



Grand Slam Lease Extension

September 2, 2015

The Honorable Mayor Ellison and
Members of the City Commission:

At the February 16, 2015 commission meeting a one year extension for Grand Slam Baseball Training Center, Inc. (Grand Slam) was approved. Staff was directed to negotiate a lease extension based on the improvements presented at that meeting.

Attached is the contract incorporating those improvements (Attachment 1). The lease runs through 2024 and contains an early termination clause.

The following resolution is recommended for approval:

Be It Resolved, the commission hereby approves the contract with Grand Slam Baseball Training Center, Inc.

Respectfully submitted,
Greg Rassel
Director of the Departments of
Public Services and Recreation

Approved,


Donald E. Johnson
City Manager

1 Attachment

Attachment 1

PROPERTY LEASE

The City of Royal Oak, a Michigan municipal corporation, with offices at 211 Williams Street, Royal Oak, Michigan (the "Lessor") and Grand Slam Baseball Training Center, Inc., a Michigan corporation with offices at 3530 Coolidge Highway, City of Royal Oak, State of Michigan (the "Lessee") enter into this lease subject to the following conditions:

1. Premises. The Lessor leases to the Lessee and the Lessee rents from Lessor, the real property located in the City of Royal Oak legally described as:

Commencing at the northwest corner of Lot 104 of the "Wider Woodward Subdivision" Part of the W ½ of the W ½ of Section 5, T.1.N., R.11.E City of Royal Oak, Oakland County, Michigan. As recorded in Liber 33 Page 14 Oakland County Records;

Thence S.1°21'E. 320.00 Ft. along Easterly R.O.W. Line of Coolidge Highway to the point of beginning; thence N.88°39'E. 207.00 Ft.; thence S.1°21'E. 148.00 Ft.; thence S.88°39'W. 207.00 Ft. to the Easterly R.O.W. Line of Coolidge Highway; thence N.1°21'W. 148.00 Ft. along the Easterly R.O.W. Line of Coolidge Highway to the point of beginning.

Less an area 110' x 20' which has been converted to nine (9) parking spaces; plus an area approximately 148' x 44' which is operated as a Defensive Skill area

together with all easements, rights, privileges, advantages or appurtenances belonging to or pertaining thereto and together with a non-exclusive easement for the purpose of vehicle parking and for use as a walkway for the ingress and egress to and from the Leased Premises and the adjacent parking area; including a means of reasonable automobile and pedestrian access to and from a public highway from the parking area.

2. Approved use for the Leased Premises. The Lessor grants to the Lessee, during this Lease, the right to operate and to maintain upon the Leased Premises a recreational facility consisting of:

eight (8) baseball batting machines,
one (1) defensive skills area,
a pitching speed recorder, and
a permanent support building,

as are currently existing and operating on the Leased Premises.

3. Capital Improvements. The lessor agrees to make the following capital improvements:
 - a. Two self-contained cages – replace pitching machines, netting, flooring, decking, coin boxes and electronics at \$15,000 each, total, \$30,000.
 - b. Replace netting, total \$18,000.
 - c. Replace two outdoor machine roofs/decks, total \$8,000.
 - d. Upgrade/refurbish bathrooms (sinks, toilets, floor, lights and faucets), total \$8,000.
 - e. Replace lighting, total \$8,000.
 - f. The capital improvements shall be completed by March 31, 2017.

4. Term. The term of this lease shall be from the date of the execution of this lease through March 31, 2024.

4. Rent.

A. Base Rent. During the term of the Lease, Lessee shall pay to Lessor as rental hereunder and as compensation for the right and privilege of operating the said batting facility:

- Ten percent (10%) of the first One Hundred Thousand (\$100,000.00) dollars of the Lessee's annual gross revenues;
- Twelve (12%) percent of the Lessee's annual gross revenues above the first One Hundred Thousand (\$100,000.00) dollars;
- Minimum guaranteed annual rental of Twelve Thousand (\$12,000.00) dollars annually.

For accounting purposes herein, the "lease year" or "season" shall commence on the first day of April and end on March 31 of the following year. Rental shall be paid on the first of each month. In each lease year, rental shall be paid each month in an amount which equals one-twelfth (1/12) of the prior season's entire percentage rental, adjusted as hereinafter set forth. Within ninety (90) days from the end of this lease, Lessee shall furnish Lessor a statement, certified by a Certified Public Accountant regularly auditing the books and records of Lessee, setting forth the aggregate amount of gross revenues attributable to the most recently completed season and the computation of rental predicated thereon. Any over payments of underpayments above or below these level monthly payments actually made shall be immediately refunded or paid by Lessor or Lessee, as the case may be. Lessor shall not unreasonably withhold its consent to a request for a reduction in the amount of monthly payments to be made in any season if Lessee can demonstrate that gross revenues the previous season were substantially below that level represented by the then fixed rental payments, provided that monthly rental shall never be less than five hundred (\$500.00) dollars.

"Gross revenue" shall mean all sums paid to the Lessee in connection with the operation of the Leased Premises and any and all other sums paid for any reason to any party, excepting Lessee's employees' wages, in connection with the operation of the Leased Premises. Lessee shall not render services or accept a rendition of services for which the consideration is an exchange or barter of other services.

B. Additional Rent. The Lessee shall be responsible for the payment of all the insurance on the leased premises as required by this lease. The Lessee shall pay all utility costs. The Lessee shall pay for all other services contracted for by the Lessee as soon as an invoice is presented so that no past due accounts arise. In addition, any fees, costs, or expenses incurred by the Lessor for enforcing Lessor's rights under this lease, including reasonable attorney fees, shall be additional rent owing under the lease and shall be immediately due and payable by the Lessee.

5. Security Deposit/Performance Bond. The Lessee has previously paid to the Lessor a security deposit of Eight Thousand (\$8,000.00) dollars. The Lessor may hold the security deposit/performance bond in any manner the Lessor chooses. The Lessor may commingle it with other funds and use it as the Lessor determines. No interest shall be paid on the

security deposit/performance bond to the Lessee during the term of this lease without Lessor's consent. At the end of the lease term, the security deposit/performance bond and accrued interest, if any, shall be returned to the Lessee unless the Lessee has defaulted under this lease. If the Lessee defaults under this lease, the security deposit and any accrued interest thereon may be used to defray any costs or damages, direct or contingent, of the Lessor under this Lease, at Lessor's sole discretion, with any remaining balance thereon continuing to be an obligation of the Lessee. Any amount of security deposit/performance bond in excess of Eight Thousand Dollars (\$8,000.00) shall be returned to the Lessor within thirty (30) days of the execution of this lease.

6. Signs. All signs placed on the premises shall be in keeping with the character and decor of the premises and shall be approved, in advance, by the Lessor.
7. Acceptance of Occupancy. The Lessee shall commence occupancy of the premises on the commencement date and begin paying rent as required by this lease. The Lessee acknowledges that the premises are in a state of repair that is acceptable for the Lessee's intended use of the premises. The Lessee accepts the premises as they are.
8. Vacation of the Premises. The Lessee shall not vacate or abandon the premises during the term of this lease. If the Lessee does abandon or vacate the premises or is dispossessed by process of law or otherwise, any of the Lessee's personal property that is left on the premises shall be deemed abandoned by the Lessee, at the option of the Lessor.
9. Use. The premises are to be used and occupied by the Lessee for the operation of a pro shop, snack bar and batting cage training enterprise. A pro shop may be operated in the facility in order to make available to the public that merchandise of a type customarily used at a batting case training facility. Lessee shall be required to keep said shop open, if at all, only during the twenty-four (24) week season. Net income obtained in the operation of the pro shop shall be included in gross revenues. A snack bar may be operated in the facility in order to provide snacks and beverages to the public. The snack bar will not contain a cooking facility and will provide only storable, pre-processed foods. The snack bar shall be maintained in accordance with all state and local ordinances. At the lessee's option, the snack bar may be in the form of vending machines. Snack bar net income shall be included in gross revenues. No activity shall be conducted on the premises that does not comply with all state and local laws. The Lessor shall retain/reserve the following rights regarding the operation of a business on the Lessor's premises, the interference therewith by the Lessee shall constitute a breach of this agreement:

- A. To insure that all prices and fees charged by Lessee are competitive.

All changes in token rates shall be subject to the approval of the City's Parks & Recreation Advisory Board, or its successor(s), and maintained under its jurisdiction, which approval shall not be unreasonably withheld. The token rates shall not change more than once a year. The principal objective of such controls shall be to assure the public a satisfactory service at a reasonable charge while allowing for the economic feasibility of the operation of the facility by the Lessee, including both a reasonable investor return in light of the relative investment risk and an annual recapture of the original cost of the leasehold and capital improvements. In considering any proposed increase, the Board shall also consider the following:

Prevailing rate and fee schedules at permanent structure batting facilities in Wayne, Oakland and Macomb Counties;

Increase, if any, in the Consumer Price Index, as promulgated by the United States Department of Labor;

Operating cost increases, if any;

If available, the rates of return on investment experienced at other successful batting facilities. The assembly and proof of such evidence shall be the burden of Lessee, and at Lessee's sole expense; and

Lessee's requirements for debt service, if any;

The criteria listed herein above are discretionary and are not mandatory and are intended for purposes of providing a framework for the review of a request for an increase in token fees by the Lessee. Said criteria are to be reviewed by the Lessor, but are not inclusive of all matters and information that may be reviewed or considered by the Lessor, nor do the criteria impose any restriction upon the discretion of the Lessor in approving or denying a token rate change.

- B. To ensure that all sale prices for all items and services are prominently displayed.
- C. To establish and/or approve the hours of operation of the Lessee.
- D. To enter the premises at all times without notice.
- E. To establish rules and regulations to be enforced by the Lessee.
- F. To approve the location of equipment and furniture on the leased premises.
- G. To audit the inventory and sales records of the Lessee.

The interference by the Lessee with any or all of these rights of the Lessor shall constitute a breach of this agreement.

- 10. Schedule of Operation: Lessee is required to operate the facilities at the Leased Premises and to remain open to the public for twenty four (24) consecutive weeks beginning not later than April 7th of each year, subject to minor modifications based upon inclement weather.
- 11. Repairs and Maintenance. The Lessee shall be responsible for all maintenance and repair of the premises. The Lessee must repair and maintain the premises at the Lessee's expense. The premises shall be kept in good and safe condition, including any plate glass windows, the electrical wiring, the plumbing, any other system or equipment on the premises, structural members of the buildings, and other improvements on the premises.
- 12. Surrender of the Premises. The Lessee shall surrender the premises to the Lessor in good condition when this lease expires, except for normal wear and tear.

13. Entry and Inspection. The Lessee shall permit the Lessor or the Lessor's agents to enter the premises at reasonable times and with reasonable notice, to audit, inspect or repair the premises or for any other reason deemed appropriate by the Lessor.
14. Taxes and Assessments. The Lessee shall pay all personal property taxes and assessments levied against the premises during the term of this lease. All taxes levied on personal property owned or leased by the Lessee are the sole responsibility of the Lessee.
15. Alterations. The Lessee may not remodel or otherwise alter the premises without the prior written consent of the Lessor if the alteration(s) exceed \$1,000.00 in value in any single calendar year. Such work shall be done without injury to any structural portion of the building. Any improvements constructed on the premises shall become the property of the Lessor when this lease terminates.
16. Assignment and Subletting. The Lessee may not assign, sublet, or otherwise transfer or convey its interest or any portion of its interest in the premises without prior written consent from the Lessor. The Lessor shall have total discretion on its approval of proposed assignments or subleases.
17. Trade Fixtures. All trade fixtures and movable equipment installed by the Lessee in connection with the business it conducts on the premises shall remain the property of the Lessee and shall be removed when this lease expires. The Lessee shall repair any damage caused by the removal of such fixtures.
18. The Lessee's Liability. All the Lessee's personal property, including trade fixtures, on the premises shall be kept at the Lessee's sole risk, and the Lessor shall not be responsible for any loss of business or other loss or damage that is occasioned by the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the premises.
19. Destruction of the Premises. If the premises are partially damaged or destroyed through no fault of the Lessee, the Lessee shall, at its own expense, promptly repair and restore the premises. If the premises are partially damaged, rent shall not abate in whole or in part during the period of restoration. If the premises are totally destroyed through no fault of the Lessee or if the premises cannot be repaired and restored within one hundred and eighty (180) days, either party may terminate this lease effective the date of the destruction by giving the other party written notice of termination within ten (10) days after the destruction. If such a notice is given within that period, this lease shall terminate and rent shall be adjusted between the parties to the date of the surrender of possession. If the notice is not given within the required period, this lease shall continue, without abatement of rent, and the Lessor may repair the premises and the cost of such repair shall be billed to the Lessee as Additional Rent.
20. Mutual Releases. The Lessor and the Lessee release each other from all claims and liabilities arising from or caused by any hazards covered by insurance on the leased premises or covered by insurance in connection with property or activities on the premises, regardless of the cause of the damage or loss. The Lessor and the Lessee shall each include appropriate clauses waiving subrogation against the other party, consistent with the mutual release in this provision, in their insurance policies on the premises.

21. Insurance Requirements. Lessee shall obtain and maintain the insurance required under this paragraph. All Coverage shall be with insurance carriers licensed and in good standing with the State of Michigan and acceptable to the Lessor.
- A. Commercial General Liability Insurance. The Lessee shall procure and maintain in effect during the term of this lease Comprehensive General Liability Insurance, including contractual liability, in an amount no less than one million (\$1,000,000.00) dollars combined single limit liability.
- B. Additional Insured: Commercial General Liability Insurance, as described above, shall include an endorsement stating that the following shall be additional insureds: the City of Royal Oak, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof.
- C. Workers' Compensation Insurance. The Lessee shall procure and maintain during the term of this lease Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- D. Cancellation Notice: All policies shall include an endorsement stating the following: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."

The above requirements should not be interpreted to limit the liability of the Lessee under this lease.

22. Proof of Insurance Coverage. The Lessee shall provide the Lessor, at the time this lease is returned for execution, two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance and two (2) copies of a Certificate of Insurance for Workers' Compensation Insurance.
23. Indemnity. The Lessee shall defend, indemnify and hold Lessor harmless from and against any and all claims, demands, actions, proceedings, liability or losses, of whatever nature (including reasonable attorney fees) for injury or death to person(s) or from damage or loss to property arising out of or caused by Lessee's construction, maintenance, operations or activities in connection with this Lease, the Grand Slam Baseball Training Center, Inc., or its successors or assigns, or any contiguous or non-adjacent property under Lessee's control including such injury, damage or loss that is caused by the wrongful acts or negligence of Lessor.
24. Default and reentry. If the Lessee fails to pay rent when due; if the Lessee fails to perform any other obligations under this agreement within 10 days after receiving written notice of the default from the Lessor; if the Lessee makes any assignment for the benefit of creditors or a receiver is appointed for the Lessee or its property; or if any proceedings are instituted by or against the Lessee for bankruptcy (including reorganization) or under any insolvency laws, the Lessor may terminate this lease, reenter the premises, and seek to relet the premises on whatever terms the Lessor thinks advisable. Notwithstanding reentry by the Lessor, the Lessee shall continue to be liable to the Lessor for rent owed under this lease and for any rent deficiency that results from reletting the premises during the term of this lease. Notwithstanding any reletting without termination, the Lessor may at any time elect to

terminate this lease for any default by the Lessee by giving the Lessee written notice of the termination.

25. Right of Repairs: In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the Lessor's costs for curing any defaults as additional rent under this lease.
26. Liens: The Lessee shall not permit any recorded lien(s) to stand against the premises for any labor or material furnished to the Lessee in connection with any work performed by or at Lessee's direction. If because of any act or omission (or alleged act or omission) of Lessee, any lien shall be recorded against Lessor, or Lessor's property, Lessee shall, at its own expense and cost, cause the discharge of record of any lien within 120 days of receipt of notice of the lien(s).
27. Notices. Any notices required under this lease shall be in writing and served in person or sent by registered or certified mail, return receipt requested, to the addresses of the parties stated in this lease or to such other addresses as the parties substitute by written notice. Notices shall be effective on the date of the first attempted delivery.
28. The Lessee's Possession and Enjoyment. As long as the Lessee pays the rent as specified in this lease and performs all its obligations under this lease, the Lessee may peacefully and quietly hold and enjoy the premises for the term of this lease.
29. Sale of Interest in Lessee. This Lease is conditioned upon the continued participation in the ownership of Lessee during the term of the Lease by Grand Slam Baseball Training Center, Inc. In the event that ownership of the interest or of the corporation is to be changed beyond the original parties, such new party must first obtain the written consent of the Lessor, which consent shall not be unreasonably withheld. Upon the death of any of the parties hereto (or an approved successor), no consent by Lessor shall be required to effect a transfer of said stock to the estate of the decedent or to his heirs or personal representatives. Any subsequent sale by such estate, heir or personal representative and all subsequent sales by approved successors shall require the approval of Lessor, which approval shall not be unreasonably withheld. Failure of the Lessor to reject any such proposed sale within a period of ninety (90) days from the date of notice from such stockholder of his or her intention to sell shall constitute an approval of such sale.
30. Holding Over. If the Lessee does not vacate the premises at the end of the term of this lease, the holding over shall constitute a month-to-month tenancy at a monthly rental rate to be set by the Lessor at its sole discretion.
31. Entire Agreement. This agreement, together with the security and option agreement entered into between the Lessor and the Lessee, contains the entire agreement of the parties with respect to its subject matter. This agreement may not be modified except by a written document signed by the parties.

32. Waiver. The failure of the Lessor to enforce any condition of this lease shall not be a waiver of its right to enforce every condition of this lease. No provision of this lease shall be deemed to have been waived unless the waiver is in writing.
33. Binding Effect. This agreement shall bind and benefit the parties and their successors and permitted assigns.
34. Time is the Essence. Time is the essence in the performance of this lease.
35. Effective Date. This lease shall be effective on this the ___ day of 2015.
36. Early Termination. The Lessor shall have the right to terminate the lease in advance of its termination date on payment of 10% of the amount spent on capital improvements listed in paragraph 3 for each year remaining in the lease.

City of Royal Oak

Grand Slam Baseball Training Center, Inc.

James B. Ellison, Mayor

Philip M. Roy, President

Melanie Halas, City Clerk

Approved as to form:

Mark O. Liss
Interim City Attorney