

## GROUND LEASE

This Ground Lease ("Lease") is entered into on \_\_\_\_\_, 2021 (the "Effective Date"), by and between the City of Bryan, a Texas home rule city ("Lessor"), and Bryan Business Council, Inc., a Texas non-profit corporation ("Lessee"). The parties may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Lessor is the owner of certain property located at 2205 Bomber Drive in Bryan, Texas ("Bomber Drive Property"); and

WHEREAS, Lessor intends to lease to Lessee a portion the Bomber Drive Property (the "Leased Premises") to construct and operate recreational facilities.

Accordingly, the Parties agree as follows:

### ARTICLE I. DEMISE OF LEASED PREMISES

**1.01 Leased Premises.** In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Lessor demises and leases to Lessee, and Lessee leases from Lessor, the Leased Premises situated in Bryan, Brazos County, Texas, legally described on Exhibit A attached to this Lease, and made a part of this Lease for all purposes.

**1.02 Lessee Rights.** Lessee is to have and to hold the Leased Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them.

### ARTICLE II. LEASE TERM AND RENTAL RATE

**2.01 Term.** The term of this Lease begins on \_\_\_\_\_, 2021, and ends on \_\_\_\_\_, 2046 (the "Term"), unless terminated sooner as provided in this Lease. In any event, this Lease shall terminate, with no right of renewal, 12 months after the Effective Date, in the event that construction of the recreational facilities referenced above have not commenced.

**2.02 Renewal.** The Term will be extended for one consecutive, five-year period (the "Renewal Period") unless Lessee gives Lessor written notice of Lessee's intention to terminate the Lease no less than six months before the Initial Term expires.

**2.03 Holdover.** If Lessee holds over and continues in possession of the Leased Premises after the Term expires, other than as provided in Section 2.02, Lessee will be considered to be occupying the Leased Premises as a tenant at sufferance and will be subject to, at Lessor's option, immediate eviction and removal. Lessee will be subject to all the conditions, provisions, and obligations of the Lease insofar as same are applicable to a month-to-month tenancy.

**2.04 Surrender.** On the last day of the Term, or upon the earlier termination of this Lease, Lessee, will peaceably and quietly leave, surrender, and yield to Lessor the Leased Premises, free of all claims, broom clean, in good order and repair, and in condition for continued recreational use, normal wear and tear excepted. Lessee will remove all liens and other encumbrances that have resulted from the acts or omissions of Lessee. If Lessee fails to do any of the foregoing, Lessor, in addition to other remedies available to it at law or in equity, may, without notice, enter upon, reenter, possess and repossess itself thereof by force, summary proceedings, or otherwise and may dispossess and remove Lessee and all persons and property from the Leased Premises and remove any alterations required hereunder to be removed; and Lessee waives any and all damages or claims for damages as a result thereof. Such dispossession and removal of Lessee will not constitute a waiver by Lessor of any claims by Lessor against Lessee. If Lessee is not in default hereunder, Lessee will retain the ownership of all moveable equipment, furniture and supplies prior to termination of this Lease, if Lessee repairs any injury to the Leased Premises resulting from such removal. If Lessee does not move such movable equipment, furniture and supplies prior to such termination, then, in addition to its remedies at law or in equity, Lessor will have the right to have such items removed and stored or disposed of, and all damage to the Leased Premises resulting therefrom repaired at the cost of Lessee or elect that such movable equipment, furniture and supplies automatically become the property of the Lessor upon termination of this Lease, and Lessee will not have any further right with respect thereto or reimbursement therefor. Lessee will be responsible for, and will pay, any and all costs incurred by Lessor in restoring the condition of the Leased Premises at surrender to that required under the provisions hereof. The provisions of this Section 2.04 will survive the expiration or other termination of this Lease.

**2.05 Rentals.** Lessee will pay Lessor \$1.00 per year during the Term of this Lease as annual rent for using and occupying the Leased Premises. Lessee may make a lump-sum payment to cover the entire Lease Term.

### **ARTICLE III. USE OF LEASED PREMISES AND ALTERATIONS**

**3.01 Use.** The Leased Premises will be used solely for the operation of recreational facilities constructed and operated by Lessee or Lessee's approved sublessee ("Sublessee"). Lessee will not use the Leased Premises, or any portion thereof, for any other purpose than that set forth in this Lease without first having obtained the written approval of Lessor. Lessee will not use or permit the use of the Leased Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Leased Premises in any way that creates a hazard to persons or property.

**3.02 Reservation of Rights.** Lessor reserves for itself the right of ingress and egress for access to the adjacent Parks Department maintenance shed and to adjoining City of Bryan property.

**3.03 Improvements & Alterations.**

(a) Lessee may, at any time and from time to time during the Term, erect, maintain,

alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the Premises, and correct or change the contour of the Leased Premises, subject to the following:

- (i)** Lessee bears the cost of any such work;
- (ii)** Lessor must be notified of the time for beginning and the general nature of any such work, other than routine maintenance of existing buildings or improvements, at the time the work begins; and
- (iii)** The conditions of Section 3.03(b) concerning Lessor's approving plans must be followed.

**(b)** The following rules govern Lessor's approving construction, additions, and alterations of buildings or other improvements on the Leased Premises:

- (i)** No building or other improvement may be constructed on the Leased Premises unless the plans, specifications, and proposed location of the building or other improvement have received Lessor's written approval and the building or other improvement complies with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Leased Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Lessor.
- (ii)** Lessor will promptly review and approve all plans submitted by Lessee or will note in writing any required changes or corrections that must be made to the plans. Any required changes or corrections must be made, and the plans resubmitted to Lessor. Lessor's failure to request changes to or object to any submitted or resubmitted plans within 30 days of receipt constitutes Lessor's approval of the plans. Minor changes in work or materials not affecting the general character of the project may be made at any time without Lessor's approval.
- (iii)** The following items do not require submission to, and approval, by Lessor:
  - 1.** Minor repairs and alternations necessary to maintain existing structures and improvements in a useful state of repair and operation; or
  - 2.** changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements, to comply with legal requirements.

(c) Lessor will not unreasonably withhold its approval of any items required by this Section 3.03.

(d) With respect to any contract for work performed by Lessee or caused to be performed by Lessee in, on, or to the Leased Premises, Lessee will act as a principal and not as the agent of Lessor, and Lessor expressly disclaims any liability for the cost of labor performed by Lessee or material furnished to Lessee. Lessee will pay promptly when due the entire cost of any work affecting the Leased Premises done by or for the account of Lessee so that the Leased Premises will at all times be free of liens for labor and materials. Lessee will not cause or permit any mechanics' liens or other liens to be filed against the fee of the Leased Premises or against Lessee's leasehold interest (excluding any leasehold mortgage) in the land or any buildings or improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or anyone holding the Leased Premises or any part of them through or under Lessee. Lessee agrees to indemnify and hold Lessor harmless from and against and will cause to be discharged of record forthwith (by payment, bond, order of court of competent jurisdiction, or otherwise) any mechanic's, materialman's or other lien which may at any time be filed, claimed or asserted against the Leased Premises or any part thereof or interest therein arising out of work done by or for the account of Lessee, irrespective of whether or not such lien is valid or enforceable. In no event will Lessor or any of Lessor's property be liable for or chargeable with any expense or lien for work, labor, or materials used in the Leased Premises or any improvements or change thereof made at the request of, or upon the order of, or to discharge the obligation of Lessee.

**3.04 Ownership of Buildings, Improvements, and Fixtures.** Any buildings, improvements, additions, alterations, and fixtures (except for furniture and trade fixtures) constructed, placed, or maintained on any part of the Leased Premises during the Term are considered part of the real property of the Leased Premises and must remain on the Leased Premises and become Lessor's property when the Lease terminates.

**3.05 Right to Remove Improvements.** Lessee may, at any time while it occupies the Leased Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Lessee, its sublessees, or licensees, in, under, or on the Leased Premises, or acquired by Lessee, whether before or during the Lease Term.

**3.06 Maintenance.** At all times during the Term, Lessee will keep and maintain, or cause to be kept and maintained, all buildings and improvements erected on the Leased Premises in a good state of appearance and repair (except for reasonable wear and tear) at Lessee's own expense.

**3.07 Damage or Destruction.** If any building or improvement constructed on the Leased Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Lessee must, within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed

building or improvement and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the building to substantially the condition it was in before the casualty. But if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond Lessee's control, whether similar to any of those enumerated or not, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

**3.08 Trash, Garbage, and Utilities.** Lessee will provide and pay all costs for the adequate, sanitary handling of all trash, garbage and other refuse caused as a result of its operations on the Leased Premises and will provide for the timely removal of all trash, garbage and refuse from the Leased Premises in accordance with all applicable laws or regulations. Lessee will pay or cause to be paid all charges for water, heat, gas, electricity, sewer, and all other utilities on the Leased Premises throughout the Term, including any connection, tap or meter fees.

**3.09 Hazardous Substance.** No goods, merchandise or materials will be kept, stored or sold in or on said Leased Premises which are explosive or hazardous and which are not in customary use in the businesses herein authorized; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon.

**3.10 Inspection of Premises.** Lessor or its duly authorized representatives may enter upon the Leased Premises at any reasonable time during the Term for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of Lessor. Lessor's right to enter the Leased Premises is subject to any reasonable restrictions that may be included in a lease agreement between Lessee and its Sublessee. Lessee will make Lessor aware of any such restrictions.

**3.11 Quiet Enjoyment.** Lessor agrees that Lessee, upon payment of the rentals and all other payments and charges to be paid by Lessee under the terms of this Lease and upon observing and keeping each of the covenants of this Lease on the part of Lessee to be observed and kept, will lawfully and quietly hold, occupy and enjoy the Leased Premises, equipment, furniture and fixtures during the Term of this Lease.

#### **ARTICLE IV. ENCUMBRANCE OF LEASEHOLD ESTATE**

**4.01 Encumbrance.** Lessee may, at any time and from time to time, encumber the leasehold interest, by deed of trust, mortgage, or other security instrument, only after obtaining the prior, written consent of Lessor. No such encumbrance, if approved by Lessor, will constitute a lien on Lessor's fee title. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this Lease and to all Lessor's rights under this Lease.

#### **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**5.01 Liability Insurance.** Lessee will provide commercial general liability insurance for

personal injuries and death arising out of a single occurrence in a minimum amount of \$500,000.00 and an aggregate amount of \$1,000,000.00. Lessee is required to name the Lessor as an additional insured on the policy of general liability insurance. Lessee will maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy will provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the Lessor, its officers, agents, servants or employees and Lessee, its officers, agents, servants or employees.

(a) Lessee's obligation to carry commercial generally liability insurance may be performed by a Sublessee. The Sublessee must comply with all requirements of Section 5.01.

**5.02 Property Insurance.** At all times during the Term, Lessee will keep all buildings and other improvements located or being constructed on the Leased Premises insured against loss or damage by fire, vandalism, and malicious mischief coverage with extended-coverage endorsement or its equivalent. Lessee will maintain said insurance with a solvent insurance company authorized to do business in Texas. The insurance must be paid for by Lessee and will be in amounts not less than 100% of the full insurable value of the buildings and other improvements. The insurance policy or policies must name both Lessor and Lessee as named insureds. Lessee must also procure and maintain, at its expense, all-risk property insurance in an amount equal to the full replacement cost of Lessee's furniture, fixtures, equipment and other property located at the Leased Premises.

**5.03 INDEMNIFICATION.** THE LESSEE OR ITS INSURER WILL INDEMNIFY, DEFEND AND HOLD THE LESSOR AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES, INCLUDING ANY MEMBER OF ITS GOVERNING BODY, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE OR LOSS OF PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RESULTING FROM THE LESSEE'S USE AND OCCUPANCY OF THE LEASED PREMISES AND/OR ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS LEASE AND FROM ANY LIABILITY ARISING OUT OF OR RESULTING FROM THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF LESSEE, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.

**5.04 Waiver of Subrogation.** Lessor and Lessee each waive any claim it might have against the other for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured against or is required hereunder to be insured against under any insurance policy that covers the improvements, the Leased Premises, Lessee's fixtures, personal property,

leasehold improvements, or business. Each Party will cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.

## **ARTICLE VI. EMINENT DOMAIN**

**6.01 Eminent Domain.** If the Leased Premises, or a substantial part thereof, is lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, the Term of this Lease will end upon, and not before, the date of the taking of possession by the condemning authority. Rentals will be apportioned as of the date of such termination, and Lessee will be entitled to pursue an award with respect to such taking or condemnation. If any part of the Leased Premises not constituting a substantial part thereof is so taken or condemned or conveyed under threat of such taking or condemnation, or if the grade of any street adjacent to the Leased Premises is changed by any competent authority and such taking or change of grade makes it necessary or desirable substantially to remodel or restore the Leased Premises, Lessee will have the right to cancel this Lease, such cancellation to take place no later than the date of this taking of possession by the condemning authority, and Lessee will be entitled to pursue an award with respect to such taking or condemnation. Lessor will give Lessee notice of such intended taking or condemnation within a reasonable time of its receipt of same.

## **ARTICLE VII. TAXES AND LICENSES**

**7.01 Licenses and Permits.** Lessee will obtain and pay for all licenses or permits necessary or required by law for the construction of additions or improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder.

**7.02 Taxes.** Lessee will be responsible for payment of any and all taxes and assessments arising from the Lessee's use of the Leased Premises.

## **ARTICLE VIII. DEFAULT AND REMEDIES**

**8.01 Lessee Default.** If Lessee defaults in performing any covenant or term of this Lease and does not correct the default within 60 days after receipt of written notice from Lessor to Lessee, Lessor may pursue any remedy Lessor has available to it by law or in equity; subject, however, to the limitation that in no event shall the Lessor have the right or remedy to terminate the Lease except as allowed by Section 2.01.

**8.02 Lessor's Default.** If Lessor defaults in performing any covenant or term of this Lease and does not correct the default within 60 days after receipt of written notice from Lessee to Lessor, Lessee may pursue any remedy Lessee has available to it by law or in equity.

## ARTICLE IX. TITLE

**9.01 Warranty of Title.** Lessor owns good and indefeasible fee simple title to the Premises, and has the authority to enter into and perform this Lease in accordance with its terms.

**9.02 Title Commitment.** The parties have agreed to not obtain a Title Commitment as part of this transaction.

## ARTICLE X. GENERAL PROVISIONS

**10.01 Waiver.** No waiver by either party of any default or breach of any covenant or term of this Lease may be treated as a waiver of any subsequent default or breach of the same or any other covenant or term of this Lease.

**10.02 Severability.** Every provision of this Lease is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Lease.

**10.03 Successors and Assigns.** This Lease binds, and inures to the benefit of, the Parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**10.04 Notice.** All notices provided for herein must be in writing. Any notice permitted or required to be given to the Parties hereto will be effective if hand delivered or mailed certified, return receipt requested to the Parties at the following addresses:

Lessee: Bryan Business Council, Inc.  
Attn: BBC Board President  
P.O. Box 1000  
Bryan, Texas 77805

With copy to: West, Webb, Allbritton & Gentry  
Attn: Michael Gentry  
1515 Emerald Parkway  
College Station, Texas 77845

Lessor: City Manager  
City of Bryan  
P.O. box 1000  
Bryan, Texas 77805

Any of the necessary notices may be sent to the foregoing addresses or another address of the Party, provided that notice of change of address has been given to the Party to be bound by the notice in writing beforehand.

**10.05 Assignment and Subleases; Amendment.** Neither Party may assign this Lease, collaterally, or otherwise, or any of its rights under it without the prior, written consent of the other Party. Lessee may not enter into a sublease without the prior, written consent of Lessor. Such consent shall not unreasonably be withheld or delayed. In the event of any assignment or sublease that is consented to by Lessor, Lessee shall remain primarily liable for the payment and performance of all of the obligations of the Lessee under this Lease. Further, the Parties may modify or waive this Lease only by a separate writing that expressly modifies or waives this Lease and is signed by each Party.

**10.06 Choice of Law and Choice of Venue.** This Lease will be governed by and construed and enforced according to the laws of the State of Texas, without regard to the principles of conflicts of law. This Lease is performable in Brazos County, Texas, and venue for any suit arising this Lease shall be in Brazos County, Texas.

**10.07 Counterparts and Copies.** The Parties may execute this Lease in multiple counterparts, each of which will constitute an original and all of which together will constitute one instrument. A copy of the original Lease will be as enforceable as the original Lease itself.

**10.08 Entire Agreement.** This Lease constitutes the final agreement between the Parties. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Lease are expressly merged into and superseded by this Lease.

**10.09 Headings.** Titles, headings, and captions in this Lease are included for convenience and reference only and will not be deemed to constitute a part of or to affect the construction of this Lease.

**10.10 Attorney's Fees.** Any signatory to this Lease who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Lease will be entitled to recover court costs, reasonable attorney fees, and all other out-of-pocket costs, from the non-prevailing party.

**10.11 Force Majeure.** If the curing of any default or the performance of any other covenant or term of this Lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or casualty, or any other circumstances beyond Lessee's control or that of the Party obligated or permitted under this Lease to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated or not, each Party so delayed is excused from performance during the delay period.

**[Signatures to Follow]**

**IN WITNESS WHEREOF**, the Parties execute this Lease to be effective on the Effective Date.

**CITY OF BRYAN:**

by: \_\_\_\_\_  
Andrew Nelson, Mayor

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**BRYAN BUSINESS COUNCIL, INC.:**

by: \_\_\_\_\_  
Sam Harrison, President

Date: \_\_\_\_\_