

RFP EXHIBIT VII
OPERATING AGREEMENT WITH BEXAR COUNTY

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OPERATING AGREEMENT
BETWEEN
BEXAR COUNTY, TEXAS,
AND
EASTSIDE CHRISTIAN ACTION GROUP

OCTOBER 6, 2009

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TABLE OF CONTENTS

ARTICLE I **TERM** 4

ARTICLE II **PARTIES' REPRESENTATIVES**..... 4

ARTICLE III **OPERATOR'S RIGHTS AND OBLIGATIONS** 5

ARTICLE IV **FINANCIAL OBLIGATIONS** 10

ARTICLE V **COMMUNITY OVERSIGHT COMMITTEE**..... 12

ARTICLE VI **RECORDS AND AUDITS**..... 13

ARTICLE VII **CHANGES, ALTERATIONS, AND IMPROVEMENTS** 14

ARTICLE VIII **INDEMNIFICATION** 14

ARTICLE IX **USE OF SPORTS FACILITY**..... 16

ARTICLE X **DAMAGE OR DESTRUCTION**..... 16

ARTICLE XI **CONDEMNATION** 17

ARTICLE XII **ASSIGNMENT AND TRANSFER**..... 17

ARTICLE XIII **REPRESENTATIONS, WARRANTIES AND COVENANTS** 17

ARTICLE XIV **TERMINATION EVENTS, EVENTS OF DEFAULT, AND
REMEDIES**..... 19

ARTICLE XV **DISPUTE RESOLUTION** 22

ARTICLE XVI **SURRENDER** 22

ARTICLE XVII **MISCELLANEOUS**..... 23

EXHIBIT "A" **DEFINITIONS**..... 27

EXHIBIT "B" **DESCRIPTION OF THE PREMISES**..... 34

EXHIBIT "C" **CITY LICENSE AGREEMENT** 35

EXHIBIT "D" **BUSINESS PLAN**..... 36

VOL 810 PG 650

**OPERATING AGREEMENT BETWEEN
BEXAR COUNTY, TEXAS, AND
EASTSIDE CHRISTIAN ACTION GROUP**

V 810P6651

This **OPERATING AGREEMENT** ("Operating Agreement") is made and entered into as of the effective date of October 6, 2009 ("Effective Date") by and between **COUNTY OF BEXAR**, a political subdivision of the State of Texas (the "COUNTY"), and **EASTSIDE CHRISTIAN ACTION GROUP**, a Texas non-profit corporation under Section 501(c)(3) of the IRS Code of 1986, as amended (the "OPERATOR"). The OPERATOR is the same legal entity as the DEVELOPER in the Grant and Development Agreement between the COUNTY and EASTSIDE CHRISTIAN ACTION GROUP ("Development Agreement"). The COUNTY and the OPERATOR shall collectively be referred to as the "Parties".

DEFINITIONS AND INTERPRETATIONS. Each term or phrase used in this Operating Agreement in which the first letter of each word is capitalized has the meaning set forth in the attached Exhibit "A", unless the context in which such term or phrase is used in this Operating Agreement clearly indicates otherwise.

RECITALS

WHEREAS, the CITY and the OPERATOR entered into a License Agreement dated June 28, 2009, approved by Ordinance 2009-06-18-0532, through which the OPERATOR is entitled to use certain land at the Martin Luther King Park and adjacent land in the Wheatley Heights neighborhood acquired through FEMA which comprises approximately one hundred seventy (170) acres in the City of San Antonio, Bexar County, Texas, identified as the premises ("Premises") in Exhibit "B". The License Agreement is for an initial term of five (5) years with up to seven (7) additional renewal options for a period of five (5) years each ("CITY'S License Agreement"). The CITY'S License Agreement is attached hereto and incorporated herein as Exhibit "C";

WHEREAS, the COUNTY also concurs with the CITY and the OPERATOR that an amateur sports and recreational facility on the Premises ("Sports Facility") will provide community and sports related activities for the citizens of Bexar County and will enhance economic development in Bexar County and the neighborhoods surrounding the Sports Facility;

WHEREAS, as authorized by majority vote of the electorate in a special election called by the COUNTY, pursuant to Texas Local Government Code Sections 334.024 and 334.103, held on May 10, 2008, the COUNTY has agreed to provide to the OPERATOR the funding necessary to develop and construct the Sports Facility through the issuance and sale of the Bonds, subject to the terms of this Development Agreement;

WHEREAS, the Parties entered into a Letter of Intent which contemplates that the COUNTY shall provide funding up to SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00) pursuant to a financing program to support the development and construction of the Sports Facility ("COUNTY Contribution");

WHEREAS, the Sports Facility shall be designed and constructed by the OPERATOR, as provided in this Development Agreement, to support the provision of a venue for football,

soccer, a running track, cross-country track/trail, and multi-use courts for the youth and young adults of both the local community as well as for regional competition at Martin Luther King Park and Wheatley Heights ("Project"). The running track at the Sports Facility shall be designed and built to AAU standards ("the Design Standards") and shall comply with applicable building codes and ordinances; and

WHEREAS, the Sports Facility will be exclusively managed and operated by the OPERATOR pursuant to a forty (40) year operating agreement (the "Operating Agreement") dated of even date hereof, and executed simultaneously herewith, between the OPERATOR and the COUNTY.

NOW, THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Operating Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I
TERM

1.01 Commencement and Term. This Operating Agreement becomes binding on the Parties on the Effective Date; however, unless expressly stated that the Effective Date governs, the rights and obligations of the Parties under this Operating Agreement begin on the Commencement Date as set out herein. The Commencement Date of this Operating Agreement occurs on the day following the Project Completion Date, as reflected in the Project Completion Letter required in the Development Agreement ("Commencement Date"). The term (the "Term") of this Operating Agreement shall commence on the Effective Date and shall terminate on the Termination Date.

ARTICLE II
PARTIES' REPRESENTATIVES

2.01 OPERATOR'S Control. The OPERATOR shall have full control and discretion in the operation, direction, management and supervision of the Sports Facility, and its staff, subject to the terms of this Operating Agreement.

2.02 Authority of OPERATOR. The OPERATOR shall have the exclusive right and authority to exercise, or may delegate the exercise of, all rights, powers and duties conferred or imposed on the OPERATOR in this Operating Agreement; provided, however, that the right to delegate such rights, powers and duties shall not relieve the OPERATOR of its duties and responsibilities hereunder.

2.03 Duty and Liability. The OPERATOR shall conduct the management and operation of the Sports Facility at all times with integrity and good faith in a manner which is consistent with the terms of this Operating Agreement.

2.04 OPERATOR Representative. Upon execution of this Operating Agreement, the OPERATOR shall designate in writing to the COUNTY the name of the individual who is to be the OPERATOR Representative with full authority to execute any and all instruments and to otherwise act on behalf of the OPERATOR with respect to its activities with and obligations

810PG653

owed to the COUNTY arising out of this Operating Agreement. From time to time following the execution hereof, the OPERATOR may change or replace the OPERATOR Representative by giving the COUNTY written notice thereof. Any consent, approval, decision or determination hereunder by the OPERATOR Representative shall be binding on the OPERATOR, provided, however, that the OPERATOR Representative shall not have any right to modify, amend or terminate this Operating Agreement. The COUNTY, and any Person dealing with the OPERATOR in connection with this Operating Agreement or any matter governed by this Operating Agreement, may rely and shall be fully protected in relying upon the authority and capacity of the OPERATOR Representative to act for and bind the OPERATOR in any such matter, except with respect to any modification, amendment or termination of this Operating Agreement.

2.05 COUNTY Representative. The COUNTY designates the Director of the Bexar County Venues Program Office to be the COUNTY Representative and provide the OPERATOR with written notice of the identity of the individual so designated. The COUNTY shall have the right, from time to time, to change the Person designated as the COUNTY Representative by giving the OPERATOR written notice thereof. With respect to any action, decision or determination which is to be taken or made by the COUNTY under this Operating Agreement, the COUNTY Representative may take such action or make such decision or determination or shall notify the OPERATOR in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any consent, approval, decision or determination hereunder by any COUNTY Representative shall be binding on the COUNTY; provided, however, that the COUNTY Representative shall not have any right to modify, amend or terminate this Operating Agreement. The OPERATOR, and any Person dealing with the COUNTY in connection with this Operating Agreement or any matter governed by this Operating Agreement, may rely and shall be fully protected in relying upon the authority and capacity of the COUNTY Representative to act for and bind the COUNTY in any such matter, except with respect to any modification, amendment or termination of this Operating Agreement.

2.06 OPERATOR Pre-Operations Start Date Duties. After the Commencement Date, the OPERATOR shall have such rights and shall discharge such duties as are reasonable and necessary to ensure that the Sports Facility is equipped, staffed and managed to commence operations upon the Operations Start Date.

ARTICLE III
OPERATOR'S RIGHTS AND OBLIGATIONS

3.01 Expenses of Ownership. The OPERATOR shall assume the risks of all costs of the operation of the Sports Facility. The OPERATOR shall fully equip, operate and maintain the Sports Facility and shall have and perform all obligations as an operator, including (but not limited to) maintenance, repair and replacement of the structural components, infrastructure improvements, and the operating systems (including replacements required by physical or functional obsolescence); payment of insurance premiums for insurance maintained at levels necessary to replace all improvements; payment of all utilities; and other duties associated with operating and managing the Sports Facility.

3.02 Maintenance and Repairs.

- A. OPERATOR'S Obligation. The OPERATOR shall throughout the Term do the following:
- (1) Perform all Maintenance and perform all Capital Repairs, or cause the performance of all Maintenance and all Capital Repairs, necessary to keep and maintain the Sports Facility in a first class condition; and
 - (2) Maintain and keep, or cause to be maintained and kept, the Sports Facility in a clean, neat, safe, and orderly condition given the nature and use of the Sports Facility.
 - (3) Host tournaments and provide practice facilities.
 - (4) Submit to the COUNTY Representative, within ten (10) Business Days of approval by the CITY, the annual Maintenance program for the Sports Facility required under Article 8, Section 8.1 of the CITY License Agreement. The COUNTY shall have ten (10) Business Days to provide additional maintenance requirements to the CITY-approved Maintenance program.

3.03 Management. The OPERATOR shall be the exclusive manager and operator and OPERATOR of the Sports Facility and shall have the exclusive right to use the Sports Facility during the Term in a manner that will promote and further the purposes for which the Sports Facility has been constructed. The OPERATOR shall have the exclusive right to delegate any portion of its duties and responsibilities hereunder to a Sports Facility Management Firm(s); provided, however, that any such delegation shall not relieve the OPERATOR of any of its obligations hereunder. In performing its duties and responsibilities hereunder, the OPERATOR shall maintain, operate, and manage the Sports Facility in a first condition. Without limiting the generality of the foregoing, the OPERATOR is authorized to and shall:

- A. collect all Sports Facility Operating Revenues, and in connection therewith, use all reasonable efforts to obtain all fees, rents and other amounts due from Licensees, Concessionaires and other users of the Sports Facility with all Sports Facility Operating Revenues to be deposited in an Operating Fund;
- B. distribute funds from the Operating Fund to pay Sports Facility Operating Expenses, payable by the OPERATOR in the ordinary course of business when they become due;
- C. the OPERATOR shall commence, defend and settle such legal actions and proceedings concerning the operation of the Sports Facility as are necessary or required in the opinion of the OPERATOR and retain counsel in connection therewith;
- D. employ, pay and supervise all personnel that the OPERATOR determines to be necessary for the operation of the Sports Facility, including such personnel as

shall be necessary to maintain and ensure public order and safety in and around the Sports Facility; determine all matters with regard to its employees, including, without limitation, compensation, hiring and replacement; not knowingly employ Persons who do not have the proper legal credentials for employment in the United States; and prepare, on its own behalf and file when due, all forms, reports and returns required by law relating to the employment or hiring of such personnel;

- E. purchase or rent materials, tools, machinery, equipment, spare parts and supplies necessary for the operation of the Sports Facility;
- F. arrange for all utility and other services for the Sports Facility and pay, or cause to be paid, when due all charges for water, sewer, gas, light, heat, telephone, electricity and other utilities and services rendered to or used on or about the Sports Facility;
- G. maintain, or cause to be maintained, all necessary licenses, permits and authorizations for the operation of the Sports Facility;
- H. procure and negotiate contracts with Concessionaire(s) for the operation of Consumable and/or Non-Consumable Concessions at the Sports Facility unless the OPERATOR is operating the Consumable and/or Non-Consumable concessions;
- I. procure and negotiate contracts with all service providers and suppliers of the Sports Facility;
- J. use reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Sports Facility and prepare and file any and all reports required by any insurance carriers in connection with the accident and provide copies of the reports, upon request, to the COUNTY;
- K. maintain at its regular business office separate, true and complete books, records, accounts, journals and files regarding the management and operation of the Sports Facility;
- L. promptly notify the COUNTY of any suit, proceeding or Action filed against the OPERATOR and/or the COUNTY that is initiated or threatened in connection with the Sports Facility;
- M. provide the COUNTY Representative with copies of all information including reports and financial statements furnished to the CITY as required in CITY's License Agreement;
- N. provide sufficient security during Events to protect the attendees and the participants from injury and the Sports Facility grounds from damage; and

- O. if necessary, provide security measures during periods in which the Sports Facility is not being utilized for events to adequately protect the Sports Facility from vandalism and theft.

3.04 Use Agreements. The OPERATOR shall have the exclusive right to negotiate, execute and perform all use agreements with entities who desire to schedule Events at the Sports Facility including for practice, tournaments, and competitions. The OPERATOR shall have the exclusive control over the negotiation and execution of contracts with users of the Sports Facility. In so doing, the OPERATOR shall negotiate for rental rates with the goal of maximizing use of the Sports Facility and the generation of revenues therefrom. The OPERATOR shall also have the right to negotiate and enter into agreements with users of the Sports Facility whereby the OPERATOR and such user co-promote an Event at the Sports Facility. Each of these co-promotion contracts shall specifically set forth the arrangement between the OPERATOR and the co-promoter with respect to sharing of revenues and expenses attributable to co-promoter's use of the Sports Facility in connection with an Event.

3.05 Temporary Advertising. The OPERATOR shall have the right to sell, license, and/or grant Temporary Advertising. Temporary Advertising shall be signage placed at the Sports Facility before an Event and taken down following the conclusion of the Event and shall be subject to the naming rights parameters as set out in Section 3.11 below.

3.06 Concessions. The OPERATOR shall have the exclusive right to operate and/or contract for the operation of Concessions (both fixed and portable) and catering operations at the Sports Facility for the sale of Consumable and Non-Consumable Concessions. All contracts entered into by the OPERATOR with a Concessionaire or vendor for the exclusive sale of a brand of food, beverages, apparel, game programs and sporting equipment shall recognize the right of the OPERATOR to agree to comply with the contractual obligations of a tournament or competition sponsor with regard to the exclusive use and sale of another vendor's products.

3.07 Booking. The OPERATOR shall have the sole right and duty to arrange for and otherwise book Events at the Sports Facility. The OPERATOR shall develop and maintain a scheduling system for Events at the Sports Facility.

3.08 Ticketing. The OPERATOR shall control and coordinate all ticketing for Events at the Sports Facility.

3.09 Security and Traffic Control. The OPERATOR shall develop and implement a traffic management plan to facilitate the ingress and egress of traffic to and from Events at the Sports Facility.

3.10 Significant Event Reports. Should any Force Majeure or Casualty or other event occur that could have a material impact on the Sports Facility, the OPERATOR will immediately prepare a written "Significant Event Report" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the COUNTY Representative within five (5) Business Days after the OPERATOR'S discovery of such Force Majeure, Casualty or other event.

3.11 Naming Rights Parameters. The OPERATOR will have the sole and exclusive right, following the Effective Date, to grant license agreements for the naming rights to the Sports Facility and the individual football and soccer fields, the running track, the cross-country tract/trail, and the multi-use courts, subject to the following limitations:

A. Subject only to the circumstances described in Subsection B below, the OPERATOR shall obtain the COUNTY'S approval of the "flag name" of the Sports Facility and of the terms of the license agreement granting the naming rights to such facility.

B. The OPERATOR will not be required to obtain the COUNTY'S approval of the terms of a naming rights license agreement for the Sports Facility if:

- (i) such license agreement evidences a legally binding and enforceable obligation of: (i) a single licensee to fund an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) as consideration for naming rights or the license agreement for the "flag name" or (ii) naming rights for the individual football and soccer fields, the running track, the cross-country tract/trail, and the multi-use courts and other structures to fund an amount not less than TEN THOUSAND DOLLARS (\$10,000.00);
- (ii) such license agreement provides that, if such amount is not fully funded, the license agreement will terminate; and
- (iii) the license agreement and the name(s) permitted thereunder comply with the naming parameters identified in Subsection C below.

C. Any license agreement granting flag naming rights for the Sports Facility and any license agreement granting naming rights for the individual football and soccer fields, the running track, the cross-country tract/trail, and the multi-use courts and other structures shall contain the following restrictions, limitations and conditions:

- (i) The licensed name shall:
 - (1) Include the name of a facilitator or benefactor of the Sports Facility or the individual football and soccer fields, the running track, the cross-country tract/trail, and the multi-use courts and other structures;
 - (2) Honor a person, place, institution, group, entity or event, whether now existing or that existed in the past;
 - (3) Recognize events or affairs of historic significance; or
 - (4) Embrace civic ideals or goals.
- (ii) The licensed name shall not include a name or reference that:

- (1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;
- (2) May violate the rights of any person, institution, group or entity;
- (3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases, firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by Applicable Law;
- (4) Advocates or opposes any political candidate, issue, cause, or belief;
- (5) Identifies, or is identified with, a person or organization that has been convicted of a criminal offense; or
- (6) Advocates violence, criminal activity or immorality.

ARTICLE IV
FINANCIAL OBLIGATIONS

4.01 Business Plan. The OPERATOR shall submit to the COUNTY within one hundred eighty (180) days of the Effective Date a Business Plan. When approved in writing by the COUNTY, the Business Plan will automatically become incorporated in this Operating Agreement. The Business Plan will be based on a five (5) year rolling plan and incorporate an Operating Budget also based on a five (5) year rolling plan. The Business Plan shall be updated annually and shall be subject to the review of the Community Oversight Committee under Subsection 5.01B below.

4.02 The Capital Improvement and Repair Fund and the Reserve Fund.

A. The OPERATOR shall establish the Capital Improvement and Repair Fund on or prior to the Operations Start Date, and shall commence the funding of same during the first year of operation of the Sports Facility with the goal of the OPERATOR to have funded the Capital Improvement and Repair Fund in the amount stated herein within thirty-six (36) months of the Operations Start Date. The OPERATOR shall fund the Capital Improvement and Repair Fund from the Sports Facility Operating Revenues remaining after payment of all usual and customary Sports Facility Operating Expenses and after funding the Reserve Fund. The OPERATOR shall use its best efforts to maintain a reserve in the Capital Improvement and Repair Fund of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) ("Capital Improvement and Repair Fund Goal"). The Capital Improvement and Repair Fund will be a funding source for the maintenance, repair, refurbishment, upgrades, improvements, and replacement of the components comprising the Sports Facility, including (without limitation) all

infrastructure, fixtures, equipment, surfaces, and structures used in the operation of the Sports Facility. The OPERATOR shall maintain complete Records reflecting the sources and uses of the Capital Improvement and Repair Fund, including, but not limited to, the manner in which the OPERATOR has allocated Sports Facility Operating Revenues to the Capital Improvement and Repair Fund. The COUNTY, and its authorized representative(s), including the Community Oversight Committee, shall have the right to examine, inspect and audit such Records to determine the OPERATOR'S compliance with the requirements of this Operating Agreement as part of the COUNTY'S annual inspection of the Sports Facility and examination of the Records. The COUNTY may copy all or part of such Records and may retain such copies. The cost and expense of such examinations, inspections and audits will be the sole responsibility of the COUNTY; provided, however, if an audit reflects that the OPERATOR has expended more than ten percent (10%) of the Capital Improvement and Repair Fund in a manner not authorized by this Operating Agreement, the reasonable cost and expense of the audit will be borne by the OPERATOR.

- B. Capital Improvement and Repair Schedule. The OPERATOR shall prepare before the beginning of each Fiscal Year, commencing with the beginning of the first Fiscal Year, a rolling five (5) year Capital Improvement and Repair schedule for the Sports Facility ("Capital Improvement and Repair Schedule") which indicates the schedule for implementing the Capital Improvement and Repairs that the OPERATOR anticipates (but without obligation) making to the Sports Facility during each of the succeeding five (5) Fiscal Years.

- C. The Reserve Fund. The purpose of the Reserve Fund is to pay unanticipated Sports Facility Operating Expenses that were not funded in the Operating Budget or deficiencies in the allocation of funding the Sports Facility Operating Expenses. The OPERATOR shall establish the Reserve Fund on, or prior to, the Operation Start Date and shall commence funding during the first year of operation of the Sports Facility. The OPERATOR shall fund the Reserve Fund from the Sports Facility Operating Revenues. The goal of the OPERATOR shall be to fund the Reserve Fund within thirty-six (36) months of the Operations Start Date in an amount equal to three (3) months of the average total monthly Sports Facility Operating Expenses ("Reserve Fund Goal"). The OPERATOR shall use its best efforts to maintain that Reserve Fund Goal. The Reserve Fund shall operate on a five (5) year rolling plan to be updated in the OPERATOR'S annual Business Plan.

4.03 Release of Funds Following Termination of Operating Agreement. Within thirty (30) days after the Termination Date any and all funds remaining as Net Operating Income together with funds remaining in the Capital Improvement and Repair Fund and the Reserve Fund shall be distributed to the CITY for use by the successor OPERATOR of the Sports Facility.

ARTICLE V

COMMUNITY OVERSIGHT COMMITTEE

5.01 Rights of Community Oversight Committee. The COUNTY will appoint, through Bexar County Commissioners Court, an independent committee during the Term to: (i) conduct an annual general site inspection of the Sports Facility grounds; (ii) receive and approve the annual Maintenance program described in Subsection 3.02A(4); (iii) conduct a review of the financial statement, and backup, set out in Section 6.02 below with the OPERATOR Representative; (iv) conduct a review of all accident reports filed with insurance carriers; and (v) conduct a review of the previous year's practice and competition calendar and the bookings for the coming year. The annual inspection of the Sports Facility grounds and review of the financial statement are for the purpose of confirming the OPERATOR'S compliance with the terms of this Operating Agreement.

- A. The Community Oversight Committee shall have the right to enter the Sports Facility during regular business hours once per Fiscal Year upon reasonable notice, but not less than seventy-two (72) hours, in order to inspect the football and soccer fields, the running track, the cross-country tract/trail, and the multi-use courts, the grounds, structures, equipment, furnishings, and fixtures provided that: (i) the Community Oversight Committee shall not interfere with the operations of the Sports Facility; and (ii) the Community Oversight Committee shall not disturb the license or concession rights of others. The OPERATOR will be provided with the name of the Community Oversight Committee representative chairing the inspection at the time the OPERATOR is notified of the annual inspection date and time.
- B. In addition, the Community Oversight Committee shall meet once per Fiscal Year with the OPERATOR Representative to review the financial documentation set out in Section 6.02 below and to examine the backup documentation, if necessary, to confirm the information contained in the financial documentation. Copies may be made of such documentation at the COUNTY'S request and expense.
- C. Within thirty (30) days of the Community Oversight Committee's conclusion of its inspection of the Sports Facility and review of the financial statement for the relevant Fiscal Year, the Committee shall develop and deliver to the COUNTY Representative a report detailing the results of the Committee's on-site inspection of the Sports Facility and examination of the OPERATOR'S financial documentation. The report shall include the Committee's recommendations for improving compliance, if necessary, with the terms of this Operating Agreement.
- D. The COUNTY Representative shall deliver to the OPERATOR Representative a copy of the Community Oversight Committee's report within thirty (30) days of the COUNTY'S receipt of the report. The Committee report shall be accompanied by a summary letter from the COUNTY Representative advising the OPERATOR as to whether the COUNTY is in agreement with the Community Oversight Committee report regarding the non-compliance issues. The OPERATOR shall have the right to contest the findings set out in the Committee's report as well as the COUNTY'S summary letter. The COUNTY

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Representative and the OPERATOR Representative shall work together to resolve any issues regarding compliance and determine solutions for bringing the Sports Facility into compliance if the Sports Facility is not in compliance. If the COUNTY and the OPERATOR are unable to resolve issues regarding compliance of the Sports Facility under this Operating Agreement, the Parties shall use the dispute resolution provisions under Article XV below.

- E. Once any disputed issues are agreed upon by the Parties, the OPERATOR shall have three (3) months to resolve the non-compliance and/or safety issues and provide a report to the COUNTY Representative and the Community Oversight Committee as to the manner in which the issues were brought into compliance. The COUNTY Representative shall determine, in his sole discretion, whether a follow-up inspection to determine compliance of the Sports Facility shall take place during the annual inspection for the next Fiscal Year or sooner. If the inspection to determine compliance will occur earlier than the next annual inspection, the OPERATOR shall be given a minimum of thirty (30) days' notice of the inspection.

ARTICLE VI
RECORDS AND AUDITS

6.01 Records. For a period of four (4) years after the end of the Fiscal Year to which they pertain, the OPERATOR shall keep and maintain complete and accurate Records for the Sports Facility and for the OPERATOR separate and identifiable from its other records and such Records shall be sufficient to verify the Sports Facility Operating Revenues and Sports Facility Operating Expenses. The COUNTY, through its representatives including the Community Oversight Committee, shall be entitled to inspect and audit, at the COUNTY'S expense, the books, Records and accounts relating to the Sports Facility to the extent they could have an effect upon the Sports Facility Operating Revenues, the Sports Facility Operating Expenses, the Capital Improvement and Repair Fund, and the Reserve Fund during the Term of this Operating Agreement and three (3) years thereafter.

6.02 Financial Reports. The OPERATOR shall furnish to the COUNTY, as soon as practicable and, in any event within sixty (60) days after the end of each Fiscal Year, a financial statement as of the end of such Fiscal Year prepared in accordance with GAAP, which reflects: (i) the Sports Facility Operating Revenues and Sports Facility Operating Expenses for such Fiscal Year; (ii) the calculation of Net Operating Income for such Fiscal Year; and (iii) contributions to, and expenditures from, the Capital Improvement and Repair Fund and the Reserve Fund. The OPERATOR shall also provide the COUNTY with an updated Business Plan, a report of major tournaments revenues, and a copy of the IRS Form 990, Return of Organization Exempt from Income Tax, filed for such Fiscal Year.

ARTICLE VII

CHANGES, ALTERATIONS, AND IMPROVEMENTS

7.01 Changes, Alterations, and Improvements. Subject to the limitations and requirements contained elsewhere in this Operating Agreement, the OPERATOR shall have the right from time to time to construct replacement improvements to the Sports Facility and to make changes and alterations in, or to, the Sports Facility. The OPERATOR shall not make any improvements to the Sports Facility which would be reasonably expected to have a material adverse effect upon the operations of the Sports Facility or that materially alter the nature or character of the Sports Facility. All improvements shall: (i) be approved by the COUNTY; and (ii) once commenced, be made with due diligence and shall be completed in a good and workmanlike manner and in compliance with all Applicable Laws. Upon installation, all improvements shall become a part of the Sports Facility.

ARTICLE VIII
INDEMNIFICATION

8.01 INDEMNIFICATION. THE OPERATOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD THE COUNTY AND ITS OFFICIALS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") HARMLESS FROM, AND AGAINST, ANY AND ALL LIABILITIES, DAMAGES, SUITS, CLAIMS AND JUDGMENTS OF ANY NATURE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND EXPENSES) ARISING FROM, OR IN CONNECTION WITH, THE SPORTS FACILITY INCLUDING INJURY TO, OR DEATH OF, A PERSON OR ANY DAMAGE TO PROPERTY (INCLUDING LOSS OF USE) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH: (I) ANY DEFAULT BY THE OPERATOR UNDER THIS OPERATING AGREEMENT; OR (II) THE USE OR OCCUPANCY OF THE SPORTS FACILITY UNDER THIS OPERATING AGREEMENT ON OR AFTER THE COMMENCEMENT DATE; OR (III) THE NEGLIGENCE OR WILLFUL ACT OF THE OPERATOR OR ITS CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONSULTANTS, AGENTS, GUESTS, OR INVITEES. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE RIGHT OF THE COUNTY TO INDEMNIFICATION UNDER THIS ARTICLE VIII IS COMPLETELY INDEPENDENT AND SEPARATE FROM AND SHALL NOT LIMIT SUCH PARTY'S RIGHT TO SEEK REMEDIES AND RELIEF UNDER ARTICLE XIV OR UNDER APPLICABLE LAW AND NO QUALIFICATION TO OR LIMITATIONS ON THE OPERATOR'S OBLIGATION TO INDEMNIFY ANY INDEMNITEE, AS PROVIDED HEREIN, SHALL AFFECT OR LIMIT THE RIGHTS OF ANY PERSON TO DAMAGES OR ANY OTHER RELIEF DUE TO AN OPERATOR EVENT OF DEFAULT OR OTHERWISE FOR DAMAGES OR LIABILITIES ARISING OUT OF OR IN CONNECTION WITH AN EVENT OF DEFAULT BY THE OPERATOR.

A. Indemnification Procedures.

- (1) If any Indemnitee shall discover or have actual notice of facts giving rise, or which may give rise, to a claim for indemnification under this Article VIII, or shall receive notice of any Action, with respect to any matter for which indemnification may be claimed, the Indemnitee shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the OPERATOR a reasonable opportunity to respond to such service of process) or within twenty (20) days after any other such notice, notify the OPERATOR in writing thereof together with a statement of such information respecting such matter as the Indemnitee then has; it being understood and agreed that any failure or delay of the Indemnitee to so notify the OPERATOR shall not relieve the OPERATOR from liability hereunder except and solely to the extent that such failure or delay shall have adversely affected the OPERATOR'S ability to defend against, settle, or satisfy any such Action. Following such notice, the OPERATOR shall have the right, at its sole cost and expense, to contest or defend such Action through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of the Indemnitee, such approval not to be unreasonably withheld) and in the event it elects to do so, it shall promptly notify the Indemnitee of such intent to contest or defend such Action. If within twenty (20) days following such notice from the Indemnitee (or within such shorter time as may be necessary to give the OPERATOR a reasonable opportunity to respond to service of process or other judicial or administrative action), the Indemnitee has not received notice from the OPERATOR that such Action will be contested or defended by the OPERATOR, the Indemnitee shall have the right to: (i) authorize attorneys satisfactory to it to represent it in connection therewith; or (ii) subject to the approval of the OPERATOR, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise, or pay such Action, in either of which Events the Indemnitee shall be entitled to indemnification therefor subject to this Section 8.01.
- (2) In the event, and so long as, the OPERATOR is actively contesting or defending against an Action as hereinabove provided, the Indemnitee shall cooperate with the OPERATOR and its counsel in such contest or defense. Notwithstanding that the OPERATOR is actively conducting such defense or contest, any Action may be settled, compromised or paid by the Indemnitee without the consent of the OPERATOR; provided, however, that if such action is taken without the OPERATOR'S consent, its indemnification obligations with respect to such claim shall thereby be nullified. Any such Action may be settled, compromised, or paid by the OPERATOR without the Indemnitee's consent, so long as such settlement or compromise does not cause the Indemnitee to incur any present or future cost, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Indemnitee.

(3) If a conflict of interest exists between the Indemnitee and the OPERATOR with respect to any Action, the Indemnitee shall have the right to participate in the defense of such Action with separate counsel chosen by the Indemnitee, subject to the reasonable approval of the OPERATOR, and paid by the OPERATOR.

B. No Third Party Beneficiary. The provisions of this Article VIII are solely for the benefit of the COUNTY and the OPERATOR and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

ARTICLE IX
USE OF SPORTS FACILITY

9.01 Use of Sports Facility. The OPERATOR shall allow the use of the Sports Facility by other amateur sports groups, subject to the availability of the Sports Facility based on the OPERATOR'S use for its own practices, games, tournaments, maintenance, and other related uses. The OPERATOR shall establish the policies and the fees associated with the use of the Sports Facility by other amateur sports groups, which will be reflected in the Business Plan, and such policies and fees will be consistently and fairly applied to all other users. Fees established shall be reasonable, customary, and based on rates at similar facilities for similar use. Information on the policies and fees shall be made available to the general public, either through the OPERATOR'S website, publications, or other means of dissemination to the public. The OPERATOR agrees to give priority consideration to regional tournaments and other events that will result in attendance by large numbers of citizens of Bexar County or visitors outside of Bexar County.

9.02 COUNTY Days. Following the Operations Start Date, and subject to availability, the COUNTY shall be afforded the right to use the Sports Facility for up to five (5) days each calendar year without the obligation to pay an entry fee to the OPERATOR but the COUNTY shall be obligated to pay the amounts reasonably established by the OPERATOR to cover the operating costs associated with such usage including security, cleanup, and any repairs that are required as a result of the COUNTY's use of the Sports Facility. The COUNTY may use the Sports Facility for regional, national and international events and the COUNTY'S selection of days on which it may utilize the facility shall be subject to, and in accordance with, the OPERATOR'S normal scheduling and booking procedures. The COUNTY may select the day(s) for its use with such selection(s) to be made from the open date(s) and time(s) during the applicable calendar year on which no event for an identified third party has been selected by the OPERATOR. If the COUNTY does not elect to use the Sports Facility as provided herein for any calendar year then such right shall be forfeited for such calendar year.

ARTICLE X
DAMAGE OR DESTRUCTION

10.01 Damage or Destruction. If, at any time during the Term, there is any Casualty to the Sports Facility, or any part thereof, then the OPERATOR shall: (i) use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Sports Facility to a safe

condition whether by repair or by demolition, removal of debris; and (ii) to the extent allowed by law, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore or replace the Sports Facility as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction. All insurance proceeds paid pursuant to the policies of insurance for loss of, or damage to, the Sports Facility shall be applied to the payment of the costs of the repair work. The OPERATOR shall maintain during the Term normal and customary liability and casualty insurance for facilities of this type.

**ARTICLE XI
CONDEMNATION**

11.01 Condemnation. In the event that the portion of the Premises on which the Sports Facility is located is taken by any governmental authority, then this Operating Agreement shall be terminated effective on the date the condemning authority takes possession of the condemned property and the Parties shall be relieved of any further obligation under this Operating Agreement.

**ARTICLE XII
ASSIGNMENT AND TRANSFER**

12.01 Assignment and Transfer. The OPERATOR shall have no right to assign or transfer its rights and obligations under this Operating Agreement without prior written approval of the COUNTY.

**ARTICLE XIII
REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.01 COUNTY Representations, Warranties and Covenants. The COUNTY represents, warrants and covenants to the OPERATOR the following:

- A. Organization. The COUNTY is a public body corporate and politic and a political subdivision of the State of Texas. The COUNTY has all requisite power and authority to enter into this Operating Agreement.
- B. Authorization; No Violation. The execution, delivery and performance by the COUNTY of its rights and obligations under this Operating Agreement are within the power of the COUNTY and have been duly authorized by all necessary action. This Operating Agreement has been duly executed and delivered by the COUNTY and this Operating Agreement constitutes a valid and binding obligation of the COUNTY.
- C. No Conflicts. This Operating Agreement is not prohibited by, and does not conflict with, any other agreements, instruments, resolutions or judgments to which the COUNTY is a party or is otherwise subject or which affect the use of the Sports Facility.

- D. No Violation of Laws. The COUNTY has received no notice, as of the date of this Operating Agreement, asserting any noncompliance in any material respect by the COUNTY with applicable statutes, rules and regulations of the United States, the State of Texas, or of any other state or municipality or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Operating Agreement.
- E. Litigation. No suit is pending before or by any court or governmental body seeking to restrain or prohibit or seeking damages or other relief in connection with the execution and delivery of this Operating Agreement or the consummation of the transactions contemplated hereby or which might materially and adversely affect the use and operation of the Sports Facility as contemplated herein.

13.02 OPERATOR Representations, Warranties and Covenants. The OPERATOR represents, warrants and covenants to the COUNTY the following:

- A. Organization. The OPERATOR is a Texas non-profit corporation and maintains an IRS 501(c)(3) status.
- B. Authorization; No Violation. The execution, delivery and performance by the OPERATOR of this Operating Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the OPERATOR or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which the OPERATOR is a party or by which the OPERATOR may be bound or affected. This Operating Agreement has been duly executed and delivered by the OPERATOR and this Operating Agreement constitutes a valid and binding obligation of the OPERATOR.
- C. Litigation. No suit is pending against or affects the OPERATOR which could have a material adverse effect upon the OPERATOR'S performance under this Operating Agreement or the financial condition of the OPERATOR. There are no outstanding judgments against the OPERATOR which would have a material adverse affect upon its assets, or properties.
- D. No Payments. The OPERATOR has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Operating Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, consultants and attorneys.
- E. No Conflicts. This Operating Agreement is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the OPERATOR is a party or is otherwise subject.
- F. No Violation of Laws. The OPERATOR, the members of its Board of Directors, and its officers have not received notice, as of the Effective Date, asserting any

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noncompliance in any material respect by the OPERATOR with applicable statutes, rules and regulations of the United States, the State of Texas, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Operating Agreement. The OPERATOR, the members of its Board of Directors, and its officers are not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

- G. Environmental Conditions. After the Effective Date: (i) the OPERATOR shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws; and (ii) the OPERATOR shall comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Sports Facility that will violate or threaten to violate any Environmental Law.
- H. Survival of Covenants and Warranties. All covenants, representations and warranties contained in this Operating Agreement shall remain in effect during the Term of this Operating Agreement.
- I. No Encumbrances. The OPERATOR shall not permit the encumbrance, whether voluntary or involuntary, of the Sports Facility for any purpose whatsoever.
- J. Mechanic's Liens and Claims. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") shall be filed against the interest of the OPERATOR in the Sports Facility by reason of any labor or services performed or claimed to have been performed or materials supplied or claimed to have been supplied by or on behalf of the OPERATOR, or any of its agents or contractors, the OPERATOR shall, at its sole cost and expense, cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure thereof against the Sports Facility by injunction, payment, deposit, bond, order of court or otherwise. The provisions of this Subsection 13.02 J shall survive the Termination Date and the OPERATOR shall indemnify, defend and hold harmless the COUNTY, its officials, employees and agents from and against any and all such Mechanic's Liens (including, without limitation, all costs, expenses and liabilities, including reasonable attorney's fees and costs, so incurred in connection with such Mechanic's Liens), for which the OPERATOR is responsible under this Subsection 13.02 J, and in accordance with the indemnification provisions set forth in Article XIII hereof.

ARTICLE XIV
TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

14.01 Automatic Termination Events. The Parties acknowledge that certain obligations and requirements of this Operating Agreement are of fundamental importance to the Parties, such that one Party's default in the performance of such obligations and requirements would justify the automatic termination of this Operating Agreement. The Parties agree that each of A-E

below shall constitute an event such that, if it occurs, the non-defaulting Party may elect to terminate this Operating Agreement (“Automatic Termination Event”). If the non-defaulting Party elects not to enforce its right to terminate this Operating Agreement following an Automatic Termination Event by the defaulting Party, but rather to treat the Automatic Termination Event as an Event of Default, the defaulting Party shall be entitled to the cure process set out in Subsection 14.03 B below:

- A. If, at any time, ownership of the Sports Facility is not vested in an organization exempt from taxation under Section 501(c)(3) of the Code, or similar section of the Code;
- B. The Sports Facility is not used for the Public Purpose after the Commencement Date;
- C. The CITY License Agreement is terminated;
- D. The entry of a non-appealable ruling by a court of competent jurisdiction that the action of the COUNTY pursuant to this Operating Agreement is beyond the authority conferred upon the COUNTY by any applicable governmental rules and that the COUNTY did not have authority to enter into this Operating Agreement; or
- E. Any legal proceeding contesting the validity of the Special Election, any matter affecting the ability of the COUNTY to fund its obligations under the Development Agreement, or the validity or enforceability of this Operating Agreement, which proceeding: (i) is concluded by a final non-appealable determination adverse to the COUNTY; or (ii) prevents the Operations Start Date to occur in accordance with this Operating Agreement.

14.02 Events of Default. Each of the following will be an Event of Default:

- A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Operating Agreement, which failure continues for more than sixty (60) days following notice of such failure to such Party.
- B. Any material representation or warranty of a Party is untrue when made or becomes untrue thereafter.
- C. A Party submits a report, application, certificate or other information required under the terms of this Operating Agreement which contains any materially false or misleading statements.
- D. The OPERATOR transfers, attempts to transfer, encumbers, or attempts to encumber the Sports Facility in breach of this Operating Agreement.
- E. The OPERATOR fails to fund the Capital Improvement and Repair Fund and/or the Reserve Fund in accordance with this Operating Agreement.

- F. The OPERATOR makes a general assignment for the benefit of creditors.
- G. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by or against the OPERATOR and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.
- H. The OPERATOR admits in writing its inability to pay its debts when due.
- I. A bill in equity or other proceeding for the appointment of a receiver of the OPERATOR or other custodian for the OPERATOR'S business or assets is filed and consented to by the OPERATOR.
- J. A receiver or other custodian (permanent or temporary) of the OPERATOR'S assets or property, or any part thereof, is appointed by any court of competent jurisdiction.
- K. A final judgment representing a claim or charge against the assets of the OPERATOR in an amount in excess of ONE MILLION DOLLARS (\$1,000,000.00) remains of record or remains unsatisfied or is not resolved through a settlement agreement for one hundred twenty (120) days or longer (unless a supersedeas or other appeal bond is filed).
- L. The OPERATOR is dissolved.
- M. Suit to foreclose any lien or mortgage against any property owned or held by the OPERATOR is instituted against the OPERATOR and not dismissed within one hundred twenty (120) days.
- N. A majority of the property owned or held by the OPERATOR is sold after levy thereupon by any sheriff, marshal or constable.

14.03 Procedures and Remedies.

- A. Automatic Termination Event. In the event of the occurrence of an Automatic Termination Event which the non-defaulting Party elects to treat as such, the non-defaulting Party shall notify the defaulting Party in writing within five (5) Business Days of the non-defaulting Party becoming aware of the Automatic Termination Event of its election to terminate this Operating Agreement ("Termination Notice"). The Operating Agreement will be deemed to have automatically terminated on the date of receipt of the notice of the occurrence of the Automatic Termination Event by the defaulting Party and the non-defaulting Party may pursue the remedies set out in Subsection 14.03 C. If a Party sends a Termination Notice as provided above and it is later determined that an Automatic Termination Event had not occurred, then the Party that received the Termination Notice may pursue all rights and remedies provided by law or in equity against the Party sending the Termination Notice including reinstatement of this Operating Agreement.

- B. Event of Default. In the event of the occurrence of an Automatic Termination Event which is treated as an Event of Default, or the occurrence of an Event of Default under Section 14.02, the non-defaulting Party shall give the defaulting Party written notice of the Event of Default. The defaulting Party shall have sixty (60) days from receipt of the notice of the default to cure such default. If the default is not cured within the sixty (60) day period, the non-defaulting Party may pursue the remedies set out in Subsection 14.03 C.
- C. Remedies. In the event of an Automatic Termination Event under Subsection 14.03 A, or an Event of Default under 14.03 B which is not cured, the non-defaulting Party may pursue all rights and remedies provided by law or in equity. The rights and remedies provided in this Operating Agreement shall be in addition to, and cumulative of, all other rights and remedies available to a Party, and the pursuit of one (1) remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.
- D. Non-waiver. Any failure of the COUNTY to exercise any right or remedy as provided in this Operating Agreement shall not be deemed a waiver by the COUNTY of any claim for actual damages (but not consequential damages) it may have by reason of the OPERATOR Default.

14.04 Contingency Obligation. Any termination of this Operating Agreement shall not relieve the OPERATOR from the payment of any sums that are due and payable prior to the Termination Date or are attributable to the OPERATOR after the Termination Date.

**ARTICLE XV
DISPUTE RESOLUTION**

15.01 Mediation. Any claim, dispute, or other matter in question arising out of or related to this Operating Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either Party. Any legal proceedings shall be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. The Parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in Bexar County, Texas.

**ARTICLE XVI
SURRENDER**

16.01 Surrender of Possession. The OPERATOR shall, on or before the Termination Date, or upon the earlier termination of this Operating Agreement, peaceably and quietly leave, surrender and yield up to the CITY, its successors or assigns: (i) the Sports Facility, free of subtenancies and in a reasonably clean condition and free of debris; (ii) the Sports Facility, including all improvements and all assets paid for through the COUNTY funds under the Development Agreement as well as improvements and assets paid for out of the Capital Improvement and Repair Fund, Reserve Fund, or through the OPERATOR'S insurance fund; (iii) all remaining

spare parts on hand for the Sports Facility; (iv) all manuals, drawings, plans and tools for the Sports Facility; (v) all keys for the Sports Facility; (vi) any other property that is used by the OPERATOR for the use, occupancy or maintenance of the Sports Facility; and (vii) all funds remaining on the Termination Date that are generated through activities at the Sports Facility as well as funds in the Capital Repair and Improvement Fund and Reserve Fund. Upon the Termination Date, all of the OPERATOR'S right, title and interest in and to any maintenance and warranty contracts, service contracts, and equipment leases transfer automatically to the CITY.

16.02 Removal of Personal Property of OPERATOR. All trade fixtures, furniture, equipment (including kitchen, concession and maintenance equipment), furnishings, and other personal property that is not part of the Sports Facility shall be removed by the OPERATOR within thirty (30) days after the Termination Date, provided that the OPERATOR shall promptly repair any damage to the Sports Facility caused by such removal.

ARTICLE XVII
MISCELLANEOUS

17.01 Notices. All notices, demands, consents, approvals, statements, requests and invoices to be given under this Operating Agreement shall be in writing, signed by the Party or officer, agent of the Party giving the notice, and shall be deemed effective upon receipt if hand delivered, or sent by telecopy with transmission confirmation or overnight courier service; and if sent by the United States mail, postage prepaid, certified mail, return receipt requested, then three (3) Business Days after mailing or the date of refusal, addressed as follows:

If to OPERATOR
Frank Dunn
Eastside Christian Action Group
4526 Walzem Road
San Antonio, Texas 78218

With a copy to
Jane Macon
Fulbright & Jaworski L.L.P.
300 Convent St., Suite 2200
San Antonio, Texas 78205

If to COUNTY
Bexar County Judge
Bexar County Commissioners Court
Bexar County Courthouse
100 Dolorosa, Suite 101
San Antonio, Texas 78205

With a copy to
Mike Sculley
Community Venues Program Director
Bexar County Courthouse
100 Dolorosa, Suite 1.20
San Antonio, Texas 78205

Either Party may from time to time by written notice given to the other pursuant to the terms of this Section 17.01 change the address or designees to which notices shall be sent or designate one or more additional Persons to whom notices are to be sent.

17.02 Force Majeure. Failure in performance by either Party hereunder shall not be deemed an Event of Default and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein when such failure or non-occurrence is due to Force Majeure. An extension of time for any such cause shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause, provided that, if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Operating Agreement may be extended as mutually agreed upon in writing by the COUNTY and the OPERATOR. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

17.03 Binding Effect. This Operating Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

17.04 Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Operating Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Operating Agreement.

17.05 Entire Agreement. This Operating Agreement, and the Exhibits, each of which is incorporated herein, constitute the entire understanding and agreement of the Parties with respect to the subject matter of this Operating Agreement. This Operating Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof, including the Letter of Intent.

17.06 Applicable Law. The laws of the State of Texas shall govern the interpretation and enforcement of this Operating Agreement.

17.07 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Sports Facility. Neither the OPERATOR nor any person claiming under or through it shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of licensees, sublicensees, concessionaires or vendors using or operating at the Sports Facility or any portion thereof.

17.08 Consent. Unless otherwise specifically provided herein, no consent or approval by the COUNTY or the OPERATOR permitted or required under the terms of this Operating Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

17.09 Attorneys' Fees. Each Party shall bear its own costs, including but not limited to, attorneys' fees, court costs, and post-judgment proceedings to collect or enforce the judgment for any action at law or in equity brought to enforce the terms of this Operating Agreement. This provision does not modify the requirement in Section 15.01 that the Parties share equally the costs of mediation.

17.10 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have entered in this Operating Agreement as of the 7th day of October 2009.

COUNTY OF BEXAR

EASTSIDE CHRISTIAN ACTION GROUP

By: [Signature]
NELSON W. WOLFF
County Judge
Date: 10/7/09

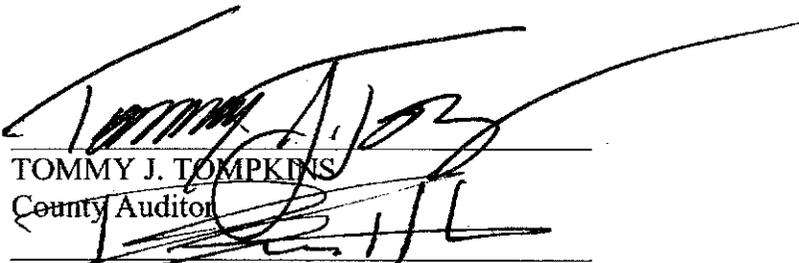
By: FRANK A. DUNN
Name: Frank A. Dunn
Title: EXECUTIVE DIRECTOR
Date: 9/25/09

ATTEST:
[Signature]
GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas
By: [Signature]
GERARD A. CALDERON
Assistant Criminal District Attorney
Venue Counsel

APPROVED AS TO FINANCIAL CONTENT:



TOMMY J. TOMPKINS

County Auditor

DAVID SMITH

Executive Director/Budget Officer
Planning & Resource Management Dept.

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EXHIBIT "A"

DEFINITIONS

As used in this Operating Agreement, capitalized terms shall have the meanings indicated below unless a different meaning is specifically provided or unless the context otherwise requires. Other capitalized terms which are not defined in this Operating Agreement shall have the meanings set out in the Development Agreement.

"Action(s)" or "Proceeding(s)" means any action, lawsuit, demand, claim, proceeding, arbitration or other alternative dispute resolution process, or Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"Advertising" means, collectively, all advertising, sponsorship and promotional activity, signage, messages and displays of every kind and nature, including, without limitation, permanent, non-permanent and transitory signage or advertising located on portions of the Sports Facility.

"Advertising Revenue(s)" means all revenues derived from Advertising.

"Affiliate(s)" of a specified Person means a Person who (i) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (ii) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (iii) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (i) or (ii); or (iv) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

"Applicable Law(s)" means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of underwriters (or other body exercising similar functions) or any recorded restrictive covenant or deed restriction affecting the Sports Facility or the Premises, including, without limitation, the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and Environmental Laws.

"Business Day(s)" means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally in the State of Texas. The use of "day" as opposed to "Business Day," means a calendar day.

"Business Plan" means a summary of the OPERATOR'S operational and financial objectives and the manner in which how they will be achieved.

"Capital Improvement and Repair Fund" means the fund described in Section 4.02 of this Operating Agreement.

"Capital Repair" means any work (including all labor, supplies, materials, and equipment) reasonably necessary to repair, restore, or replace any equipment, structure or any other component (such as lighting, sprinkling systems, or permanent signage) of the Sports Facility. The term "Capital Repair" shall not include any maintenance.

“Casualty” means damage, destruction or other property casualty resulting from any fire or any Force Majeure or other sudden, unexpected, and unusual cause.

“CITY” means City of San Antonio, Texas, a Home Rule Municipality under Article XI, Section 5, of the Texas Constitution and Municipal Corporation primarily situated in Bexar County, Texas.

“Code” means the Internal Revenue Code of 1986, 26 U.S.C.S §101, et seq., as amended.

“Commencement Date” occurs on the day following the Project Completion Date, as reflected in the Project Completion Letter required in the Development Agreement and is the same day as the Operations Start Date.

“Community Oversight Committee” means a committee appointed by Bexar County Commissioners Court to conduct an annual review, as set forth in Section 5.01 above, to determine whether the OPERATOR is meeting its obligations under this Operating Agreement.

“Concession(s)” means the business of selling, furnishing or renting of foods, beverages, apparel, game programs, sporting equipment, goods, novelties or merchandise (but not including parking) in, at, from or in connection with the operation of the Sports Facility whether sold or rented from kiosks or by individual vendors circulating through the Sports Facility including, without limitation, any facility therein for the sale of food or beverages or novelties or merchandise, and including sales to fill orders for any such items received by any Concessionaire operating a Concession at the Sports Facility by mail, facsimile, telephone or other medium of communication.

“Concessionaire(s)” means any Person, including the OPERATOR, operating a Concession at the Sports Facility.

“Consumable Concessions” means items of food, drink, or other items for consumption which are sold or dispensed at the Sports Facility.

“COUNTY” has the meaning set forth in the initial paragraph hereof.

“COUNTY Representative” is the person authorized to issue and receive notices on behalf of the COUNTY with respect to this Operating Agreement and shall be the person so designated and shall have the rights, duties and responsibilities described in Section 2.05 hereof.

“Design Standards” mean the AAU standards for the running track to be constructed as part of the Project.

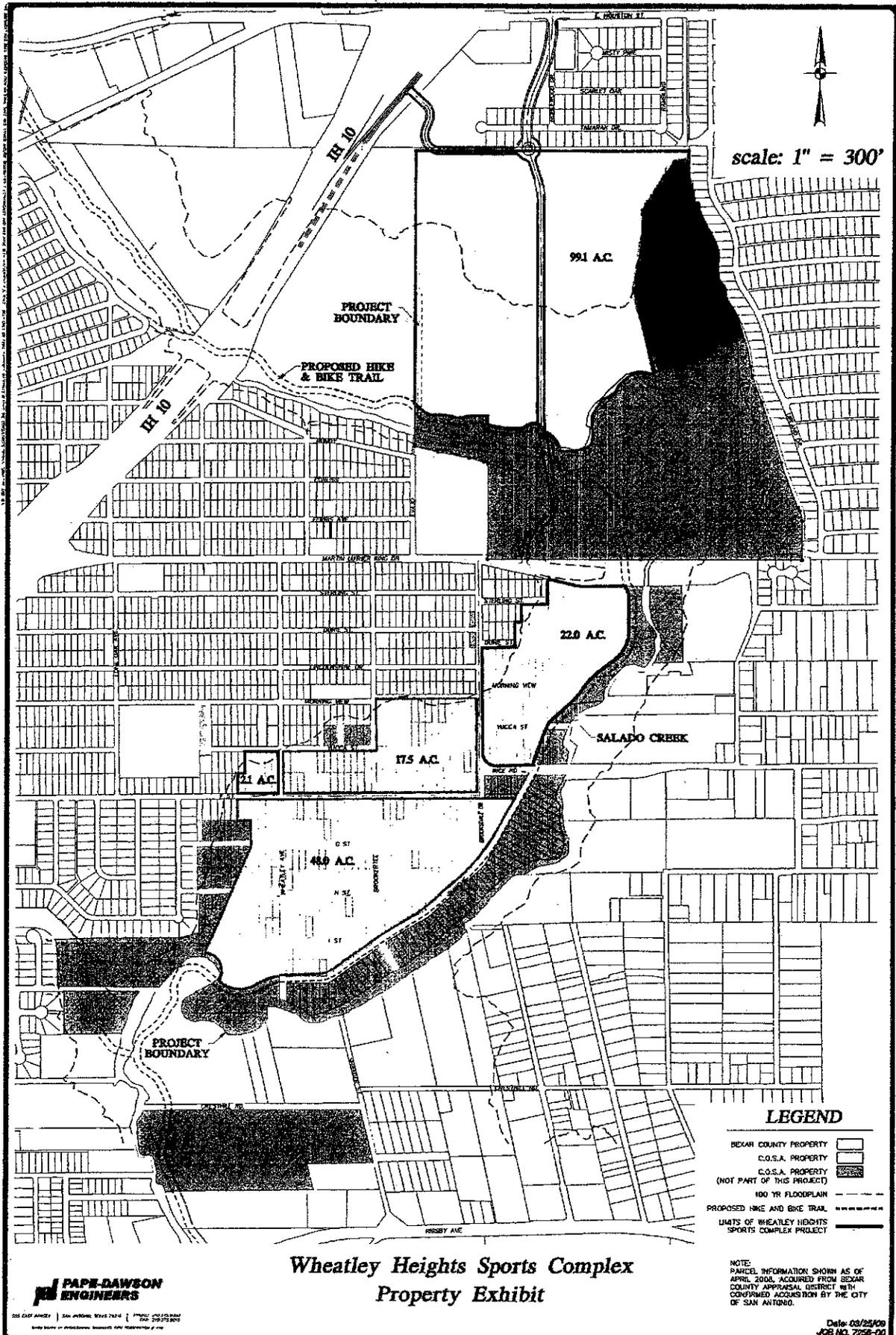
“Development Agreement” means the Grant and Development Agreement, executed simultaneously with this Operating Agreement, between the COUNTY and the OPERATOR setting forth the terms of design and construction of the Sports Facility.

“Emergency” means any condition or situation which threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Sports Facility or the structures or

EXHIBIT "B"

PREMISES

Lands and property owned by the City of San Antonio known as Martin Luther King Park and flood buyout property known as Wheatley Heights; composed of approximately 170 acres of certain land at Martin Luther King Park and Wheatley Heights being part of N.C.B. 10677, 10698, 10699, 10703, 10704, 10710, 10711, 10712, 10713, 10714, 10715, 10720, 10721, 10722, 10723, 10724, 10725, 10726, 10729, 10730, 10731, 10732, San Antonio, Bexar County,



VOL 8 | 0 Pg 6 7 7

**Wheatley Heights Sports Complex
Property Exhibit**

PAPE-DAWSON ENGINEERS

305 EAST ANGELO | SAN ANTONIO, TEXAS 78204 | TEL: 214.349.1000
FAX: 214.349.1001
www.pape-dawson.com | www.pape-dawson.com

NOTE:
PARCEL INFORMATION SHOWN AS OF
APRIL 2004, ACQUIRED FROM BEXAR
COUNTY APPRAISAL DISTRICT WITH
CONFIRMED ACQUISITION BY THE CITY
OF SAN ANTONIO.

Date: 03/25/09
JOB NO. 7258-00

components of the Sports Facility, or any portion thereof, including the Parking Areas or which physically or functionally prevents the holding or continuance of an Event.

“Environmental Condition” means any Environmental Event or any recognized environmental condition that occurs subsequent to the Effective Date.

“Environmental Event” means: (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life; (ii) the occurrence of any Actions or Proceedings pursuant to any Environmental Laws arising out of any of the foregoing; and (iii) any claims, demands, actions, causes of actions, remedial or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an environmental proceeding.

“Environmental Law(s)” means any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

“Event Fee” means a fee charged to use the Sports Facility or for the opportunity to view an Event and, for purposes of this Operating Agreement, shall also include league, team, and individual participant fees.

“Event(s)” means all revenue or nonrevenue producing sports, entertainment, cultural, civic and other activities and events which are conducted at the Sports Facility.

“Fiscal Year” means a twelve (12) month period commencing on January 1st and ending on December 31st of the immediately following year, or any portion thereof; provided, however, that the initial Fiscal Year shall commence on the Operations Start Date and end on the next occurring December 31st.

“Force Majeure” means labor disputes, casualties (which are not the result of negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or

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shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by the OPERATOR or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control.

“Funds” means any accounts that are required to be maintained by the OPERATOR under the terms of this Operating Agreement including, without limitation, the Operating Fund, the Capital Improvement and Repair Fund, the Reserve Fund, and all other accounts for the deposit of the Sports Facility Operating Revenues as provided in Article IV.

“GAAP” means generally accepted accounting principles applied on a consistent basis, in effect in the United States from time to time as set forth in the opinions of the Accounting Principals Board of the American Institute of Certified Public Accountants or the statements of the Financial Accounting Standards Board or their respective successors and which are applicable to the circumstances as of the date in question.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Sports Facility or Premises.

“Hazardous Material(s)” means: (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in an Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls or (iii) any substance, emission or material determined to be hazardous or harmful.

“Licensee” means licensees of concessions, signage, naming rights, and other users of privileges in or around the Sports Facility for a fee.

“Licenses” means licenses with Concessionaires, licenses with other users of the Sports Facility, and all booking and use agreements as described herein.

“Liens” means, with respect to any property, any mortgage, lien, pledge, charge or security interest and with respect to the Sports Facility, the term “Lien” shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or other similar liens, including, but not limited to, mechanic’s liens and claims.

“Maintenance” means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep of property, structures, surfaces, facilities, fixtures, equipment or furnishings, or any other component of the Sports Facility in order to preserve such items. Maintenance shall include, but not be limited to, the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) periodic testing of structure systems, such as bleachers, mechanical, fire alarm,

lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters; (v) touch up painting; (vi) cleaning prior to, during and following all games and other Events held at the Sports Facility; (vii) changing of standard, isolated light bulbs, fuses and circuit breakers, as they burn out; (viii) mowing, fertilizing, aerating, watering, reseeding and resodding; and (ix) any other work of a routine, regular and generally predictable nature that is reasonably necessary to keep the Sports Facility consistent with a first class facility. Maintenance shall not include any work included within the term "Capital Repairs" whether or not predictable in nature.

"Net Operating Income" means, as to each Fiscal Year during the Term, the net of Sports Facility Operating Revenues for such Fiscal Year less the Sports Facility Operating Expenses and the revenues placed in the Reserve Fund for such Fiscal Year.

"Non-Consumable Concessions" means all Concessions items other than Consumable Concessions.

"Operating Budget" means a projection of all anticipated income and expenses based on the OPERATOR'S estimated revenues which reflects that the OPERATOR can operate the Sports Facility on a fiscally sound basis in accordance with the Business Plan, while accommodating use of the Sports Facility for other uses consistent with the Public Purpose.

"Operating Fund" means an account which shall be established by the OPERATOR solely for the deposit of all Sports Facility Operating Revenues and from which all Sports Facility Operating Expenses shall be paid and from which other distributions shall be made. The OPERATOR shall establish the Operating Fund in a bank or other financial institution with an office located in Bexar County, Texas. The OPERATOR may deposit or otherwise employ the funds in the Operating Fund as deemed appropriate by the OPERATOR and as otherwise required hereunder.

"Operations Start Date" means the day following the Project Completion Date, as reflected in the Project Completion Letter to be executed by the Parties pursuant to the terms of the Development Agreement which is the same day as the Commencement Date as set out in Section 1.01.

"OPERATOR" means EASTSIDE CHRISTIAN ACTION GROUP, a Texas non-profit corporation, exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, as amended, its successors and permitted assigns.

"OPERATOR Representative" is the person authorized to issue and receive notices on behalf of the OPERATOR with respect to this Operating Agreement and shall be the person so designated and shall have the rights, duties and responsibilities set forth in Section 2.04 hereof.

"Parking Areas" means the areas of the Sports Facility designated for parking in the Plans and Specifications.

"Parking Fees" means those fees collected by the OPERATOR for use of the Parking Area at Events.

“Person” means any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, or any other legal entity or business or enterprise.

“Premises” means the land in Bexar County, Texas more particularly described on Exhibit “B”, attached hereto and incorporated herein for all purposes.

“Project” means, collectively, the entire conceptual planning, site planning, development, construction and equipage of the Sports Facility.

“Project Completion Date” means the date of Final Completion of all the work in accordance with the requirements of the Development Agreement.

“Project Document(s)” means this Operating Agreement, the Development Agreement, and the CITY License Agreement.

“Public Purpose” use of the Sports Facility for youth and amateurs sports related activities by the Bexar County Community.

“Records” means those books, records, accounts, journals, files, contracts, rental agreements, insurance policies, Permits, non-proprietary correspondence directly related to the Project, receipts, bills, vouchers, and any audits obtained by the OPERATOR of the Sports Facility that the COUNTY is permitted to inspect and audit pursuant to this Operating Agreement.

“Reserve Fund” means the account established for funds deposited pursuant to Section 4.02.

“Sports Facility” means: (i) a regional sports park for amateur athletic tournaments, amateur league play, and other athletic competitions comprised of football and soccer fields, a running track, cross-country tract/trail, and multi-use courts; concession buildings and restrooms; and (ii) other structures and improvements reflected in the Final Plans as being located on that tract of the Premises designated for the Sports Facility.

“Sports Facility Management Firm” means a firm selected by the OPERATOR pursuant to Section 3.03 hereof to operate and manage the Sports Facility on behalf of the OPERATOR.

“Sports Facility Operating Expense(s)” means all expenses or obligations of whatever kind or nature made or incurred by the OPERATOR, within the scope of the OPERATOR’S authority or responsibility under this Operating Agreement for the management, operation or Maintenance of the Sports Facility.

“Sports Facility Operating Revenue(s)” means all revenues of whatever kind or nature received or obtained by the OPERATOR, within the scope of the OPERATOR’S authority or responsibility under this Operating Agreement for the management, operation or maintenance of the Sports Facility, including, but not limited to, Event Fees, Parking Fees, revenues from Consumable and Non-Consumable Concessions, all other licensing, rent revenues, forfeited

security deposits, and equipment rental fees actually received by the OPERATOR, for or from the following: (i) the use of, operation, or admission to, the Sports Facility or any portion thereof (including, without limitation, revenues received from temporary advertising and sponsorship for Events); (ii) the right to sell, or in respect to the sale of, and sponsorship or advertisement in Sports Facility including all rents and concessions from Concessionaires and Licensees; (iii) interest on, or proceeds of investment of, any Funds (except the Capital Improvement and Repair Fund) required to be maintained hereunder; and (iv) rental or use of the Sports Facility equipment.

“Temporary Advertising” means Advertising in connection with any Event which is to be removed or terminated at the conclusion of any such Event.

“Termination Date” means the date which is the earlier to occur of: (i) the termination of the CITY License Agreement with the OPERATOR; or (ii) the termination of this Operating Agreement as provided in Section XIV.

EXHIBIT "B"

DESCRIPTION OF THE PREMISES

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EXHIBIT "C"

CITY LICENSE AGREEMENT

LICENSE AGREEMENT
EASTSIDE CHRISTIAN ACTION GROUP

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THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of the 18th day of June 2009, by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. 2009-06-18-0532, dated June 18, 2009 (herein called "CITY"), and Eastside Christian Action Group, a Texas non-profit corporation (herein called "LICENSEE");

1. WITNESSETH:

- 1.1 WHEREAS, CITY desires to provide amateur sports and recreational facilities for the use of the citizens of San Antonio and Bexar County; and
- 1.2 WHEREAS, LICENSEE is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and
- 1.3 WHEREAS, CITY owns Martin Luther King Park and flood buyout property known as Wheatley Heights; and
- 1.4 WHEREAS, a Bexar County Venue Tax Project election held May 10, 2008 was approved by the voters of Bexar County and the short term motor vehicle rental tax collected pursuant to Texas Local Government Code Section 334.103 will be a source of funds for LICENSEE for the design and construction of an amateur sports venue project; and
- 1.5 WHEREAS, CITY and LICENSEE desire to enter into a License Agreement which will allow for the construction and operation of an amateur sports facility and, in the event that LICENSEE'S rights under this Agreement cease earlier than forty (40) years from the date of this Agreement, CITY intends to enter into an agreement with an alternate amateur sports group for the operation of the improvements as anticipated by the Bexar County voters; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to CITY and LICENSEE and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT AND RENT

- 2.1 For so long as LICENSEE maintains its non-profit and 501(c)(3) status and remains in good standing with its governing body throughout the term of this Agreement, CITY hereby designates LICENSEE as the primary user and maintainer of approximately 170 acres of certain land at Martin Luther King Park and Wheatley Heights being part of N.C.B. 10677, 10698, 10699, 10703, 10704, 10710, 10711, 10712, 10713, 10714, 10715, 10720, 10721, 10722, 10723, 10724, 10725, 10726, 10728, 10729, 10730,

10731, 10732, San Antonio, Bexar County, and LICENSEE hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

2.2 In consideration of the public benefit of derived from LICENSEE'S operations, LICENSEE shall not owe any rent under this agreement.

3. USE

3.1 CITY, for and in consideration of the mutual benefits to CITY and LICENSEE and the observance of the terms and conditions set forth hereinafter, hereby grants to LICENSEE permission to enter and use the Premises described in EXHIBIT A which is attached hereto and incorporated by reference herein for the purposes set forth in Section 3.2 below. The Exhibit A attached for purposes of execution of this Agreement reflects the conceptual location and dimensions of the Premises. The final approved dimensions and acreage, to be determined as a part of the design process, will be subject to City's approval and a revised Exhibit A will be attached to this Agreement.

3.2 The Premises shall be occupied by LICENSEE for amateur sports and related activities. LICENSEE agrees and specifically understands that permission herein given does not grant to LICENSEE any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that CITY retains dominion, possession and control of the Premises, including access thereto at all times. CITY reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.

3.3 LICENSEE shall allow the use of the Premises by other amateur sports groups, subject to the availability of the Premises based on LICENSEE'S use for its own practices, games, tournaments, maintenance, and other related uses. LICENSEE shall establish policies and fees associated with the use of the Premises by other amateur sports groups, and such policies and fees will be consistently and fairly applied to all other users. Fees established shall be reasonable, customary, and based on rates found at similar facilities for similar use. All fees collected from use by other amateur sports groups shall be used to offset LICENSEE'S cost of maintenance of the Premises. Information on the policies and fees shall be made available to the general public, either through LICENSEE'S website, publications, or other means of dissemination to the public. LICENSEE agrees to give priority consideration to regional tournaments and other events that will result in attendance by large numbers of citizens of CITY, Bexar County, or visitors outside of Bexar County.

3.4 Following final completion of the improvements, CITY shall have the right to use the Premises for CITY activities and events for up to ten (10) days in any calendar year during the term of this Agreement ("City Days"). CITY'S right to City Days shall be subject to the availability of the Premises based on LICENSEE'S use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups as outlined in Section 3.3 above. CITY shall be exempt from the payment to LICENSEE of any rent or fees for City Days. CITY shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of CITY'S use shall be promptly repaired by CITY, at CITY'S expense. During City Days and County Days neither CITY nor County shall be

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bound by any exclusivity contracts for concession sales entered into by LICENSEE with any concession suppliers.

3.5 LICENSEE agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of LICENSEE is called to any such violation, LICENSEE or those under its control will immediately desist from and correct such violation.

3.6 LICENSEE acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. LICENSEE covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the CITY, indemnify, hold harmless and defend CITY from all claims which might arise from LICENSEE'S activities under this Agreement.

4. TERM OF AGREEMENT

4.1 The term of this Agreement is five (5) years, beginning immediately upon the date of execution by the City Manager or her designee, which is hereafter referred to as the commencement date, and expiring five (5) years from the commencement date, if not earlier terminated according to the terms hereof.

4.2 So long as LICENSEE is not then in default of any of the provisions of this Agreement or any agreements between Bexar County and LICENSEE, this Agreement may be extended for up to seven additional five (5) year renewal options, subject to the approval of City Council as evidenced by an Ordinance, for a total maximum term of this Agreement of forty (40) years.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

5.1 LICENSEE has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LICENSEE'S taking possession of the Premises shall be conclusive evidence of LICENSEE'S acceptance thereof in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. CITY specifically disclaims any warranty of suitability for intended commercial purposes of LICENSEE.

5.2 LICENSEE agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by CITY or its agents to LICENSEE unless the same are contained herein or made a part hereof by specific reference herein.

6. LICENSEE'S MAINTENANCE OBLIGATIONS AND DUTIES

6.1 General Maintenance: Commencing upon the start of the construction of its proposed improvements to the Premises and continuing throughout the term of this Agreement, LICENSEE shall, at its sole expense, provide year round maintenance service of the Premises. In the event LICENSEE elects to implement the improvements of the Martin

Luther King Park or Wheatley Heights portions of the Premises on different schedules, **LICENSEE** shall commence the maintenance at the start of construction for that portion. For purposes of this provision, the start of construction shall be defined as the first date on which construction activity begins, including site preparation work, demolition, soil removal/relocation, or any other construction activity. The level of maintenance will be the more stringent of the maintenance standards required in the Operating Agreement between Bexar County and **LICENSEE** or the quality of maintenance service demonstrated in other **CITY**-owned fields and improvements. In addition to the other obligations of **LICENSEE** set forth herein, **LICENSEE** shall render the following services and perform the following duties with regard to its maintenance of the Premises for **CITY** in a faithful, diligent, and efficient manner:

- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
- 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
- 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep all areas of the Premises free from litter and debris, including following all practices and games;
- 6.1.4 Seed and fertilize fields as required to sustain acceptable standards of playing conditions;
- 6.1.5 Provide pest control services as needed;
- 6.1.6 Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions;
- 6.1.7 Maintain all buildings and structures, including but not limited to, concession structures, restrooms, storage units, signage, lighting fixtures, irrigation systems in good repair at all times, promptly making any needed repairs or replacements;
- 6.1.8 Keep all improvements free of graffiti
- 6.1.9 Provide such other maintenance tasks and chores as may be required to sustain the fields, parking areas, and all improvements at acceptable standards of use conditions. All structures and equipment that are vandalized must be cleared of debris and graffiti within five (5) days.
- 6.2. **LICENSEE** shall be responsible for making all capital repairs and/or improvements (including physical and functional obsolescence) necessary to maintain the Premises in a first class condition throughout the term of this **Agreement**.
- 6.3 Upon completion of the initial improvements, or at such earlier date as it may desire, **LICENSEE** shall establish a Capital Repair and Improvement Fund and deposit into such Capital Repair and Improvement Fund all net revenues remaining after payment of all usual and customary operating expenses and after funding any necessary contingency reserve funds (such contingency reserve funds not to exceed ten percent (10%) of **LICENSEE'S** total annual revenue). Revenues are hereby defined as all revenues and income of every nature and from whatever source derived by **LICENSEE** from the operation of the Premises (but excluding grants and donations for capital

purposes or specific projects) including, but not limited to, rents, ticket sales, concessions, and other revenues received therefrom. The Capital Repair and Improvement Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the improvements to the Premises including without limitation all furniture, fixtures and equipment. LICENSEE shall use its best faith effort to operate the Premises in a manner that results in the deposit of monies into the Capital Repair and Improvement Fund each year. LICENSEE shall maintain complete books and records reflecting the sources and uses of the Capital Repair and Improvement Fund, including the manner in which LICENSEE has allocated revenues to the Capital Repair and Improvement Fund. CITY shall have the right to examine, inspect and audit such records as necessary to determine LICENSEE'S compliance with the requirement hereof. Lack of adequate funding in the Capital Repair and Improvement Fund shall not reduce or eliminate LICENSEE'S obligation to make necessary capital improvements and repairs. At the conclusion of the term of this Agreement, or any extended term, or upon the early termination of this Agreement, all funds remaining in the Capital Repair and Improvement Fund shall become the property of CITY.

- 6.4 LICENSEE shall promptly repair any damage to the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, CITY shall be under no obligation to rebuild or repair the Premises, however, LICENSEE shall be obligated to rebuild or repair the Premises to the same or better condition as prior to any event of casualty.
- 6.5 No parking is allowed in any area other than the designated parking area shown as a parking lot in EXHIBIT A (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.6 In carrying out the aforesaid maintenance responsibilities, LICENSEE agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 LICENSEE shall provide for and pay directly to the utility companies, all utility company connection charges, including, but not limited to, the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, used in or on the Premises and LICENSEE shall furnish and install all electric light bulbs, tubes, and ballasts. CITY shall not be liable to LICENSEE in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of CITY.
- 7.2 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, LICENSEE agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:

7.2.1. Stage 1 Aquifer level reaches 660 mean sea level feet: Ball field may only be

watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.

7.2.2. **Stage 2** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.3. or a **LICENSEE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED MAINTENANCE

8.1. **LICENSEE** agrees to formulate an annual maintenance program and to submit same in writing to the **CITY** no later than January 1 of each year of the term hereof. Said program will indicate planned mowing frequency of the Premises and time frames for seeding, fertilization, and other programmable field maintenance activities, as well as planned maintenance for other improvements. The maintenance program submitted to the **CITY** by **LICENSEE** shall be identical to, or more stringent than, the maintenance program set out in the Operating Agreement between Bexar County and **LICENSEE** with regard to comparable obligations. The **CITY** shall review said maintenance program and shall notify **LICENSEE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LICENSEE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.

8.2. **LICENSEE** further agrees to notify **CITY** in writing two (2) weeks in advance of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LICENSEE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

9.1. **CITY**, through its Parks and Recreation Director and/or his representative(s), shall have the right to inspect the Premises at any time.

10. CONCESSIONS

10.1. **LICENSEE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LICENSEE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LICENSEE**. **LICENSEE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder. **LICENSEE** shall have the right to enter into exclusive

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

sales contracts with concession suppliers which will prohibit the sale of the products of other suppliers, subject however to the terms of Section 4.

11. IMPROVEMENTS

- 11.1. **LICENSEE** may, subject to having first obtained the written approval of **CITY**, install and/or construct facilities and improvements suitable for amateur sports and recreational activities, said facilities and improvements to include, but not necessarily be limited to **the construction of softball fields, football field, running track, cross country running trail, parking areas, concession stand and restroom facilities.** **LICENSEE'S** improvements must be completed on or before the Scheduled Completion Date as set forth in the Grant and Development Agreement between Bexar County and **LICENSEE**. During any period of construction or installation, **LICENSEE**, its members, employees, agents, and contractors shall ensure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property. In the event damage does occur, **LICENSEE** shall promptly make all repairs so as to restore the property to its condition prior to the damage. Improvements constructed or installed by **LICENSEE** shall be the property of **LICENSEE** during the term of this **Agreement**.
- 11.2. **LICENSEE** shall present, for review and written approval, all designs, plans, and specifications to the **CITY** and applicable **CITY** boards prior to commencing any construction or installation upon the Premises, including the initial improvements and any and all improvements during the term of this **Agreement**. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LICENSEE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of fields and facilities so as to insure **LICENSEE'S** compliance with this **Agreement**.
- 11.3. **LICENSEE** must comply with the Preconstruction Milestones of the Grant and Development Agreement with Bexar County prior to commencement of the initial improvements to the Premises.
- 11.4. **LICENSEE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA, if required. A copy of said permits or clearances shall be provided to **CITY** prior to the start of any construction. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LICENSEE** during the performance of any said construction and against any claim for injury to person or property. Following execution of this **Agreement**, **CITY** shall request a waiver of **LICENSEE'S** building inspection, review and permitting fees by the Planning and Development Services Department.
- 11.5. **LICENSEE** shall provide to **CITY** copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 11.6. Any improvements so installed by **LICENSEE** which can be removed without damage to the Premises may be removed at the sole expense of **LICENSEE** at the termination of

this **Agreement** without payment therefore being made by **CITY**, except however, that equipment and improvements paid for by **CITY** or Bexar County shall not be removed. If the improvements are not so removable without said damage to the Premises or were paid for by **CITY** or Bexar County, then said improvements become the property of the **CITY**.

11.7 **LICENSEE** will enter into one or more agreement(s) with Bexar County regarding the funding of improvements and operation of the Premises ("County Agreements"). **LICENSEE** hereby agrees to notify **CITY** at least ten (10) days prior to an amendment to any County Agreements.

12. DEFAULTS AND TERMINATION RIGHTS

12.1. Default by LICENSEE: Any of the following events shall constitute default by **LICENSEE** under this **Agreement**:

12.1.1 **LICENSEE** shall apply for or consent to the appointment of a receiver, trustee, or liquidator of **LICENSEE** or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against **LICENSEE** in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating **LICENSEE** as bankrupt or insolvent or approving a petition seeking reorganization of **LICENSEE**, or appointing a receiver, trustee, or liquidator of **LICENSEE** or of all or a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or

12.1.2. **LICENSEE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LICENSEE**, and such default shall continue for a period of thirty (30) days after notice thereof by **CITY** to **LICENSEE**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided so long as **LICENSEE** has commenced to cure such default and diligently pursues such cure to completion.

12.1.3. **LICENSEE** abandons all or any part of the Premises.

12.1.4. Bexar County ever declares **LICENSEE** in default of any County Agreements with **LICENSEE**.

12.1.5 **LICENSEE** fails to maintain its status as a 501(c)(3) non-profit entity.

12.2. Remedies of CITY: Upon the occurrence of an event of default by **LICENSEE** as specified in this **Agreement** hereof, **CITY** shall be entitled to terminate this **Agreement** and **CITY** shall have no further obligation hereunder.

12.3 Upon receipt by **LICENSEE** of notice of default from **CITY** or Bexar County, **LICENSEE** shall cease the expenditure of any funds contained in the Capital Repair and

Improvement Fund, unless LICENSEE requires the use of a portion of the Fund to cure the default. In such case, LICENSEE shall submit to CITY and Bexar County, for their written approval, a request for expenditure from the Fund and shall provide a detailed description of the planned use of the Fund which would cure the default. In the event that the default is cured, LICENSEE'S right to expend monies contained in the Capital Repair and Improvement Fund, as outlined in Section 6.33 of this Agreement, shall be restored. In the event that the default is not cured and the Agreement is terminated by CITY, LICENSEE shall immediately transfer all funds contained in the Capital Repair and Improvement Fund to CITY for use for maintenance, repair, replacement, refurbishment of the Premises .

- 12.4. Default by CITY: CITY shall be in default under this Agreement if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice thereof by LICENSEE to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that CITY has commenced to cure such default and diligently pursues such cure to completion.
- 12.5. Remedies of LICENSEE: Upon the occurrence of an event of default as specified in this Agreement hereof, LICENSEE shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.

13. INDEMNIFICATION

- 13.1 LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 13.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within twenty four (24) hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or

arising out of **LICENSEE'S** activities under this **Agreement** and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **GRANTEE** of any of its obligations under this paragraph.

14. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any work under this License, **LICENSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "EASTSIDE CHRISTIAN ACTION GROUP" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this License until such certificate and endorsements have been received and approved by the **CITY'S** Parks and Recreation Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

- 14.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this License. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

- 14.3 **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/ \$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of
a. Premises/Operations	\$1,000,000 per occurrence
b. Independent Contractors	\$2,000,000

- c. Contractual Liability
- d. Products/completed operations
- e. Personal Injury

general aggregate or its equivalent in umbrella or excess liability coverage

- Comprehensive Automobile Liability
- a. Owned/Leased Vehicles
- b. Non-owned Vehicles
- c. Hired Vehicles

Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent

Property Insurance: For physical damage to the property of Licensee, including improvements and betterment to the Licensed Premises, if applicable.

Coverage for 100% of the replacement cost of Licensee's property.

Builders Risk (if applicable)

All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

14.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LICENSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. LICENSEE shall pay any costs incurred resulting from said changes.

City of San Antonio

Attn: Parks and Recreation Department/Contract Services

P.O. Box 839966

San Antonio, Texas 78283-3966

14.5 LICENSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- A. Name the **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**; and
- D. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

14.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

14.7 In addition to any other remedies the **CITY** may have upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

14.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this License.

14.9 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License.

15. REPORTS AND RECORDS

15.1 Commencing upon completion of the initial improvements, **LICENSEE** shall provide to **CITY** a duplicate copy of the annual report that it provides to Bexar County's Citizens Oversight Committee ("Annual Report"). In addition, **CITY** shall have the right to attend any meetings that **LICENSEE** may have with the Citizens Oversight Committee regarding the Annual Report. The Annual Report to **CITY** shall be submitted to **CITY** on the same day that the Report is submitted to Bexar County.

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15.2 To the extent that this information is not included in the Annual Report, **LICENSEE** shall provide to **CITY**, at the same time the Annual Report is provided, the following information:

15.2.1 List of current officers, including addresses, telephone numbers and, if available, e-mail addresses;

15.2.2 Accounting of the Capital Repair and Improvement Fund, as defined in Section 6.3 above, including detail regarding all funds deposited on a monthly basis and withdrawals for repairs and improvements, accompanied by copies of each monthly bank statement for the Capital Repair and Improvement Fund bank account for the previous year.

15.2.3 Number of participants in **LICENSEE'S** programs and teams, and ages;

15.2.4 **LICENSEE'S** by-laws and, unless previously provided to **CITY**, its articles of incorporation.

15.3 Throughout the term of this **Agreement** and any extensions hereof, **LICENSEE** shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to **CITY** inspection, review, and audit following reasonable notification of intent to inspect.

15.4 **CITY** reserves the right to conduct, or cause to be conducted, a review and/or audit of **LICENSEE'S** records at any and all times deemed necessary by **CITY** provided, however, an audit will be conducted no more often than one time per year. **CITY** staff, a Certified Public Accountant (CPA), or other auditors as designated by **CITY**, may perform such audits and/or reviews. **CITY** reserves the right to determine the scope of every audit and/or review. In accordance herewith, **LICENSEE** agrees to make available to **CITY** all accounting records.

16. SIGNS

16.1 **LICENSEE** hereby agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the **CITY**. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. For purposes of this **Agreement**, temporary signs shall be defined as any sign or banner that is placed on the Premises before the game begins, and removed at the conclusion of the game. Signs which advertise businesses, sponsors, products, services, logos, or events not available upon the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LICENSEE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LICENSEE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign

contractor. CITY hereby acknowledges that LICENSEE shall display signage that acknowledges the contribution of Bexar County to the development and construction of the Premises with such signage to be permanently installed in a prominent location agreed to by Bexar County Commissioners Court and CITY.

17. ASSIGNMENT

17.1 LICENSEE shall not sublicense, assign, mortgage, or pledge this Agreement or any part of the Licensed Premises or any interest therein without first obtaining the written consent of Bexar County and CITY through the Director of the Parks and Recreation Department. Any such action by LICENSEE without the written consent of CITY shall be null and void, and shall, at the option of CITY terminate the Agreement. Sublicensee shall accept all terms and conditions of this Agreement, including the terms of use outlined in Section 3 herein.

18. RELATIONSHIP OF PARTIES

18.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of LICENSOR and LICENSEE.

19. CONFLICT OF INTEREST

19.1 LICENSEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined therein, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

19.2 LICENSEE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

20. SEPARABILITY

20.1 The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as

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similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

21.1 Notices to **CITY** required or appropriate under this **Agreement** shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the **CITY** from time to time. Notices to **LICENSEE** shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to **LICENSEE** at:

**Frank Dunn, Project Manager
Eastside Christian Action Group
210 S. Grimes, Ste. 115
San Antonio, Texas 78210**

or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

22.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

23. GENDER

23.1 Words of any gender used in this **Agreement** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

24. NON-DISCRIMINATION

24.1 **LICENSEE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LICENSEE** acknowledges is prohibited.

25. CAPTIONS

25.1 The captions contained in this **Agreement** are for convenience of reference only and in no way limit or enlarge the terms and conditions of this **Agreement**.

26. HOLDING OVER

26.1 Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, or any extension thereof, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding Agreement continuing in effect. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for **LICENSEE** to hold over.

27. ENTIRE AGREEMENT/AMENDMENT

27.1 This **Agreement**, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

27.2 No amendment, modification or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

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28. AUTHORITY

28.1 The signer of this License Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of LICENSEE.

IN WITNESS WHEREOF, we have affirmed our signatures this 10th day of July 2009.

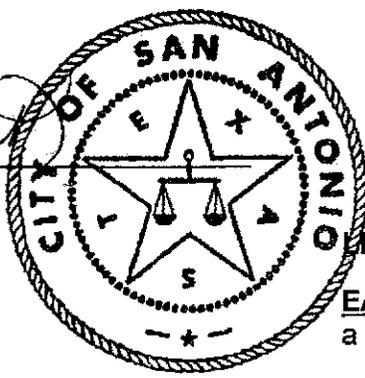
CITY:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

Sheryl Sculley
City Manager

ATTEST:

Sherry N. Hunt
City Clerk



LICENSEE:

EASTSIDE CHRISTIAN ACTION GROUP,
a Texas Non-profit Corporation

By: Fred Wynn

Title: PROJECT MANAGER

APPROVED AS TO FORM: [Signature]
City Attorney

RE: Ordinance 2009-06-18-0532; June 18, 2009

EASTSIDE CHRISTIAN ACTION GROUP

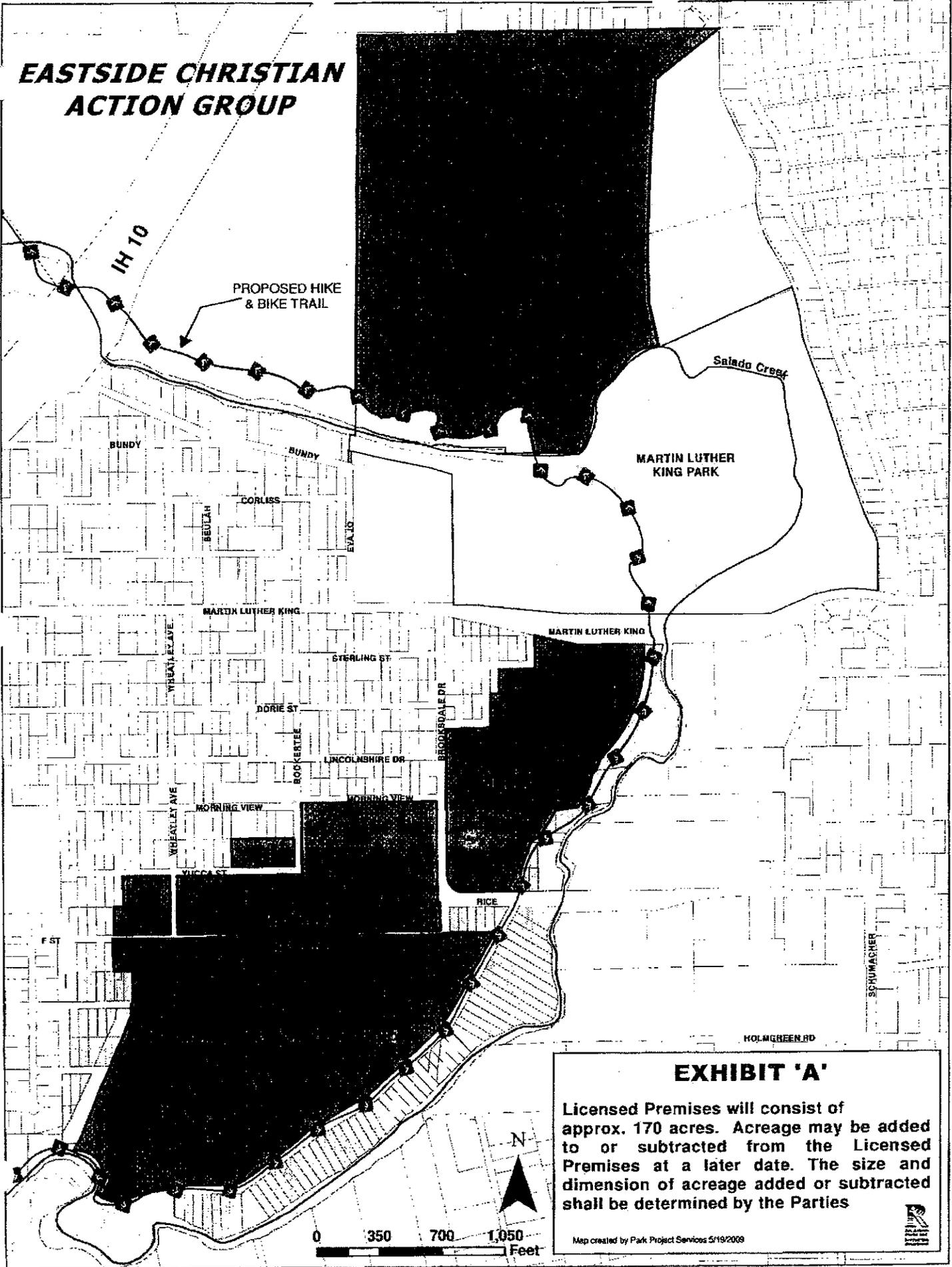


EXHIBIT 'A'

Licensed Premises will consist of approx. 170 acres. Acreage may be added to or subtracted from the Licensed Premises at a later date. The size and dimension of acreage added or subtracted shall be determined by the Parties

Map created by Park Project Services 5/19/2009



AN ORDINANCE 2009-06-18-0532

APPROVING A FIVE YEAR LICENSE AGREEMENT WITH EASTSIDE CHRISTIAN ACTION GROUP (ECAG) FOR THE DEVELOPMENT OF A SPORTS COMPLEX IN MARTIN LUTHER KING PARK AND WHEATLEY HEIGHTS FLOOD BUYOUT PROPERTY LOCATED IN CITY COUNCIL DISTRICT 2.

* * * * *

WHEREAS, on May 10, 2008, Bexar County voters approved an extension of the 1999 hotel occupancy and short term motor vehicle rental tax, referred to as the visitor or venue tax; and

WHEREAS, Bexar County identified community projects to fund with this tax extension that would have a positive impact on tourism; and

WHEREAS, a portion of the motor vehicle tax was dedicated to fund thirteen amateur sports facilities, many of which will be developed on land owned by the City of San Antonio; and

WHEREAS, the Eastside Christian Action Group (ECAG) was selected by Bexar County to receive \$7,500,000.00 from the venue tax for the development of a sports complex in Martin Luther King Park and in the Wheatley Heights flood buyout area; and

WHEREAS, ECAG's improvement plans include the construction of softball fields, football fields, a running track, cross country running trail, parking, restrooms, and a concession stand; and

WHEREAS, the proposed License Agreement is consistent with the agreements for four Bexar County tax venue projects previously approved by City Council; and

WHEREAS, ECAG will utilize approximately 170.0 acres in Martin Luther King Park and in the Wheatley Heights flood buyout area; and

WHEREAS, the initial term of the License Agreement is five years, with up to seven five year renewal options, subject to City Council approval; and

WHEREAS, the License Agreement will commence at a later date upon City Council approval of requested street closures in the Wheatley Heights area; and

WHEREAS, the improvement plans are subject to the approval of the City and Bexar County; and

WHEREAS, as with other City sports license agreements, there will be no rent paid to the City, but, in consideration of the use of this land, ECAG will maintain all fields and improvements; and

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SW/mgc
06/18/09
Item # 33

WHEREAS, the Capital Improvement Management Services Department has canvassed City departments in order to facilitate the closure of multiple streets in the Wheatley Heights area; and

WHEREAS, an ordinance requesting approval of street closures will be presented to City Council for consideration at a later date; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

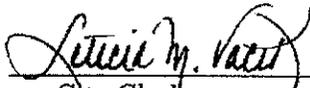
SECTION 1. The City Manager or her designee or the Director of the Parks and Recreation Department or his designee, is authorized to execute a License Agreement with the Eastside Christian Action Group (ECAG) for the development of a sports complex in Martin Luther King Park and Wheatley Heights flood buyout property located in City Council District 2. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance shall be effective on and after June 28, 2009.

PASSED AND APPROVED this 18th day of June, 2009.

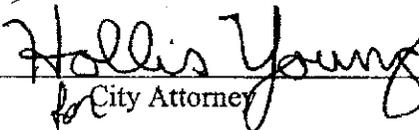
ATTEST:


City Clerk


M A Y O R

JULIÁN CASTRO

APPROVED AS TO FORM:


City Attorney

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EXHIBIT "D"

BUSINESS PLAN

(TO BE ATTACHED)

FAD

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