

ORDINANCE NO. BL2019 - 11

An ordinance approving amendment three to the ground lease for Rose Park between The Metropolitan Government of Nashville and Davidson County, acting by and through the Department of Parks and Recreation, and Belmont University, and approving a new ground lease between The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Public Education, and Belmont University for the construction and operation of an indoor batting and locker/training facility (Proposal No. 2019M-032AG-001).

WHEREAS, The Metropolitan Government of Nashville and Davidson County ("Metro") owns, and through the Department of Parks and Recreation ("Parks") operates, Rose Park; and

WHEREAS, Metro and Belmont University ("Belmont") are parties to the lease dated November 5, 2007, as authorized by BL2007-1544 and subsequently amended by Ordinance Nos. BL2016-458 and BL2017-662 (the "Parks Lease"); and

WHEREAS, Ordinance No. BL2017-662 approved amendment two to the Parks Lease to permit Belmont to construct a new indoor batting and locker/training facility abutting the baseball field; and

WHEREAS, Belmont subsequently negotiated an agreement with Metropolitan Nashville Public Schools (MNPS) for the construction and use, at Belmont's sole expense, of the indoor batting and locker/training facility on a portion of the Rose Park Magnet Math and Science Middle School (the "School Lease"), attached hereto as Exhibit A, rather than being constructed on the Rose Park property; and

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that amendment three to the Parks Lease (the "Third Amendment"), attached hereto as Exhibit B, be approved to remove the indoor batting and locker/training facility from the Rose Park property, and that the School Lease be approved.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. The School Lease is hereby approved, and the Director of Public Property is authorized to execute the same.

Section 2. The Third Amendment to the Parks Lease is hereby approved, and the Director of Public Property is authorized to execute the same.

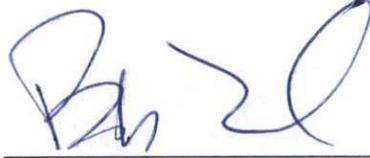
Section 3. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO
FORM AND LEGALITY:



Metropolitan Attorney

INTRODUCED BY:



Members of Council

Lease Agreement and Memorandum of Understanding

This Lease Agreement and Memorandum of Understanding (“MOU”) by and between The Metropolitan Government of Nashville and Davidson County through the Metropolitan Board of Public Schools (“Metro” or “MNPS”) and Belmont University (“Belmont”) is intended to outline the agreement of the parties as it relates to Rose Park Middle School and the construction and use of an indoor batting and locker/training facility (the “Improvements”).

- 1. Grant of Temporary Construction Right of Access.** MNPS grants to Belmont a temporary construction right of access adjacent to Rose Park Magnet Math and Science Middle School (the “Property”) as depicted in the survey and site plan and as described in the property description, each of which is attached to this Agreement as collective Exhibit A. The purpose of the temporary access shall be for the construction of the Improvements. Metro shall grant for the benefit of Belmont, MNPS, and the community such utility easements and temporary construction easements as reasonably necessary to construct and utilize the Improvements or for any subsequent alterations or additions to the Improvements approved by MNPS.
- 2. Design and Construction.** The design and construction of the Improvements shall be fully funded by Belmont and accepted by MNPS. No construction may begin without the written approval of the plans for the Improvements by MNPS. Once such plans are approved, Belmont shall promptly begin and diligently pursue the Improvements to completion. No material changes to the plans shall be made without the written approval of MNPS. In addition, Belmont shall be responsible for securing all necessary licenses, permits, and approvals required to authorize construction of the Improvements. MNPS shall assist in these efforts as appropriate.
- 3. Improvements.** The Improvements shall include but may not be limited to an indoor batting and locker/training facility with associated site improvements including a new driveway and parking spaces as depicted on Exhibit A. Belmont warrants that all of the completed Improvements will fully comply with all Metropolitan Nashville Public Schools and Metropolitan Government of Nashville and Davidson County regulations, building and other applicable codes, rules, laws, ordinances and regulations, including, without limitation, the Americans With Disabilities Act.
- 4. Use of Facility.** In consideration of the obligations assumed hereunder, Metro, by and through the Metropolitan Board of Education, hereby authorizes Belmont to have, hold, and use those portions of the Property on which Improvements are located for the contemplated use as set forth in this MOU. In connection therewith, Metro hereby further grants Belmont the right to nonexclusive ingress and egress by Belmont (or its contractors) through any portion of the Property for the purpose of taking any action necessary or convenient for construction, maintenance, repair, or alteration of the Improvements or as necessary for the enjoyment of the Improvements. No part of the Property or Improvements shall be used to secure any obligation of Belmont or Metro. In the event any lien of any kind shall be filed or asserted against the Property or Improvements as a result of the actions or inactions of Belmont, Belmont shall promptly cause an appropriate bond to be filed and said lien transferred to the bond.



- 5. Activities and Scheduling.** Belmont's uses at the Improvements may include tryouts, training, practices, recruiting, administrative activities, and sports camps associated with its intercollegiate athletic programs in baseball, softball, and golf. MNPS and RBI activities shall include tryouts, training, practices, administrative activities and sports camps associated with their interscholastic and Edgehill-based community programs in baseball and softball.

Belmont shall be responsible for scheduling the use of the Improvements by all parties and shall provide a building supervisor to provide scheduled access by MNPS and RBI Nashville to the Improvements. Any time there is not a previously scheduled Belmont use for the facility or portion of the facility, MNPS and RBI shall be allowed access to the unused portions of the facility. MNPS and RBI Nashville shall provide appropriate coaching supervision to the players participating on MNPS and RBI teams while such players are using the Improvements. Belmont shall construct office space on first floor of the Improvements for the shared use by Belmont's building supervisor, MNPS and RBI. Notwithstanding any other provision of this memorandum, each week for the duration of the term, MNPS shall have reasonable opportunities and access to use the Improvements during daytime and evening hours.

Belmont warrants that its uses of the Property and Improvements shall comply in full with all MNPS policies of general applicability, as well as every applicable law, ordinance, statute, rule and regulation.

- 6. Term and Termination.** Unless sooner terminated pursuant to this MOU, the Term shall expire on the fiftieth (50th) anniversary of the Commencement Date. Either party may terminate this Agreement for its convenience prior to expiration upon written notice delivered to the non-terminating party. Termination as contemplated by this paragraph shall take effect on the first anniversary of delivery of the notice ("Termination Date"). If this MOU is terminated by MNPS prior to expiration of the term for any reason other than Belmont's uncured material breach of its obligations under this Agreement, MNPS shall pay Belmont the fair market value of the Improvements. Such value shall be calculated based on two appraisals. MNPS and Belmont shall each select and compensate an appraiser to perform appraisals of the Improvements. If these appraised values are more than 10% apart, a third appraiser shall be jointly hired to conduct the determinative appraisal. If Belmont terminates this MOU for its convenience, no payment shall be owed by MNPS to Belmont.
- 7. Removal of Property upon Termination.** Upon termination of Belmont's use under this MOU, Belmont shall be entitled to remove its personal property and shall vacate the Improvements within sixty (60) calendar days. The Improvements shall at all times belong solely to Metro. Unless stated otherwise in this MOU, all personal property and fixtures obtained by Belmont for use on the Property will remain the property of Belmont; provided, however, that fixtures that cannot be removed without material damage to the Improvements shall remain on the Property and become the sole property of Metro, unless Belmont agrees to promptly repair any damage caused by the removal of such fixtures.
- 8. Performance and Payment Bond.** Until such time as the Improvements are completed, Belmont shall provide or cause to be provided and maintained in full force and effect a performance bond and a labor and material payment bond in the full amount of the lump sum or guaranteed maximum price payable for the work under any contract issued or executed by Belmont for construction of the Improvements. Such bonds shall be in form and substance and issued by a corporate surety satisfactory to Metro. Each bond shall be in favor of Metro and shall conform in all respects to all requirements imposed by applicable law. Belmont shall pay all premiums for such bonds.

9. **Programming Space.** MNPS and Belmont shall work together to plan the use and programming of the Improvements.
10. **Extended Learning Site.** MNPS shall operate an Extended Learning Site at Rose Park. Belmont and MNPS shall work together to recruit community groups to support the Extended Learning Site special interest activities in academics, athletics, and the arts.
11. **Annual Grant.** Belmont shall pay MNPS an annual grant of \$35,000 to support MNPS's Extended Learning Site at Rose Park including Saturday operating hours at The Easley Center and to support Edgehill community baseball programs through RBI Nashville. If the Metropolitan Government of Nashville and Davidson County adopts an operating budget that includes funding for Saturday operating hours at one or more of Metro Parks neighborhood park community centers, the annual grant shall decrease to \$20,000. Such funds shall be used to support Edgehill community baseball programs through RBI Nashville.
12. **Signage.** Belmont may place signage on the building in a location approved by MNPS. Such signage shall be reasonable in size and MNPS administration shall approve such signage, which approval shall not be unreasonably withheld.
13. **Maintenance and Repair.** Belmont shall keep the Improvements in good condition and repair throughout the term of this MOU. The maintenance and repair of the Improvements shall be the sole responsibility of Belmont. If damage is caused by a third party, its agents, employees, or guests, MNPS shall assist in recovery of funds to pay for the damage caused by such parties.
14. **Utilities and Janitorial.** Belmont shall bear the cost of utilities as well as janitorial services incurred in operating the Improvements. MNPS shall bear the cost of grounds maintenance with the exception of any decorative landscaping which shall be installed and maintained by Belmont.
15. **Insurance.** During the entire Term of this Agreement, Belmont shall provide and keep in force a policy of insurance covering builders risk and property damage at the full replacement value of the Improvements. Metro shall be named as an additional insured on the policy, which shall be issued by a corporation licensed to do business in Tennessee, financially sound and generally recognized, selected by Belmont and with the approval of Metro, not to be unreasonably withheld. Belmont shall maintain, and include Metro as an additional insured, throughout the term of this MOU, insurance of the types and in the amounts described below.
 - a. Worker's Compensation Insurance as required by law and Employer's Liability Insurance with minimum limits of \$1,000,000.
 - b. General Liability Insurance with minimum limits of \$1,000,000 per occurrence.
16. **Indemnification.** Belmont agrees to be responsible for the conduct of its employees, agents, and students using the Improvements. Belmont agrees that if it uses the Rose Park Magnet Math and Science Middle School building, it will be used in accordance with the rules and regulations of MNPS. Belmont agrees to indemnify and hold harmless MNPS and the Metropolitan Government of Nashville and Davidson County from:
 - a. Any claim, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from Belmont's use of the facility; and

- b. Any claim, damages, penalties, costs and attorney fees arising from any failure of Belmont, its officers, employees, and/or agents, to observe applicable laws.

Belmont further acknowledges that MNPS and the Metropolitan Government of Nashville and Davidson County make no warranties about the safety, maintenance, or inspection of the site before, during or after construction of the Improvements.

17. **Good Faith Effort.** The parties hereto agree to work in good faith with each other to do all things necessary as it relates to this agreement.
18. **Relationship of Parties.** Nothing in this MOU is intended or shall be interpreted to create a joint venture or partnership between Metro/MNPS and Belmont or make Metro/MNPS the partner of Belmont or constitute either the agent of the other, or make either party in any way responsible for the debts, losses, duties, obligations, responsibilities or liabilities of the other party. Without limiting the generality of the foregoing, Metro and Belmont agree that in respect to use and occupancy of the Property and Improvements by Belmont pursuant to this MOU, Belmont shall be acting as facility user and independent contractor on Metro/MNPS's behalf.

**THE METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY BY AND THROUGH THE
METROPOLITAN BOARD OF PUBLIC EDUCATION:**

APPROVED:

Anna Shepherd

MBPE Board Chair

RECOMMENDED:

[Handwritten Signature]

Executive Director of Facilities, Maintenance & Construction

[Handwritten Signature]

Chief Operating Officer

BELMONT UNIVERSITY

APPROVED:

Robert Fisher

Signature

Robert Fisher

Name

President

Title

9/23/2019 | 10:26 AM CDT

Date

**FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

Metropolitan Clerk

Date

Legal Description

Beginning at a point along the southern boundary of the property described in Instrument Number DB- 00003346-0000579 in the Register's office of Davidson County, Tennessee, said point also lying on the North Right-of-Way of Edgehill Avenue;

Thence, NORTH 13 DEGREES 40 MINUTES 24 SECONDS WEST, 53.65 Feet;

Thence, NORTH 13 DEGREES 2 MINUTES 25 SECONDS EAST, 247.54 Feet to a point along the western boundary of the same property;

Thence, SOUTH 87 DEGREES 16 MINUTES 12 SECONDS EAST, 69.88 Feet;

Thence, SOUTH 12 DEGREES 56 MINUTES 36 SECONDS WEST, 99.77 Feet;

Thence, SOUTH 77 DEGREES 27 MINUTES 40 SECONDS EAST, 65.63 Feet;

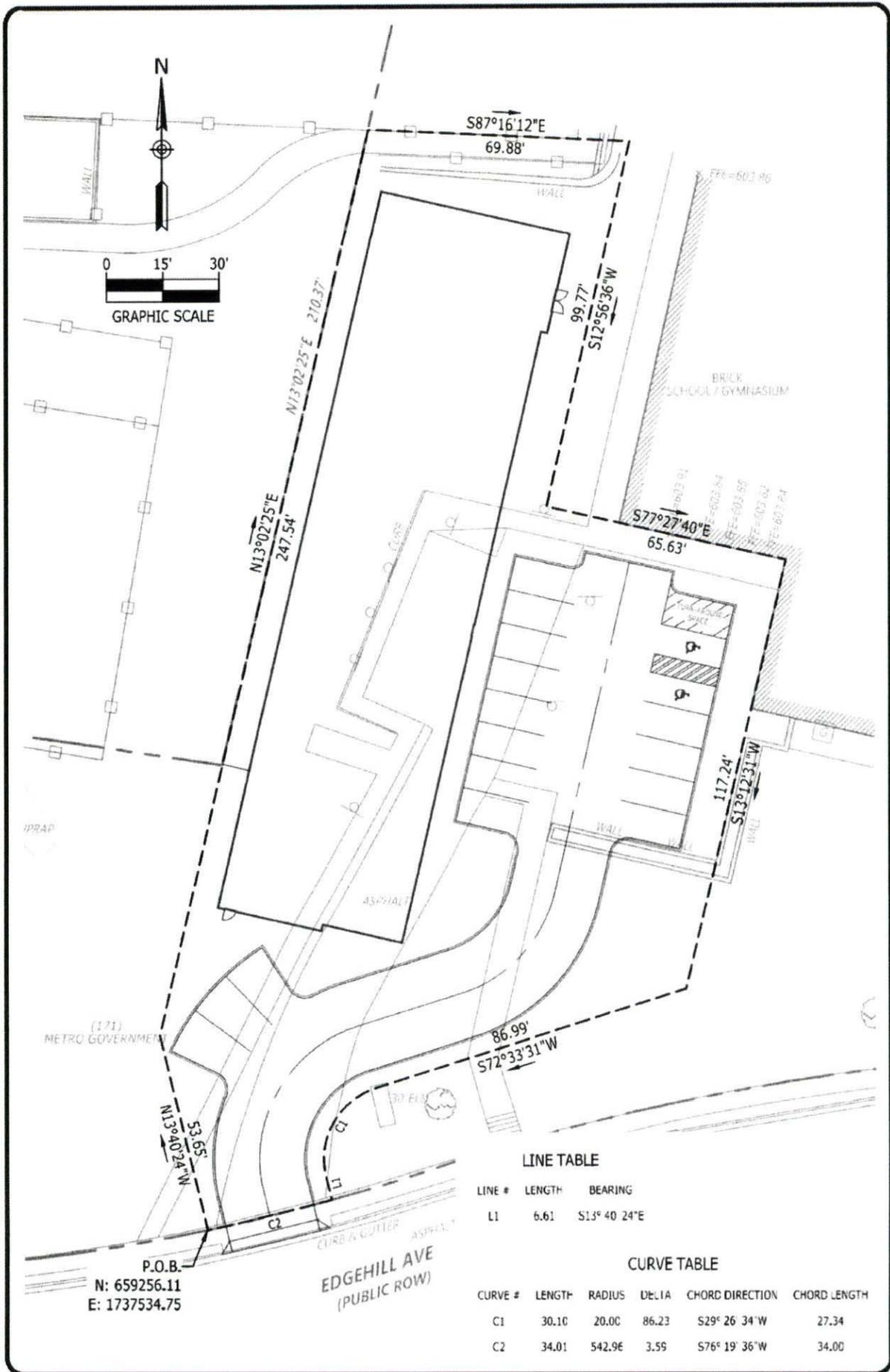
Thence, SOUTH 13 DEGREES 12 MINUTES 31 SECONDS WEST, 117.24 Feet;

Thence, SOUTH 72 DEGREES 33 MINUTES 31 SECONDS WEST, 86.99 Feet;

Thence, with a curve turning to the left with an arc length of 30.10 feet, with a radius of 20.00 feet, with a chord bearing of SOUTH 29 DEGREES 26 MINUTES 34 SECONDS WEST, with a chord length of 27.34 feet;

Thence, SOUTH 13 DEGREES 40 MINUTES 24 SECONDS EAST, 6.61 Feet to a point along the North Right- of-Way of Edgehill Avenue;

Thence, with a curve turning to the right with an arc length of 34.01 feet, with a radius of 542.96 feet, with a chord bearing of SOUTH 76 DEGREES 19 MINUTES 36 SECONDS, with a chord length of 34.00 feet, which is the point of beginning, having an area of 28,094 Square Feet.



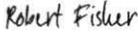
Certificate Of Completion

Envelope Id: 04FC8BA541DB4830BC2795A7B689CA2A	Status: Sent
Subject: Please DocuSign: Amended MOU - Belmont & MNPS	
Contract Number: n/a	
Source Envelope:	
Document Pages: 7	Signatures: 4
Certificate Pages: 2	Initials: 0
AutoNav: Enabled	
Envelope Stamping: Enabled	
Time Zone: (UTC-06:00) Central Time (US & Canada)	
	Envelope Originator:
	Facility Planning & Construction
	2601 Bransford Ave
	Nashville, TN 37204
	fpc@mnps.org
	IP Address: 96.4.9.1

Record Tracking

Status: Original 9/20/2019 4:04:36 PM	Holder: Facility Planning & Construction fpc@mnps.org	Location: DocuSign
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Signer Events

Signer Events	Signature	Timestamp
Robert Fisher robert.fisher@belmont.edu President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 142.147.71.8	Sent: 9/20/2019 4:10:36 PM Viewed: 9/23/2019 10:20:20 AM Signed: 9/23/2019 10:26:35 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

David Proffitt David.Proffitt@mnps.org Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 96.4.9.1	Sent: 9/23/2019 10:26:36 AM Viewed: 9/23/2019 11:12:19 AM Signed: 9/23/2019 11:13:16 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Chris Henson Chris.Henson@mnps.org CFO Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 96.4.9.1	Sent: 9/23/2019 11:13:17 AM Viewed: 9/23/2019 11:16:45 AM Signed: 9/23/2019 11:16:53 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Anna Shepherd Cameo.Bobo@mnps.org Board Chair Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 96.4.9.1	Sent: 9/23/2019 11:16:54 AM Resent: 9/24/2019 10:05:30 AM Viewed: 9/24/2019 10:05:54 AM Signed: 9/24/2019 10:06:02 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events	Signature	Timestamp
Julie Conn julie.conn@nashville.gov Security Level: Email, Account Authentication (None)	Completed Using IP Address: 170.190.198.100	Sent: 9/24/2019 10:06:03 AM Resent: 9/24/2019 11:38:54 AM Resent: 9/24/2019 11:41:21 AM Resent: 9/24/2019 11:42:06 AM Viewed: 9/24/2019 11:41:49 AM Signed: 9/24/2019 11:48:16 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Elizabeth Waites
Marlene.Fuller@nashville.gov
Metropolitan clerk
Security Level: Email, Account Authentication (None)

Sent: 9/24/2019 11:48:17 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Judy Vokes
judy.vokes@mnps.org
Security Level: Email, Account Authentication (None)

COPIED

Sent: 9/23/2019 11:16:54 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Brenda Wingler
brenda.wingler@mnps.org
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jackie Taylor
jackie.taylor@mnps.org
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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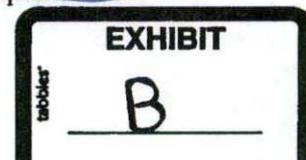
AMENDMENT TWO
TO
LEASE BETWEEN
METROPOLITAN NASHVILLE DEPARTMENT OF PARKS AND RECREATION
AND
Belmont University

This amendment is entered into on this 6 day of May, 2017, by and between by and between METROPOLITAN NASHVILLE DEPARTMENT OF PARKS AND RECREATION ("Metro"), and BELMONT UNIVERSITY, a tax-exempt educational organization ("Belmont").

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions to their original agreement dated November 5, 2007, hereinafter the "the Lease," the parties hereby agree as set forth below.

1. Section 2. Improvements. Is hereby modified to read as follows:
 - a. At its own expense, Belmont will construct Improvements on the Property. Improvements shall include baseball, softball, soccer and track venues ("Sports Fields") as well as a building for concessions, storage and locker rooms and improvements to certain common areas, including parking lots, circulation infrastructure and site furnishings. Metro shall determine necessity of and pay for improvements to portions of the Property outside the Improvements. Belmont warrants that all of the completed Improvements will fully comply with all Metropolitan Parks Department regulations, building and other applicable codes, rules, laws, ordinances and regulations, including, without limitation, the Americans With Disabilities Act. Belmont shall make every effort to include qualified minority and women-owned business in the construction improvements. No improvements shall place exterior chain link fence around the park. In addition, access to parking and to the park shall not be limited, unless specifically to improve the Safety of Carter Lawrence or Rose Park dismissal. Belmont agrees that during the initial construction and future improvements it will minimize the disruption to adjacent public schools and residents; maximize the safety of school children and pedestrians; maintain as much access as possible to parks grounds; and minimize dust associated with construction.
 - b. ~~In addition, at its own expense, Belmont will construct a 80 foot x 120 foot indoor batting facility and related training space, office, and meeting room ("Facility") on the Property abutting the northern edge of the Olympic Street parking lot as illustrated on the attached Exhibit A. Metro shall schedule the use of the Facility in the same manner as Metro currently schedules the use of existing storage and locker rooms on the Property. Belmont agrees to comply with all of the requirements already mentioned herein and agrees to replace any trees that are removed for construction with additional smaller trees equal to the~~



~~combined total caliper of the trees removed. Further, Belmont's annual lease payment to Metro shall be increased by \$5,000 which shall be divided proportionately between Metro Parks Department, Rose Park Middle School and Carter Lawrence Elementary School.~~

2. This amendment shall not be binding upon the parties until it has been signed first by the authorized representatives of Lessee, by the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY**

RECOMMENDED BY:

Steve Berry
Steve Berry, Director
Public Property Administration

Tommy Lynch
Tommy Lynch, Director
Department of Parks and Recreation

APPROVED AS TO AVAILABILITY OF FUNDS:

Talia Lomax-O'dneal
Talia Lomax-O'dneal, Director
Department of Finance *15*

APPROVED AS TO FORM AND LEGALITY:

Katie Dorney
Metropolitan Attorney

**ATTEST:
FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

5/8/2017 *BL2017-662*
Date:

LESSEE

Belmont University

Company:

BY: Bob Fisher

Print: BOB FISHER

Title: PRESIDENT Sworn to

and subscribed to before me, a Notary Public,

this eighth day of

March, 2017, by

Robert C. Fisher, the

President of LESSEE

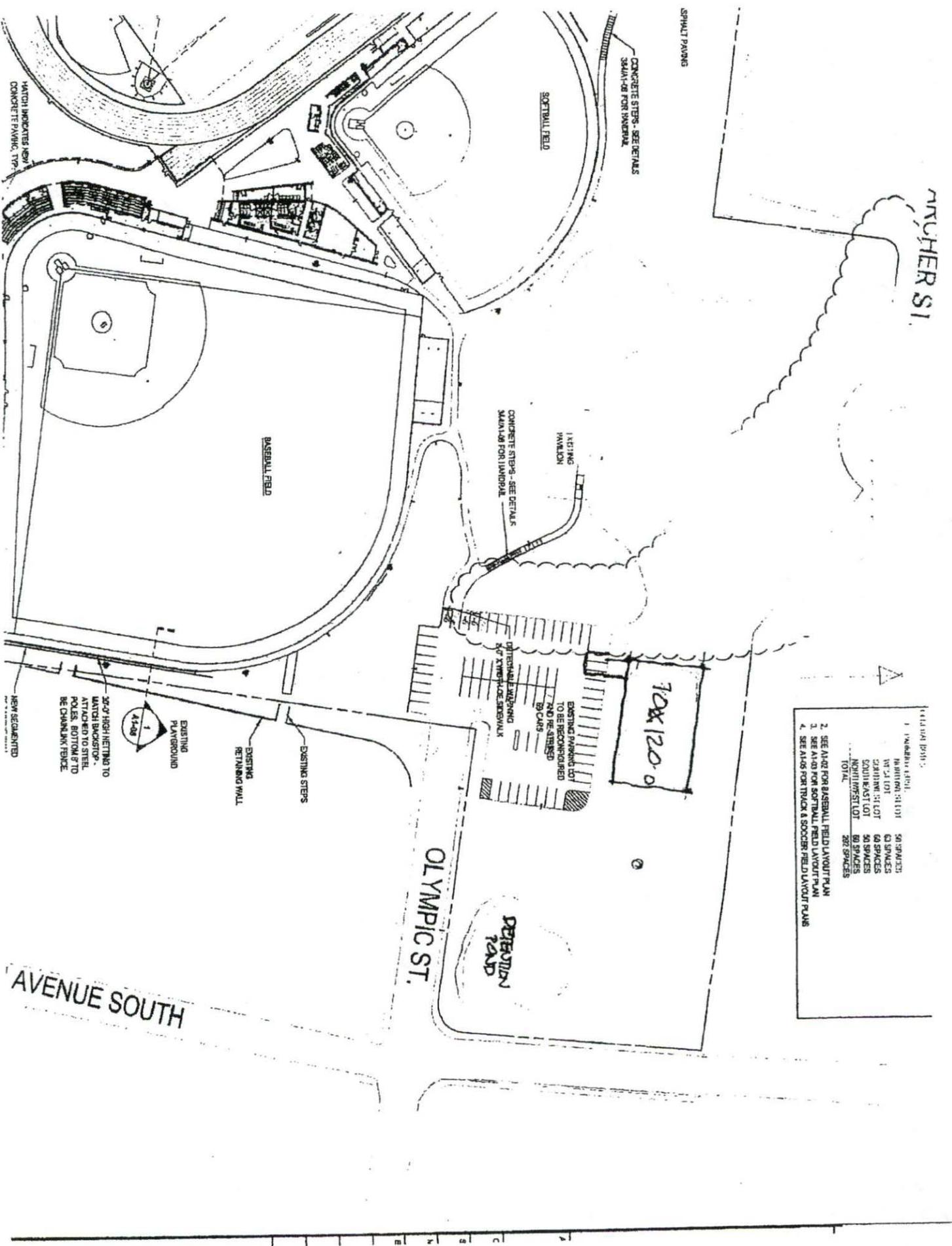
and duly authorized to execute this

instrument on Lessee's behalf.

Lynda Hefflin
Notary Public



My Commission Expires 07.08.2019



FIELD LAYOUT DATA:

1. PARKING LOTS	50 SPACES
IN BROWN: S1 LOT	62 SPACES
IN WHITE: S2 LOT	60 SPACES
SOUTH/EAST LOT	50 SPACES
NORTH/WEST LOT	60 SPACES
TOTAL	282 SPACES

2. SEE A1-02 FOR BASEBALL FIELD LAYOUT PLAN
 3. SEE A1-03 FOR SOFTBALL FIELD LAYOUT PLAN
 4. SEE A1-05 FOR TRACK & SOCCER FIELD LAYOUT PLAN