

**FOURTH AMENDMENT TO CITY OF BRYAN AND
INFINITY SPORTS ENTERTAINMENT
EXCLUSIVE FACILITY USE AGREEMENT**

THIS FOURTH AMENDMENT EXCLUSIVE FACILITY USE AGREEMENT is entered into by and between the City of Bryan, a municipal corporation of the County of Brazos, State of Texas ("City"), and Infinity Sports Entertainment, LLC, a Texas limited liability company ("Infinity"), for the use of the City's Travis Major Baseball Field located at the Travis Athletic Complex ("Facility").

RECITALS

WHEREAS, the City is the owner of the Facility which is comprised of a baseball field, partially covered stadium seating, concession booths, restrooms and maintenance facilities, parking facilities and other facilities, equipment and fixtures commonly related to municipal baseball field uses and activities; and

WHEREAS, Infinity seeks to host at the Facility (as herein defined) a collegiate baseball team to play in the Texas Collegiate League ("TCL"), a baseball league comprised of collegiate level and caliber players, and Infinity also seeks to host various other third parties for other entertainment related uses at the Facility; and

WHEREAS, Infinity sought approval to make improvements to, and to be responsible for maintenance of, the Facility if the City granted exclusive use of the Facility to Infinity; and

WHEREAS, the City determined that the proposed improvements and maintenance would be beneficial to the Facility, and moreover the intended activities to be conducted at the Facility would be conducive to its then current use and would foster economic development and other opportunities for the benefit of the residents of the City; and

WHEREAS, the parties entered into the original City of Bryan and Infinity Sports Entertainment Exclusive Facility Use Agreement ("Agreement") on August 23, 2006, and have subsequently agreed to three (3) previous amendments, the last being the Third Amendment which was effective June 30, 2016; and

WHEREAS, the parties have determined there is a need to amend the Agreement again to address additional improvements for the Facility and for the sake of clarity, adopt this Fourth Amendment which replaces the original Agreement as well as all prior amendments thereto.

AGREEMENT

In consideration of the mutual benefits, promises, covenants, terms and conditions in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

The initial term of this Agreement shall begin on August 23, 2006, and shall terminate on December 31, 2025, unless sooner terminated or modified under the terms of this Agreement. Provided that this Agreement has not been terminated for any reason, Infinity shall have an exclusive option to renew this Agreement, if it is not in default, for an additional ten (10) year term upon terms and

conditions as shall be agreed upon by the parties. If Infinity intends to exercise its option to renew, it shall provide written notice thereof to the City at least twelve (12) months before the date of termination of the initial term of this Agreement.

During the term of the Agreement, the parties may review and consider amending the Agreement, including additional projects, which may require funding from one or both parties (see Section 23.D).

2. LEASED PREMISES

A. Leased Premises Defined

For and during the term of this Agreement, the City leases, demises and rents to Infinity the Facility. For purposes of this Agreement, "Facility" shall mean, Travis Major Baseball Field located at the Travis Athletic Complex, 525 Carson Street, Bryan, Texas 77801, and that area immediately surrounding Travis Major Baseball Field and parking lot as identified in the attached Exhibit "A", which is incorporated herein by reference and made a part hereof. In addition to the lease, demise, and rental of the Facility, Infinity shall have non-exclusive use, but no responsibility for maintenance, of all other parking lots at Travis Athletic Complex in connection with events and activities permitted under this Agreement.

B. Acceptance of Premises

Infinity acknowledges that it has inspected or been provided an opportunity to inspect the Facility for defects and to determine its suitability for its intended and anticipated uses and activities during the term of the Agreement. By entering into this Agreement, Infinity accepts the Facility "**AS-IS, WHERE IS, WITH ALL FAULTS**". The City has not made any representations, verbal, written, express or implied and makes no warranties, express or implied, as to the condition of the Facility or as to the Facility's suitability for Infinity's intended or anticipated uses and activities. It is expressly understood that Infinity assumes all liability and responsibility arising from and related to premises defects and conditions and that Infinity shall procure such liability insurance as it deems suitable for its protection in addition to the insurance required herein.

3. RENT

Infinity shall pay no rent for use of the Facility.

4. USE OF THE FACILITY

A. Primary Use

The Facility shall be used by Infinity as a sports and entertainment venue. The intended primary use of the Facility by Infinity shall be to host baseball games for teams in the TCL. In connection with such primary use, Infinity may place other baseball teams of a caliber, reputation or status comparable to that of TCL within the Facility only upon the written approval of the City, which approval shall not be unreasonably withheld. The use of the Facility for non-baseball events and activities shall be permitted only upon the written approval of the City, which approval shall not be unreasonably withheld.

B. Secondary Uses

Secondary to such intended primary use, Infinity shall be permitted to sponsor or conduct other sports related activities or entertainment activities for profit, subject to the written approval of the City, which approval shall not be unreasonably withheld.

C. Limitations on Use

All events and activities occurring at the Facility shall comply with all applicable laws and ordinances regarding nuisance, noise, or other health and safety laws and ordinances. All other uses not specifically authorized herein shall be subject to City's written approval, which approval shall not be unreasonably withheld.

D. Heads in Beds

As a condition of the use of Hotel Occupancy Tax (HOT) revenues to finance Improvements under this Agreement, as set forth in Section 22, Infinity will be responsible for hosting, sponsoring, or promoting tournaments, or similar events, at the Facility to promote tourism and the convention and hotel industry. Tournaments, or similar events, sponsored at the Facility pursuant to this Agreement must account for a corresponding number of rooms to account for the HOT funds attributable to HOT funded improvements as required by State law. For the purposes of this Agreement, each night a rentable unit is occupied at a hotel, motel, or other temporary lodging that pays Hotel Occupancy Tax.

Infinity is required to provide documentation of HOT compliance as a part of the annual report made under this Agreement. Documentation should follow the example as provided by Exhibit "C," and more specifically, documentation shall meet requirements of State statutes.

5. INSPECTIONS

Each year, at least thirty (30) calendar days prior to the commencement of TCL regular baseball season, the City shall be allowed to inspect the Facility for general conditions and maintenance issues. Each year, within thirty (30) calendar days after the completion of each TCL regular baseball season, the City shall be permitted to inspect the Facility, including, but not limited to such things as equipment, nets, fences, storage facilities, restrooms, etc. The findings during the City's inspection will be contained in a written report which inspection will become part of an annual report available to both parties. The City shall, upon reasonable notice to Infinity, have the right to make inspections at any reasonable time to insure compliance with this Agreement.

6. ACCOMMODATION OF EXISTING USERS AND ACTIVITIES

A. Existing Uses to Continue

Before the effective date of this Agreement, the City made the Facility available to third party users for purposes of playing baseball and softball games and tournaments. Such users include youth Little Leagues and other youth and adult baseball and softball leagues, teams and organizations. In consideration of the City entering into this Agreement, Infinity agrees to continue to make available the Facility to such users to continue to conduct their activities (the "Community Baseball Activities") during the term of this Agreement under similar terms and

conditions and fees applicable to similar users of City baseball facilities during the same time period, and provided such user organizations satisfy all Parks and Recreation Department field rental agreement user requirements, including but not limited to liability insurance, hold harmless agreement, and criminal background check verification. It shall be the responsibility of Infinity to annually provide to the City a copy of such user organization's current rental application, rental agreement, proof of insurance, and hold harmless agreement prior to the user organization's use of the field.

B. Annual Scheduling Conference

In recognition of the obligation to accommodate such users and the Community Baseball Activities, the parties agree to meet annually during the month of February at a mutually agreed date, time and location for the purpose of coordinating the proposed schedules for such users' Community Baseball Activities and the proposed schedule of activities of Infinity. If the parties are unable to agree on a date, time and location for such meeting, then such meeting shall be held on the second Wednesday of the month of February at 2:00 p.m. at the main offices of the City's Parks and Recreation Department.

(1) Meeting Notice

Two (2) weeks prior to the scheduled dates for the above meetings, City shall contact the following:

- a. President of Infinity Sports Entertainment
- b. Director of City of Bryan Parks and Recreation Department

Meeting information will contain, at a minimum, the following: meeting date, meeting time, and meeting place.

(2) Meeting

At the meeting the parties shall reach agreement regarding the scheduling of the Community Baseball Activities and other events and activities sponsored by Infinity for profit. All conflicts in scheduling shall be resolved at such meeting or at such time as reasonably practical thereafter as agreed between the parties. In the event of a scheduling conflict that cannot be resolved, if an alternate venue for the Community Baseball Activities cannot be provided, the Community Baseball Activities shall have priority for use of the Facility only with regard to an Infinity sponsored non-baseball event or activity. For purposes of scheduling under this paragraph, any and all construction and renovation activities of Infinity shall be considered the same as any other event or activity sponsored by Infinity.

(3) Written Schedule

Upon coordinating and reconciling the needs of all users for the Community Baseball Activities and the needs of Infinity, a written schedule shall be prepared and approved by the parties. Such schedule shall be deemed a part of this Agreement, as amended from time to time, and a breach by Infinity of the expectations created by such schedule shall be deemed a breach of this Agreement, unless otherwise resolved by the

parties. Infinity shall be allowed to add or change the dates of events or activities sponsored by it after the date of approval of the annual written schedule provided reasonable notice is given to the City and the City is satisfied that the Community Baseball Activities have been accommodated.

7. UTILITIES

The City shall pay all utility expenses in an amount not to exceed \$25,000.00 per City fiscal year, associated with the Facility, to include all water, gas, electricity (including all playing field floodlights), and sanitation services, required in connection with the normal use of the Facility. Infinity shall use its best efforts to minimize electricity and other utility usage and expenses. The not-to-exceed amount provided in this paragraph is subject to annual adjustment reflecting increases in utility rates and agreed to in writing by City and Infinity (e.g. Infinity shall not be responsible for any utility expenses over \$25,000.00 that are incurred due to utility rate increases, as opposed to increased utility usage). In exchange for utility expense payments by the City, Infinity shall provide the City equal value via promotional consideration at the Facility (e.g. signage, tickets, branded events, etc.). Such promotional consideration shall be provided during the season immediately following the City fiscal year in which the utility expenses were paid by the City.

8. ALTERATIONS, ADDITIONS, IMPROVEMENTS

Infinity shall be allowed to make alterations, additions or improvements to the Facility as it deems necessary to accommodate its authorized intended uses and activities. Before Infinity commences making any such alterations, additions or improvements, it shall obtain the written consent of the City. The consent of the City shall not be unreasonably withheld, except that the City may withhold consent for any alteration, addition or improvement that City reasonably determines diminishes the integrity of the Facility for use as or is otherwise incompatible with its use as a municipal baseball field after termination of the Agreement. All alterations, additions or improvements shall result in a condition of the Facility that is superior to its condition on the effective date.

9. SIGNS

Infinity shall not install or erect any signs without the written approval of the City as to the technical specifications, which approval shall not be unreasonably withheld. The City shall also approve the location of any permanent signs outside the fenced area enclosing the field and visible from any public rights of way. All signs and banners shall comply with applicable sign ordinances. Temporary single event banners and signs may be erected or installed without approval of the City. The City shall not unreasonably withhold approval of any signs or banners that are otherwise in compliance with applicable sign ordinances.

10. REPAIRS AND MAINTENANCE

A. Infinity

Infinity shall be solely responsible for all repairs to and maintenance of the Facility, except to the extent the City is responsible for maintaining the field lighting at the Facility. Such maintenance shall include, but not be limited to:

- (1) Field maintenance, at a minimum, must be kept to the same or superior standard as other City athletic fields. Mowing during the growing season must be done weekly or

sooner. The grass is to be professionally maintained as is appropriate for the conduct of TCL games. This requirement also applies to any grass growing along the fence lines. **Manufactured fields shall be maintained to the manufacturer's specifications, including abiding by the manufacturer's scheduled maintenance recommendations.**

(2) Infinity will be responsible for all turf maintenance in the Facility and immediate surrounding area, and the City will maintain all turf outside the aforementioned areas. There should be no noticeable turf presentation difference on either side of the areas.

(3) Infinity will maintain the skinned clay areas in a weed and grass free condition, as well as remove any "lips" that develop on the grass edge with a height as professionally needed for baseball games.

(4) Infinity will be responsible for appropriate and safe watering, fertilizing, or application of pesticides or herbicides.

(5) Infinity will be solely responsibility for all Facility repairs and maintenance, including, but not limited to the repair and maintenance of fences, bleachers, irrigation, buildings, commodes, plumbing, canopies and roofs, walls, electric and gas lines, equipment, fixtures and appliances.

(6) Infinity will provide, store, and apply marble dust or paint as needed in the sole discretion of Infinity.

(7) Infinity shall, at all times, maintain the Facility in a clean and sanitary condition. After each event or activity, Infinity shall collect and discard into appropriate waste containers all litter, trash, garbage, debris and other waste within seventy-five (75) feet of the perimeter of the field and all parking lots.

B. The City

The City shall be responsible for maintaining all Facility field lighting existing on the date of this Agreement. Any upgrades shall be at Infinity's sole cost and expense unless otherwise agreed upon in writing.

11. LIENS AND ENCUMBRANCES

Infinity shall not permit any mechanic's or materialman's liens or any other liens or encumbrances to be placed on or against the Facility or any property owned by the City. Any contracts between Infinity and any third party for construction, the installation of fixtures or equipment or for any product or service for which liens against real or personal property are permitted by law shall contain a waiver by such third party of the right to place a lien or other encumbrance against the Facility or any property owned by the City.

12. FOOD AND BEVERAGE OPERATIONS

Infinity shall comply with all requirements of state and local law governing the sale or provision of food and beverages to the public. Infinity shall obtain and maintain all permits from all governmental agencies having jurisdiction for all food and beverage operations at the Facility. Infinity shall comply

with all health laws and regulations as existing or as may be established by the federal, state, county, and city governmental agencies.

13. BEER AND WINE CONCESSION

A. Grant of Concession for Beer and Wine Sales

During the term hereof, City grants to Infinity, or Infinity's City-approved designee, the exclusive right to sell beer and wine for on-premises consumption at the Facility.

B. Licenses and Permits

Infinity, or Infinity's City-approved designee, shall acquire all necessary licenses and permits to operate its beer and wine concession and shall comply with all laws and regulations pertaining to the sale of alcoholic beverages, including but not limited to those pertaining to the sale of beer and wine for on-premises consumption. No consumption or open containers of beer and wine or alcohol shall be permitted beyond any fenced seating or picnic areas enclosing the field. Consumption and open containers of beer and wine and alcohol shall be permitted between the locations from which beer and wine is sold and such enclosed seating or picnic areas. Infinity, or Infinity's City-approved designee, shall not operate its beer and wine concession such that consumption or open containers of alcohol would occur in any parking areas.

C. Personnel

Infinity, or Infinity's City-approved designee, shall recruit, hire, train, discharge, promote and supervise all personnel engaged in the operation of the beer and wine concession and shall be responsible for the compensation of such personnel. City shall have no control over or supervision of the personnel hired by Infinity, or Infinity's City-approved designee, to operate the beer and wine concession at the Facility.

D. Contracts and Agreements

All contracts and agreements relating to the operation and maintenance of the beer and wine concession shall be entered into by Infinity as the contracting party for its benefit and for its own account. All inventory of beer and wine purchased by Infinity, or Infinity's City-approved designee, shall be the property of Infinity and shall be resold for Infinity's own benefit and for its own account.

E. Liquor Liability Insurance

In addition to any other insurance required under this Agreement, Infinity, or Infinity's City-approved designee, shall, at all times, maintain liquor liability insurance in an amount of not less than \$5,000,000.00 per occurrence that covers the sale of beer and wine for on-premises consumption.

F. Legal Relationship

Infinity, or Infinity's City-approved designee, shall be the owner of the beer and wine concession business at the Facility at all times during the term of this Agreement. City is the owner of the Facility and by this Agreement agrees to Infinity's, or Infinity's City-approved

designee's, use of the Facility as a location for the operation of a beer and wine concession. Nothing contained in this Agreement shall be construed to be, or create, a partnership or joint venture between City, and its successors and assigns, and Infinity and its successors and assigns.

G. Indemnity Related to Beer and Wine Sales

Infinity and/or Infinity's City-approved designee, agrees to indemnify and hold harmless City and City's officers, officials, members, employees, agents, representatives, and volunteers from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, expert witness fees, attorney's fees, costs and expenses, which result from any act or omission by Infinity, Infinity's City-approved designee, or by any officer, agent, contractor or employee of the foregoing, in connection with the operation of a beer and wine concession at the Facility.

H. Security

Infinity, or Infinity's City-approved designee, shall be solely responsible for providing any security personnel as may be required by the laws of the State of Texas governing the sale of alcoholic beverages.

14. INDEMNIFICATION

INFINITY SHALL SO CONDUCT ITS ACTIVITIES UPON THE FACILITY SO AS NOT TO ENDANGER ANY PERSON LAWFULLY THEREON; AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST AND FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND SUITS FOR LOSSES, INJURIES, DAMAGES AND LIABILITIES TO PERSONS OR PROPERTY OCCASIONED WHOLLY OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF INFINITY, ITS SUBCONTRACTORS, ASSIGNEES, AGENTS, OFFICERS, EMPLOYEES, GUESTS, PATRONS, OR ANY PERSON OR PERSONS ADMITTED TO THE FACILITY, OR RESULTING FROM ANY PREMISES DEFECTS OR OTHER CONDITIONS EXISTING AT THE FACILITY WHILE THE FACILITY IS USED BY OR UNDER THE CONTROL OF INFINITY, BUT ONLY IN PROPORTION TO THE PERCENTAGE OF INFINITY'S CONTRIBUTION THERETO. ANY CONTRACTS BETWEEN INFINITY AND ANY THIRD PARTY PURSUANT TO WHICH SUCH THIRD PARTY IS PERFORMING AN ACTIVITY OR OBLIGATION OF INFINITY UNDER THIS AGREEMENT SHALL CONTAIN THIS INDEMNITY PROVISION IN FAVOR OF THE CITY.

15. GENERAL REQUIREMENTS AND TERMS

A. City Licenses and Permits

Infinity shall obtain, and the City shall provide such City licenses and/or permits as may be required by Infinity, subject to the requirements of applicable City ordinances, codes and policies.

B. Public Safety

Other than for meeting infinity's requirements as a vendor of beer and wine, the City will provide such traffic control and public safety personnel as may be necessary or advisable during

events and activities in accordance with City policies and ordinances and subject to any fees applicable to similar private functions in the City.

C. Exclusive Use

Subject to the requirements of Section 6, Infinity shall have the exclusive right to use and operate the Facility, including, without limitation, the right to rent out the Facility to third parties and to retain all revenues generated thereby, except as otherwise provided for the payment of rent and subject to the types of uses authorized by this Agreement.

D. Revenues

Infinity shall have the exclusive right to generate, sell and retain all revenues from sources including, without limitation, signage, parking, concessions (including beer and wine), field naming rights, advertising, broadcasting, merchandising, ticketing.

E. Annual Report

During the term of this Agreement, Infinity shall annually make a formal written report to the City Manager, no later than March 1st of each year, regarding the use of the Facility, to include but not limited to, overview of season play; resolution of conflicts; planning issues which may have been recognized by Infinity; number and age of groups involved at the Facility; other items as deemed reasonable and appropriate by the City and Infinity. This report shall be a summary of the year's activities, and therefore, should include items possibly previously reported to the City.

F. Personnel

Infinity, or Infinity's City-approved designee, shall be responsible for hiring and payment of all Facility-related personnel.

G. Team Name

The name of the TCL or other team to be hosted at the Facility under Section 4.A shall be the Brazos Valley Bombers. If Infinity shall desire to use any other name, any such name change shall be approved by the Bryan City Council

H. Publicity

Any commercial advertisements, press releases, articles, or other written media information generated by Infinity using the City's trademarks or logos shall be subject to the prior written approval of the City Manager, or his/her designee, which approval shall not unreasonably be withheld.

I. ADA Compliance

All improvements, additions or alterations to the Facility by Infinity shall comply with the accessibility requirements of the Americans with Disabilities Act. Infinity shall otherwise make reasonable accommodations for accessibility by disabled persons at all events and activities at the Facility.

16. INSURANCE

A. City's Insurance

The City of Bryan shall purchase and maintain property insurance covering the Facility. The City shall furnish Infinity with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with this insurance requirement. The certificate shall contain a provision that coverage under such policy shall not be cancelled or non-renewed until at least thirty (30) calendar days' prior written notice, or ten (10) business days' notice for cancellation due to non-payment of premiums, is given to Infinity.

B. Infinity's Insurance

Infinity agrees to maintain for the duration of this Agreement the insurance coverages and limits as described below. The Parties agree that Infinity's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Infinity, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by Infinity under the Agreement.

Infinity must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) business days of execution of this Fourth Amendment. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) business days **may cause the Agreement to be terminated.**

The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

- (1) **Property Insurance.** Infinity shall purchase and maintain property insurance covering the Facility and contents in an amount not less than \$1,000,000.
- (2) **Commercial General Liability Insurance.** Infinity shall maintain Commercial General Liability ("CGL") with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employee shall be listed as an additional insured.
- (3) **Business Automobile Liability Insurance.** If a vehicle is used by Infinity to conduct business, then Infinity shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Infinity shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.

(4) **Policy Limits.** Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Infinity agrees to endorse City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.

(5) **Deductibles, Coinsurance Penalties & Self-Insured Retention.** Infinity may maintain reasonable and customary deductibles, subject to written approval by the City. Infinity shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

(6) **Subcontractors.** If the Infinity’s insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Infinity, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Infinity. It is the responsibility of the Infinity to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

(7) **Acceptability of Insurers.** Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

(8) **Evidence of Insurance.** A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within ten (10) business days by the successful Infinity’s insurance agent or insurance company after this Fourth Amendment is effective. Endorsements must be submitted with the certificate. The Agreement may be terminated if the required certificates are not received and approved by the City. Renewal certificates shall be sent a minimum of ten (10) business days prior to coverage expiration.

(9) Upon request, Infinity shall furnish the City with certified copies of all insurance policies.

(10) The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management
PO Box 1000
Bryan, TX 77805
Emailed to: mquiroga@bryantx.gov

(11) Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Infinity’s obligation to maintain such insurance.

(12) **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits.** Infinity must provide minimum thirty (30) calendar day’s prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If the City is notified a required insurance coverage will cancel or non-renew during the contract period, the Infinity shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to terminate this Agreement if

coverage is not reinstated.

(13) **Infinity's Failure to Maintain Insurance.** If the Infinity fails to maintain the required insurance, the City shall have the right, but not the obligation, to terminate this Agreement.

(14) **No Representation of Coverage Adequacy.** The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Infinity, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Infinity under the Agreement.

17. TAXES

Infinity shall be solely responsible for the payment before delinquency of any real property or personal property taxes assessed as a result of the activities of Infinity at the Facility or resulting from the rights granted to Infinity under this Agreement. Any invoices for taxes due received by the City shall be immediately forwarded to Infinity for payment. Infinity shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any taxes assessed as a result of its activities at the Facility, including the right to seek a reduction thereof. The City shall cooperate fully with Infinity in connection with any such contest or request for reduction. Infinity, however, shall, upon the conclusion of any proceedings, promptly pay all taxes, interest, penalties, and other charges assessed as a result of its activities at the Facility.

18. ENVIRONMENTAL MATTERS

Infinity shall comply with all federal, state, and local laws and regulations pertaining to the storage, use, and disposal of "hazardous or toxic wastes, substances, or materials" as defined by applicable law.

19. ASSIGNMENT

Infinity shall neither directly or indirectly assign this Agreement to any third party without the prior written consent of the City Council. Except as provided below, the majority ownership of Infinity, as it exists as of the date of execution of this Agreement, shall not be changed, amended, or modified without the prior written consent of the City Council, which approval shall not unreasonably be withheld. Any otherwise lawful assignment by Infinity shall not be effective unless and until Infinity and such assignee execute an assignment and assumption in a form mutually-acceptable to the City Attorney and Infinity. It is understood and agreed that any consent granted by the City Council to any such assignment by Infinity shall not be deemed a waiver of any consent required under this paragraph as to any future assignment. In addition to any other remedies available to the parties, the provisions of this Section shall be enforceable by injunctive proceeding or by suit for specific performance.

20. TERMINATION

A. Termination by the City

In the event of any breach of any terms or conditions of this Agreement by Infinity which remains uncured for a period of ninety (90) calendar days after written notice thereof, the City shall have the right to terminate this Agreement, to enter and obtain possession of the Facility, to remove and exclude any and all persons from the premises, and to remove and exclude all

property of Infinity therefrom. In addition to any other rights of City to terminate this Agreement that are set forth above, City shall also have the right to terminate this Agreement after twenty-one (21) calendar days' written notice to Infinity, upon the occurrence of any of the following events:

- (1) Failure of Infinity to regularly and actively operate the Facility for its primary use under Section 4 of this Agreement.
- (2) Infinity applies for or consents to the appointment of a receiver, trustee or liquidator of Infinity or of all or a substantial part of its assets;
- (3) Infinity or its files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors;
- (4) Infinity files an answer admitting the material allegations of a bankruptcy petition reorganization proceeding, or insolvency proceeding filed against Infinity;
- (5) Infinity admits in writing its ongoing inability to pay its debts as they come due;
- (6) Infinity makes a general assignment for the benefit of creditors; or
- (7) An order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Infinity a bankrupt or insolvent or approving a petition seeking reorganization of Infinity or appointing a receiver, trustee or liquidator of Infinity or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive calendar days.

B. Termination by the City for Convenience

The City may terminate this Agreement for convenience after providing written notice to Infinity at least thirty (30) calendar days prior to September 1st of any year during the term of this Agreement. In such event, the City shall reimburse Infinity for the costs of improvements made to the Facility by Infinity, if any, less depreciation. All capital improvements, facilities or fixtures that were approved in writing by the City prior to installation that were made by Infinity and whose costs were over \$500.00 at time of original placement, will have a depreciation scale developed over the term of this Agreement at the time of placement. The City and Infinity will approve the depreciation scale in writing. The depreciation scale will be become a part of this Agreement, whether or not attached. If this Agreement is terminated by the City under this paragraph, the City will be obligated to pay the current depreciation value of the improvement; provided, however, that no costs shall be paid which are recoverable in the normal course of doing business in which Infinity is engaged.

C. Termination by Infinity

Infinity shall have the right to terminate this agreement in the event of a breach by the City which remains uncured for a period of sixty (60) calendar days after written notice thereof. Further, Infinity shall have the right, but not any obligation, to terminate this agreement without any further obligation to the City if the TCL and /or Infinity's TCL team (or other comparable league or organization or team) should cease operations.

D. Effect of Termination

The termination of this Agreement shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

E. Remedies Cumulative

Neither the right of termination, nor the right to sue for damages, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

F. Surrender of Premises

Upon the termination of this Agreement, whether for cause, by mutual agreement or by expiration of the term of the Agreement, Infinity shall peaceably surrender and deliver up the possession to the City of the Facility, including all permanent fixtures, improvements or additions thereto, in good order and condition, reasonable wear and tear excepted. Upon termination, infinity shall be responsible for payment of the completion of or shall complete any incomplete, unfinished or defective alterations, additions or improvements initiated by Infinity before the date of termination. Infinity shall leave the Facility in a clean and sanitary condition free of litter, debris, trash, waste and graffiti.

21. DAMAGE OR DESTRUCTION; EMINENT DOMAIN; FORCE MAJEURE EVENTS

A. Damage or Destruction

Should the Facility be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, either party, by written notice to the other given within sixty (60) calendar days following the occurrence of such event, shall have the right to terminate this Agreement, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section, the Facility shall be deemed to have been substantially damaged if the estimated length of time required to restore the Facility substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six months, as indicated by an architect's certificate or other evidence reasonably satisfactory to both parties. If this Agreement is not terminated in the event of damage to the Facility either because

- (1) the damage does not amount to substantial damage as described above, or
- (2) notwithstanding destruction of or substantial damage to the Facility, City elects to restore the facility and Infinity agrees to continue with this Agreement,

then City shall proceed, at City's own expense, with all due diligence to commence and complete restoration of the Facility to a condition at least equivalent to the condition existing on the date of this Agreement. Any improvements meeting specifications desired by Infinity above the City's

minimum specifications shall be completed by and paid for by Infinity unless otherwise negotiated between the parties.

B. Eminent Domain

If all of the Facility (or such a substantial portion of the Facility so to make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the Facility for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain, then upon the earlier of:

- (1) the date that City shall be required to surrender possession of the Facility or of that substantial portion of the Facility, or
- (2) the date when the Facility is no longer open,

this Agreement shall terminate and neither party shall have any further obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the Facility shall not make it unfeasible to restore and continue to operate the remaining portion of the Facility for the purposes contemplated in this Agreement, then this Agreement shall not terminate.

C. Force Majeure Events

(1) Notwithstanding anything contained herein to the contrary, the performance of a Party's obligations under this Agreement and any deadlines or other specific dates shall be subject to being extended for the duration of a Force Majeure Event. For purposes of this Agreement, the term "Force Majeure Event" shall mean any delay, obstruction or interference with a party's ability to perform its work or obligations under this Agreement resulting from any act or event beyond the reasonable control of the party claiming delay as a result of a Force Majeure Event, and not separately or concurrently caused by any willful act or omission or negligent act or omission of such party, and which could not have been prevented by reasonable actions of the such party, including, but not limited to delay, obstruction or interference resulting from acts of God, accidents, fire, explosions, floods, lightning, earthquakes or similar occurrence; acts of a public enemy; acts of terrorism, extortion, or blockade or insurrection, riot or civil disturbance; acts or omissions of governmental agencies (except acts of governmental agencies including but not limited to the City taken in accordance with this Agreement); any unforeseeable condition at the site of the work which shall prevent, or require a change in, the scope of work, or adversely affect the completion schedule for said work; strikes, labor disputes, shortages of materials; or any other event not within the reasonable control of either party.

(2) The Party claiming delay of performance as a result of a Force Majeure Event shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practical after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure Event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

(3) If as a result of the occurrence of a Force Majeure Event, the reasonable expectations of the parties under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications or possible termination of this Agreement.

22. FACILITIES IMPROVEMENTS.

A. Cost Sharing. City and Infinity agree to share the costs to make certain improvements to the Facility, to be completed prior to the 15th day of May, 2018, at a total cost not to exceed One Million Eight Hundred Sixty-Three Thousand Nine Hundred Thirty-Five and No/100 Dollars (\$1,863,935.00), (hereinafter, the "Improvements"), subject to the following terms, conditions and obligations of the Parties. Attached hereto as Exhibit "B" is a sampling of possible projects; actual projects may vary. The decision as to which Improvements will be made, whether included in Exhibit "B" or not, and the priority in which these Improvements will be completed shall be mutually agreeable in writing by both parties before work commences.

B. City Obligations.

- 1) The City shall be responsible for making the Improvements. The City agrees to complete the Improvements prior to the 15th day of May, 2018, subject to Force Majeure Events, as defined in Section 21 (C).
- 2) The City's obligations to make the Improvements and other payments or expenditures under this Agreement are subject to annual appropriation of funds.
- 3) All Improvements are the property of the City.
- 4) The City may, at its sole discretion, use Hotel Occupancy Tax funds ("HOT funds") to finance some or all of the Improvements.

C. Infinity Obligations.

- 1) Per the Third Amendment to this Agreement, Infinity will contribute a total amount of Two Hundred Seventy-Eight Thousand Three Hundred Sixty and No/100 Dollars (\$278,360.00), to be paid to City in ten (10) annual payments of Twenty-Seven Thousand Eight Hundred Thirty-Six and No/100 Dollars (\$27,836.00) each, due on the 15th day of September through the year 2025. (Note: City received the first payment, in the amount of \$27,836.00, from Infinity on September 15, 2016.)
- 2) If the estimated total cost of the Improvements is greater than \$1,863,935.00, the City, at its discretion, may delete any item from Exhibit "B", to bring the total costs of the Improvements below the not to exceed amount. Infinity will not be required to contribute any funds in excess of \$278,360.00 for the Improvements, unless otherwise agreed to in writing. Total costs shall include design services, purchase, installation, construction, labor, and other procurement costs.
- 3) If the total cost of the Improvements is not at least \$1,478,685.00, the City and Infinity upon completion of the Improvements will reduce each party's respective contributions to the Improvements in accordance with their contribution percentages as follows: City shall pay eighty-one (81%) of total costs of Improvements and Infinity shall

pay nineteen percent (19%) of the total costs of Improvements. Any reduction in Infinity's total contribution amount shall be applied to Infinity's final installment payment. (Note: \$1,478,685.00 represents project cost amounts estimated by Infinity. The City estimated project costs to be approximately \$1,863,935.00. See Section 22.A. Cost Sharing.)

4) If HOT funds are used to finance the Improvements, Infinity is responsible for satisfying the Heads in Beds requirement in Section 4(D) of this Agreement. If the HOT funding requirement is not met and the City becomes legally obligated to refund the HOT funds out of the General Fund, Infinity shall reimburse the City forty percent (40%) of the amount the City has to repay. Infinity shall have ninety (90) calendar days after the end of the City's preceding fiscal year to provide payment or by December 31 following the end of the previous fiscal year.

23. MISCELLANEOUS

A. Notices

Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, replies and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods:

- (1) by personal delivery;
- (2) by deposit with the United States Postal Service ("USPS") as certified or registered mail return receipt requested, postage prepaid to the addresses stated below (Notices deposited with the USPS shall be actually deposited with a branch of the USPS Office located in either the county of City's address as provided in this Section or the county of Infinity's address as provided in this Section); or
- (3) by deposit with a same-day or overnight express delivery service that provides a receipt showing date and time of delivery. Notice deposited with the USPS in the manner described above shall be deemed effective three (3) business days after deposit with the USPS. Notice by same-day or overnight express delivery service shall be deemed effective upon receipt. Notice by personal delivery shall be deemed effective at the time of personal delivery.

Except as otherwise provided in this Agreement, for purposes of notices hereunder, the address of City shall be:

City of Bryan
Post Office Box 1000
Bryan, Texas 77805
Attention: City Manager

Except as otherwise provided in this Agreement, for purposes of notices hereunder, the address of Infinity shall be:

Infinity Sports Entertainment, LLC
405 Mitchell

Bryan, Texas 77801
Attention: General Manager

Each party shall have the right to designate a different address by the giving of notice in conformity with this Section.

B. Independent Contractor

Infinity shall, at all times, be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between City and Infinity.

C. Compliance with Law; Licenses

Infinity shall comply with all applicable laws of governmental bodies having jurisdiction with respect to its activities at the Facility. Infinity shall, at its expense, procure and maintain all licenses, permits, and approvals required to be obtained by it to conduct any activity or to perform any work under this Agreement.

D. Modification and Changes

This Agreement may be amended or modified only by a written amendment signed by both parties.

E. Entire Understanding and Agreement

This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof. Any verbal or prior representations are either incorporated herein or are of no force or effect.

F. Headings

The headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

G. Survival of Covenants

Any covenant, term, or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

H. No Third Party Beneficiaries

None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than a party to this Agreement or by party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement.

I. Waivers

No failure by Infinity or City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent

upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

J. Applicable Law; Venue; Service of Process

This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of Texas. The parties agree that the District Court of Brazos County, Texas, shall have jurisdiction of any litigation between the parties relating to this Agreement. Service of process on the City shall be affected in such manner as required by Texas law for service on public entities. Service of process on Infinity shall be made in any manner permitted by Texas law and shall be effective whether served inside or outside of Texas.

K. No Presumption Regarding Drafter

City and Infinity acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between them, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either City or Infinity to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

L. Enforceability of Any Provision

If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

M. United States Currency

All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

N. Counterparts

This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement.

O. Attorneys' Fees

In the event of a dispute involving the nonperformance by a party hereto of its obligations under this Agreement, the prevailing party in a suit brought hereunder shall be entitled to reasonable attorneys' fees and court costs as allowed by law.

P. Covenants Against Discrimination

Infinity agrees that in connection with its activities under this Agreement, there shall be no discrimination by Infinity against any person on account of race, color, creed, religion, sex, marital status, national origin or ancestry. Infinity agrees to include a provision similar to this paragraph in all subcontracts entered into by Infinity in connection with work being performed under this Agreement.

Q. Non-liability of City Officers and Employees

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to Infinity, or any successor in interest, in the event of any default or breach by the City, or for breach of any obligation of the terms of this Agreement.

R. Time of the Essence

Time is of the essence of this Agreement. The parties understand that the time for performance of each obligation has been the subject of negotiation by the parties.

S. Attachments Incorporated

All attachments to this Agreement not otherwise specifically referenced are incorporated herein and made a part hereof.

T. Authority

The parties represent for themselves that (1) such party is duly organized and validly existing, (2) the person or persons executing this Agreement on behalf of such party is/are duly authorized to execute and deliver this Agreement on behalf of such party, (3) by so executing this Agreement, such party is formally bound to the terms and provisions of this Agreement, and (4) the execution of this Agreement does not violate any provision of any other agreement to which such party is bound.

U. Authorization to City Manager

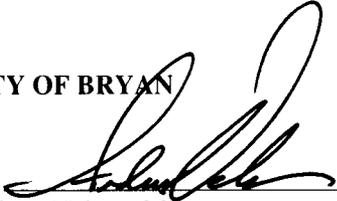
In addition to such other authorizations granted the City Manager, or his/her designee, of City in this Agreement to act on behalf of City, the City Manager, or his/her designee, shall have the authority, in the event of a dispute involving the interpretation of the terms and provisions of this Agreement, to reasonably interpret the terms and provisions of this Agreement on behalf of City.

24. FUNDING AVAILABILITY

The obligations of the City herein are subject to approval of funding from currently available municipal funds during each city fiscal year occurring within the term of this Agreement.

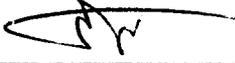
EXECUTED to be effective (the "effective date") the ____ day of _____, 2017.

CITY OF BRYAN

By: 
Andrew Nelson, Mayor

Date: Jan. 10, 2017

INFINITY SPORTS ENTERTAINMENT, LLC

By: 
Uri Geva, President

Date: Dec. 23, 2016

ATTEST:


Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

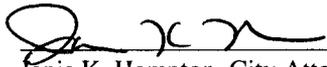

Janis K. Hampton, City Attorney

EXHIBIT "A"
Facility

Exhibit "A"



DISCLAIMER: This is a product of the City of Bixby GIS Department. The data depicted here have been downloaded from either city departments, as well as, other federal, state, and local government agencies. The City of Bixby expressly disclaims responsibility for damages or liability that may arise from the use of this map.

PROPRIETARY INFORMATION: Any results of this information is withheld, except in accordance with a licensing agreement.



EXHIBIT "B"
Improvements

EXHIBIT “B”
Possible Improvements
(Note: Not an exhaustive list)

1. Sheet metal outfield fence
2. New irrigation system
3. Infield replacement
4. Field leveling
5. New turf installation
6. Warning track installation
7. Grandstand repairs and painting
8. Press box repairs
9. New field lighting
10. Parking lot improvements
11. New scoreboard
12. Synthetic turf (infield or entire field)
13. New portable bleachers

EXHIBIT "C"
EXAMPLE OF HOTEL OCCUPANCY TAX (HOT) DOCUMENTATION

**THIRD AMENDMENT TO CITY OF BRYAN
AND INFINITY SPORTS ENTERTAINMENT EXCLUSIVE
FACILITY USE AGREEMENT**

THIS THIRD AMENDMENT TO EXCLUSIVE FACILITY USE AGREEMENT (the "Third Amendment") is made and entered into by and between the City of Bryan, a home rule municipal corporation of the State of Texas (the "City"), and Infinity Sports Entertainment, L.L.C ("Infinity"), a Texas limited liability company, singularly referred to as a ("Party") and collectively referred to as (the "Parties").

RECITALS

WHEREAS, the City and Infinity entered into that certain Exclusive Facility Use Agreement effective on or about August 23, 2006, pursuant to which Infinity was granted the use of Travis Major Baseball Field located at the Travis Athletic Complex (the "Facility"), as amended on January 22, 2008, and May 14, 2010, by a First and Second Amendment respectively (the "Agreement"); and

WHEREAS, the Parties hereto wish to amend the Agreement as provided herein; and

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits, promises, covenants, terms and conditions in this Third Amendment, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto mutually agree, and the Agreement is hereby amended as follows:

ARTICLE 1 – DEFINITIONS.

Section 1.1. Definitions. Unless otherwise defined herein, all capitalized terms shall have the meaning given thereto in the Agreement.

ARTICLE 2 – AMENDMENTS.

Section 2.1. Section 1. "Term of Agreement" shall be amended to read as follows:

1. Term of Agreement.

The initial term of this Agreement shall begin on the effective date of this Agreement, as indicated above the signatures of the representatives of the Parties below, and shall terminate on December 31, 2020, unless sooner terminated or modified under the terms of this Agreement.

Section 2.2. Section 6.A. "Existing Uses to Continue" shall be amended to read as follows:

- 6.A. Existing Uses to Continue.

Before the effective date of this Agreement, the City made the Facility available to third party users for purposes of playing baseball and softball games and tournaments. Such users include youth Little Leagues and other youth and adult baseball and softball league and team organizations. It is the intent of the parties that such users continue to conduct such activities (the "Community Baseball Activities") during the term of this Agreement, under similar terms and fees as similar users of City baseball facilities during the same period, and provided such user organizations satisfy all Park and Recreation Department field rental agreement user requirements, including but not limited to liability insurance, hold harmless agreement and criminal background check verification.

It shall be the responsibility of Infinity to annually provide to the City a copy of such user organization's current rental application, rental agreement, proof of insurance, and hold harmless agreement prior to the user organization's use of the field.

Section 2.3. Section 15.E. "Annual Report" shall be amended to read as follows:

15.E. Annual Report

During the term of this Agreement, Infinity shall make a formal report annually to the City Manager, no later than March 1st of each year, regarding the use of the Facility, to include but not limited to, overview of season play; resolution of conflicts; planning issues which may have been recognized by Infinity; number and age of groups involved at the Facility; other items as deemed reasonable and appropriate by the City and Infinity. This report shall be a summary of the year's activities, and therefore, should include items possibly previously reported to the City.

Section 2.4. Section 16.B. "Infinity's Insurance" shall be amended to read as follows:

16.B. Infinity's Insurance.

Infinity agrees to maintain for the duration of this Agreement the insurance coverages and limits as described below. The Parties agree that Infinity's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Infinity, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by Infinity under the Agreement.

Infinity must deliver to City of Bryan a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) business days of execution of this Third Amendment. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) business days **may cause the Agreement to be terminated.**

The City of Bryan reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

(1) **Property Insurance.** Infinity shall purchase and maintain property insurance covering the Facility and contents in an amount not less than \$1,000,000.00.

(2) **Commercial General Liability Insurance -** Infinity shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City of Bryan. The City of Bryan and its agents, officers, officials, and employee shall be listed as an additional insured.

(3) **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Infinity agrees to endorse City of Bryan and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

(4) **Deductibles, Coinsurance Penalties & Self-Insured Retention** - Infinity may maintain reasonable and customary deductibles, subject to approval by the City of Bryan. Infinity shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

(5) **Subcontractors** - If the Infinity's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Infinity, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Infinity. It is the responsibility of the Infinity to assure compliance with this provision. The City of Bryan accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

(6) **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

(7) **Evidence of Insurance** - A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City of Bryan within 10 business days by the successful Infinity's insurance agent or insurance company after agreement award. Endorsements must be submitted with the certificate. No agreement shall be effective until the required certificates have been received and approved by the City of Bryan. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

(8) Upon request, Infinity shall furnish the City of Bryan with certified copies of all insurance policies.

(9) The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management
PO Box 1000
Bryan, TX 77805
Emailed to: mquiroya@bryantx.gov

(10) Failure of the City of Bryan to demand evidence of full compliance with these insurance requirements or failure of the City of Bryan to identify a deficiency shall not be construed as a waiver of Infinity's obligation to maintain such insurance.

(11) **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits**
Infinity must provide minimum 30 days prior written notice to the City of Bryan of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City of Bryan is notified a required insurance coverage will cancel or non-renew during the agreement period, the Infinity shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City of Bryan reserves the right to withhold payment to Infinity until coverage is reinstated.

(12) **Infinity's Failure to Maintain Insurance** – If the Infinity fails to maintain the required insurance, the City of Bryan shall have the right, but not the obligation, to withhold payment to Infinity until coverage is reinstated or to terminate the Agreement.

(13) **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City of Bryan's review or acceptance of insurance coverage to be maintained by Infinity, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Infinity under the Agreement.

Section 2.5. Section 21.C. "Force Majeure Events" shall be amended to read as follows:

21.C. Force Majeure Events.

(1) Notwithstanding anything contained herein to the contrary, the performance of a Party's obligations under this Agreement and any deadlines or other specific dates shall be subject to being extended for the duration of a Force Majeure Event. For purposes of this Agreement, the term "Force Majeure Event" shall mean any delay, obstruction or interference with a party's ability to perform its work or obligations under this Agreement resulting from any act or event beyond the reasonable control of the party claiming delay as a result of a Force Majeure Event, and not separately or concurrently caused by any willful act or omission or negligent act or omission of such party, and which could not have been prevented by reasonable actions of the such party, including, but not limited to delay, obstruction or interference resulting from acts of God, accidents, fire, explosions, floods, lightning, earthquakes or similar occurrence; acts of a public enemy; acts of terrorism, extortion, or blockade or insurrection, riot or civil disturbance; acts or omissions of governmental agencies (except acts of governmental agencies including but not limited to the City taken in accordance with this Agreement), any unforeseeable condition at the site of the work which shall prevent, or require a change in, the scope of work, or adversely affect the completion schedule for said work; strikes, labor disputes, shortages of materials, or any other event not within the reasonable control of either party.

(2) The Party claiming delay of performance as a result of a Force Majeure Event shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practical after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure Event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

(3) If as a result of the occurrence of a Force Majeure Event, the reasonable expectations of the parties under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications or possible termination of this Agreement.

Section 2.6. The First Amendment Addendum effective January 22, 2008, containing Sections 1 and 2, "Facilities Improvements" and "Web-Based Promotional Services" respectively, shall be deleted in its entirety.

Section 2.7. The Agreement shall be amended by the addition of a new Section 22 entitled "Facilities Improvements" and the existing Section 22 "Miscellaneous" shall be renumbered as Section 23.

22. FACILITIES IMPROVEMENTS.

A. **Cost Sharing.** City and Infinity agree to share the costs to make certain improvements to the Facility, to be completed prior to the 15th day of May, 2017, in a total cost not to exceed Four Hundred Sixty-Three Thousand Nine Hundred Thirty-Five and No/100 Dollars (\$463,935.00), (hereinafter, the "Improvements"), subject to the following terms, conditions and obligations of the Parties. Attached hereto as Exhibit "A" is sampling of possible projects; actual projects may vary. The decision as to which Improvements will be made, whether included in Exhibit "A" or not, and the priority in which these Improvements will be completed shall be mutually agreeable in writing by both parties before work commences.

B. City Obligations.

- 1) The City shall be responsible for making the Improvements. The City agrees to complete the Improvements prior to the 15th day of May, 2017, subject to Force Majeure Events, as defined in Section 21 (C).
- 2) The City's obligations to make the Improvements and other payments or expenditures under this Agreement are subject to annual appropriation of funds.
- 3) All Improvements are the property of the City.

C. Infinity Obligations.

- 1) Infinity will contribute a total amount of One Hundred Thirty-Nine Thousand One Hundred Eighty-One and No/100 Dollars (\$139,181.00), to be paid to City in five (5) annual payments of Twenty-Seven Thousand Eight Hundred Thirty-Six and No/100 Dollars (\$27,836.00) each. The first \$27,836.00 payment shall be due to the City on the 15th day of September, 2016, and each 15th day of September thereafter through September, 2020.
- 2) If the estimated total cost of the Improvements is greater than Four Hundred Sixty-Three Thousand Nine Hundred Thirty-Five and No/100 Dollars (\$463,935.00), the City, at its discretion, may delete any item from Exhibit "A", to bring the total costs of the Improvements below the not to exceed amount of \$463,935.00. Infinity will not be required to contribute any funds in excess of \$139,181.00 for the Improvements, unless otherwise agreed to in writing. Total costs shall include design services, purchase, installation, construction, labor, and other procurement costs.
- 3) If the total cost of the Improvements is less than Four Hundred Sixty-Three Thousand Nine Hundred Thirty-Five and No/100 Dollars (\$463,935.00), the City and Infinity upon completion of the Improvements will reduce each party's respective contributions to the Improvements in accordance with their contribution percentages as follows: City shall pay seventy percent (70%) of total costs of Improvements and Infinity shall pay thirty percent (30%) of the total costs of Improvements. Any reduction in Infinity's total contribution amount shall be applied to Infinity's final installment payment.

ARTICLE 3 – MISCELLANEOUS.

Section 3.1. No Further Amendments. This Third Amendment hereby modifies, amends, and supplements the Agreement. All terms and conditions of the Agreement remain unchanged except as altered by this Third Amendment.

Section 3.1. Conflict. In the event of any conflict of inconsistencies between the terms of this Third Amendment and the terms of the Agreement, the terms of this Third Amendment shall govern.

Section 3.2 Applicable Law. This Third Amendment and all the rights and obligations of the parties hereto with respect thereto will be construed in accordance with, and governed by, the laws of the State of Texas.

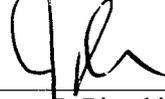
EXECUTED to be effective (the "effective date") this 30 day of June, 2016.

Approved as to Form:



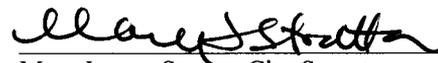
Janis K. Hampton, City Attorney

City of Bryan, Texas



Jason P. Bienski, Mayor

Attest:



Mary Lynne Stratta, City Secretary

Infinity Sports Entertainment, L.L.C.



Uri Geva, President
Date: _____

Exhibit "A"

Fence Project	Sheet Metal Outfield Fence Materials	\$5,190
Fence Project	Fence Labor & other materials	\$11,200
Fence Project	New Mesh Coverage of Ballpark Fence	\$1,820
Field Project	Full Field New Irrigation	\$20,500
Field Project	Infield Replacement Project	\$48,000
Field Project	Field Leveling Project	\$41,000
Field Project	New Grass Installation	\$45,200
Field Project	Warning Track Installation	\$29,000
Field Project	Bullpens & Base Layering	\$33,000
Grandstand Project	Installation of new aluminum foot plank, aisle plank and intermediate steps	\$43,008
Grandstand Project	Installation of new aluminum riser	\$18,240
Grandstand Project	Demo and removal of old wood - foot plank & intermediate steps	\$9,648
Grandstand Project	Demo and removal of old riser	\$2,894
Grandstand Project	Press Box Structure Wood Replacement & Painting	\$7,900
Grandstand Project	Grandstand Overhead Painting	\$9,200
Lights Project	LED Lights Installation	\$90,000
Parking Lot Project	Mill & Replace with 3" hot mix asphalt material. Approx. 230 SY	\$6,850
Parking Lot Project	Clean & seal all major cracks - excludes gator'd areas	\$1,200
Parking Lot Project	Clean all asphalt areas & apply 2 coats of asphalt sealer.	\$6,550
Parking Lot Project	Restripe all existing markings including parking, ADA parking, X-hatch areas & Fire Lane markings	\$1,535
Scoreboard	28 Foot Baseball Line Scoreboard & Structure	\$32,000
	Total Project	\$463,935
	Bombers Portion - 30% of project costs	\$139,181
	Bombers Annual Payment for 5 Season	\$27,836

66

**SECOND AMENDMENT TO
CITY OF BRYAN AND
INFINITY SPORTS ENTERTAINMENT
EXCLUSIVE FACILITY USE AGREEMENT**

THIS SECOND AMENDMENT TO CITY OF BRYAN AND INFINITY SPORTS ENTERTAINMENT EXCLUSIVE FACILITY USE AGREEMENT (this "Second Amendment") is entered into as of the 14 day of May, 2010, by and between the City of Bryan, a municipal corporation of the County of Brazos, State of Texas ("City"), and Infinity Sports Entertainment, LLC, a Texas limited liability company ("Infinity"). Defined terms used in this Amendment but not herein defined shall have the meanings ascribed to those terms in the Original Agreement (defined below).

RECITALS

WHEREAS, City and Infinity have entered into an Exclusive Facility Use Agreement dated August 23, 2006 (the "Original Agreement") and a First Amendment dated January 22, 2008;

WHEREAS, City and Infinity mutually desire to amend certain portions of the Original Agreement pursuant to Section 22D of the Original Agreement;

NOW THEREFORE, the parties agree as follows:

1. Section 1. Term of Agreement: is hereby amended so that the first sentence (Section 1 shall otherwise remain unchanged) is deleted in its entirety and replaced with the following language:

The initial term of this Agreement shall begin on the effective date of this Agreement, as indicated above the signatures of the representatives of the parties below, and shall terminate on December 31, 2019, unless sooner terminated or modified under the terms of this Agreement.

2. Section 3. Rent: is hereby modified so that subsections A, B and C are deleted in their entirety and replaced with the following language:

For the period commencing on the effective date and ending on December 31, 2019, Infinity shall pay no rent for use of the Facility.

3. Section 7. Utilities: is hereby amended to read as follows:

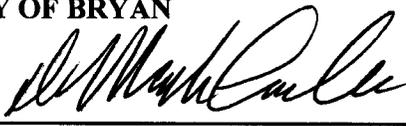
The City shall pay all utility expenses in an amount not to exceed \$25,000 per City fiscal year, associated with the Facility, to include all water, gas, electricity (including all playing field floodlights), and sanitation services, required in connection with the normal use of the Facility. Infinity shall use its best efforts to minimize electricity and other utility usage and expenses. The not-to-exceed amount provided in this paragraph is subject to annual adjustment reflecting increases in utility rates and agreed to in writing by City and Infinity (e.g. Infinity shall not be responsible for any utility expenses over \$25,000.00 that are incurred due to utility rate increases, as opposed to increased utility usage). In exchange for utility expense payments by the City, Infinity shall provide the City equal value via promotional consideration at the Facility (e.g., signage, tickets, branded events, etc.). Such promotional consideration shall be provided during the season immediately following the City fiscal year in which the utility expenses were paid by the City. Infinity shall, in its sole discretion, be allowed to provide excess promotional considerations in order to build a "credit" towards future deliverables.

4. Miscellaneous. Except as modified hereby, the Original Agreement and First Amendment remain in full force and effect. In the event of any conflict between the terms of this Second Amendment, the Original Agreement, and the First Amendment, the provisions of this Second Amendment shall supersede any conflicting provisions but only to the extent of such conflict. All of the provisions of the Original Agreement and First Amendment are hereby modified as necessary so as to be consistent with the terms of this Second Amendment. This Second Amendment shall be binding upon and inure to the benefit of the below-signed parties and their respective successors and permitted assigns. This Second Amendment may be executed in any number of counterparts, which may bear the signatures of all or less than all of the parties hereto, and each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Second Amendment shall become binding when one or more counterparts, individually or taken together, shall bear the signatures of all the parties reflected hereon as signatories.

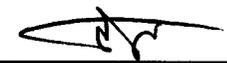
IN WITNESS WHEREOF, City and Infinity have executed this Second Amendment as of the day and year first above set forth.

Executed to be effective the 14 day of May, 2010.

CITY OF BRYAN

By: 
Name: D. Mark Conlee
Title: Mayor
Date: 5-14-10

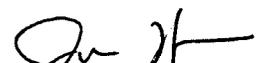
INFINITY SPORTS
ENTERTAINMENT, LLC

By: 
Name: Uri Gera
Title: Member
Date: 5/11/2010

ATTEST:


Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:


Janis Hampton, City Attorney

**FIRST AMENDMENT TO CITY OF BRYAN AND
INFINITY SPORTS ENTERTAINMENT
EXCLUSIVE FACILITY USE AGREEMENT**

THIS FIRST AMENDMENT TO EXCLUSIVE FACILITY USE AGREEMENT, is entered into by and between the City of Bryan, a municipal corporation of the County of Brazos, State of Texas (the "City"), and Infinity Sports Entertainment, L.L.C. ("Infinity")

This Amendment (the "Amendment") hereby modifies, amends and supplements that certain Exclusive Facility Use Agreement (the "Agreement") by and between the City and Infinity, whether or not attached to each other. All terms and conditions of the Agreement remain unchanged except as altered by this Amendment.

In the event of any conflict or inconsistencies between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall govern. Any reference to the "Agreement" shall mean the Agreement as amended by this Amendment. Capitalized terms used in this Amendment not defined in the Amendment shall have the meanings provided in the Agreement.

WHEREAS, effective on or about August 23, 2006 the City and Infinity entered into the Agreement pursuant to which Infinity was granted the use of Travis Major Baseball Field located at the Travis Athletic Complex (the "Facility"). The mutual benefits and objectives of the Agreement included the following:

- (1) providing to Infinity a suitable facility to host a baseball team belonging to a collegiate level or caliber baseball league drawing upon a regional fan base;
- (2) spurring economic development in City by:
 - (a) providing a sales tax-generating entertainment venue unique in the region that draws spectators from the City and the region;
 - (b) enhancing the image of the City through the promotional efforts of Infinity in attracting spectators for baseball games and other entertainment offered events sponsored by or through Infinity; and
- (3) enabling the City to receive improvements and upgrades to the Facility at Infinity's cost and expense; and

WHEREAS, the mutual expectations of the parties at the inception of the Agreement have been exceeded. The first year season for the baseball team hosted by Infinity was successful, having produced a winning record and having drawn numerous spectators and visitors to the City. Such visitors to the City spent their income on game and entertainment tickets, concession items and food and beverages. Additionally, some visitors spent their income at local retail, restaurant and hotel establishments. As a result of such expenditures, the City received increased sales tax and hotel occupancy tax revenue; and

WHEREAS, through the promotional efforts of Infinity intended to increase ticket sales to its sponsored events, the City's image as a fun and family friendly community with diverse entertainment options was enhanced and tourism was consequently promoted to the benefit of the City and its residents; and

WHEREAS, during the first year of the Agreement, Infinity made numerous beneficial improvements to the Facility with a cost of approximately \$319,000. These improvements will remain with the Facility for the benefit of the City and its residents after the Agreement terminates. These improvements further benefit residents of the City by enabling other current users to enjoy the improved Facility during periods in which Infinity does not need the Facility, i.e., groups using the Facility via programs sponsored by the Parks and Recreation Department; and

WHEREAS, because of the success resulting from the Agreement, the parties have determined it to be mutually beneficial and imperative to accelerate the construction and addition of certain improvements to the Facility, including the addition of new restroom facilities and the paving and modernization of the parking lot. Infinity is unable to complete all of the desired improvements at the accelerated pace preferred and has requested the City to participate in the cost of making such improvements; and

WHEREAS, the City wishes to participate in the cost of making such improvements provided Infinity completes them with reasonable diligence and provided Infinity lends its website design, promotional and marketing expertise to the City for the purpose of enhancing the image of the City; and

WHEREAS, accelerating the construction of improvements to the Facility, combined with enhancing the image of the City using Infinity's expertise will encourage higher attendance at Infinity sponsored events, resulting in greater income to Infinity from ticket, concession and food and beverage sales and greater revenue to the City from the consequent sales and hotel occupancy taxes.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits, promises, covenants, terms and conditions in this Addendum, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto mutually agree, and the Agreement is hereby amended as follows:

1. FACILITY IMPROVEMENTS

(a) Restroom Facilities. On or before January 31, 2008, Infinity shall submit to the City for approval plans and specifications for the construction of separate restroom facilities for both men and women satisfying the minimum specifications as described in Exhibit "A", attached hereto and made apart hereof for all purposes (the "Restroom Facilities"). The City may require reasonable modifications to such plans and specifications. Within 30 days after approval by the City of the plans and specifications submitted for the Restroom Facilities, Infinity or its authorized agents and contractors, shall commence construction of the Restroom Facilities. Completion of construction shall be pursued by Infinity with commercially reasonable diligence.

(i) Reimbursement by City. Upon Infinity's satisfaction of the obligations under paragraph 1(a), together with the issuance by the City of a Certificate of Occupancy, if applicable for the Restroom Facilities, the City shall reimburse Infinity the lesser of the actual cost thereof, or an amount not to exceed \$90,000. For purposes of determining the "actual cost" to be reimbursed by the City, Infinity shall submit to the City a copy of the contract or contracts for the construction of the Restroom Facilities and a sworn affidavit signed by an authorized representative of Infinity confirming the final amount paid to such contractor or contractors. At such time as the foregoing shall have been accomplished, Infinity shall submit to the City a written request for reimbursement, together with such supporting documents as may reasonably be requested by the City to verify the actual cost of construction incurred by Infinity. The City shall reimburse Infinity within 30 days after it receives Infinity's written request for payment, together with the supporting documentation reasonably requested by the City.

(b) Parking Lot Improvements. On or before January 31, 2008, Infinity shall submit to the City for approval plans and specifications for the paving and upgrading of the Facility's parking lot in accordance with the minimum specifications as described in Exhibit "B", attached hereto and made apart hereof for all purposes (the "Parking Lot Improvements"). The City may require reasonable modifications to such plans and specifications. Within 30 days after approval by the City of the plans and specifications submitted for the Parking Lot Improvements, Infinity or its authorized agents and contractors, shall commence construction of the Parking Lot Improvements. Completion of construction shall be pursued by Infinity with commercially reasonable diligence.

(i) Reimbursement by City. Upon Infinity's satisfaction of the obligations under paragraph 1(b), together with the issuance by the City of a Certificate of Occupancy, if applicable for the Parking Lot Improvements, the City shall reimburse Infinity a portion of the cost thereof in an amount not to exceed \$120,000. At such time as the foregoing shall have been accomplished, Infinity shall submit to the City a written request for reimbursement, together with such supporting documents as may reasonably be requested by the City to verify the actual cost of construction incurred by Infinity. The City shall reimburse Infinity within 30 days after it receives Infinity's written request for payment, together with the supporting documentation reasonably requested by the City.

2. **WEB-BASED PROMOTIONAL SERVICES**

Infinity's promotional and marketing efforts intended to attract spectators to Infinity sponsored events at the Facility enhance the image of the City and draw visitors and tourists to the City. It is recognized that the City's image is also reflected in the quality of City sponsored websites and that the City's image may be enhanced by improving the quality of its websites. Infinity (and/or its affiliated entities) is a recognized leader in website design, marketing and promotion. The City seeks to further enhance its image through improved website design and Infinity shares a mutual interest in promoting a positive image of the City in order to attract spectators to events at the Facility.

Within 60 days after the effective date of this Amendment, the City Manager and/or his designee(s) shall meet with the authorized representative(s) of Infinity for the purpose of developing a plan or program (the "Website Plan") pursuant to which Infinity shall assist the City with website design services, support and advice. Pursuant to the Website Plan mutually developed, Infinity shall provide website design services, support and advice. Upon the mutual approval of the Website Plan, Infinity shall itemize its proposed services and declare an estimated value for such services using the usual and customary methods applied to private market customers of Infinity and/or its affiliated entities. The minimum total value of such services to be provided by Infinity under the Website Plan shall not be less than \$18,000.

In the event the Agreement is terminated before all such services under the Website Plan are fulfilled, Infinity agrees that it shall continue to be liable to the City for fulfillment of the services agreed under the Website Plan. In lieu of fulfillment of such services, Infinity may pay to the City an amount equivalent to the value of the remaining unfulfilled itemized services from the Website Plan.

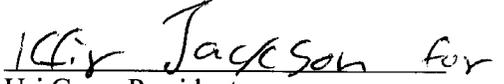
EXECUTED to be effective (the "effective date") the 22 day of January, 2008.

CITY OF BRYAN

By: 
D. Mark Conlee, Mayor

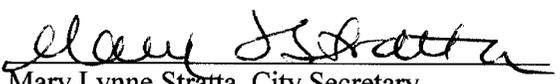
Date: 1-22-, 2008

**INFINITY SPORTS ENTERTAINMENT,
LLC**

By:  for
Uri Geva, President

Date: 01/09, 2008

ATTEST:


Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

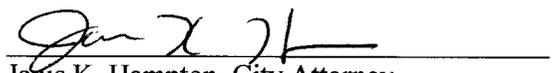
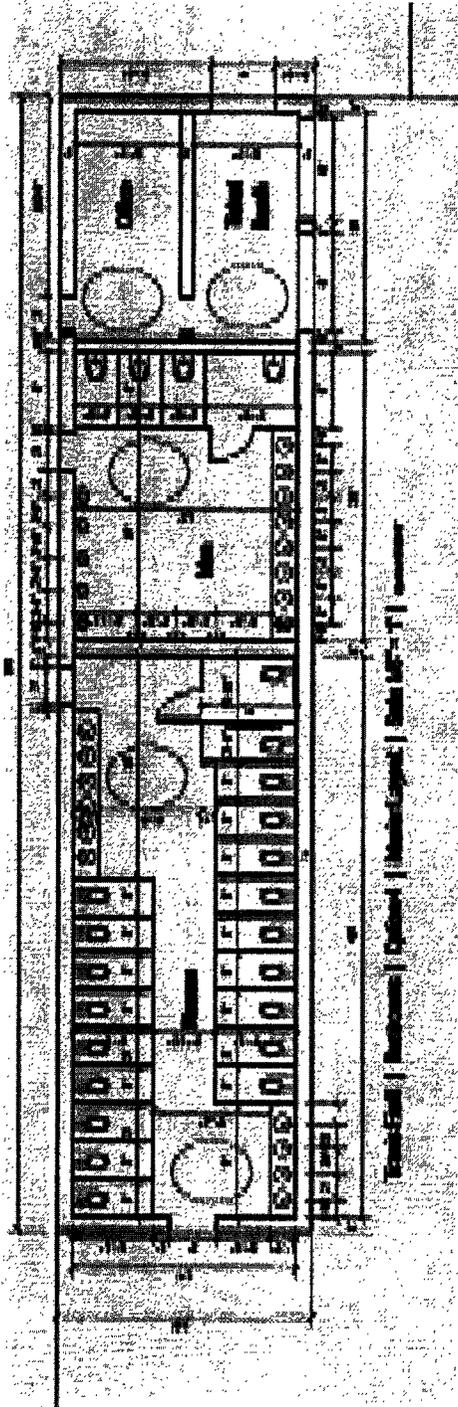

Janis K. Hampton, City Attorney

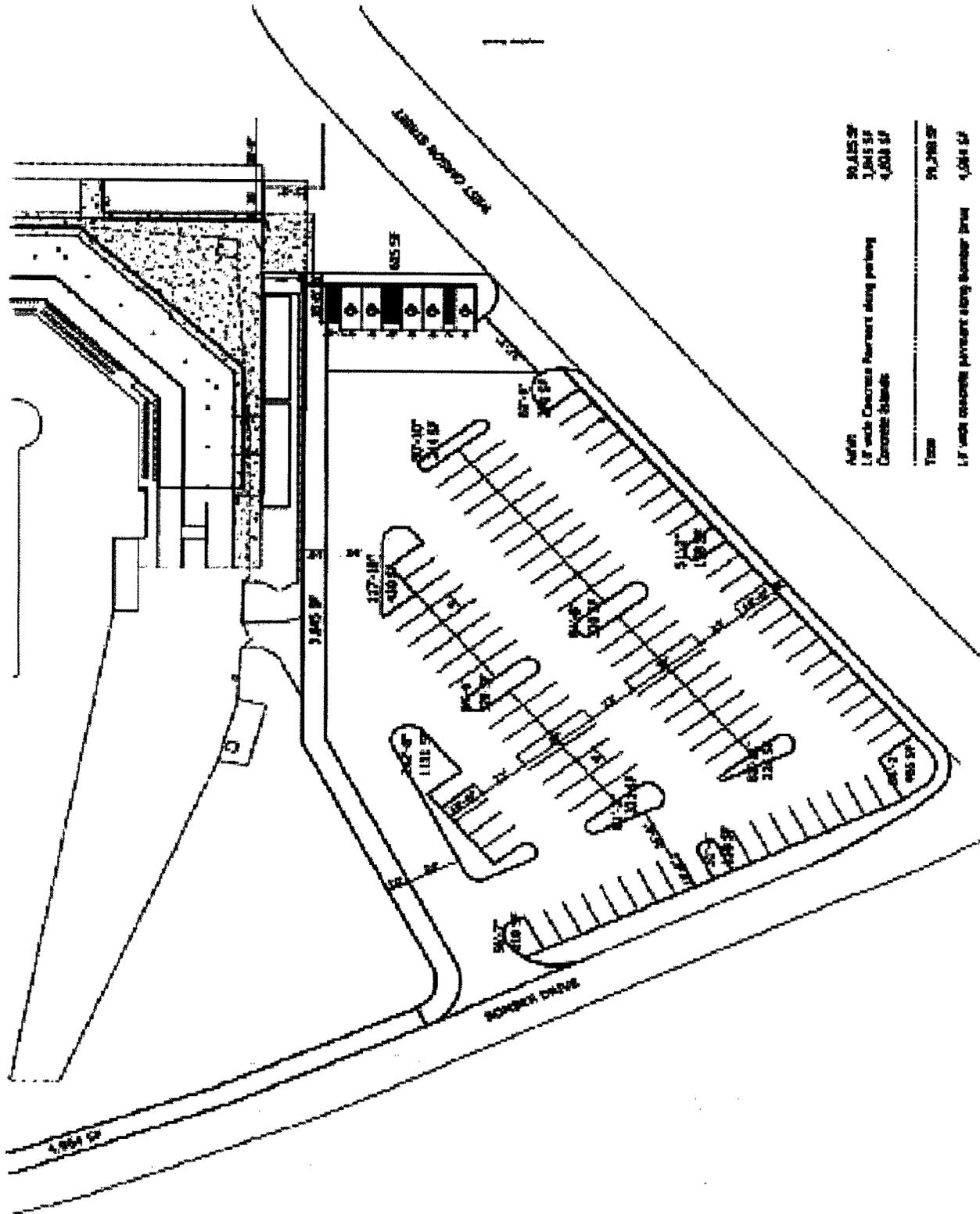
EXHIBIT "A"
Restroom Facility Specifications



Estimated Costs of Restroom Bldg

Restroom	
Building	\$38,000.00
Plumbing	\$28,000.00
Slab	\$6,000.00
Electricity	\$10,000.00
A/C	\$3,000.00
Partitions	\$11,000.00
Finish Out	\$11,000.00
Water Meter	\$3,000.00
BTU Moving Line	\$3,000.00
	\$113,000.00

EXHIBIT "B"
Parking Lot Improvement Specifications



Asphalt	29,125 SF
1.5" wide concrete pavement along parking	3,285 SF
Concrete Islands	4,203 SF
Total	36,613 SF
1.5" wide concrete pavement along Bonapart Drive	4,504 SF

Estimated Costs of Parking Lot

Parking Lot	
Paving/Walk way	\$125,000.00
Landscape	\$12,000.00
Markings	\$2,000.00
Light	\$8,000.00
	\$147,000.00

**CITY OF BRYAN AND
INFINITY SPORTS ENTERTAINMENT
EXCLUSIVE FACILITY USE AGREEMENT**

THIS EXCLUSIVE FACILITY USE AGREEMENT, is entered into by and between the City of Bryan, a municipal corporation of the County of Brazos, State of Texas (the "City"), and Infinity Sports Entertainment, LLC, a Texas limited liability company ("Infinity"), for the use of the City's Travis Major Baseball Field located at the Travis Athletic Complex (the "Facility").

RECITALS

1. The City is the owner of the Facility which is comprised of a baseball field, partially covered stadium seating, concession booths, restrooms and maintenance facilities, parking facilities and other facilities, equipment and fixtures commonly related to municipal baseball field uses and activities.
2. Infinity seeks to host at the Facility (as herein defined) a collegiate baseball team to play in the Texas Collegiate League ("TCL"), a baseball league comprised of collegiate level and caliber players. Infinity also seeks to host various other third parties for other entertainment related uses at the Facility.
3. The Facility is currently in need of improvements for which City funding is not a priority. Infinity is in need of a facility to locate its TCL team. Infinity has determined that the Facility is suitable for the location of its TCL team and for other entertainment related uses.
4. Infinity has proposed to make improvements to and maintain the Facility if the City agrees to grant exclusive use of the Facility to Infinity. The City has determined that the proposed improvements and maintenance are beneficial and that the intended activities to be conducted by Infinity will foster economic development and other opportunities for the benefit of the residents of the City.

AGREEMENT

In consideration of the mutual benefits, promises, covenants, terms and conditions in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

The initial term of this Agreement shall begin on the effective date of this Agreement, as indicated above the signatures of the representatives of the parties below, and shall terminate on October 1, 2017, unless sooner terminated or modified under the terms of this Agreement. Provided that this Agreement has not been terminated for any reason, Infinity shall have an exclusive option to renew this Agreement, if it is not in default, for an additional 10 year term upon terms and conditions as shall be agreed upon by the parties. If Infinity intends to exercise its option to renew for an additional 10 year period, it shall provide written notice thereof to the

City at least 12 months before the date of termination of the initial term of this Agreement.

2. LEASED PREMISES

A. Leased Premises Defined

For and during the term of this Agreement, the City leases, demises and rents to Infinity the Facility. For purposes of this Agreement, "Facility" shall mean, Travis Major Baseball Field located at the Travis Athletic Complex, 525 Carson Street, Bryan, Texas 77801, and that area immediately surrounding Travis Major Baseball Field and parking lot as identified in the attached Exhibit "A", which is incorporated herein by reference and made a part hereof. In addition to the lease, demise and rental of the Facility, Infinity shall have use of and access to, but no responsibility for maintenance of all other parking lots at Travis Athletic Complex in connection with events and activities permitted under this Agreement.

B. Acceptance of Premises

Infinity acknowledges that it has inspected or been provided an opportunity to inspect the Facility for defects and to determine its suitability for its intended and anticipated uses and activities during the term of the Agreement. By entering into this Agreement, Infinity accepts the Facility "AS-IS, WHERE IS, WITH ALL FAULTS". The City has not made any representations, verbal, written, express or implied and makes no warranties, express or implied, as to the condition of the Facility or as to the Facility's suitability for Infinity's intended or anticipated uses and activities. It is expressly understood that Infinity assumes all liability and responsibility arising from and related to premises defects and conditions and that Infinity shall procure such liability insurance as it deems suitable for its protection in addition to the insurance required herein.

3. RENT

A. First Period

For the period commencing on the effective date and ending 60 months thereafter, Infinity shall pay no rent for use of the Facility.

B. Second Period

For the period commencing one day after the end of the first period above and ending 60 months thereafter, Infinity shall pay rent to the City of \$200.00 per event day or 50 percent of gross revenues generated by Infinity for use of the Facility by third parties, whichever is lower. An event day is any day on which Infinity provides the Facility to any third party, including users for the Community Baseball Activities, for a fee or any day that Infinity sponsors an activity or event. Gross revenues generated from third party uses shall be the stated fee or rental rate in any contract between Infinity and any third party for the lease, use or occupancy of the Facility by such third party whether

such agreement is termed as a lease. For purposes of verifying the gross rental revenues, Infinity shall make available to the City any and all such agreements for inspection and copying. Infinity shall not enter into any unwritten agreements with any third party for the rental, use or occupancy of the Facility. Rent shall be paid within 30 days of the last day of the preceding month during which any event or activity occurred. If there is no such event or activity during the preceding month, Infinity shall provide a written statement to the City so stating and no rent shall be due to the City.

C. Renewal Period

For any renewal period thereafter, rent shall be in an amount to be negotiated, but in no event shall such renewal rent be more than 10 percent higher than the rent paid during the second period of the initial lease term.

4. USE OF THE FACILITY

A. Primary Use

The Facility shall be used by Infinity as a sports and entertainment venue. The intended primary use of the Facility by Infinity shall be to host baseball games for teams in the TCL. In connection with such primary use, Infinity may place other baseball teams of a caliber, reputation or status comparable to that of TCL within the Facility only upon the approval of the City, which approval shall not be unreasonably withheld. The use of the Facility for non-baseball events and activities shall be permitted only upon the approval of the City, which approval shall not be unreasonably withheld.

B. Secondary Uses

Secondary to such intended primary use, Infinity shall be permitted to sponsor or conduct other sports related activities or entertainment activities for profit, subject to the approval of the City, which approval shall not be unreasonably withheld.

C. Limitations on Use

All events and activities occurring at the Facility shall comply with all applicable laws and ordinances regarding nuisance, noise, or other health and safety laws and ordinances. All other uses not specifically authorized herein shall be subject to City's approval, which approval shall not be unreasonably withheld.

5. INSPECTIONS

A. Initial Inspection

Within 10 days after the effective date, of this Agreement, but before the use or occupancy by Infinity, the parties shall jointly conduct a walk through inspection of the Facility and document in writing the general condition and state of the Facility and all

grounds, parking areas, equipment, fixtures, appliances and appurtenances. Either party may, in their discretion, photograph, video record and/or retain such professionals as may be necessary to ascertain, the condition of the Facility at such time.

B. Annual Inspection

Each year, at least thirty days prior to the commencement of TCL regular baseball season, the City shall be allowed to inspect the Facility for general conditions and maintenance issues. Each year, within thirty days after the completion of each TCL regular baseball season, the City shall be permitted to inspect the Facility, including, but not limited to such things as equipment, nets, fences, storage facilities, restrooms, etc. The findings during the City's inspection will be contained in a written report which inspection will become part of an annual report available to both parties.

C. Other Inspections

The City shall, upon reasonable notice to Infinity, have the right to make inspections at any reasonable time to insure compliance with this Agreement.

6. ACCOMODATION OF EXISTING USERS AND ACTIVITIES

A. Existing Uses to Continue

Before the effective date of this Agreement, the City made the Facility available to third party users for purposes of playing baseball and softball games and tournaments. Such users include youth Little Leagues and other youth and adult baseball and softball leagues, teams and organizations. It is the intent of the parties that such users continue to conduct their activities (the "Community Baseball Activities") during the term of this Agreement under similar terms and conditions and fees applicable to similar users of City baseball facilities during the same time period. In consideration of the City entering into this Agreement, Infinity agrees to continue to make available the Facility to such users and for Community Baseball Activities under similar terms and conditions and fees applicable to similar users of City baseball facilities during the same time period.

B. Annual Scheduling Conference

In recognition of the obligation to accommodate such users and the Community Baseball Activities, the parties agree to meet annually during the month of February at a mutually agreed date, time and location for the purpose of coordinating the proposed schedules for such users' Community Baseball Activities and the proposed schedule of activities of Infinity. If the parties are unable to agree on a date, time and location for such meeting, then such meeting shall be held on the second Wednesday of the month of February at 2:00 p.m. at the main offices of the City's Parks and Recreation Department.

(1) Meeting Notice

Two weeks prior to the scheduled dates for the above meetings invitations will be mailed to the following:

- a. Infinity Sports Entertainment, President
- b. City of Bryan Parks and Recreation, Athletics Supervisor
- c. City of Bryan Parks and Recreation, Manager

The mailing will contain, at a minimum, the following information: meeting date, time, place; agenda of the meeting, and a copy of the most current agreement between City and Infinity.

(2) Meeting

At the meeting the parties shall reach agreement regarding the scheduling of the Community Baseball Activities and other events and activities sponsored by Infinity for profit. All conflicts in scheduling shall be resolved at such meeting or at such time as reasonably practical thereafter as agreed between the parties. In the event of a scheduling conflict that cannot be resolved, if an alternate venue for the Community Baseball Activities cannot be provided, the Community Baseball Activities shall have priority for use of the Facility only with regard to an Infinity sponsored non-baseball event or activity. For purposes of scheduling under this paragraph, any and all construction and renovation activities of Infinity shall be considered the same as any other event or activity sponsored by Infinity.

(3) Written Schedule

Upon coordinating and reconciling the needs of all users for the Community Baseball Activities and the needs of Infinity, a written schedule shall be prepared and approved by the parties. Such schedule shall be deemed a part of this Agreement, as amended from time to time, and a breach by Infinity of the expectations created by such schedule shall be deemed a breach of this Agreement, unless otherwise resolved by the parties. Infinity shall be allowed to add or change the dates of events or activities sponsored by it after the date of approval of the annual written schedule provided reasonable notice is given to the City and the City is satisfied that the Community Baseball Activities have been accommodated.

7. UTILITIES

The City shall pay all utility expenses in an amount not to exceed \$7,500.00 per City fiscal year, associated with the Facility, to include all water, gas, electricity (including all playing

U.G.

field floodlights), and sanitation services, required in connection with the normal use of the Facility. During the first City fiscal year occurring within the term of this Agreement, utility charges shall be prorated between the parties as of the effective date such that all charges incurred directly by the City prior to the effective date shall not be included in the total charges for purposes of calculating Infinity's responsibility to pay any amount over \$7,500.00. Infinity shall use its best efforts to minimize electric and other utility usage and expenses. The not-to-exceed amount provided in this section is subject to annual adjustment reflecting increases in utility rates and agreed to in writing by City and Infinity (e.g., Infinity shall not be responsible for any utility expenses over \$7,500.00 that are incurred due to utility rate increases, as opposed to increased utility usage).

8. ALTERATIONS, ADDITIONS, IMPROVEMENTS

Infinity shall be allowed to make alterations, additions or improvements to the Facility as it deems necessary to accommodate its authorized intended uses and activities. Before Infinity commences making any such alterations, additions or improvements, it shall obtain the written consent of the City. The consent of the City shall not be unreasonably withheld, except that the City may withhold consent for any alteration, addition or improvement that City reasonably determines diminishes the integrity of the Facility for use as or is otherwise incompatible with its use as a municipal baseball field after termination of the Agreement. All alterations, additions or improvements shall result in a condition of the Facility that is superior to its condition on the effective date.

9. SIGNS

Infinity shall not install or erect any signs without the approval of the City as to the technical specifications, which approval shall not be unreasonably withheld. The City shall also approve the location of any permanent signs outside the fenced area enclosing the field and visible from any public rights of way. All signs and banners shall comply with applicable sign ordinances. Temporary single event banners and signs may be erected or installed without approval of the City. The City shall not unreasonably withhold approval of any signs or banners that are otherwise in compliance with applicable sign ordinances.

10. REPAIRS AND MAINTENANCE

A. Infinity

Infinity shall be solely responsible for all repairs to and maintenance of the Facility, except to the extent the City is responsible for maintaining the lighting at the Facility. Such maintenance shall include, but not be limited to:

- (1) Field maintenance, at a minimum, must be kept to the same or superior standard as other City athletic fields. Mowing during the growing season must be done weekly or sooner. The grass is to be professionally maintained as is appropriate for the conduct of TCL games. This requirement also applies to any grass growing along the fence lines.

(2) Infinity will be responsible for all turf maintenance in the Facility and immediate surrounding area, and the City will maintain all turf outside the aforementioned areas. There should be no noticeable turf presentation difference on either side of the areas.

(3) Infinity will maintain the skinned clay areas in a weed and grass free condition, as well as remove any "lips" that develop on the grass edge with a height as professionally needed for baseball games.

(4) Infinity will be responsible for appropriate and safe watering, fertilizing, or application of pesticides or herbicides.

(5) Infinity will be solely responsibility for all Facility repairs and maintenance, including, but not limited to the repair and maintenance of fences, bleachers, irrigation, buildings, commodes, plumbing, canopies and roofs, walls, electric and gas lines, equipment, fixtures and appliances.

(6) Infinity will provide, store, and apply marble dust or paint as needed in the sole discretion of Infinity.

(7) Infinity shall, at all times, maintain the Facility in a clean and sanitary condition. After each event or activity, Infinity shall collect and discard into appropriate waste containers all litter, trash, garbage, debris and other waste within 75 feet of the perimeter of the field and all parking lots.

B. The City

The City shall be responsible for maintaining all Facility lighting existing on the date of this Agreement. Any upgrades shall be at Infinity's sole cost and expense unless otherwise agreed upon in writing.

11. LIENS AND ENCUMBRANCES

Infinity shall not permit any mechanic's or materialman's liens or any other liens or encumbrances to be placed on or against the Facility or any property owned by the City. Any contracts between Infinity and any third party for construction, the installation of fixtures or equipment or for any product or service for which liens against real or personal property are permitted by law shall contain a waiver by such third party of the right to place a lien or other encumbrance against the Facility or any property owned by the City.

12. FOOD AND BEVERAGE OPERATIONS

Infinity shall comply with all requirements of state and local law governing the sale or provision of food and beverages to the public. Infinity shall obtain and maintain all permits from all governmental agencies having jurisdiction for all food and beverage operations at the Facility.

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Infinity shall comply with all health laws and regulations as existing or as may be established by the federal, state, county, and city governmental agencies.

13. BEER AND WINE CONCESSION

A. Grant of Concession for Beer and Wine Sales

During the term hereof, City grants to Infinity, or Infinity's City-approved designee, the exclusive right to sell beer and wine for on-premises consumption at the Facility.

B. Licenses and Permits

Infinity, or Infinity's City-approved designee, shall acquire all necessary licenses and permits to operate its beer and wine concession and shall comply with all laws and regulations pertaining to the sale of alcoholic beverages, including but not limited to those pertaining to the sale of beer and wine for on-premises consumption. No consumption or open containers of beer and wine or alcohol shall be permitted beyond any fenced seating or picnic areas enclosing the field. Consumption and open containers of beer and wine and alcohol shall be permitted between the locations from which beer and wine is sold and such enclosed seating or picnic areas. Infinity, or Infinity's City-approved designee, shall not operate its beer and wine concession such that consumption or open containers of alcohol would occur in any parking areas.

C. Personnel

Infinity, or Infinity's City-approved designee, shall recruit, hire, train, discharge, promote and supervise all personnel engaged in the operation of the beer and wine concession and shall be responsible for the compensation of such personnel. City shall have no control over or supervision of the personnel hired by Infinity, or Infinity's City-approved designee, to operate the beer and wine concession at the Facility.

D. Contracts and Agreements

All contracts and agreements relating to the operation and maintenance of the beer and wine concession shall be entered into by Infinity as the contracting party for its benefit and for its own account. All inventory of beer and wine purchased by Infinity, or Infinity's City-approved designee, shall be the property of Infinity and shall be resold for Infinity's own benefit and for its own account.

E. Liquor Liability Insurance

In addition to any other insurance required under this Agreement, Infinity, or Infinity's City-approved designee, shall, at all times, maintain liquor liability insurance in an amount of not less than \$5,000,000.00 per occurrence that covers the sale of beer and wine for on-premises consumption.

F. Legal Relationship

Infinity, or Infinity's City-approved designee, shall be the owner of the beer and wine concession business at the Facility at all times during the term of this Agreement. City is the owner of the Facility and by this Agreement agrees to Infinity's, or Infinity's City-approved designee's, use of the Facility as a location for the operation of a beer and wine concession. Nothing contained in this Agreement shall be construed to be, or create, a partnership or joint venture between City, and its successors and assigns, and Infinity and its successors and assigns.

G. Indemnity Related to Beer and Wine Sales

Infinity and/or Infinity's City-approved designee, agrees to indemnify and hold harmless City and City's officers, officials, members, employees, agents, representatives, and volunteers from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, expert witness fees, attorney's fees, costs and expenses, which result from any act or omission by Infinity, Infinity's City-approved designee, or by any officer, agent, contractor or employee of the foregoing, in connection with the operation of a beer and wine concession at the Facility.

H. Security

Infinity, or Infinity's City-approved designee, shall be solely responsible for providing any security personnel as may be required by the laws of the State of Texas governing the sale of alcoholic beverages.

14. INDEMNIFICATION

A. By Infinity

Infinity shall so conduct its activities upon the Facility so as not to endanger any person lawfully thereon; and shall indemnify, save and hold harmless the City and all of its officers, agents, and employees against and from any and all claims, demands, causes of action and suits for losses, injuries, damages and liabilities to persons or property occasioned wholly or in part by the negligent acts or omissions of Infinity, its subcontractors, assignees, agents, officers, employees, guests, patrons, or any person or persons admitted to the Facility, or resulting from any premises defects or other conditions existing at the Facility while the Facility is used by or under the control of Infinity, but only in proportion to the percentage of Infinity's contribution thereto. Any contracts between Infinity and any third party pursuant to which such third party is performing an activity or obligation of Infinity under this Agreement shall contain this indemnity provision in favor of the City.

B. By the City

To the extent permitted by applicable law, the City shall indemnify, save and hold harmless Infinity and all of its officers, agents and employees against and from any and all claims, demands, causes of action, and suits for losses, injuries, damages and liabilities to persons or property occasioned wholly or in part by the negligent acts or omissions of the City, its agents, officers, and employees, but only in proportion to the percentage of the City's contribution thereto.

15. GENERAL REQUIREMENTS AND TERMS

A. City Licenses and Permits

Infinity shall obtain, and the City shall provide such City licenses and/or permits as may be required by Infinity, subject to the requirements of applicable City ordinances, codes and policies.

B. Public Safety

Other than for meeting infinity's requirements as a vendor of beer and wine, the City will provide such traffic control and public safety personnel as may be necessary or advisable during events and activities in accordance with City policies and ordinances and subject to any fees applicable to similar private functions in the City.

C. Exclusive Use

Subject to the requirements of Section 6, Infinity shall have the exclusive right to use and operate the Facility, including, without limitation, the right to rent out the Facility to third parties and to retain all revenues generated thereby, except as otherwise provided for the payment of rent and subject to the types of uses authorized by this Agreement.

D. Revenues

Infinity shall have the exclusive right to generate, sell and retain all revenues from sources including, without limitation, signage, parking, concessions (including beer and wine), field naming rights, advertising, broadcasting, merchandising, ticketing.

E. Annual Report

Infinity shall annually make a formal report to the City regarding the use of the Facility, to include but not limited to, overview of season play; resolution of conflicts; planning issues which may have been recognized by Infinity; number and age of groups involved at the Facility; other items as deemed reasonable and appropriate by the City and Infinity. This report shall be a summary of the year's activities, and, therefore, should include items possibly previously reported to the City.

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F. Personnel

Infinity, or Infinity's City-approved designee, shall be responsible for hiring and payment of all Facility-related personnel.

G. Annual Meeting

The parties shall meet at least once each year to provide/discuss agenda items including: current list of officers and officials; review and discussion of the existing agreement; and, a proposed, written league schedule prior to the beginning of TCL (or comparable league) play (these schedules, upon review of both parties, shall become deemed a part of this agreement for all purposes by reference herein).

H. Team Name

The name of the TCL or other team to be hosted at the Facility under paragraph 4.A shall be either Brazos Valley Bombers U.S. or Brazos Bombers U.S. If Infinity shall desire to use any other name, any such name change shall be approved by the Bryan City Council

I. Publicity

Any commercial advertisements, press releases, articles, or other written media information generated by Infinity using the City's trademarks or logos shall be subject to the prior approval of the City Manager, or his/her designee, which approval shall not unreasonably be withheld.

J. ADA Compliance

All improvements, additions or alterations to the Facility by Infinity shall comply with the accessibility requirements of the Americans with Disabilities Act. Infinity shall otherwise make reasonable accommodations for accessibility by disabled persons at all events and activities at the Facility.

16. INSURANCE

A. City's Insurance

The City of Bryan shall purchase and maintain property insurance covering the Facility. The City shall furnish Infinity with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with this insurance requirement. The certificate shall contain a provision that coverage under such policy shall not be cancelled or non-renewed until at least 30 days' prior written notice, or 10 days' notice for cancellation due to non-payment of premiums, is given to Infinity.

B. Infinity's Insurance

Infinity agrees to maintain, on a primary basis, for the duration of this Agreement the insurance coverages and limits as described below. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Infinity, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by infinity under the Agreement.

(1) Property Insurance

Infinity shall purchase and maintain property insurance covering the Facility in an amount not less than \$1,000,000.00 in the aggregate.

(2) Commercial General Liability Insurance

Infinity shall purchase and maintain commercial general liability insurance with a limit of liability not less than \$1,000,000.00 per occurrence. Infinity agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors.

(3) Additional Insured Endorsements

Infinity agrees to endorse the City as an Insured on each insurance policy required to be maintained. It is agreed that the Infinity's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the City.

(4) Waiver of Subrogation

Waiver of subrogation in favor of the City shall be included as part of each required policy. When required by the insurer or should a policy condition not permit Infinity to enter into a pre-loss agreement to waive subrogation without an endorsement, then Infinity agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

(5) Deductibles, Coinsurance Penalties and Self-Insured Retention

Infinity shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

(6) Subcontractor's Insurance

Infinity shall agree to cause each subcontractor employed by Infinity to purchase and maintain insurance of the type specified, provided Infinity's insurance does not afford coverage on behalf of the subcontractor.

(7) Certificates of Insurance

Infinity shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD or equivalent form and all endorsements must be included with the submittal. The certificate(s) shall contain a provision that coverage under such policies shall not be cancelled or non-renewed until at least 30 days prior written notice, or 10 days' notice for cancellation due to non-payment of premiums, is given the City of Bryan.

(8) Cancellation

In the event the City is notified that a required insurance coverage will cancel or non-renew, Infinity shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. If Infinity fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Infinity's expense.

(9) Review and Adjustment

The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent as long as such modifications are consistent with City-wide insurance requirements. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

(10) Third Parties

All Facility user groups must meet the commercial general liability insurance requirements set forth in this agreement.

17. TAXES

Infinity shall be solely responsible for the payment before delinquency of any real property or personal property taxes assessed as a result of the activities of Infinity at the Facility or resulting from the rights granted to Infinity under this Agreement. Any invoices for taxes due received by the City shall be immediately forwarded to Infinity for payment. Infinity shall have

the right in good faith, at its sole cost and expense, to contest the amount or legality of any taxes assessed as a result of its activities at the Facility, including the right to seek a reduction thereof. The City shall cooperate fully with Infinity in connection with any such contest or request for reduction. Infinity, however, shall, upon the conclusion of any proceedings, promptly pay all taxes, interest, penalties, and other charges assessed as a result of its activities at the Facility.

18. ENVIRONMENTAL MATTERS

Infinity shall comply with all federal, state, and local laws and regulations pertaining to the storage, use, and disposal of "hazardous or toxic wastes, substances, or materials" as defined by applicable law.

19. ASSIGNMENT

Infinity shall neither directly or indirectly assign this Agreement to any third party without the prior written consent of the City Council. Except as provided below, the majority ownership of Infinity, as it exists as of the date of execution of this Agreement, shall not be changed, amended, or modified without the prior written consent of the City Council, which approval shall not unreasonably be withheld. Any otherwise lawful assignment by Infinity shall not be effective unless and until Infinity and such assignee execute an assignment and assumption in a form mutually-acceptable to the City Attorney and Infinity. It is understood and agreed that any consent granted by the City Council to any such assignment by Infinity shall not be deemed a waiver of any consent required under this paragraph as to any future assignment. In addition to any other remedies available to the parties, the provisions of this Section shall be enforceable by injunctive proceeding or by suit for specific performance.

20. TERMINATION

A. Termination by the City

In the event of any breach of any terms or conditions of this Agreement by Infinity which remains uncured for a period of 90 days after written notice thereof, the City shall have the right to terminate this Agreement, to enter and obtain possession of the Facility, to remove and exclude any and all persons from the premises, and to remove and exclude all property of Infinity therefrom. In addition to any other rights of City to terminate this Agreement that are set forth above, City shall also have the right to terminate this Agreement after 21 days' written notice to Infinity, upon the occurrence of any of the following events:

- (1) Failure of Infinity to regularly and actively operate the Facility for its primary use under Section 4 of this Agreement.
- (2) Infinity applies for or consents to the appointment of a receiver, trustee or liquidator of Infinity or of all or a substantial part of its assets;
- (3) Infinity ~~is~~ files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors;

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(4) Infinity files an answer admitting the material allegations of a bankruptcy petition reorganization proceeding, or insolvency proceeding filed against Infinity;

(5) Infinity admits in writing its ongoing inability to pay its debts as they come due;

(6) Infinity makes a general assignment for the benefit of creditors; or

(7) An order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Infinity a bankrupt or insolvent or approving a petition seeking reorganization of Infinity or appointing a receiver, trustee or liquidator of Infinity or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of 60 consecutive days.

B. Termination by the City for Convenience

The City may terminate this Agreement for convenience after providing written notice to Infinity at least 30 days prior to September 1st of any year during the term of this Agreement. In such event, the City shall reimburse Infinity for the costs of improvements made to the Facility by Infinity, if any, less depreciation. All capital improvements, facilities or fixtures that were approved by the City prior to installation that were made by Infinity and whose costs were over \$500.00 at time of original placement, will have a depreciation scale developed over the term of this Agreement at the time of placement. The City and Infinity will approve the depreciation scale in writing. The depreciation scale will become a part of this Agreement, whether or not attached. If this Agreement is terminated by the City under this paragraph, the City will be obligated to pay the current depreciation value of the improvement; provided, however, that no costs shall be paid which are recoverable in the normal course of doing business in which Infinity is engaged.

C. Termination by Infinity

Infinity shall have the right to terminate this agreement in the event of a breach by the City which remains uncured for a period of 60 days after written notice thereof. Further, Infinity shall have the right, but not any obligation, to terminate this agreement without any further obligation to the City if the TCL and /or Infinity's TCL team (or other comparable league or organization or team) should cease operations.

D. Effect of Termination

The termination of this Agreement shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

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E. Remedies Cumulative

Neither the right of termination, nor the right to sue for damages, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

F. Surrender of Premises

Upon the termination of this Agreement, whether for cause, by mutual agreement or by expiration of the term of the Agreement, Infinity shall peaceably surrender and deliver up the possession to the City of the Facility, including all permanent fixtures, improvements or additions thereto, in good order and condition, reasonable wear and tear excepted. Upon termination, Infinity shall be responsible for payment of the completion of or shall complete any incomplete, unfinished or defective alterations, additions or improvements initiated by Infinity before the date of termination. Infinity shall leave the Facility in a clean and sanitary condition free of litter, debris, trash, waste and graffiti.

21. DAMAGE OR DESTRUCTION; EMINENT DOMAIN; FORCE MAJEURE EVENTS

A. Damage or Destruction

Should the Facility be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, either party, by written notice to the other given within 60 days following the occurrence of such event, shall have the right to terminate this Agreement, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section, the Facility shall be deemed to have been substantially damaged if the estimated length of time required to restore the Facility substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six months, as indicated by an architect's certificate or other evidence reasonably satisfactory to both parties. If this Agreement is not terminated in the event of damage to the Facility either because

- (1) the damage does not amount to substantial damage as described above, or
- (2) notwithstanding destruction of or substantial damage to the Facility, City elects to restore the facility and Infinity agrees to continue with this Agreement, then City shall proceed, at City's own expense, with all due diligence to commence and complete restoration of the Facility to a condition at least equivalent to the condition existing on the date of this Agreement. Any improvements meeting specifications desired by Infinity above the City's minimum specifications shall be completed by and paid for by Infinity unless otherwise negotiated between the parties.

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B. Eminent Domain

If all of the Facility (or such a substantial portion of the Facility so to make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the Facility for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain, then upon the earlier of:

- (1) the date that City shall be required to surrender possession of the Facility or of that substantial portion of the Facility, or
- (2) the date when the Facility is no longer open, this Agreement shall terminate and neither party shall have any further obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the Facility shall not make it unfeasible to restore and continue to operate the remaining portion of the Facility for the purposes contemplated in this Agreement, then this Agreement shall not terminate.

C. Force Majeure Events

As used in this Agreement, the term "Force Majeure Event" means a disruption in the operation of the Facility due to, or the cause of the failure to perform by a party hereto due to, declared or undeclared war, sabotage, riot or acts of civil disobedience, acts or omissions of governmental agencies (except acts of governmental agencies including but not limited to the City taken in accordance with this Agreement), accidents, fires, explosions, floods, earthquakes, or other acts of God, strikes, labor disputes, shortages of materials, or any other event not within the control of either party. If, as a result of the occurrence of a Force Majeure Event, the reasonable expectations of the parties under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications or termination of this Agreement.

22. MISCELLANEOUS

A. Notices

Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, replies and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods:

- (1) by personal delivery;
- (2) by deposit with the United States Postal Service as certified or registered mail return receipt requested, postage prepaid to the addresses stated below (Notices deposited with the United States Postal Service shall be actually deposited with a branch of the United States Postal Office located in either the

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county of City's address as provided in this Section or the county of Infinity's address as provided in this Section); or

(3) by deposit with a same-day or overnight express delivery service that provides a receipt showing date and time of delivery. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three business days after deposit with the Postal Service. Notice by same-day or overnight express delivery service shall be deemed effective upon receipt. Notice by personal delivery shall be deemed effective at the time of personal delivery.

Except as otherwise provided in this Agreement, for purposes of notices hereunder, the address of City shall be:

City of Bryan
Post Office Box 1000
Bryan, Texas 77805
Attention: City Manager

Except as otherwise provided in this Agreement, for purposes of notices hereunder, the address of Infinity shall be:

Infinity Sports Entertainment
405 Mitchell
Bryan, Texas 77801
Attention: General Manager

Each party shall have the right to designate a different address by the giving of notice in conformity with this Section.

B. Independent Contractor

Infinity shall, at all times, be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between City and Infinity.

C. Compliance with Law; Licenses

Infinity shall comply with all applicable laws of governmental bodies having jurisdiction with respect to its activities at the Facility. Infinity shall, at its expense, procure and maintain all licenses, permits, and approvals required to be obtained by it to conduct any activity or to perform any work under this Agreement.

D. Modification and Changes

This Agreement may be amended or modified only by a writing signed by both parties.

E. Entire Understanding and Agreement

This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof. Any verbal or prior representations are either incorporated herein or are of no force or effect.

F. Headings

The headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

G. Survival of Covenants

Any covenant, term, or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

H. No Third Party Beneficiaries

None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than a party to this Agreement or by a party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement.

I. Waivers

No failure by Infinity or City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

J. Applicable Law; Venue; Service of Process

This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of Texas. The parties agree that the District Court of Brazos County, Texas, shall have jurisdiction of any litigation between the parties relating to this Agreement. Service of process on the City shall be affected in such manner as required by Texas law for service on public entities. Service of process on Infinity shall be made in any manner permitted by Texas law and shall be effective whether served inside or outside of Texas.

K. No Presumption Regarding Drafter

City and Infinity acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between them, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either City or Infinity to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

L. Enforceability of Any Provision

If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

M. United States Currency

All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

N. Counterparts

This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement.

O. Attorneys' Fees

In the event of a dispute involving the nonperformance by a party hereto of its obligations under this Agreement, the prevailing party in a suit brought hereunder shall be entitled to reasonable attorneys' fees and court costs as allowed by law.

P. Covenants Against Discrimination

Infinity agrees that in connection with its activities under this Agreement, there shall be no discrimination by Infinity against any person on account of race, color, creed, religion, sex, marital status, national origin or ancestry. Infinity agrees to include a provision similar to this paragraph in all subcontracts entered into by Infinity in connection with work being performed under this Agreement.

Q. Non-liability of City Officers and Employees

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to Infinity, or any successor in interest, in the event of any default or breach by the City, or for breach of any obligation of the terms of this Agreement.

R. Time of the Essence

Time is of the essence of this Agreement. The parties understand that the time for performance of each obligation has been the subject of negotiation by the parties.

S. Attachments Incorporated

All attachments to this Agreement not otherwise specifically referenced are incorporated herein and made a part hereof.

T. Authority

The parties represent for themselves that (1) such party is duly organized and validly existing, (2) the person or persons executing this Agreement on behalf of such party is/are duly authorized to execute and deliver this Agreement on behalf of such party, (3) by so executing this Agreement, such party is formally bound to the terms and provisions of this Agreement, and (4) the execution of this Agreement does not violate any provision of any other agreement to which such party is bound.

U. Authorization to City Manager

In addition to such other authorizations granted the City Manager, or his/her designee, of City in this Agreement to act on behalf of City, the City Manager, or his/her designee, shall have the authority, in the event of a dispute involving the interpretation of the terms and provisions of this Agreement, to reasonably interpret the terms and provisions of this Agreement on behalf of City.

23. CONTINGENCIES

A. Award of Franchise to Infinity

This Agreement shall be contingent upon the granting of a franchise or other approval by the TCL or other sports league or organization of comparable caliber to or for Infinity to own or operate a team. In the event, Infinity fails to obtain such franchise or other approval by December 31, 2006, then either party may terminate this Agreement unless otherwise agreed in writing between the parties.

B. Funding Availability

The obligations of the City herein are subject to approval of funding from currently available municipal funds during each city fiscal year occurring within the term of this Agreement.

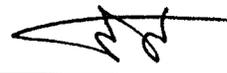
EXECUTED to be effective (the "effective date") the 23 day of August, 2006.

CITY OF BRYAN

By: 
Ernie Wentrcek, Mayor

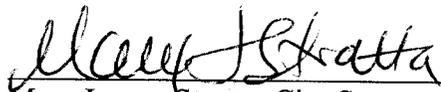
Date: Aug. 23, 2006

**INFINITY SPORTS
ENTERTAINMENT, LLC**

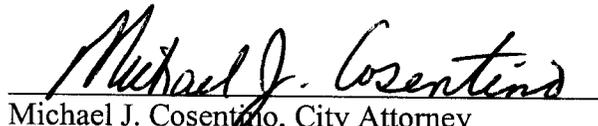
By: 
Uri Geva, President

Date: 8/18, 2006

ATTEST:


Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:


Michael J. Cosentino, City Attorney



INFINITY

OVERFLOW PARKING

CITY OF BRYAN

DISCLAIMER: This is a product of the City of Bryan GIS Department. The data displayed here has been developed from other city departments, as well as other local, state, and local government agencies. The City of Bryan is not responsible for any errors or omissions, or liability that may arise from the use of this map. PROPRIETARY INFORMATION: Any results of the information is prohibited, except in accordance with a licensing agreement.



Exhibit "A"

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