

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
BELLVILLE INDEPENDENT SCHOOL DISTRICT AND WEST END BALLPARK INC.**

This Memorandum of Understanding (the “MOU” or “Agreement”) is entered into and executed by and between the **BELLVILLE INDEPENDENT SCHOOL DISTRICT**, a public school district (“District”) and the **WEST END BALLPARK INC.**, a non-profit corporation located at 127 Beunger Road, Industry, TX 78944 (“WEB”), (each individually referred to herein as a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the District owns a baseball field and other related improvements including without limitation a turf field, bleachers, a concession stand, and restrooms (the “Facility”) located on the grounds of the property containing West End Elementary School at 7453 Ernst Parkway, Industry, TX 78944; and

WHEREAS, WEB maintains and operates a Little League baseball program and hosts other youth baseball activities and events; and

WHEREAS, WEB desires to formalize its arrangement with the District regarding WEB’s use of the Facility, and to continue to utilize the Facility as a venue for its Little League baseball program and other youth baseball games and practices; and

WHEREAS, WEB has previously donated to the District certain of the improvements located on the Facility including without limitation a turf field, bleachers, a concession stand, and restrooms, and desires to provide all reasonably necessary maintenance and certain utilities for the Facility in exchange for the right to utilize the Facility as a venue for its Little League baseball program and other youth baseball games and practices consistent with the terms of this MOU; and

WHEREAS, enactment of this MOU will allow for the continued operation of the Facility in a mutually beneficial manner; and

WHEREAS, the District and WEB are authorized to enter in this MOU; and

WHEREAS, the District recognizes that its public purpose will be served by the continued operation of the Facility as set forth in this MOU, as it will provide recreational opportunities for its community including without limitation its students, unless and until such operation impinges upon the District’s use of the property containing West End Elementary School for educational purposes or otherwise frustrates its educational mission.

NOW, THEREFORE, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the Parties to this MOU, the Parties agree as follows:

1. Term. The Term of this MOU shall commence on the Effective Date and shall continue in effect for five (5) years unless terminated sooner in accordance with this MOU. Upon

mutual written agreement of the Parties, the Term may be extended for a maximum of two (2) additional periods of five (5) years each.

2. Condition of Use.

(a) This MOU provides WEB and its officers, directors, equity holders, partners, employees, independent contractors, volunteers, agents, guests, and invitees (Collectively “Guests”) only with the right and privilege to enter and use the Facility for the purposes and in the manner set forth in this MOU. Nothing herein is intended to grant to WEB the exclusive right to occupy or use the Facility.

(b) WEB and its Guests shall comply with all applicable federal, state, and local laws and regulations, as well as with all applicable District policies, rules, and procedures, and shall not carry on any activities which may be deemed a nuisance or of an unlawful nature. During use of the Facility, WEB and its Guests will keep the Facility in as good condition as the Facility was in when the use began, subject to normal wear and tear, and will not use or permit any use thereof which will otherwise damage the Facility. WEB shall have the right to promulgate and impose reasonable rules and regulations regarding its Guests’ use of the Facility, provided such rules and regulations are consistent with and subject to the requirements of this MOU.

(c) The District maintains sole ownership of the Facility and shall have the right to exclude persons from the Facility for failure to follow District policies, rules, and procedures, and individuals who the District reasonably determines pose a risk to the safety and wellbeing of the District’s employees, students, or guests.

(d) The District has the right to hold classes, events, and/or other activities at the Facility, provided the District will work with WEB to coordinate such activities to allow WEB to have reasonable access to the Facility consistent with the purpose of this MOU.

(e) The use of the Facility under this MOU shall not in any way interfere with the operations of the District or any programs or activities of the District. Upon a determination by the District’s Board at a duly called meeting that the Facility is again required for the District’s educational purposes or that the continuation of this MOU otherwise frustrates the District’s educational mission, WEB understands that the District reserves the right to withdraw, rescind, or terminate this MOU at any time upon ninety days’ written notice.

3. Consideration for Non-Exclusive Use. In consideration for the non-exclusive right to use the Facility as provided herein, WEB hereby formalizes its donation to the District of those certain improvements located on the Facility, and will maintain the facility and pay for certain utilities as set forth in Section 5 herein.

4. Facility Improvements. The Parties do not currently contemplate any improvements to the Facility. Should WEB desire to make improvements to the Facility during the term of this Agreement, WEB will arrange for the improvements of the Facility, and same must

be brought to the attention of the District. WEB will provide the District with construction drawings and specifications prior to any improvements. WEB is not to make any changes to the Facility without District approval, which shall not be unreasonably withheld. The District will make reasonable efforts to cooperate with WEB during any improvement process, including allowing WEB and its contractors reasonable access to any temporary and permanent utilities necessary for the improvements of the Facility for its intended purpose. Notwithstanding the forgoing or any other provision contained in this MOU, WEB accepts the Facility in its current condition and agrees that the District shall have no liability to make the Facility suitable for improvement projects and that the District makes no warranties of any kind regarding the availability or suitability of any temporary or permanent utilities or other site conditions for the contemplated improvements or intended use. Prior to making any improvements or using the Facility for improvement-related purposes, WEB and its contractors shall be responsible for inspecting the site and all related conditions to ensure suitability for WEB's purpose. WEB will provide the District with a minimum of fifteen (15) days prior written notice before construction commences. The District shall have sole discretion to determine whether any planned improvement and/or construction cannot proceed because it poses a conflict with the District's current or future educational use of the Facility. All construction, improvements, maintenance, upkeep, and use must comply with any applicable laws, codes and building standards.

5. Maintenance and Utilities. WEB shall be responsible for all necessary maintenance, repair, and upkeep of the Facility, as well as for the general appearance and cleanliness of the Facility. Without limitation, WEB shall be solely responsible for (1) cleaning the Facility and returning same to its prior condition after each use by WEB or any of its Guests according to the District's standards and policies related to same, (2) repairing any damage caused to the Facility by WEB or any of its Guests, (3) general repairs or maintenance of the Facility necessary to keep the Facility in good repair and appearance or to achieve the purpose of this MOU. WEB shall also be responsible for provision of, and payment for, reasonably necessary electrical, water, and sewer service to the Facility. WEB acknowledges and agrees that the electrical service to the Facility that WEB provides and pays for will also continue to provide electricity to the District's West End Elementary marquee sign during the Term of this MOU. Without limitation to the District's other rights and remedies under this MOU, any failure by the WEB to fulfill its responsibilities pursuant to this Section in a manner acceptable to the District may result in the District's termination of this MOU, along with all other remedies and damages available to the District. The District will be responsible for maintenance and upkeep of the District-owned area surrounding and adjacent to the Facility.
6. Placement of Containers and Equipment. WEB may place containers for storage of necessary equipment for its activities upon the Facility provided WEB obtains the prior written consent from the District to a mutually agreed location. WEB acknowledges that the right to place containers upon the Facility is permissive and the District reserves the right to revoke the permission to place containers upon the Facility upon 30 days' written notice to WEB.

7. Use of Parking Lot. WEB may have use of the parking area adjacent to the Facility to the extent such use does not conflict with the District's use of the parking area.
8. Security/Safety. In coordination with the District, WEB will communicate and cooperate with law enforcement regarding any security and safety issues at the Facility. WEB shall be responsible for all costs associated with any security required by WEB's use under this agreement, including without limitation any additional security presence provided by the District necessitated by WEB's use under this MOU.
9. Damage to the Property. WEB shall maintain the Facility in good condition and repair, and shall keep the appearance of the Facility attractive. WEB agrees to pay all costs for cleanup or damage to grounds resulting from the operation of the Facility. Failure of WEB to maintain the Facility in acceptable condition or to abide by the terms and conditions of this MOU may result in the District's termination of this MOU, along with all other remedies and damages available to the District.
10. Vacation of Facility. Upon vacating the Facility, WEB is responsible for clearing all persons and property and returning the Facility to its original condition. WEB shall provide the District thirty (30) days prior written notice of the date when WEB will vacate the Facility. Before WEB vacates, WEB and the District will jointly conduct an inspection to record any damage or other conditions. Any property not removed by WEB's notice date of vacation shall become the sole property of the District. If the District determines, in its sole and absolute discretion, that additional cleaning, maintenance, or repair is required, the District may use its own personnel or contractors for the performance of the extra work and WEB agrees to pay any costs (including overtime pay of District staff) associated with the extra work. WEB shall pay said costs within twenty (20) days following receipt of an invoice for these costs from the District.
11. Insurance.
 - a. Without limiting WEB's indemnification under Section 12, WEB shall maintain in force, at all times during the term of this MOU:
 - i. Property insurance covering the Facility for replacement costs up to and including the total insured value of the Facility (as determined by the District in consultation as needed with the Property Casualty Alliance of Texas or similar entity) and naming the District as loss payee.
 - ii. Comprehensive or commercial general liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, and \$2,000,000 general aggregate limit, for bodily injury and property damage, including coverage for contractual liability.
 - b. The coverage afforded by WEB's insurance shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of

more than one (1) insured shall not operate to increase the insurer's limits of liability.

- c. WEB's insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas, shall have an "A-VIII" in Bests Rating Guide, and shall be satisfactory to the District.
- d. Within ten (10) days of the Effective Date of this MOU, WEB shall furnish certificates of insurance and copies of endorsements to the District for each required insurance policy, with complete copies of policies to be furnished to District promptly upon request. The certificate of insurance for property insurance shall state the total insurance value on the certificate. WEB shall furnish new certificates of insurance to the District annually.
- e. All original and copies of WEB's certificates of insurance, endorsements, and policies shall (a) state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices; (b) except Worker's compensation and professional liability insurance, add the District, the District's directors, officers, trustees, and employees of any of them as named additional insureds on all policies; (c) include a waiver of subrogation in favor of the District; (d) include the Facility, if applicable; and (e) include the following clause: "This policy shall not be non-renewed, or canceled, until notice has been mailed to Bellville Independent School District. Date of cancellation may not be less than thirty (30) days after the date of mailing notice." WEB shall provide thirty (30) days' advanced written notice of any reduction in coverage limits or amount of insurance.
- f. Should any of the required insurance except for professional liability be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall apply separately to WEB's activities/omissions pursuant to this Agreement (with the insurer's endorsement provided to the District) or shall be two times the occurrence limits stipulated.
- g. If WEB fails to maintain any required insurance, the District, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and may collect same from WEB.

12. INDEMNIFICATION. WEB, TO THE EXTENT PERMITTED BY TEXAS LAW, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT, ITS RESPECTIVE TRUSTEES, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, OR ASSIGNS FOR ALL CLAIMS FOR COMPENSATION FOR ANY LOSS, DAMAGE, PERSONAL INJURY, OR DEATH OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF, OR FAILURE TO PERFORM, THIS MOU.

- 13. DISCLAIMER OF LIABILITY. NEITHER THE DISTRICT NOR ANY OF ITS RESPECTIVE TRUSTEES, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, OR ASSIGNS SHALL BE LIABLE OR RESPONSIBLE FOR ANY CLAIMS, LOSSES, DEMANDS, SUITS, COSTS AND EXPENSES, AND OTHER FORMS OF LIABILITY INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND LITIGATION EXPENSES OR ANY INJURY TO ANY PERSON OR TO ANY PROPERTY OF WEB, ITS OFFICERS, EMPLOYEES, AGENTS, MEMBERS, GUESTS, INVITEES, OR ANY THIRD PARTY, IN OR UPON THE FACILITY, RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, THEFT, OR VANDALISM, RELATED TO WEB'S USE OF THE FACILITY UNDER THIS MOU.**
14. No Waiver of Immunity. Neither the execution of this MOU nor any other conduct by either Party relating to this MOU shall be considered a waiver by the District of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.
15. Amendment. This MOU shall not be amended without prior written consent of each Party.
16. Cooperation of Parties. It is the intention of the Parties that any details of the use of the Facility anticipated by this MOU that are not addressed by the terms of this MOU shall be worked out, in good faith, by both Parties.
17. Public Purpose. It is the intent of the Parties that the Facility be used as a public project and that all of the improvements on the Facility will have a significant public benefit.
18. Entire Agreement. This written MOU is the entire agreement of the Parties with respect to the subject matter contained herein and it supersedes all other previous agreements, whether verbal or written, and discussions related thereto. There are no oral representations, warranties, agreements, or promises pertaining to this MOU.
19. Relationship. This MOU is made for the sole benefit of the District and WEB. Nothing in this MOU shall create or be deemed to create a relationship between the Parties to this MOU and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.
20. Assignment. No assignment of this MOU or of any duty or obligation of performance hereunder, shall be made in whole or in part by any Party hereto without the prior written consent of the other Party hereto.
21. Severability. If any portion of this MOU shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect and this MOU shall be liberally construed to carry out the intent of the Parties.

22. Counterparts. The Parties agree that this MOU may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document; provided each of the Parties hereto executes at least one counterpart. A facsimile or other electronic signature to this MOU shall be sufficient to prove the execution hereby by any Party.
23. No Representations or Warranties. WEB has inspected the Facility and found it to be safe and appropriate for WEB's use. The District makes no representations that the Facility is safe or suitable for the intended use. The District assumes no responsibility for improving, altering, or maintaining the Facility to meet WEB's requirements.
24. Governing Law and Venue. The laws of the State of Texas shall control the construction and interpretation of this MOU. Mandatory exclusive venue for any proceeding under this MOU shall be state district court in Austin County, Texas.
25. Effective Date. This MOU is effective upon execution by both Parties. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.
26. Notice. Except as otherwise provided in this MOU, where the MOU requires one Party to notify or give notice to the other Party, such notice shall be provided in writing to the designated representative of the Party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission at the following addresses:

Bellville ISD

Dr. Nicole Poenitzsch
Superintendent
518 S. Mathews Street
Bellville, TX 77418
npoenitzsch@bellvillebrahamas.org

West End Ballpark, Inc.

Allen Woodruff
President
127 Beunger Road
Industry, TX 78944
allen.woodruff@gmail.com

Signed as of the Effective Date:

**West End Ballpark, Inc.
District**

Bellville Public Independent School

By: _____
Name: Allen Woodruff
Title: President
Date:

By: _____
Name: Dr. Nicole Poenitzsch
Title: Superintendent
Date: