLORD written notice requesting an extension of the LEASE for up to an additional 10-year period. Thereafter, the Parties shall meet to negotiate any desired changes to the terms of this LEASE. If TENANT has fully performed its obligations under this LEASE, and the Parties mutually agree to the conditions for an extension of the Term, then the LEASE shall be amended to extend the TERM accordingly. TENANT is granted two options to extend the Term for 10 additional years subject to compliance with the foregoing provisions and mutual approval and execution of the LEASE amendment. LANDLORD’s approval of each LEASE extension shall not be unreasonably denied or conditioned.

2.04 OPTION TO PURCHASE. In lieu of an extension to the LEASE as set forth

above, TENANT may exercise a right to purchase the Premises at the fair market value of the land excluding the improvements constructed by TENANT (The "Property") based on an independent appraisal. No later than one hundred and eighty (180) days prior to the Termination Date, TENANT may give LANDLORD written notice requesting to purchase the Property. Thereafter, LANDLORD shall cooperate with TENANT in the selection of an appraiser and defining the scope of the appraisal to estimate the fair market value of the Property. The limitation on use of the Property as set forth below shall be a factor in determining the fair market value.

LANDLORD shall select and pay for the appraisal, and the valuation of the Property as set by the appraiser shall be binding on the parties. If LANDLORD and TENANT are unable to agree to the selection of an appraiser, then each party shall independently hire an appraiser to prepare an appraisal report and a copy of each report shall be provided to the other party. Thereafter, the parties shall negotiate for a period not to exceed thirty (30) days to determine if they can mutually agree to the purchase price of the Property. If the parties are still unable to agree to a purchase price, then the two appraisers shall select a third appraiser to conduct an appraisal, which cost shall be split by the parties, and the valuation of the Property by that appraiser shall be final and binding on the parties.

Once the Property value has been established, then TENANT shall notify LANDLORD in writing whether TENANT desires to purchase the Property at that price, and escrow would be scheduled to close prior to the LEASE Termination Date. The conditions for the sale of the Property shall include a covenant running with the land that restricts redevelopment of the Property for a use other than a baseball complex and ancillary facilities consistent with the primary use of the Property at the time of sale.

ARTICLE III

RENT

3.01 BASE RENT. In consideration for the Improvements to the Premises that TENANT shall undertake at its sole cost and expense as described herein, TENANT shall not be obligated to pay any rent to LANDLORD during the Initial Term or the Occupancy Term. In lieu of rent, TENANT shall set aside a portion of the revenues it receives from operation of the Premises to pay for routine maintenance and establish a capital reserve account to fund repairs, system replacements, and building improvements to maintain the Premises in good condition during the Term of the Lease.

ARTICLE IV

PAYMENT OF UTILITIES, SERVICES, TAXES AND ASSESSMENTS

4.01 UTILITIES. TENANT shall pay when due all fees and charges for water, sanitary sewer, storm drainage, natural gas, electricity, telephone and the disposal of garbage, refuse and rubbish and all other utilities, services and conveniences used on the Premises during the Term of this LEASE. TENANT shall also ensure the integrity and accuracy of facilities that are installed by TENANT as a requirement of service by utility providers (meters, conduits, boxes, valves, switches, pads, etc.) for the duration

required by the utility provider.

4.02 SECURITY SERVICES. TENANT shall be solely responsible to contract for security patrol services for the Premises if it desires such services after the Effective Date, or if LANDLORD requires such services be provided in the event that loitering, nuisances, unlawful conduct, damage to the Premises or surrounding properties, or trespassing occurs at or around the Premises as described in Section 7.05.

LANDLORD shall have no duty or obligation to TENANT to provide security patrol services with LANDLORD's police officers, employees, agents, contractors or subcontractors, or to regularly monitor the Premises to prevent loitering, nuisances, unlawful conduct, damage to the Premises or surrounding properties, or trespassing.

4.03 TAXES, ASSESSMENTS AND SERVICE CHARGES. As a Government Entity, LANDLORD is not obligated to pay property taxes and certain types of assessments as the owner of the Property. However, this LEASE constitutes a possessory interest in property that is subject to taxation.

(a) **TENANT's Obligation to Pay Taxes.** As a part of the consideration for the execution and delivery of this LEASE and the amount of the Base Rent, TENANT covenants to pay and shall pay, without abatement, deduction, or offset and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all personal property taxes, property taxes (whether or not denominated as possessory interest taxes), and all assessments, special taxes, license and permit fees, or other property related, and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits (all of which taxes, assessments, special taxes or other property related charges or service fees, and all other governmental charges may be hereinafter referred to as "Impositions"), which shall be made, assessed, levied, imposed upon or become due and payable in connection with, or become a lien upon, the Property and/or the Improvements, or become payable, during the Term of this LEASE that may be assessed on or against the Property, the Premises, the Improvements or the leasehold estate created by this LEASE. Without limiting the generality of the previous sentence, TENANT's duty to pay the Impositions under this Section 4.03 includes the payment of any possessory interest tax levied or assessed by any Governmental Entity on or against TENANT's possessory interest under this LEASE or in the Premises or Improvements.

(b) **Installments.** If by law, any such Imposition may at the option of the TENANT be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), TENANT may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and shall only pay such installments as may become due during the Term of this LEASE as the same respectively becomes due and before any fine, penalty, interest or cost may be added thereto, for the nonpayment of any such installment and interest.

(c) **Proration.** Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included in the Term of this LEASE and a part of which is included in a period of time before the Effective Date or after the Termination Date, shall (whether or not such Imposition shall be assessed, levied, imposed or become a lien upon the Property and/or the Improvements, or shall become payable during the Term of this LEASE) be adjusted between LANDLORD and TENANT as of the date this LEASE commences or is terminated, so that TENANT shall pay that portion which relates to the period of time after the commencement, and prior to the termination, of this LEASE. The foregoing proration shall also apply to an early termination of this LEASE as provided in Sections 10.02 and 10.05.

4.04 SEPARATE ASSESSMENT OF LEASED PREMISES. If the Premises are assessed and taxed as part of other property LANDLORD owns, then LANDLORD shall try in good faith to have the taxing authorities tax and assess the Premises, while this LEASE is in effect, as a separate parcel distinct from the LANDLORD's other property. If, prior to the first Lease Year the Premises are assessed and taxed as part of other property LANDLORD owns, then the share of the Impositions that TENANT must pay under Section 4.03 will be calculated as follows: (1) divide the acreage of the Property by the acreage of LANDLORD's total taxed property; (2) multiply the resulting quotient by the sum of the Impositions on LANDLORD's total taxed property, excluding Impositions attributable to the Improvements and the possessory interest under this LEASE; and (3) add to the resulting product the Impositions attributable to any Improvements constructed by, or at the direction of, TENANT and the possessory interest under this LEASE. LANDLORD shall cooperate with TENANT's efforts to obtain separate tax assessments and tax bills by timely executing any documents the taxing authorities reasonably require in connection with TENANT's application.

4.05 EVIDENCE OF PAYMENT. TENANT shall, within thirty (30) days after the written request of LANDLORD, but no sooner than sixty (60) days after the date on which the Imposition is payable, furnish to LANDLORD the official receipts from the appropriate taxing authority, or other evidence satisfactory to LANDLORD, evidencing the payment of such Imposition.

4.06 PAYMENT BY LANDLORD. In the event of TENANT's failure to pay any such Imposition when due, LANDLORD shall have the right to pay the same and charge that amount to TENANT as Additional Rent. LANDLORD shall promptly send to TENANT: (a) copies of any notices for any taxes, assessments or charges, if such notices have been received by LANDLORD, and (b) evidence of any such payment of Impositions made by LANDLORD, which are the responsibility of the TENANT pursuant to the terms of this LEASE.

4.07 CONTEST RIGHTS. TENANT shall have the right to contest the amount or validity, or to seek a refund, in whole or in part, of any Imposition by appropriate proceedings; provided, however, that this provision shall not be deemed or construed in any way as relieving, modifying or extending TENANT's covenants to pay any such Imposition at the time and the manner as provided in this Article IV unless TENANT shall have deposited with LANDLORD or a bank or a trust company designated by

LANDLORD, as security for the payment of such Imposition, money or a corporate surety bond or other security acceptable to LANDLORD in the amount so contested and unpaid, together with the estimated amount of all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Property and/or Improvements or any part thereof pursuant to said proceedings, whereupon TENANT may postpone or defer payment of such Imposition.

(a) **Proceedings.** Upon the termination of such proceedings, TENANT shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and upon such payment LANDLORD shall return, or cause such bank or trust company to return, the amount above referred to without interest. If, at any time during the continuance of such proceedings, LANDLORD shall deem the amount deposited is insufficient, TENANT shall, upon demand, deposit with LANDLORD or such bank or trust company such additional sums as LANDLORD may reasonably request, and upon such failure of TENANT to do so, the amount theretofore deposited may be applied by LANDLORD or such bank or trust company to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith any costs, fees or other liabilities accruing in any such proceedings, and the balance, if any, shall be returned to TENANT.

(b) **Indemnity.** LANDLORD agrees not to unreasonably withhold its consent in joining in any such proceedings or permit the same to be brought in its name. LANDLORD shall not ultimately be subject to any liability for the payment of any cost or expenses in connection with any such proceeding, and TENANT agrees to indemnify, save and hold harmless LANDLORD for any such costs or expenses.

(c) **Refund.** TENANT shall be entitled promptly to any refund of any Imposition and penalties or interest therein, which may have been paid by TENANT or which have been paid by LANDLORD and for which the LANDLORD has been fully reimbursed.

4.08 OTHER TAXES. Except as may be provided to the contrary in Section 4.03, nothing in this LEASE shall require TENANT to pay any franchise, corporate, estate, inheritance, succession, capital levy, stamp tax or transfer tax of LANDLORD as a Government Entity. LANDLORD shall not be required to pay any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon the rental of the Premises under the rental agreements or subleases, or and other similar charges that may be owed by TENANT due to the nominal amount of the Base Rent, LANDLORD's payment for a portion of the costs for the Improvements, or other financial terms of this LEASE.

4.09 TAX HOLD HARMLESS CLAUSE. TENANT shall indemnify, defend (with attorneys reasonably acceptable to LANDLORD), protect, and hold harmless LANDLORD and LANDLORD's Property, including the Premises and the Improvements located on the Property on or after the Effective Date, from and against all Impositions,

liabilities, claims, demands, damages, fines, interest, penalties, judgments, settlements, and other costs that arise from any taxes, assessments, or other charges TENANT is required to pay under this Article IV.

ARTICLE V

IMPROVEMENT OF THE PREMISES

5.01 LANDLORD'S IMPROVEMENTS. During the Initial Term of this LEASE, LANDLORD, at its election, may undertake repair of the field irrigation well in lieu of providing funds for that purpose to TENANT, after TENANT repairs the electrical system needed for the well operation.

5.02 TENANT'S OBLIGATION TO CONSTRUCT IMPROVEMENTS. As a part of the consideration for the execution and delivery of this LEASE and the amount of the Base Rent, TENANT shall construct all of the Improvements to the Property for the Project: (a) in accordance with the Plans as approved by LANDLORD, (b) in accordance with the Permits issued by a Governmental Entity including LANDLORD, and (c) consistent with and in compliance with all applicable local, state and federal rules, regulations and laws. The Improvements shall be consistent with TENANT's plans and specifications that are submitted and approved in writing by LANDLORD prior to commencement of construction of such Improvements.

5.03 SCOPE OF TENANT IMPROVEMENTS. The required Improvements to be constructed by TENANT include, without limitation, the renovation, repair and/or replacement of all of the existing facilities, structures, buildings, utilities, lighting, fencing, landscaping and paving located on the Premises as of the Commencement Date, along with a source for potable water for the restrooms, drinking fountains and concession stand.

5.04 UTILITIES. TENANT shall install (or cause to be installed) in, on, and within the Property all facilities necessary to supply water, sewer, gas, electricity, telephone, cable television, and other utility services required for TENANT's construction, maintenance and operation of the Improvements while this LEASE is in effect, all at no cost to LANDLORD.

5.05 DRAINAGE; HAZARDOUS MATERIALS. TENANT must design and construct the Improvements to the Property so that all surface water from the Premises is discharged into the underground stormwater drainage system, and that prior to such discharge, any oil, gasoline or other Hazardous Materials spilled, leaked or discharged on the Premises are properly collected before stormwater from the Premises is discharged into the storm drainage system. All Hazardous Materials spilled, leaked or discharged on the Premises during the Term of this LEASE must be handled, removed and disposed of in compliance with all Environmental Laws.

5.06 WARRANTIES AND REPRESENTATIONS OF PARTIES. The Parties have made to each other the following warranties and representations, which shall not be construed as covenants.

(a) **LANDLORD.** As of the Effective Date, LANDLORD warrants and represents that:

(1) LANDLORD is authorized to enter into and perform the obligations of this LEASE, including without limitation, to lease the Property in accordance with the terms hereof.

(2) To its best actual knowledge, and without a search of all LANDLORD records, LANDLORD is not subject to any contract or agreement which would prevent the consummation of this LEASE, or cause it to be in default under such contract or agreement.

(3) To its best actual knowledge, and without a search of official court or other tribunal records, there is no action, suit, or proceedings (including but not limited to eminent domain proceedings) which have been instituted or threatened, which would materially affect the Property or the right to construct improvements thereon, at law or in equity, or before any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality.

(4) To its best actual knowledge, and without having conducted or having any obligation to conduct any formal, informal, or other investigation, there is no Hazardous Substance located upon the Property, or which has been generated, manufactured, stored, disposed of or used on the Property.

(b) **TENANT.** As of the Effective Date, TENANT warrants and represents that:

(1) TENANT is a legal entity and its corporate status is active and all of the requirements of the Secretary of State have been met, and that it is authorized to enter into and perform the obligations of this LEASE, including without limitation, to lease the Property in accordance with the terms hereof.

(2) To its best actual knowledge, and without a search of all TENANT's records, TENANT is not subject to any contract or agreement which would prevent the consummation of this LEASE, or cause it to be in default under such contract or agreement.

(3) To its best actual knowledge, and without a search of official court or other tribunal records, there is no action, suit, or proceedings (including but not limited to eminent domain proceedings) which have been instituted or threatened, which would materially affect TENANT's ability to perform its obligations hereunder or construct the Improvements for the Project, at law or in equity, or before any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality.

5.07 CONSTRUCTION OF IMPROVEMENTS.

(a) **All Work on Written Contract.** All work required to construct the

Improvements by TENANT must be performed only by competent contractor(s) licensed under California law and must be performed under written contracts with those contractors. As used in this Section 5.07, the terms “work” and “improvements” means not only the actual construction of the Project, but also any site-preparation, utilities, roadways, landscaping, lighting, fencing and signage, as well as interior improvements to the buildings.

(b) **Compliance with Law and Standards.** TENANT’s Improvements as required or permitted under this LEASE must be constructed, and all work on the Property must be performed, in accordance with all valid and applicable statutes, ordinances, regulations, rules, and orders of all federal, state, or local governmental entities with jurisdiction over the Property. All work performed on the Property under this LEASE by TENANT must be done in a good workmanlike manner and only with new materials of good quality and high standard.

(c) **Inspection.** TENANT covenants that LANDLORD and any other Governmental Entity will be permitted to inspect the Property and the Improvements during construction of the Improvements and shall have access to the Premises for this purpose at all times. Should LANDLORD find any nonconformance or noncompliance with the approved Permits, the approved Plans and specifications, or any provision of this LEASE, LANDLORD shall notify TENANT of such nonconformance or noncompliance, and the representatives of LANDLORD and TENANT shall meet and jointly determine the nature of the corrective action to be taken.

(d) **Contribution.** LANDLORD agrees to pay TENANT an amount not to exceed Fifty Thousand Dollars (\$50,000) for the costs of the Improvements, and an amount not to exceed Thirty One Thousand Dollars (\$31,000) to repair the field irrigation well. The Improvements and repairs to be funded by LANDLORD shall consist of permanent site improvements to the Property which will make it suitable for use by LANDLORD or other tenants in the future after expiration of the Term. Payment shall be made after work has been performed on a reimbursement basis based on receipt of copies of contractors’ invoices and cancelled checks to verify that the work has been performed and the contractor has been paid.

(e) **Prevailing Wages.** The work to be performed with LANDLORD’s contribution for Improvements as set out above is subject to payment of prevailing wages. TENANT covenants that TENANT’s contractors and subcontractors which are not volunteers shall pay all workers undertaking the Improvements of the Property which are funded by LANDLORD not less than the general prevailing rate of wages for such workers’ craft or trade, as determined by the Director of the Department of Industrial Relations (DIR) at the time that TENANT requests bids for the Improvements (pursuant to Labor Code Section 1773). Copies of certified payroll shall be provided to LANDLORD as a prerequisite to LANDLORD’s payment of its contribution for the Improvements. The nominal Base Rent under this Lease in consideration for the cost of the Improvements to the Property funded by TENANT may be considered a public subsidy by DIR, thereby requiring payment of prevailing wages for all of the Improvements. LANDLORD makes no representation regarding whether the

Improvements funded by TENANT are subject to payment of prevailing wages and TENANT shall be solely responsible for making that determination in consultation with its attorney. TENANT shall be solely responsible for paying any fines or penalties for TENANT's failure to comply with the applicable prevailing wage requirements.

(f) **Performance, Labor and Material Bonds.** TENANT covenants that it will comply with all applicable State laws regarding payment for labor and materials, and will obtain performance and payment bonds in the full amount of the construction contract with respect to the construction of the Improvements. If permitted by State law, TENANT may satisfy the obligation to post bonds with an assignment to LANDLORD of the TENANT's contractor's bond or bonds or through the posting of bonds, letters of credit or other security instruments acceptable to LANDLORD; provided, however, that all such bonds, letters of credit, or other security instruments must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if LANDLORD, in its capacity as a Government Entity, and not TENANT was contracting to construct the Improvements.

(g) **Schedule.** TENANT shall commence construction of the Improvements, as approved by LANDLORD, as soon as reasonably practicable after obtaining all required Permits, and shall construct the Improvements in accordance with the provisions of this Article V and all of the provisions of this LEASE. The construction of the Improvements shall be completed (as evidenced by a duly executed and recorded notice of completion for all such Improvements) subject to Force Majure, not later than the end of the Construction Phase as defined in Section 2.02(a), or such later date as diligent prosecution and pursuance of such construction would permit such completion. In the event construction of the Improvements stops or is terminated for a continuous period of more than ninety (90) days after the commencement of such work, except for Force Majure, that suspension of work shall, at the option of LANDLORD, constitute an Event of Default as provided in Section 10.01.

5.08 MECHANIC'S LIENS. TENANT shall not be deemed to be the agent or representative of LANDLORD in making any alterations, physical additions or improvements to the Property, and shall have no right, power or authority to encumber any interest in the Premises in connection therewith, other than TENANT's leasehold estate under this LEASE. However, should any mechanics' or other liens be filed against any portion of the Premises or the Property (or any other property of LANDLORD in the vicinity of the Premises) or any interest therein (other than TENANT's leasehold estate hereunder) by reason of: (a) TENANT's acts or omissions, or (b) because of a claim against TENANT, or its contractors and subcontractors; TENANT shall cause the same to be canceled or discharged of record, or shall file a bond sufficient to discharge such lien, within twenty (20) days after notice by LANDLORD. If TENANT shall fail to cancel or discharge said lien or liens, or file a bond sufficient to discharge such lien or liens, within said twenty (20) day period, that failure shall be deemed to be an Event of Default hereunder, LANDLORD may, at its sole option and in addition to any other remedy of LANDLORD hereunder, cancel or discharge the same and upon LANDLORD's demand, and TENANT shall promptly reimburse LANDLORD for all costs incurred in canceling or discharging such lien or

liens as Additional Rent.

5.09 HOLD HARMLESS CLAUSE. TENANT shall indemnify, defend (with attorneys reasonably acceptable to LANDLORD), protect, and hold harmless LANDLORD and LANDLORD's Property, including the Premises and the Improvements located on the Premises on or after the Effective Date, from and against all liabilities, claims, demands, damages, fines, interest, penalties, judgments, settlements, and other costs that arise from any wages, costs, penalties, or other charges that TENANT and its contractors and subcontractors are required to comply with or pay under this Article V, including, without limitation, payment of prevailing wages and payment for labor and materials supplied by contractors and subcontractors.

5.10 AMERICANS WITH DISABILITIES ACT. TENANT shall be responsible for all costs and expenses for the construction of, and for any alterations, changes or additions to, the Improvements necessary to ensure the compliance of the Premises with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq. and any similar state or local laws regarding accessibility (collectively, the "Acts") during the Term of this LEASE. TENANT covenants and agrees that all of the Improvements, and any alterations, changes or additions to the Improvements, constructed by TENANT shall be constructed in accordance with the Acts. TENANT covenants and agrees to and does hereby indemnify, defend and hold LANDLORD harmless from and against all liability (including, without limitation, attorneys' fees and court costs) that LANDLORD may actually sustain by reason of TENANT's breach of its obligations under this Section 5.10.

5.11 RELOCATION OF PLAYGROUND. The Premises as of the Effective Date does not include the small public park with playground equipment located along Auburn Boulevard immediately adjacent to the Field. If in the future TENANT desires to expand the Premises to include this park area, and TENANT fully funds the costs for replacement of this park and the equipment thereon, and LANDLORD is able to find a suitable location within Del Paso Regional Park within the vicinity of the Premises to locate the replacement park; the Parties in good faith will negotiate the terms of an amendment to the LEASE to address their respective rights and obligations with respect to the park relocation, the change in size of the Premises, and the proposed use of this additional land area.

ARTICLE VI
FINANCING IMPROVEMENTS; SUBORDINATION AND MORTGAGE LIENS

6.01 STATUS OF TITLE OF PROPERTY. LANDLORD holds fee title to the Property. Title to the leasehold estate created by this LEASE is subject to all exceptions, easements, rights, rights of way, and other matters of record existing as of the Effective Date. Title to the leasehold estate is subject to, and subordinate to, all easements, rights of entry, rights of way, and other rights and interests that may be subsequently be required by a Governmental Entity other than LANDLORD or a public utility as a condition for approving construction of the Improvements.

6.02 FINANCING IMPROVEMENTS. Except as provided in Section 5.07(d), TENANT shall be fully responsible for obtaining all required construction and permanent financing for the Improvements constructed by TENANT on the Property pursuant to its obligations under this LEASE. TENANT has provided evidence to LANDLORD prior to the Effective Date to demonstrate that TENANT has obtained financing to undertake construction of the Improvements.

6.03 BUDGET. TENANT shall prepare for LANDLORD's approval, and for the approval of the construction and/or permanent Lender, a budget ("Budget") for the cost of the Improvements, consisting of all anticipated costs and expenses (including predevelopment, soft costs and hard costs) to undertake construction of the Improvements for the Project ("Construction Costs"). The Budget shall also include the projected costs of owning, managing and maintaining the Improvements over the LEASE Term ("Operation and Maintenance Costs"), including, without limitation, the payment of utilities, security services, taxes and assessments as set out in Article IV, the insurance requirements in Article VIII, the preventative maintenance requirements set out in Section 7.09, all Loan payments, and TENANT's overhead and profit. The Budget shall also include all Loan proceeds, LANDLORD contributions per the terms of Section 5.07(d), plus a prudent reserve amount, as well as all anticipated revenues to be generated by the operations during the LEASE Term (collectively "Revenues").

The Budget shall identify all sources and uses of the Revenues, as well as a disbursement schedule for each funding source. LANDLORD's contribution shall not be used to pay TENANT's predevelopment costs. The Budget is subject to LANDLORD's prior written approval, which shall not be unreasonably withheld, prior to submission to any Lender. The Budget may be amended by TENANT during the course of the construction of the Improvements for the Project, subject to LANDLORD's prior written consent, which shall not be unreasonably withheld, and subject to the provisions of Sections 6.04 and 6.05.

6.04 UNFORESEEN CONSTRUCTION COST INCREASE. If after TENANT commences construction of the Improvements, TENANT or its contractor encounters unknown and unforeseen site conditions that will increase the Improvement costs beyond the amount the financing obtained by TENANT for the Improvements; then the scope of the Improvements may be modified in order to bring the costs back within the amount of the financing, subject to the mutual agreement of LANDLORD and TENANT.

6.05 CONTRACTS AND CHANGE ORDERS. TENANT shall be responsible for entering into all contracts and any change orders required for the construction of the Improvements; provided, however TENANT shall not be required to enter into any change orders that would increase the Project costs beyond the approved Budget.

6.06 REIMBURSEMENT FOR LANDLORD'S CONTRIBUTION. As provided in Section 5.07(d), TENANT shall be entitled to reimbursement by LANDLORD, without interest, for a portion of the costs actually incurred by TENANT for construction of Improvements to the Property based on the approved Budget.

TENANT shall provide copies of all contracts, change orders, certified payroll records and invoices for the costs of the Improvements and such other documentation as may be reasonably requested by LANDLORD to verify the Project costs to be funded by LANDLORD were actually incurred and paid for by TENANT ("Reimbursement Request"). LANDLORD has the right to verify whether the materials and work for which reimbursement is being requested have been installed or performed as represented in the Reimbursement Request. TENANT's right to reimbursement shall be conditioned on the prior release and satisfaction of any stop notices or mechanic's liens. LANDLORD shall have forty-five (45) calendar days to process payment after receipt of each TENANT's Reimbursement Request.

LANDLORD's progress payments may be reduced by the cost of work included in the Reimbursement Request that has not been satisfactorily completed. The making of any disbursement by LANDLORD shall not be deemed to constitute an approval or acceptance by LANDLORD of the work completed or a waiver of the condition of the Property or the Premises with respect to a work that has not been satisfactorily completed.

6.07 SOURCES FOR REIMBURSEMENT. The source for LANDLORD's Funding Commitment was identified at the time this LEASE was approved. Nothing in this LEASE shall be construed to create an obligation of, or be attributable to, LANDLORD's general or special funds, or any other funds in the hands of LANDLORD, as a Government Entity, or its accounts now and in the future, except as otherwise expressly provided herein.

6.08 TENANT'S RIGHT TO ENCUMBER. While this LEASE is in effect, TENANT may encumber any part of its interests under this LEASE with LANDLORD's prior written approval, which shall not be unreasonably withheld, to a Lender for the purpose of securing repayment of any Loan to fund the Improvements that are included in the approved Budget as evidenced by a deed of trust, mortgage, or other security instrument (a "Leasehold Encumbrance"). A Leasehold Encumbrance may not constitute a lien or encumbrance on LANDLORD's fee interest in the Property. Except as otherwise provided in this LEASE, each Leasehold Encumbrance will be subject to all reserved rights of LANDLORD, all covenants, conditions, and restrictions set forth in this LEASE, and to all of LANDLORD's rights, title, and interest in the Property and the Premises. TENANT shall give LANDLORD prior written notice of any proposed Leasehold Encumbrance affecting TENANT's interest under this LEASE, together with a copy of the deed of trust, mortgage, or other security interest evidencing the Leasehold Encumbrance, for LANDLORD's approval prior to its execution by TENANT.

6.09 FINANCING; SUBORDINATION. It is the intention of the Parties that LANDLORD's interest in this LEASE will be subordinated by LANDLORD to a Leasehold Encumbrance upon the terms and conditions specified herein, under an Institutional Leasehold Mortgage. It is also the intention of the Parties that the LANDLORD's fee title interest in the Property cannot lawfully be and shall not be subordinated to any such financing. LANDLORD shall not be obligated to make payment of its LANDLORD Funding Commitment to a Lender, by TENANT's

assignment of payments owed by LANDLORD to TENANT under this LEASE, under the terms of the Subordination Documents referenced below, or by any other manner.

(a) **LANDLORD Execution of Documents.** Subject to the provisions of this Section 6.09, LANDLORD agrees to execute at close of escrow for TENANT's Loan for financing Improvements to the Property such documents as may be required to effect a subordination of LANDLORD's interest in this LEASE to the interest of a Lender under an Institutional Leasehold Mortgage ("Subordination Documents"), in order to assist TENANT in obtaining construction and permanent financing for the Improvements. Such documents shall be to the satisfaction of the City Attorney, and shall expressly provide that the execution thereof shall not create any liability on the part of LANDLORD for payment of any of the principal, interest, penalties or other sums as may be due under the Institutional Leasehold Mortgage, or for any other right or remedy as between the Lender and TENANT, except as expressly provided herein. However, the Institutional Leasehold Mortgage shall allow for LANDLORD to make payment on behalf of TENANT and to cure TENANT's defaults, including the right of LANDLORD to pay off the Loan at the time of LANDLORD's exercise of its rights to an early termination of this LEASE and Lender shall be obligated upon receipt of such payment to rescind the Leasehold Encumbrance and reconvey Leasehold Encumbrance. LANDLORD's obligation to subordinate its interest under this LEASE to Lender is conditioned on the Subordination Documents not requiring any modification of the terms of this LEASE or requiring LANDLORD to enter into any agreements with Lender containing new or modified LEASE terms.

(b) **Subordination Conditions.** LANDLORD's obligation to execute the Subordination Documents shall be subject to the following conditions precedent:

(i) All conditions of Lender for close of financing shall have been satisfied.

(ii) TENANT's Lender is prepared to close its Loan transaction with TENANT, and LANDLORD has approved the Loan transaction.

(iii) TENANT has provided written confirmation in the form of an estoppel certificate acceptable in form to the City Attorney, that TENANT has completed its investigation and has satisfied itself in all respects with regard to the title to the Property, the condition of the Property, TENANT's ability to develop the Project in accordance with the approved Project Plans, specifications, and Budget, and TENANT has obtained all required Permits.

(iv) The Subordination Documents shall be subject to approval as to form by the City Attorney, and shall include (inter alia) provisions which limit LANDLORD's subordination obligation to the original TENANT Loan, provided, however, that for this purpose separate mortgages securing construction and permanent financing for the Project shall be considered to be one mortgage; and provisions which specify that TENANT may refinance its Loan, subject to LANDLORD's approval which will not be unreasonably withheld.

6.10 NOTICE TO LENDERS. If a Lender who holds a Leasehold Encumbrance provides LANDLORD with written notice of the its name and address, then LANDLORD shall provide the Lender with a copy of each notice or written communication LANDLORD gives to TENANT in connection with this LEASE, including, without limitation, any notice of breach and any notice regarding any matter on which LANDLORD may claim a breach, or any notice of termination. Such LANDLORD notice or written communication will be effective only if a copy of the notice was also provided to the Lender. LANDLORD may satisfy its obligation under this Section 6.10 by placing the copy of the notice or communication in an envelope addressed to the Lender (at the last mailing address the Lender provided to LANDLORD in writing) and by depositing the envelope in the U.S. Mail with first-class postage prepaid.

6.11 NO MODIFICATION WITHOUT LENDER'S CONSENT. So long as any Leasehold Encumbrance is in effect, TENANT and LANDLORD shall not modify or cancel this LEASE in a manner that would materially affect Lender's interests without the Lender's prior written consent.

6.12 RIGHT OF LENDER TO REALIZE ON SECURITY. A Lender with a Leasehold Encumbrance is entitled while this LEASE is in effect and during the existence of the Leasehold Encumbrance to do the following:

(a) Perform any act required of TENANT under this LEASE, and the Lender's performance will prevent a forfeiture of TENANT's rights under this LEASE.

(b) Realize on the security afforded by the leasehold estate by foreclosure proceedings, by accepting an assignment in lieu of foreclosure, or by any other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance (the "Security Instrument").

(c) Transfer, convey, or assign TENANT's title to the leasehold estate to any purchaser at any foreclosure sale (whether the foreclosure sale is conducted under court order or under a power of sale contained in the Security Instrument) or to an assignee under an assignment in lieu of foreclosure.

(d) Acquire and succeed to TENANT's interest under this LEASE by virtue of any foreclosure sale (whether the sale is conducted under a court order or under a power of sale contained in the Security Instrument) or by virtue of an assignment in lieu of foreclosure.

The Lender or any person or entity acquiring the leasehold estate will be obligated to perform TENANT's obligations under this LEASE only during the time the Lender, entity, or person owns the leasehold estate or possesses the Premises.

6.13 RIGHT OF LENDER TO CURE BREACH. So long as a Leasehold Encumbrance is in effect, LANDLORD shall not terminate this LEASE because of TENANT's breach unless LANDLORD first gives the Lender written notice of the breach and affords the Lender an opportunity, after service of the notice, to do one of the following:

(a) For a breach that can be cured by paying money to LANDLORD or some other person, cure the breach within 30 days after TENANT's opportunity to cure has expired.

(b) For a breach that must be cured by something other than the payment of money, cure the breach within 45 days after TENANT's opportunity to cure has expired.

(c) For a breach that must be cured by something other than the payment of money, if the cure cannot be performed within 45 days after TENANT's opportunity to cure has expired, cure the breach in any reasonable time that may be required, but only if the Lender (i) commences work on the cure within 45 days after TENANT's opportunity to cure has expired, and (ii) diligently prosecutes the work to completion.

6.14 FORECLOSURE IN LIEU OF CURING BREACH. Notwithstanding any other provision of this LEASE, the Lender under a Leasehold Encumbrance may forestall termination of this LEASE for TENANT's breach by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings may be for foreclosure by court order or for foreclosure under a power of sale contained in the Security Instrument. But the proceedings will not forestall LANDLORD's termination of this LEASE for the TENANT's breach unless:

(a) They are commenced within 60 days after service on the Lender of notice under Section 6.10;

(b) They are diligently pursued to completion in the manner required by law; and

(c) The Lender keeps and performs all of the terms, covenants, and conditions of this LEASE that require TENANT to pay or expend money until the proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to the Lender.

6.15 ASSIGNMENT WITHOUT CONSENT ON FORECLOSURE. Transfer of the TENANT's leasehold estate to any of the following does not require LANDLORD's prior consent as long as the purchaser or assignee provides its written agreement to LANDLORD to be bound by all provisions of this LEASE.

(a) A purchaser at a foreclosure sale of the Leasehold Encumbrance, whether the sale is conducted under a court order or under a power of sale in the Security Instrument. The Lender under the Leasehold Encumbrance must give LANDLORD written notice of the purchase, including the name and address of the purchaser and the effective date of the purchase.

(b) An assignee of the leasehold estate by Lender under an assignment in lieu of foreclosure. The Lender under the Leasehold Encumbrance must give LANDLORD

written notice of the assignment, including the name and address of the assignee and the effective date of the assignment.

(c) An assignee of TENANT's leasehold estate by an assignment in lieu of foreclosure. The TENANT must deliver to LANDLORD written notice of the assignment, including the name and address of the assignee and the effective date of the assignment.

6.16 NEW LEASE TO LENDER. Notwithstanding any other provision of this LEASE, if LANDLORD terminates this LEASE because of TENANT's breach, then LANDLORD will enter into a new lease of the Premises with the Lender under a Leasehold Encumbrance if all of the following conditions are satisfied:

(a) Within 60 days after LANDLORD serves the Lender with notice under Section 6.10, the Lender has served LANDLORD with a written request for the new lease.

(b) The term of the new lease ends on the same date this LEASE would have expired had this LEASE not been terminated.

(c) The new lease provides for payment of Rent at the same rate that would have been payable under this LEASE had it not been terminated and the new lease contains the same terms, covenants, conditions, and provisions that are in this LEASE (except those that have already been fulfilled or no longer apply).

(d) On LANDLORD's execution of the new lease, the Lender pays all sums that would have been due at the time under this LEASE but for its termination; in addition, the Lender remedies (or agrees in writing to remedy) all of TENANT's other breaches of this Lease to the extent they can be remedied.

(e) On LANDLORD's execution of the new lease, the Lender pays all reasonable costs and expenses, including attorneys' fees and court costs, LANDLORD incurred in terminating this LEASE, recovering possession of the Premises from TENANT, curing any defaults of TENANT, and preparing the new lease.

(f) The Lender may assign the new lease without LANDLORD's prior consent. However, an assignee of the Lender may only assign the new lease with LANDLORD's prior written consent, which LANDLORD shall not withhold, delay, or condition unreasonably.

6.17 NO MERGER OF LEASEHOLD AND FEE ESTATES. So long as any Leasehold Encumbrance exists, the leasehold estate created by this LEASE and LANDLORD's fee estate in the Property and in the Premises will not merge, even if both estates are acquired or become vested in the same person or entity, unless the Lender and LANDLORD consents otherwise in writing.

6.18 LENDER AS ASSIGNEE OF LEASE. A Lender will not be liable to LANDLORD

as an assignee of this LEASE unless the Lender acquires all of TENANT's rights under this LEASE through foreclosure, an assignment in lieu of foreclosure, or some other action or remedy provided by law or by the Security Instrument.

6.19 LENDER INCLUDES SUBSEQUENT SECURITY HOLDERS. Except for purposes of Section 6.16, the term "Lender" as used herein means not only the institutional lender that lent TENANT money and is named as beneficiary, mortgagee, secured party, or security holder in the Security Instrument, but also all subsequent purchasers or assignees of the leasehold estate from Lender.

6.20 TWO OR MORE LENDERS. If two or more Lenders each exercise their rights under this LEASE and a conflict arises that renders compliance with all Lender requests impossible, then the Lender whose Leasehold Encumbrance would have senior priority in a foreclosure will prevail.

6.21 PUBLIC FINANCING SUBORDINATION. LANDLORD may have acquired the Property with the proceeds of bonds and the security for repayment includes the Property. In the future, LANDLORD may include the Property as part of an asset for public financing. TENANT covenants and agrees with LANDLORD that this LEASE is subject and subordinate to any public financing methodology utilizing the Property as an asset for security or lease/leaseback purposes, or any mortgage, deed of trust, and/or security agreement which may now or hereafter encumber the Property and the Premises or any interest of LANDLORD therein, and to any advances made on the security thereof and to any and all increases, renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination need be required by any owner or holder of any such lease, mortgage, deed of trust or security agreement in confirmation of such subordination; however, at LANDLORD's request TENANT shall execute promptly any appropriate certificate or instrument that LANDLORD may request. Notwithstanding the foregoing, LANDLORD's interest in the Improvements shall be subordinate to that of any Lender in accordance with the provisions of Section 6.09.

6.22 TENANT'S OBLIGATIONS UNDER LOANS. Nothing contained in this LEASE shall relieve TENANT of its obligations and responsibilities under any Loans to the extent specified in those agreements. TENANT affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, for the Loans, and (iii) all taxes and charges payable in connection with the Loans. It is expressly understood and agreed that all Loan proceeds shall be paid to and become the property of TENANT and that the LANDLORD shall have no right to receive any such Loan proceeds.

6.23 LANDLORD'S RIGHT TO CURE TENANT DEFAULTS UNDER LOANS. Upon the recording of a Memorandum of Lease for this LEASE, LANDLORD may also record in the Office of the Recorder of Sacramento County, California requests for copies of any notice of default or notice of sale under each Loan. In the event of default by TENANT under a Loan, LANDLORD shall have the right, but not the obligation, to cure

the default. Any payments made by LANDLORD to cure a default shall be treated as Rent due from TENANT which shall be paid within thirty (30) days of the date on which the payment was made by the LANDLORD.

6.24 SUBSEQUENT LEASEHOLD ENCUMBRANCES. Except as provided in Section 6.08, TENANT shall not have the right, without LANDLORD's prior written consent, to enter into Leasehold Encumbrances for purposes of other than to fund the cost of the Improvements to the Property or the Premises as permitted by LANDLORD. If TENANT demonstrates that such additional financing is: (i) necessary to meet TENANT's obligations under this LEASE, (ii) such additional financing will not materially adversely affect TENANT's ability to repay the Loans, and (iii) LANDLORD will not be held responsible for repaying the additional financing; then LANDLORD shall not withhold its consent.

ARTICLE VII

OWNERSHIP, OPERATION AND MAINTENANCE OF IMPROVEMENTS

7.01 OWNERSHIP OF IMPROVEMENTS. The Improvements constructed by TENANT shall be owned by TENANT until the expiration or sooner termination of this LEASE, whereupon the Improvements shall become the LANDLORD's property without compensation to TENANT. At the expiration, termination or cancellation of this LEASE as permitted herein, TENANT shall surrender the Premises and all Improvements on the Property to LANDLORD free of all liens and encumbrances, including the Leasehold Encumbrances permitted under this LEASE and consented to by LANDLORD.

7.02 REMOVAL OF IMPROVEMENTS AND FIXTURES. TENANT shall not remove any Improvements or create waste, destroy or modify the Improvements except as approved by LANDLORD in advance in writing, or as otherwise permitted in this LEASE. TENANT is entitled (but not obligated) to remove any trade fixtures installed at the Premises at any time without first obtaining LANDLORD's consent, so long as TENANT repairs any damage caused to the Premises or the Improvements by the removal. After surrender of the Property and the Premises to LANDLORD at the expiration or termination of this LEASE, TENANT shall have no right, title or interest in the Property, the Premises or the Improvements thereon.

7.03 SIGNAGE. TENANT shall have the right to display signs on the Premises to advertise TENANT's operations and to acknowledge sponsors that provided funding or donated materials and/or labor for the Improvements, but all such signage must comply with all applicable laws and restrictions of LANDLORD, acting in its capacity as a Governmental Entity. TENANT shall be solely responsible for obtaining any required Permit or governmental approvals for the signage. In addition, TENANT may erect directional signs for the purpose of wayfinding the passenger parking and loading areas, and informational signs regarding the prohibition of loitering, trespassing and nuisance activities.

7.04 USE RESTRICTED TO FIELD OPERATIONS. TENANT covenants to LANDLORD that TENANT shall only permit and occupy the Premises during the Term of this LEASE for operation of a baseball complex and the following activities:

7.05 OPERATION OF PREMISES. In its occupation and operation of the approved uses of the Premises, TENANT shall comply with all of the following requirements and restrictions:

(a) **Permits.** TENANT shall at all times, comply and adhere to all pertinent or applicable regulations and ordinances of the City of Sacramento and the County of Sacramento, all requirements of the local officials governing building, fire and health laws, and the laws of the State of California and the United States insofar as the same of any of them are applicable to TENANT's operations. TENANT shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein, and shall adhere to all requirements of County, State and Federal laws covering requirements for the storage and dispensing of volatile fuels and other hazardous materials.

(b) **Personnel.** TENANT shall at all times retain active, qualified, competent, and experienced personnel to supervise TENANT's operation and to represent and act for TENANT's organization.

(c) **Sale of Goods.** All prices charged for rentals, goods, and services supplied to the public at or from the Premises shall be fair and reasonable.

(d) **Noise.** TENANT shall not operate any amplified sound or music system in a manner which interferes with the reasonable enjoyment of surrounding and adjacent properties or which violates the City's Noise Ordinance. TENANT shall immediately comply with any written request of LANDLORD concerning the use of sound systems.

(e) **Minors.** If any employees, volunteers or subcontractors of TENANT who are to perform services at the Premises are in a position to exercise supervisory or disciplinary authority over any minor child, then TENANT shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers, and require such clearance be provided by its contractors and their employees and volunteers, prior to any such persons exercising such supervisory or disciplinary authority over minors at the Premises. TENANT shall submit proof or certification of such DOJ clearances to LANDLORD upon request. Any person who has been convicted of an offense listed in Public Resources Code Section 5164 shall be prohibited from working or performing services at the Premises. Violations of this requirement by TENANT's contractor who fails to obtain DOJ clearances for its employees and volunteers shall not constitute a breach of this Lease by TENANT.

7.06 SUBLEASES OF PORTION OF THE PREMISES. In accordance with Section

9.02, any occupation of the Premises by any sublessee of TENANT without LANDLORD's prior written consent is a breach of this LEASE and LANDLORD may declare such occupation to be an Event of Default. LANDLORD may, but is not obligated to, approve one or more sublessees of TENANT if the goods or services offered by such sublessees are designated to provide ancillary services for TENANT's operations and/or ancillary services for the convenience of TENANT's patrons, such as food and beverages.

TENANT shall submit to LANDLORD the proposed sublease prior to its execution for LANDLORD's written approval. If LANDLORD approves the sublessee, LANDLORD reserves the right to impose conditions on the operations of such sublessee to be included as conditions of that sublease. In addition, LANDLORD may at any time revoke its approval if that sublease and the sublessee if the operations of such sublessee creates: (a) trash that is not properly discarded and is strewn within the Premises creating unsightly or unsanitary conditions; (b) significant foot or car traffic into the Premises by persons who are not sublessee's patrons; (c) loitering within the Premises or on adjacent properties; or (d) other conditions that are expressly prohibited in this LEASE. Failure to remove that sublessee after LANDLORD's written notice of revocation of its approval of that sublease shall be an Event of Default.

7.07 PROHIBITION OF LOITERING, NUISANCE, TRESPASSING AND UNLAWFUL CONDUCT. TENANT shall not use or allow any use of any of the Improvements, the Premises, or the Property, or any part thereof, for: (i) any unlawful purpose, (ii) any dangerous or noxious trade or business, or (iii) any use that is not permitted under the Permits issued by LANDLORD in its capacity as a Governmental Entity.

LANDLORD may at any time during the LEASE Term require TENANT, at TENANT's sole cost, to provide security patrol services to prevent loitering, nuisance and unlawful conduct within and surrounding the Premises. Upon receipt of LANDLORD's written request for security patrol services, the Parties shall meet to determine the type of services needed and the hours of patrol operations.

In addition, the Parties will evaluate whether there are other additional security measures that may be appropriate to control the improper activities, such as installation and monitoring of security cameras, additional lighting, and more secure or additional fencing, which may be needed to supplement the security patrol services.

7.08 PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION. TENANT hereby covenants for itself, its officers, directors, employees, agents, contractors, subcontractors, assignees, its sublessees and all persons claiming under or through TENANT, and this LEASE is made and accepted upon subject to, compliance with the following condition:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, disability, medical condition, national origin, or ancestry in the use and occupancy of the Premises, nor shall the TENANT or any person claiming under or through it establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of groups or persons that rent the facilities at the Premises or are customers of TENANT or sublessees.

7.09 NON-DISCRIMINATION IN EMPLOYEE BENEFITS. This LEASE is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in **Exhibit D**. TENANT is required to sign the Declaration of Compliance (Equal Benefits Ordinance) in **Exhibit D**, to assure compliance with these requirements prior to LANDLORD's approval and execution of this LEASE.

7.10 LANDLORD'S RIGHT TO ENTER. TENANT shall permit LANDLORD, the authorized representatives of LANDLORD and the holder of any Leasehold Mortgage to enter the Premises at all reasonable times during usual business hours for the purpose of inspecting the same, determining compliance with the terms of this LEASE. TENANT shall insure that LANDLORD has the same rights of inspection within all portions of the Premises that may be under the control of a sublessee.

7.11 MAINTENANCE OF THE PREMISES. Throughout the Term, TENANT shall, at TENANT's sole cost and expense, maintain the Premises and all of the Improvements in first class condition and repair, ordinary wear and tear excepted, and in accordance with the terms of any Loans and all applicable federal, state and local laws, ordinances and regulations of (i) governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, (ii) insurance underwriting boards or insurance inspection bureaus having or claiming jurisdiction, and (iii) all insurance companies insuring all or any part of the Improvements. TENANT shall, at its sole cost, keep and maintain the Premises in a safe, clean, sanitary, orderly and attractive condition.

TENANT shall promptly repair any damage to the Improvements, including, without limitation, the fencing and any damage to the electrical and irrigation systems. All broken or damaged items shall be removed and replaced by TENANT within 30 days. TENANT shall promptly comply with written reasonable orders that may be issued from time to time by the LANDLORD as to matters concerning the operation of the Premises as it may affect the best interests of the public using the adjacent and surrounding park areas.

In addition to the routine maintenance and repair required to comply with the foregoing, TENANT shall also perform the following preventative and programmed capital maintenance activities during the LEASE Occupancy Term, and the costs of such activities shall be included in the maintenance portion of the Budget referenced in Section 6.03.

- (a) **Buildings**. Exterior and interior painting at least every ten (10) years.
- (b) **Parking Lots and Driveways**. Repair and resurface all parking areas, driveways and walkways at least every five (5) years.

(c) **Landscaping.** Replacement of all deteriorated or worn landscaping annually and replacement of the irrigation systems at least every ten (10) years.

(d) **Fencing.** Replacement of all deteriorated or worn portions of perimeter fencing annually.

Upon the written request of TENANT, the LANDLORD, at its sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirements. TENANT shall keep such records of maintenance and repair as are necessary to demonstrate performance of the foregoing program maintenance requirements.

It is expressly understood that LANDLORD shall have no responsibility whatsoever to make any improvements or repair or perform any maintenance on facilities installed on the Premises by TENANT unless the facilities were removed or damaged by LANDLORD, its employees, contractors or agents.

ARTICLE VIII

INSURANCE, DAMAGE TO IMPROVEMENTS, INDEMNIFICATION

8.01 INSURANCE DURING CONSTRUCTION. Prior to the commencement of any construction work on the Property, TENANT shall, at TENANT's sole cost and expense, obtain and keep in force and furnish to LANDLORD a certificate or certificates substantiating the fact that TENANT it has taken out the insurance hereinafter set forth:

(a) **Term.** For the period of time from the date TENANT, including its agents, contractors and subcontractors, enters or takes possession of the Property and continuing through the period of construction of the Improvements and until the date of issuance of the insurance coverage specified in Section 8.02, TENANT shall procure and maintain insurance coverages as required in this Section 8.01.

(b) **Coverage Type.** The minimum insurance coverage shall be as follows: Public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, and underground hazards.

(c) **Amount.** The minimum amount of insurance coverage shall be not less than a combined single limit one million dollars (\$1,000,000) for one or more persons injured and property damage in each occurrence.

(d) **Additional Insured.** The certificates of insurance shall also name LANDLORD as an additional insured and shall be primary over any insurance that may be carried by LANDLORD. This insurance shall directly protect LANDLORD as well as TENANT and its agents. The insurer shall assume the defense of LANDLORD, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of the Improvements on the Property by TENANT or its contractors and subcontractors. The insurance policy shall expressly state that the

above terms are in effect.

8.02 INSURANCE DURING OPERATIONS. After completion of the Improvements specified in Article V and prior to occupancy of the Premises, TENANT shall, at TENANT's sole cost and expense, obtain and keep in force and furnish to LANDLORD a certificate or certificates substantiating the fact that TENANT it has taken out the insurance hereinafter set forth:

(a) **Term.** For the period of time from the date TENANT has completed the Improvements to the Property and continuing through the Term of this LEASE, TENANT shall procure and maintain insurance coverages as required in this Section 8.02.

(b) **Coverage Type.** The minimum insurance coverage shall be as follows: Commercial general liability insurance, or equivalent, of an "occurrence" type. TENANT's commercial general liability insurance shall include Broad Form Property Damage, Personal Injury Liability Insurance (with the Employee's Exclusion deleted), Products Liability Insurance, Independent Contractor's Liability Insurance and Blanket Broad Form Contractual Liability Insurance. The policy or policies of insurance shall cover loss or damage to the Improvements to the Property and all personal property of TENANT contained in or on the Premises.

(c) **Amount.** The minimum amount of insurance coverage shall be not less than a combined single limit one million dollars (\$1,000,000) for one or more persons injured and property damage in each occurrence. LANDLORD may, from time to time during the Term, require such higher insurance limits or additional insurance coverage as LANDLORD may reasonably believe are warranted.

(d) **Additional Insured.** The certificates of insurance shall also name LANDLORD as an additional insured and shall be primary over any insurance that may be carried by LANDLORD. This insurance shall directly protect LANDLORD as well as TENANT and its agents. The insurer shall assume the defense of LANDLORD, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the occupancy of the Premises by TENANT, any sublessee, and their agents, employees, patrons, contractors and subcontractors. The insurance policy shall expressly state that the above terms are in effect.

8.03 FIRE AND CASUALTY INSURANCE. TENANT shall also procure and maintain, at no cost to LANDLORD, a fire-insurance policy insuring the Improvements for their full replacement value against damage or destruction by fire and loss of damage by flood or other acts of nature and vandalism. The Improvements and TENANT's fixtures and other equipment shall be insured for replacement value. The proceeds from any such policy shall be used by the TENANT for replacement of personal property and restoration of the Premises and Improvements and LANDLORD shall be named as a loss payee to insure the insurance proceeds are used for such purposes. During construction of the Improvements, the policy must also include coverage for course of construction, vandalism, and malicious mischief and insure the Improvements and all

materials delivered to the construction site for their full insurable value. In addition, so long as any Leasehold Encumbrance exists, the policy must include a standard lender endorsement.

8.04 INSURERS AND POLICIES. All policies of insurance described in this Article VIII to be obtained by TENANT shall be issued in form acceptable to LANDLORD by insurance companies acceptable to LANDLORD and admitted to conduct casualty insurance business in the State of California and shall have deductibles in an amount no larger than is reasonable and customary in the location in which the Premises are located. Such insurance companies shall have a current Best's Key Rating of not less than an "A" (Policyholder's Rating) and "X" (Financial Size Category). Each such policy shall be issued in the names of TENANT and LANDLORD and any other party in interest from time to time designated by written notice by LANDLORD to TENANT, as their respective interests may appear, and shall provide that LANDLORD is a loss payee. Such policies shall be for the mutual and joint benefit and protection of TENANT, LANDLORD, and any such other party in interest.

(a) **Delivery.** Executed copies of each such policy of insurance or a certificate thereof shall be delivered to LANDLORD and any lender within ten (10) calendar days after the date of issuance and thereafter within thirty (30) calendar days prior to the expiration of each such policy. In addition, TENANT shall furnish LANDLORD a copy of the policy (policies) within ten (10) days from the date of LANDLORD's written request.

(b) **Cancellation.** Each certificate shall bear an endorsement precluding the cancellation, lapse or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after LANDLORD shall have received notification of such cancellation or reduction by registered mail.

(c) **Primary Insurance.** All such public liability, property damage and other casualty policies shall be written as primary policies which do not contribute to and are not in excess of coverage which LANDLORD may carry. All such public liability and property damage policies shall contain a provision that LANDLORD and any such other parties in interest, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to LANDLORD or any such other parties in interest, or to any of their respective servants, agents or employees by reason of the acts, omissions or negligence of TENANT or any sublessee.

(d) **Failure to Maintain.** If TENANT fails to maintain the required insurance coverages and amounts, LANDLORD may take out insurance to cover damages of the above mentioned classes for which LANDLORD might be held liable on account of TENANT and its contractors and subcontractors failing to pay such damages, and recover the amount of the premiums for such insurance from TENANT as Additional Rent or retain such amount from any monies due TENANT under this LEASE. Failure of LANDLORD to obtain such insurance shall in no way relieve TENANT from any of its responsibilities to procure and maintain such insurance under this LEASE and such failure will be an Event of Default.

8.05 WAIVER OF CLAIMS AND SUBROGATION. Anything to the contrary in this LEASE notwithstanding, neither LANDLORD nor its officers, directors, employees, agents or invitees shall be liable to TENANT, any sublessee or any insurance company (by way of subrogation or otherwise) insuring TENANT or a sublessee for any loss or damage to any building, structure or other tangible, when such loss is caused by any of the perils that are or could be insured against under a standard policy of full Replacement Cost insurance for fire, theft and all risk coverage, or losses under workers' compensation laws and benefits (including, without limitation, consequential damages, business interruption or loss of profits in connection therewith), even though such loss or damage might have been occasioned by the negligence, gross negligence or willful misconduct of LANDLORD, its agents or employees. TENANT shall notify its respective insurance carriers of this provision and shall obtain all necessary endorsements to the insurance policies of TENANT and any sublessee to give effect to this waiver of subrogation.

8.06 SUBLESSEE'S INSURANCE COVERAGES. Prior to permitting a sublessee to enter the Property or to occupy the Premises, TENANT shall insure that the sublessee maintains the same insurance coverages as required for TENANT as set out in the foregoing sections.

8.07 DESTRUCTION OF IMPROVEMENTS; REPLACEMENT. TENANT covenants that in case of damage to or destruction of the Improvements by fire or any other cause, similar or dissimilar, insured or uninsured, it will promptly, at its sole cost and expense, restore, repair, replace or rebuild the Improvements as nearly as possible to the condition, quality and class it was in immediately prior to such damage or destruction, or with such changes or alterations as TENANT shall elect to make and as approved by LANDLORD. Such restoration, repairs, replacement or rebuilding shall be commenced promptly and prosecuted with reasonable diligence.

8.08 APPLICATION OF INSURANCE PROCEEDS. All insurance proceeds that become payable while this LEASE is in effect because of damage to, or destruction of, any of the Improvements will be paid to TENANT in trust and applied by TENANT to the cost of repairing and restoring the damaged or destroyed Improvements as required by Section 8.07. If insurance proceeds, if any, recovered in respect of any insured damage or destruction, less any cost of recovery, shall be insufficient to pay the Replacement Costs, TENANT covenants to pay the deficiency. If, however, TENANT terminates this LEASE under Section 10.05, then all insurance proceeds collected by TENANT for the Improvements will be used by TENANT to satisfy any outstanding Leasehold Encumbrances with the remainder of the proceeds being turned over to LANDLORD, and LANDLORD may decide in its sole and absolute discretion whether to apply the proceeds to the repair and restoration of the Premises and the Improvements or to retain the proceeds for other uses.

8.09 ENVIRONMENTAL LAW COMPLIANCE AND INDEMNITY. TENANT shall not create, collect, store, treat, dispose of or cause to be released or otherwise discharged any Hazardous Materials on the Premises, except in such minute quantities as are found in everyday cleaning supplies. This prohibition includes, without limitation, the

storage of any oil, gasoline or transmission fluid, or the maintenance of any vehicles on the Premises. TENANT shall notify LANDLORD within twenty-four (24) hours after discovering or being informed of the presence of any Hazardous Materials on the Premises including, without limitation, the violation of any Environmental Laws. TENANT shall insure that any sublessees comply with the foregoing prohibition.

8.10 INDEMNIFICATION. Except for the claims, rights of recovery and causes of action that LANDLORD has expressly released and waived in this LEASE and to the extent it may lawfully do so, TENANT shall indemnify, defend and hold harmless LANDLORD and its officers, directors, employees, agents, contractors, subcontractors and invitees from all claims, demands, liabilities, losses, costs, damages, or expenses (including but not limited to attorneys' fees) resulting or arising from any and all injuries to, including death of, any person or damage to any property caused by (i) any act, omissions, or neglect of TENANT or its officers, directors, employees, shareholders, representatives, agents, contractors, subcontractors, invitees or guests, or any parties contracting with TENANT; (ii) any act, omissions, or neglect of any sublessee and its officers, directors, employees, shareholders, representatives, agents, contractors, subcontractors, invitees or guests; and (iii) any other accident or injury on or relating to the Property or the Premises and any sidewalk or other area adjacent thereto. The covenants and indemnifications contained in this Section 8.10 shall survive the expiration or other termination of this LEASE. **THIS INDEMNITY SHALL COVER AND INCLUDE LOSSES ARISING OUT OF THE NEGLIGENCE AND STRICT LIABILITY OF LANDLORD, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.**

ARTICLE IX

ASSIGNMENT AND SUBLETTING

9.01 ASSIGNMENT BY TENANT.

(a) TENANT may not assign or otherwise transfer, mortgage, pledge or hypothecate this LEASE without LANDLORD's prior written consent, which consent shall not be unreasonably withheld.

(b) Each request for consent to an assignment shall be in writing, accompanied by financial information on the proposed assignee, and such other information as LANDLORD may request. In the event that LANDLORD does consent to a proposed assignment, LANDLORD shall be entitled to require satisfaction of reasonable conditions to its consent, which conditions shall relate to protection of LANDLORD's interests and security hereunder and the public use and enjoyment of its adjacent property and improvements at Del Paso Regional Park, and which may include an express assumption by an assignee or sublessee of all obligations of this LEASE.

(c) Any assignment without consent of LANDLORD shall be void and an Event of Default under this LEASE. In no event shall TENANT be released from liability hereunder upon any permitted assignment unless LANDLORD expressly releases TENANT under the terms of the assignment and assumption agreement. Any permitted

assignment shall be subject to the written consent of the assignee to assume all obligations under this LEASE. No consent to an assignment or transfer shall be deemed a consent to any other future assignment or transfer.

(d) As used in this Section 9.01, the term "assignment" shall include any assignment by merger, dissolution or other operation of law or any other change in control of TENANT, including the change in ownership or control of 50% or more of the equitable ownership of TENANT or any entity having control of TENANT as of the date of this LEASE.

9.02 SUBLETTING BY TENANT.

(a) TENANT may not sublease the Premises or otherwise allow any third party to occupy the Premises or any part thereof without LANDLORD's prior written consent, which consent shall not be unreasonably withheld. This LEASE shall be evidence of LANDLORD's written consent that rental of the Premises by TENANT to athletic leagues and similar organizations for use of the baseball complex is not a sublease and does not require LANDLORD's prior consent. The restrictions set out in Section 7.06 shall apply and LANDLORD may deny the proposed sublease for the reasons stated therein.

(b) Each request for subletting shall be in writing, accompanied by financial information on the proposed tenant, information on the proposed use of the Premises, and such other information as LANDLORD may request. In the event that LANDLORD does consent to a proposed sublease, LANDLORD shall be entitled to require satisfaction of reasonable conditions to its consent, which conditions shall relate to protection of LANDLORD's interests and security hereunder and the public's use and enjoyment of its adjacent Del Paso Regional Park property, and which may include an express assumption by sublessee of the applicable provisions of this LEASE.

(c) Any sublease without consent of LANDLORD shall be void and an Event of Default under this LEASE. In no event shall TENANT be released from liability hereunder upon any permitted sublease. The foregoing applies to the Sublease as permitted under this LEASE. No consent to a sublease shall be deemed a consent to any other future sublease.

9.03 ASSIGNMENT BY LANDLORD. LANDLORD shall have the right to transfer and assign, in whole or in part, by operation of law or otherwise, its rights and obligations hereunder. LANDLORD shall have the right to sell or transfer the Property without TENANT's consent, but such sale or transfer shall be subject to this LEASE if TENANT is not in default at the time of such sale or transfer.

ARTICLE X DEFAULT AND REMEDIES

10.01 DEFAULT BY TENANT. Each of the following shall be deemed an "Event of Default" by TENANT hereunder and a material breach of this LEASE:

(a) TENANT fails to complete the Improvements in accordance with the approved Plans and specifications, Permits, and Budget;

(b) TENANT fails to pay any installment of Base Rent, Additional Rent, and any other sums owed LANDLORD when due;

(c) TENANT fails to materially keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this LEASE that are to be kept or performed by TENANT, other than with respect to payment of Rent, and TENANT shall fail to commence and take such steps as are necessary to remedy the same within thirty (30) calendar days after TENANT shall have been given a written notice specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same;

(d) TENANT subleases the Premises without LANDLORD's prior written consent;

(e) TENANT abandons the Premises and fails to occupy the Premises for a continuous thirty (30) day period; or

(f) TENANT or any other person shall file a petition naming TENANT as debtor in any bankruptcy or other insolvency proceeding or shall file for the appointment of a liquidator or receiver for all or substantially all of TENANT's property or for TENANT's interest in this LEASE or TENANT shall admit in writing its inability to meet its obligations as they become due or make an assignment for the benefit of its creditors. In that event, this LEASE or any interest of TENANT in and to the Improvements, Premises or the Property shall not become an asset in any of such proceedings and, in any such events and in addition to any and all rights or remedies of LANDLORD under this LEASE or as otherwise provided by law, this LEASE shall be automatically terminated as of the date TENANT takes or is subjected to any of such actions, and LANDLORD shall be entitled to reenter the Property and the Premises and take possession thereof and remove all persons therefrom, and TENANT shall have no further claim thereon or hereunder.

10.02 LANDLORD'S REMEDIES. If an Event of Default occurs under this LEASE, LANDLORD shall be entitled to any and all remedies permitted by California Civil Code Sections 1951.2 and 1951.4, as those sections may be amended or renumbered from time to time. Those remedies are specifically set forth in subsections (a), (b) and (c) below, and the Parties agree that such remedies are not exclusive, and are cumulative in addition to any remedies now or later allowed by law.

(a) If TENANT breaches this LEASE or abandons the Premises before the end of the Term, or if LANDLORD terminates TENANT's right to possession of the Premises due to an Event of Default, this LEASE shall terminate and LANDLORD shall be entitled to recover from TENANT:

(i) the amount of any payment LANDLORD is obligated to pay to any

Lender to remove the Leasehold Encumbrance;

(ii) the worth at the time of the award of the unpaid Base Rent, Additional Rent, and other sums that had been earned or had accrued at the time of termination; and

(iii) any other amount necessary to compensate LANDLORD for all the detriment proximately caused by TENANT's failure to perform its obligations under this LEASE or which in the ordinary course of events would be likely to result therefrom.

LANDLORD's efforts to mitigate the damages caused by TENANT's breach of this LEASE do not waive LANDLORD's right to recover damages as set forth herein. Termination of this LEASE pursuant to this Section 10.2 shall not affect LANDLORD's rights to indemnification as specified in this LEASE.

(b) Notwithstanding TENANT's default and/or the abandonment of the Premises, LANDLORD may elect to continue this LEASE in effect and enforce all of LANDLORD's rights and remedies hereunder, including without limitation the right to collect Rent as it becomes due, unless and until LANDLORD elects to terminate this LEASE. During the period that TENANT is in default, LANDLORD may enter the Premises and relet them, or any part of them, to third parties for TENANT's account.

(c) TENANT shall be liable immediately to LANDLORD for all costs LANDLORD incurs in reletting the Premises, including without limitation brokers' commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting may be for a period shorter or longer than the remainder of the Term. LANDLORD shall not be obligated to credit TENANT for the rent collected by LANDLORD if the Premises are relet due to the default of TENANT. No act by LANDLORD allowed by this subsection shall terminate this LEASE unless LANDLORD notifies TENANT that LANDLORD elects to terminate this LEASE. After TENANT's default and for as long as LANDLORD does not terminate TENANT's right to possession of the Premises, if TENANT obtains LANDLORD's consent, TENANT shall have the right to assign or sublet its interest in this LEASE, subject to the provisions of Sections 9.01 and 9.02, but TENANT shall not be released from liability for its default.

(d) All agreements and provisions to be performed by TENANT under any of the terms of this LEASE shall be at TENANT's sole cost and expense. If TENANT shall fail to pay any sum of money, other than Base Rent and Additional Rent, required to be paid by it hereunder or shall fail to cure any default and such failure shall continue for thirty (30) days after notice thereof by LANDLORD, then LANDLORD may, but shall not be obligated so to do, and without waiving or releasing TENANT from any obligations, make any such payment or perform any such act on TENANT's part. All sums so paid by LANDLORD and all costs incurred by LANDLORD in taking such action shall be deemed Additional Rent hereunder and shall be paid to LANDLORD on demand, and LANDLORD shall have (in addition to all other rights and remedies of LANDLORD) the same rights and remedies in the event of the non-payment thereof by TENANT as in the case of default by TENANT in the payment of Base Rent or Additional Rent.

10.03 CURE OF DEFAULTS OTHER THAN PAYMENT OF MONIES. Notwithstanding any other provisions of this Article X, LANDLORD agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) day period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if TENANT within such period of thirty (30) days shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so diligently complete the same.

10.04 LANDLORD DEFAULT. LANDLORD shall not be deemed to be in default in the performance of any obligation required to be performed by it under this LEASE until it has failed to perform such obligation within thirty (30) days after receipt of written notice by TENANT specifying the nature of LANDLORD's default; provided, however, that if the nature of LANDLORD's obligation is such that more than thirty (30) days are required for its performance, then LANDLORD shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

10.05 EARLY TERMINATION OF LEASE. TENANT may terminate this LEASE for its convenience prior to the Termination Date upon providing LANDLORD with one hundred and eighty (180) days advance written notice which specifies the date that this LEASE will terminate. TENANT shall not be entitled to payment of its anticipatory profit for the remaining term of the LEASE, or for payment of any other type of compensation or for damages caused by or related to early termination of this LEASE by TENANT.

10.06 SUMMARY DISPOSSESSION. Upon the expiration of the Term of the LEASE and pursuant to any of the provisions of this Article X, to the extent authorized by California statute, LANDLORD may, without formal demand or notice of any kind, reenter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law, or by force or otherwise and to remove TENANT and any sublessees therefrom without being liable for any damages therefor.

10.07 TENANT FIXTURES AND PERSONAL PROPERTY. In the event of TENANT's default, all of the Improvements and any fixtures, furniture, equipment and other personal property, whether placed on the Premises by TENANT or a sublessee, shall remain on the Premises and in that event, and continuing during the length of such default, LANDLORD shall have the right to take the exclusive possession of same and to use the same, rent or charge free, until all defaults are cured or, at its option, at any time during the LEASE Term, to require TENANT to forthwith remove the same. LANDLORD will, to the extent necessary, subordinate its liens rights as to the personal property and equipment, only, to the vendor's lien rights, if such exist.

ARTICLE XI

CONDEMNATION

11.01 TOTAL TAKING. If, while this LEASE is in effect, any public or quasi-public entity, including LANDLORD, uses the power of eminent domain to take fee title to all of the Improvements and TENANT's entire leasehold estate (a "Total Taking"), then this

LEASE will terminate on the earlier of (i) the day legal title is vested in the entity exercising the power of eminent domain; or (ii) the day the entity exercising the power of eminent domain takes actual physical possession. Thereafter, both LANDLORD and TENANT will be released from all obligations under this LEASE except those specified by Section 11.03 or by the indemnity obligations specified to survive termination or expiration of this LEASE.

11.02 PARTIAL TAKING; REPLACEMENT IMPROVEMENTS. If, while this LEASE is in effect, a taking of the Premises or the Improvements occurs that is less than a Total Taking (a "Partial Taking"), then all compensation and damages payable for the Partial Taking and attributable to the Improvements will be made available to TENANT as reasonably needed to do the following:

(a) Repair all or any portion of the Improvements not taken.

(b) Replace the Improvements taken on the portion of the Premises not taken (the "Replacement Improvements"), if replacement is permitted by then-existing law. Plans and specifications for the Replacement Improvements must be compatible in architecture and construction quality with the Improvements not taken and must be approved in writing by LANDLORD before construction begins.

Notwithstanding the foregoing, TENANT may elect to terminate this LEASE for a Partial Taking if the portion of the Premises or the Improvements taken is so substantial that even with Replacement Improvements, TENANT's use of the Premises as described in Section 7.04 will be materially impaired and if any sublessee exercises its right to terminate its sublease for that reason. To terminate this LEASE under this Section 11.02, TENANT must serve LANDLORD with written notice of termination within sixty (60) days after TENANT receives, from LANDLORD or the entity exercising the power of eminent domain, a written notice describing the extent and scope of the taking. The termination will be effective on the date the condemning authority takes physical possession of the portion of the Premises or the Improvements taken by eminent domain.

11.03 CONDEMNATION AWARD. Compensation awarded because of a taking by eminent domain will be allocated between LANDLORD and TENANT as follows:

(a) Compensation for any land that is part of the Premises will be paid to LANDLORD and be LANDLORD's sole property, free and clear of any claim of TENANT, sublessee, or any person claiming rights to the Premises through or under TENANT. TENANT is entitled to just compensation for the value of its leasehold estate, which shall be based on the outstanding Loan balances as described in Section 10.05.

(b) When only a portion of the Premises is taken by eminent domain and TENANT is not entitled to or does not terminate this LEASE, compensation for any of the Improvements constructed or located on the portion of the Premises taken will be applied in accordance with Section 11.02 toward the costs of repair of the Improvements and the Replacement Improvements.

(c) Any severance damages awarded because only a portion of the Premises is taken by eminent domain shall be LANDLORD's sole and separate property.

(d) Any damages awarded for relocation expenses, loss of business, or loss of goodwill will belong exclusively to TENANT.

11.04 VOLUNTARY CONVEYANCE IN LIEU OF EMINENT DOMAIN. LANDLORD's voluntary conveyance of title to a public or quasi-public entity of all of the Premises under threat by that entity to take it by eminent domain will be considered a taking of title to all of the Premises under the power of eminent domain for purposes of this Article XI.

11.05 ASSIGNMENT TO LEASEHOLD MORTGAGEE. If TENANT shall assign to any Lender any condemnation proceeds to which it shall be entitled under the provisions of Section 11.03, LANDLORD shall recognize such assignment and shall consent to the payment of the TENANT's condemnation proceeds to such assignee as its interest may appear.

11.06 PARTICIPATION IN CONDEMNATION PROCEEDINGS. TENANT and any Lender shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights under this LEASE, and in this connection, specifically and without limitation to introduce evidence independently of LANDLORD to establish the value of or damage to the Improvements.

ARTICLE XII MISCELLANEOUS

12.01 AMENDMENTS. Any amendment or modification of this LEASE shall be effective only if set forth in a written document executed by a duly authorized officer of each of the Parties.

12.02 NON-WAIVER. Neither the acceptance by LANDLORD of any Rent or other payment hereunder, whether or not any default hereunder by TENANT is then known to LANDLORD, or any custom or practice followed in connection with this LEASE shall constitute a consent or waiver of any right or obligation by either Party. Failure by either Party to complain of any action or non-action on the part of the other Party or to declare the other in default, irrespective of how long such failure may continue, shall not be deemed to be a waiver of any rights hereunder. Except for the execution and delivery of a written agreement expressly accepting surrender of the Premises, no act taken or failed to be taken by either Party shall be deemed an acceptance or surrender of the Premises.

12.03 FORCE MAJEURE. Except as otherwise expressly provided in this LEASE, if the performance of any act required by this LEASE to be performed by either LANDLORD or TENANT is prevented or delayed because of a Force Majeure (defined in Section 1.07), then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

This Section 12.03 does not excuse TENANT from the obligation to pay Rent and other amounts owed promptly or the obligation of either Party to perform an act rendered difficult or impossible solely because of that Party's financial condition.

12.04 NOTICES. Any notice, request, instruction, demand or other communication to be given hereunder by either Party hereto to the other shall be given in writing and shall be delivered either by hand, by telecopy or similar facsimile means, or by registered or certified mail, postage prepaid, return receipt requested, as follows:

(a) If to TENANT, addressed to:

[add at time of execution]

(b) If to LANDLORD, addressed to:

Director
Department of Parks and Recreation
City of Sacramento
915 I Street, 3rd Floor
Sacramento CA 95814

Notices shall be deemed given when received, if sent by telecopy or similar facsimile means, and when delivered and receipted for, if mailed or hand delivered. Any Party may change its address for these purposes by giving written notice of the change to the other Party in the manner provided in this Section 12.04. If sent by mail, a notice or other communication will be effective or will be considered to have been properly given 48 hours after it has been deposited in the United States Mail (certified mail and return receipt requested) and addressed as set forth above, with postage prepaid. The Parties shall not refuse or evade delivery of any notice. Notice personally served will be considered effective or to have been properly given upon delivery.

12.05 QUIET ENJOYMENT. LANDLORD covenants that if TENANT, on paying the Rent and performing and observing all of the covenants and agreements herein contained and provided to be performed by TENANT, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and TENANT may exercise all of its rights hereunder, subject only to the provisions of this LEASE and all applicable legal requirements.

12.06 HOLDING OVER. If TENANT does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, TENANT shall be a tenant at sufferance, and during such time of occupancy TENANT shall pay to LANDLORD, as damages, an amount equal to one hundred percent (100%) of the amount of rent that was being paid to TENANT by a sublessee immediately prior to the end of the Term or immediately prior to the end of sublessee's lawful possession of the Premises under the terms of the sublease.

12.07 ABANDONED PROPERTY. If TENANT and its sublessee(s) do not remove all of TENANT's and sublessee's property from the Premises within thirty (30) calendar days of the end of the Term, or within thirty (30) calendar days following notice from LANDLORD following any eviction; should LANDLORD elect not to exercise any rights it may have to such property, such property shall be deemed to have been abandoned by TENANT and its sublessee and LANDLORD may either dispose of such property without liability to TENANT or its sublessee for conversion or damage or may store such property either at the Premises or elsewhere. TENANT shall be liable for LANDLORD's reasonable storage fees and for payment of any damages that may be owed to sublessee due to the acts of LANDLORD under this Section 12.07.

12.08 LIMITATION OF LANDLORD'S LIABILITY. TENANT specifically agrees to look solely to LANDLORD's interest in the Premises for the recovery of any judgment against LANDLORD, it being agreed that LANDLORD, its officers, directors and employees shall never be personally liable for any such judgment, nor shall LANDLORD's General Fund or special funds be subject to attachment. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that TENANT might otherwise have to obtain injunctive relief against LANDLORD or LANDLORD's successors in interest, or any suit or action in connection with enforcement or collection of amounts which may become owing or payable under or on account of insurance maintained by LANDLORD.

12.09 KEYS AND LOCKS. Upon termination of this LEASE, TENANT shall surrender to LANDLORD all keys to any locks on doors entering or within a building on the Premises, and give to LANDLORD the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises.

12.10 LANDLORD'S ACCESS. LANDLORD shall have the right, at all reasonable times during the Term, after reasonable notice to TENANT, not to be less than twenty-four (24) hours unless TENANT is in default under this LEASE, to enter the Premises to inspect the condition thereof, to show the Premises to prospective new tenants, to determine if TENANT and its sublessees are performing their respective obligations under this LEASE, to cure any defaults of TENANT hereunder that LANDLORD elects to cure, and to remove from the Premises any improvements thereto or property placed therein or thereon in violation of this LEASE.

12.11 SURRENDER. On the Termination Date, or upon the earlier termination of this LEASE, TENANT shall peaceably and quietly surrender the Premises to LANDLORD, broom clean, in good order, repair and condition at least equal to the condition at the time of issuance of the certificate of occupancy, excepting only reasonable wear and tear resulting from normal use, damage by forces beyond TENANT's reasonable control, and damage by fire or other casualty covered by the insurance required hereunder. If TENANT fails to do any of the foregoing, LANDLORD, in addition to other remedies available to it at law or in equity, may enter upon, reenter, possess and repossess the Premises itself, without breach of the peace, and may dispossess and remove TENANT, any sublessee, and all persons and property from the Premises, as is allowed by law. Such dispossession and removal of TENANT and its sublessees shall

not constitute a waiver by LANDLORD of any claims by LANDLORD against TENANT, or by TENANT against LANDLORD. At LANDLORD's written request, TENANT shall execute and deliver to LANDLORD quitclaim deeds or other reasonable documents in a recordable form acceptable to LANDLORD that reflect the expiration or termination of TENANT's right, title and interest in this LEASE, the Premises and the Improvements.

12.12 LANDLORD'S LIEN. In addition to any statutory or constitutional landlord's lien, TENANT hereby expressly grants to LANDLORD, in consideration of the mutual benefits arising under this LEASE, a contractual lien and security interest to secure payment of all Rent as may, from time to time, be due under this LEASE, and to secure payment by TENANT of any loss or damages of LANDLORD arising out of any breach of any covenant, warranty, representation or condition contained herein, upon all goods, wares, equipment, inventory, fixtures, furnishings or other property of TENANT contained in the Premises.

12.13 RECORDING. Neither this LEASE, nor any memorandum thereof, shall be placed of record by TENANT without LANDLORD's express written approval. LANDLORD and TENANT shall execute, at the request of either at any time while this LEASE is in effect, a memorandum or "short form" of this LEASE for purposes of, and in a form suitable for, recordation. The memorandum or "short form" must describe the Parties and the Premises, specify the term of this LEASE, incorporate this LEASE by reference, and include any other provisions required by any Lender.

12.14 ESTOPPEL CERTIFICATES. Each Party, within ten (10) business days after receiving a written request from the other Party, shall execute and deliver to the requesting Party an Estoppel Certificate that does the following:

(a) Certifies that this LEASE is unmodified and in full effect (or, if this LEASE has been modified, that this LEASE is in full effect as modified);

(b) States the amount of Rent and dates to which the Rent has been paid in advance, if any;

(c) States, to the best knowledge of the Party providing the certificate, whether the other Party is in breach of the performance of any provision of this LEASE, specifying each breach; and

(d) Such other pertinent information as LANDLORD, TENANT, sublessee, or any Lender may request.

Prospective purchasers, lenders, and other similar lien holders of the Premises, and any assignee or subtenant of the Premises, may rely on such an Estoppel Certificate.

12.15 TIME OF ESSENCE. Time is of the essence of this LEASE.

12.16 RELATIONSHIP OF THE PARTIES. This LEASE does not create any relationship or association between LANDLORD and TENANT other than that of

landlord and tenant. For example, and without limiting the previous sentence, this Lease does not create between LANDLORD and TENANT the relationship of principal and agent, nor does it create a partnership or joint venture.

12.17 NO THIRD PARTY BENEFICIARIES. This LEASE shall not be deemed to confer any rights upon any individual or entity, which is not a party hereto, and the Parties hereto expressly disclaim any such third-party benefit. In particular, a sublessee which is not a party to this LEASE shall have no right to enforce the terms of this LEASE against either Party.

12.18 ATTORNEYS' FEES. The party prevailing in any litigation concerning this LEASE, the Property, the Premises, or the Improvements will be entitled to an award by the court of reasonable attorneys' fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation.

12.19 BINDING ON SUCCESSORS AND ASSIGNS. This LEASE binds and inures to the benefit of the successors and assigns of the Parties. This Section 12.20 does not constitute LANDLORD's consent to any assignment of this LEASE or any interest in the LEASE.

12.20 SEVERABILITY. If any nonmaterial term, provision, covenant or condition of this LEASE is held by any court of competent jurisdiction to be invalid, void or unenforceable in any respect, the remainder of such term, provision, covenant or condition in every other respect and the remainder of the terms, provisions, covenants or conditions of this LEASE shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

12.21 GOVERNING LAW. This LEASE has been executed in the State of California and shall be construed in accordance with and governed by the laws of the State of California and the laws of the United States applicable to transactions within the State of California.

12.22 INTERPRETATION AND VENUE. This LEASE is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. The Background and **Exhibits A, B, C and D** are part of this LEASE. **Exhibit E**, the Memorandum of Lease is not a part of this LEASE. Any litigation concerning this LEASE must be brought and prosecuted in the Sacramento County Superior Court.

12.23 CONSTRUCTION OF LANGUAGE. In all cases the language in all parts of this LEASE shall be construed simply, according to its fair meaning and not strictly for or against LANDLORD or TENANT.

12.24 TITLES. The word titles underlying the article and section designations contained in this LEASE are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

12.25 ENTIRE AGREEMENT. This Lease and the Exhibits hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all other prior and contemporaneous agreements and understandings, both oral and written, of the Parties in connection therewith. No covenant or condition not expressed in this LEASE shall affect or be effective to interpret, change or restrict this LEASE.

12.26 AUTHORITY OF PERSONS SIGNING LEASE. Each person or entity signing this LEASE on behalf of LANDLORD or TENANT warrants and represents that he, she, or it is authorized to execute this LEASE and to bind LANDLORD or TENANT, as the case may be, to its provisions.

[Signature page follows]

IN WITNESS WHEREOF, the LANDLORD and TENANT have executed this LEASE as of the dates set forth below.

LANDLORD:

CITY OF SACRAMENTO,
a municipal corporation

By: _____
James L. Combs
Director, Parks and Recreation Department
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

TENANT:

SACRAMENTO INTERNATIONAL BASEBALL ASSOCIATION, LLC
a limited liability company

By: _____
Name: Leon Lee
Title: Chief Executive Officer

By: _____
Name: Vujadin Jovic
Title: Chief Financial Officer

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
PREMISES SITE PLAN

EXHIBIT C
IMPROVEMENTS PLAN

EXHIBIT D

EQUAL BENEFITS ORDINANCE

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Tenant:

Address:

The above named Tenant ("Tenant") hereby declares and agrees as follows:

1. I have read and understand the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") provided to me by the City of Sacramento ("City") and attached to my City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the Requirements, as well as any additional requirements that may be specified in the City's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

- a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
- c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits.

The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

5. I understand that failure to comply with the provisions of Section 4. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one lessee is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the Ordinance requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company , or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees;. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “1.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “1”

Attachment 1



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
915 I St., 2nd Floor
Sacramento, CA 95814

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

EXHIBIT E

MEMORANDUM OF LEASE

To be prepared and affixed at the commencement of the Occupancy Term