

ORDINANCE 18-2395

**ORDINANCE AUTHORIZING THE LEASE
OF UNNEEDED MUNICIPAL REAL PROPERTY
OF THE CITY OF HOOVER, ALABAMA**

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Hoover, in regular meeting duly assembled, a quorum being present, as follows:

SECTION 1. It is hereby established and declared that the following real property of the City of Hoover, Alabama is not currently needed for public or municipal purposes and will not be needed for municipal purposes for at least the next ten (10) calendar years:

The 7,200 square feet sports performance center located within the northwest corner of The Finley Center building at 1000 RV Trace, Hoover, Alabama 35244, more particularly described and set forth in the Lease and Indemnity Agreement attached as Exhibit 1 hereto. The leased space consists of approximately 7,200 square feet, including performance, training, educational, office, and storage space.

SECTION 2. The City Council hereby declares it to be in the best interest of the public and the City of Hoover, Alabama to lease such real property set forth in Section 1 to the Alabama Sports Foundation, an Alabama 501(c)(3) non-profit organization, ("ASF") for a period of (5) five years with an automatic five (5) year renewal unless a notice of non-renewal is provided in writing by one party to the other at least ninety (90) days prior to the completion of the initial term in accordance with the provisions of the Lease Agreement authorized in Section 4 hereof.

It is further declared to be in the best interest of the public and the City of Hoover to lease the real property to ASF at a rate equal to fair market value for the term of the lease, in which the monthly rent for the first five (5) years of the lease shall be Eight Thousand Three Hundred and Thirty-Four Dollars (\$8,334) per month unless prorated or otherwise adjusted as set out in the Lease Agreement and the annual rent shall be \$100,008.00, One Hundred Thousand Eight Dollars (\$100,008.00); and the monthly rent for the second five (5) years shall be increased in an amount equal to the product of the Rent times a number equal to the percentage increase in the CPI over a 60 month period, calculated by using the most recently published CPI and the CPI published 60 months earlier, unless prorated or otherwise adjusted as set out in the Lease Agreement. The rent shall be payable on or before the tenth (10th) day of each month.

SECTION 3. It is also hereby established and declared that a public purpose is served by ASF leasing the municipal property described in Section 1 (through the uses more particularly set forth in the Lease Agreement) and that the leasing of this municipal property confers a direct public benefit in furtherance of the public health, safety and welfare. The real property leased shall be used by ASF for the management and operation of a community-based non-profit organization focused on: a) providing skills to help youth develop both as athletes and members of society by training and developing student athletes through competitive participation in sports; b) growing the sports related educational awareness in the Hoover/Birmingham area, all in

accordance with the terms of the Lease Agreement; and (c) performing the activities set forth in Exhibit B to the Lease Agreement. It is further agreed that ASF shall be allowed access to other space within the Hoover Metropolitan Complex as set forth in the Lease Agreement for the purpose of conducting the activities as described in the Lease Agreement.

SECTION 4. Pursuant to the authority granted by Section 11-47-21 of the *Code of Alabama* (1975), the Mayor of the City of Hoover or a representative of Sports Facilities Management, LLC¹ is hereby authorized and directed to execute a lease and indemnity agreement (“Lease Agreement”) with ASF in the name of the City of Hoover, Alabama. Such lease shall be in substantially the form attached hereto as Exhibit 1.

SECTION 5. This ordinance shall become effective immediately upon its adoption and publication as required by law.

THEREFORE, BE IT ORDAINED, that the City Council of the City of Hoover does hereby ordain, resolve, and enact the foregoing Ordinance for the City of Hoover.

ADOPTED this 16th day of July, 2018.

Gene Smith, President of City Council

APPROVED:

Frank V. Brocato, Mayor

ATTEST:

Margie Handley, City Clerk

¹ Sports Facilities Management, LLC is the manager of the Hoover Metropolitan Complex pursuant to the Facility Management Agreement executed by and between the City of Hoover, Alabama, The Public Park and Recreation Board of the City of Hoover, Alabama, and Sports Facilities Management, LLC for the management of the Hoover Metropolitan Stadium and the Finley Center.

Exhibit 1

LEASE AND INDEMNITY AGREEMENT

This **LEASE AND INDEMNITY AGREEMENT** ("Lease") is made and entered into this ___ day of _____, 2018 (the "Effective Date") by and between the City of Hoover, Alabama and The Public Park and Recreation Board of the City of Hoover, through their authorized agent, Sports Facilities Management, LLC, a Florida limited liability company (collectively the "Landlord"), and Alabama Sports Foundation, an Alabama 501(c)3 non-profit organization ("Tenant").

WHEREAS, Landlord owns and operates the Hoover Met Complex, which is composed of the Finley Center, the Hoover Met Baseball Stadium, and the Hoover Met Complex Outdoor Fields (collectively, the "Complex").

WHEREAS, Tenant desires to temporarily occupy the sports performance center in The Finley Center building located at 1000 RV Trace, Hoover, Alabama 35244, (the "Building") as identified on Exhibit A attached hereto (such area to be referred to herein as the "Premises" or the "Sports Performance Center") and to have access to other space within the Building during agreed upon times for the purpose of conducting athletic performance, athletic training, and athletic, health, safety and educational activities (such other space to be referred to herein as the "Activity Space" and is as further defined in Exhibit A-1) for the purpose of conducting the Activities as defined in Section 1 below; and

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained the parties agree as follows:

1. Grant of Lease; Term; Renewal; Access to Building and Premises. During the Term of this Lease (and any renewal thereof), Landlord hereby grants to Tenant (i) an exclusive right to use and occupy the Premises to conduct the Activities and (ii) a non-exclusive right to use the Activity Space during times agreed upon between Landlord and Tenant, all use being for the management and operation of a community-based non-profit organization focused on: a) providing skills to help youth develop both as athletes and members of society by training and developing student athletes through competitive participation in sports; b) growing the sports related educational awareness in the Hoover/Birmingham area, all in accordance with the terms of this Lease; and (c) performing the activities set forth in Exhibit B hereto ((a), (b) and (c) collectively referred to herein as the "Activities"). The failure by Tenant to conduct the Activities within the Premises for a period longer than twenty-eight (28) days or such other time as agreed to between Landlord and Tenant following the issuance of a Certificate of Occupancy/Certificate of Completion by the City of Hoover shall be deemed a default under this Lease.

The term of this Lease shall commence on the Effective Date and shall terminate sixty (60) months thereafter (the "Term"). This Lease shall automatically renew for an additional sixty (60) month period ("Renewal Term") unless a notice of non-renewal is provided in writing by one party to the other at least ninety (90) days prior to the

completion of the initial Term in accordance with the provisions of Section 16 hereof. At the beginning of the Renewal Term, the Rent payable by Tenant shall be increased in an amount equal to the product of the Rent times a number equal to the percentage increase in the CPI over a 60 month period, calculated by using the most recently published CPI and the CPI published 60 months earlier.¹ The term “CPI” shall mean the Consumer Price Index, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (CPI-U 1982-84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor. Notwithstanding anything to the contrary contained herein, there will be no downward adjustment in the Rent in the Renewal Term even if the CPI has declined. The remainder of the provisions of this Lease applicable to the Term, including, but not limited to, payment of the Rent as adjusted pursuant to Exhibit B, shall remain unchanged for the Renewal Term.

In the event this Lease is not renewed by Landlord, Landlord shall, within 90 days of vacation of the Premises by Tenant (or within such other timeframe as agreed to between the parties hereto), pay to Tenant in consideration of such non-renewal an amount equal to one-half (1/2) of Tenant’s investment in the Premises for leasehold improvements as shown on Tenant’s books (excluding (i) Tenant’s trade fixtures and equipment, (ii) any improvement costs to the Premises paid by Landlord, and (iii) any costs incurred by Landlord in returning the Premises to an operational condition following removal of such trade fixtures and equipment at the end of the Term).

Licensee shall conduct the Activities using its best efforts, experience and judgment. Landlord will allow Tenant’s key business staff (which shall be designated by Tenant in writing and given to Landlord) with access to the Building as reasonably needed to conduct the Activities. Tenant shall also have the right to use the Common Areas, on or around the Building and the Premises. For purposes of this Agreement, “Common Areas” means those certain areas and facilities of the Building and other improvements on the property which are from time to time provided by Landlord for the use in common of tenants of the Building and their employees, clients, customers, lessees and invitees or for use by the public, which facilities and improvements include any and all common corridors, elevator foyers, the lobby, vending areas, bathrooms on multi-tenant floors, electrical and telephone rooms, mechanical rooms, janitorial areas and other

¹ The following example illustrates the computation of a percent change:

CPI for current period	232.945
Less CPI for previous period	229.815
Equals index point change	3.130
Divided by previous period CPI	229.815
Equals	0.0136
Result multiplied by 100	0.0136 x 100
Equals percent change	1.4%

similar facilities of the Building and any and all grounds, landscaped areas, outside sitting areas, sidewalks, walkways and pedestrian ways, but in no case shall Tenant have access to portions of the Premises that have been leased or designated for exclusive use by Landlord and/or other vendors, licensees or lessees. The Term of this Lease shall not be renewed or extended except as set forth herein unless such is accomplished pursuant to the mutual written agreement of the parties hereto.

2. **Rent.** During the Term, Tenant shall pay to Landlord a usage fee ("Rent") in the amount of Eight Thousand Three Hundred and Thirty-Four Dollars (\$8,334) per month unless prorated or otherwise adjusted as set out in this Lease and/or Exhibit B hereto. Each installment of Rent shall be payable to Landlord on or before the tenth day of each calendar month during the Term and the Renewal Term. The Rent and any charges for any period during the Term or the Renewal Term in which Tenant has reduced access to the Building, Premises and Activity Space for one full month, whether the reduced access or shortened period is due to the written agreement between Landlord and Tenant or due to Tenant's inability to use the Building, Premises and Activity Space as contemplated herein and that is not due to conditions within the control of Tenant, shall be prorated based upon the actual number of days in the applicable month and/or the actual percentage of access of the Building Premises and Activity Space, as shall be agreed between the parties hereto.

3. **Compliance and Safety.** Except as otherwise provided for herein, the responsibility for the implementation and enforcement of health and safety regulations and requirements applicable to the Building lies with Landlord. Tenant will take responsibility for and reasonable precautions for the safety of, and provide the necessary protection to prevent damage, injury, or loss to: (a) all personnel of Tenant in or on the Premises and those persons engaged in Tenant's Activities (but Landlord shall be responsible for taking reasonable precautions for the safety of, and providing the necessary protection to prevent damage, injury, or loss in connection with any other activities at the Building, including any activities that are not sponsored, organized or managed by Tenant); and (b) all materials or equipment to be provided, incorporated in, or utilized by Tenant in connection with its Activities in the Building, Premises, and Activity Space, including, but not limited to any improvements made to the Premises by Tenant during the Term. Tenant agrees to take reasonable precautions for the safety of, and to provide the necessary protection to prevent damage, injury, or loss to other property located at the Building. Tenant shall obtain at its own cost all licenses (including professional licenses, permits, certificates and authorizations) necessary, if any, for Tenant to conduct the Activities in the Building.

4. **No Affiliation.** Landlord and Tenant acknowledge that neither party, nor their respective agents or employees, is an employee, agent, joint venture or partner of Tenant for any purpose under any federal, state or local law, rule or regulation. Except with specific written consent, under no circumstances shall either party advertise, to its existing customers or otherwise, that it represents or is an agent of the other party. Tenant shall not represent that, except as set forth in this Lease, that it has exclusive rights to the Building or is a permanent occupant of the Premises or the Building. This

provision does not prohibit Tenant from advertising its presence and location in the Building. Further, this provision does not prohibit either party from advertising the fact of the parties generally working together pursuant to this Lease.

5. **Compliance with Building Rules and Regulations.** Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be placed therein. Repairs necessitated by damage resulting to any such fixtures or appliances solely from misuse by Tenant shall be paid for by Tenant. Common areas of the Facility, including but not limited to entrances, passages, halls, corridors, stairways, elevators, escalator, walkways and exits shall not be obstructed by Tenant, its officers, agents, employees, sub-contractors or invitees, nor used by them for any purpose other than ingress or egress, or that which is specifically authorized in writing by Landlord. Tenant shall not use, nor permit the Premises and/or any portion of the Building to be used for any purpose in violation of any law or ordinance or in any manner that will constitute a nuisance, nor for any hazardous purpose.

6. **Insurance.**

(a) Tenant shall, at its own expense, secure insurance coverage in the following types and amounts related to the Activities in the Facility, Building and Complex:

(i) **Commercial general liability insurance** on an occurrence based policy in form acceptable to Landlord, including public liability and property damage, covering Tenant's Activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, Two Million Dollars (\$2,000,000) aggregate, including blanket contractual liability, independent contractors and broad form property damage. All insurance companies providing coverage under this Agreement, shall be licensed to do business in the State of Alabama for the applicable line of insurance and have an A.M. Best "A" rating and financial size rating of Class VII or larger. The coverage must be primary and non-contributory. If the Activities described in Section 1 of this Lease include athletic or recreational activities, then the policy coverage must include "Participant Liability" or otherwise state that coverage applies to liability claims made by athletic participants (this must be made clear on the certificate provided). The coverage may not exclude any of the Activities and/or events related thereto described in Section 1.

(ii) **Commercial automotive bodily injury and property damage insurance** in form acceptable to Landlord for business use

covering all vehicles (including owned, non-owned, and hired) operated by Tenant, its officers, directors agents and employees in connection with the Activities hereunder, or otherwise with a CSL of not less than One Million Dollars (\$1,000,000.00) (including an extension of hired and non-owned coverage).

- (iii) Excess/Umbrella Liability. Tenant shall procure and maintain excess/umbrella liability coverage in the amount of \$4,000,000 per occurrence and aggregate. All excess/umbrella coverage shall cover over Commercial General Liability, Commercial Auto Liability and Employer's Liability (Coverage "B").
- (iv) Workers' compensation insurance for all of Tenant's employees, as required by Alabama statutory and federal laws and Employer's Liability (Coverage "B") in the following amounts:
 - (i) Each accident - \$1,000,000;
 - (ii) Disease – each employee \$1,000,000; and
 - (iii) Disease – policy limit \$1,000,000.

Tenant agrees that it shall require any subtenant of the Premises to comply at all times with the insurance requirements of this Section 6. The failure of Tenant to require compliance by any subtenant with this Section shall be considered a default of this Lease. Tenant shall provide evidence of a subtenant's insurance to Landlord upon request.

(b) The following shall apply to the insurance policies described in Section 6 (a) (i - iv) above:

- (i) "City of Hoover," "The Public Park and Recreation Board of the City of Hoover," "Sports Facilities Management, LLC", and "HOOV SFM LLC" shall be named as additional insureds on all liability insurance policies provided by Tenant under this Lease. Tenant shall deliver to Landlord on or before Tenant's occupancy of the Premises, certificates of insurance evidencing the existence thereof, all in such form as Landlord may reasonably require. Tenant shall keep the insurance required in Section 6(a) above in force and effect at all times during the Term of this Lease (and the Renewal Term, if applicable). Each such policy or certificate shall contain a provision or endorsement stating that the policy will not be canceled, allowed to lapse, or materially changed or altered without consent of Landlord nor without first giving thirty (30)

days' written notice by certified mail as evidenced by return receipt thereof to Landlord, c/o HOOV SFM LLC, 1000 RV Trace, Hoover, Alabama 35244 or until such time as other insurance coverage providing the insurance coverage required in the Lease Agreement is procured. If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the Term of this Agreement, Tenant shall deliver to Landlord at least thirty (30) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

- (ii) Tenant hereby acknowledges that the coverage limits contained in any policy no way limit the liabilities or obligations of Tenant under this Lease to provide coverage of sufficient amount, including, without limitation, Tenant's indemnification obligations under Section 13 below. Furthermore nothing contained in these insurance requirements shall be construed as limiting Tenant's responsibility for any and all damages resulting from its Activities under this Lease.
- (iii) Tenant will be responsible for deductibles and self-insured retentions for claims made under the policies required herein.

(c) In response to changing circumstances of loss exposures, Landlord reserves the right to modify the insurance coverage, limits of liability, policy endorsements and policy terms required in this Lease. In such event, Landlord will provide written notice to Tenant, which outlines such changes, and will allow Tenant a reasonable period of time in which to comply with the new requirements. However, in no event shall any compliance period be longer than thirty (30) days.

(d) If at any time any of the foregoing insurance policies shall be or become unsatisfactory to Landlord, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to Landlord, Tenant shall, upon notice to that effect from Landlord, promptly obtain a new policy and submit the same to Landlord for approval. Upon failure of Tenant to furnish, deliver and maintain the insurance coverages required herein, this Lease, at the sole discretion of Landlord, may be forthwith declared suspended, discontinued or terminated. Failure of Tenant to take out and/or maintain any required insurance shall not relieve Tenant from any liability under this Lease, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Tenant concerning indemnification.

7. **Parking.** During the Term, Tenant, its customers, employees, subtenants, and invitees shall have the right to use any parking spaces located adjacent to the Building and generally available to the public; provided, however, Tenant's customers,

employees, subtenants, and invitees shall not park in spaces directly designated for Landlord's customers and clients. Landlord may make, modify, and enforce reasonable rules and regulations of general applicability relating to the parking of automobiles, and Tenant will abide by such rules and regulations.

8. Repairs and Alterations. Tenant shall, at Tenant's sole expense, keep and maintain the Premises and every part thereof and all of Tenant's personal property in good order, condition and repair. Costs for repairs to Tenant's equipment located therein incurred by Tenant due to Landlord's misuse or negligence shall be reimbursable to Tenant. Landlord shall, at Landlord's sole expense, keep and maintain the Building and Activity Space and every part thereof and all of Landlord's personal property in good order, condition and repair. Tenant shall not, without Landlord's prior written consent, make any alterations, additions or improvements in or about the Premises without Landlord's prior written consent. Tenant shall not make or cause to be made any alterations, additions or improvements to the Premises without the written consent of Landlord. Requests for any alterations, additions or improvements to the Premises shall be made in writing to Landlord. Contractors hired by Tenant to make alterations, additions and/or improvements to the Premises shall be insured in such amounts and with such types insurance as required by Landlord according to the requirements set forth in Exhibit C.

Tenant shall not do, cause or permit anything to be done that may injure or deface the Building, the Activity Space, the Premises or any equipment or furnishings therein. Tenant will not attach nails, hooks, tacks, screws, tape or any other device to any part of the Building, Activity Space, or Premises and will not make or allow to be made any alteration of any kind to the Premises without the expressed written consent of Landlord.

In the event the Building, Activity Space, Premises or any portion of the Premises or any equipment or material contained therein is damaged by Tenant, its officers, agent, employees, sub-contractors, invitees or any other person admitted to the Building by Tenant, Tenant shall pay to Landlord upon demand such sum as shall be necessary to restore same to its pre-Lease condition. Further, Tenant hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Building, leased Premises or any portion of the Premises by the consent of Tenant or by or with consent of any person acting for or in behalf of Tenant.

In the event any of Tenant's fixtures or other property belonging to Tenant is damaged by Landlord, its officers, agent, employees, sub-contractors, invitees or any other person admitted to the Building by Landlord, Landlord shall pay to Tenant upon demand such sum as shall be necessary to restore same to its condition prior to such damage. Landlord hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Building, leased Premises or any portion of the Premises by the consent of Landlord or by or with consent of any person acting for or in behalf of Landlord.

9. Personal Property; Removal of Improvements, Fixtures, Equipment and Furnishings. Tenant shall label all of its personal property in a sufficient manner to

identify its personal property. All personal property not labeled as Tenant's personal property, including, but not limited to apparatus, fixtures, machinery, equipment, furniture and improvements (trade or otherwise) shall remain the property of Landlord. When not in use for Tenant's Activities, all of Tenant's personal property shall be securely stored in the Premises. Upon the termination or expiration of the Term or Renewal Term as appropriate, Tenant shall remove Tenant's property from the Premises no later than the termination or expiration date. Any of Tenant's property not removed from the Premises on the date the Lease terminates or expires shall be deemed abandoned and shall thereafter become the property of Landlord.

10. Inspection and Access to Premises. Landlord expressly reserves the right to enter the Premises at any time to examine or to make such repairs, additions or alterations as it may deem necessary for the safety, improvement or preservation thereof.

11. Default/Remedies; Choice of Law and Venue. In the event Tenant fails to make any payments as agreed herein, Landlord shall have the right to terminate for cause pursuant to Section 12 and/or to request the total amount then due from Tenant plus interest at the maximum legal rate from the date of the breach until the full amount is paid. This remedy provision shall not apply to any amounts withheld in good faith by Tenant due to a dispute arising under Section 2 (Rent). Tenant, in its sole discretion, has the right to terminate this Lease and Indemnity Agreement upon ninety (90) days advance written notice, without penalty or obligation, if Landlord, interferes with Tenant's ability to reasonably offer and provide the Activities, including practice sessions, private sessions, camps or other sports performance operations. The parties agree that this Lease shall be construed under the laws of the state of Alabama and that the venue shall be in the county of Jefferson, Birmingham Division.

12. Termination.

(a) **Termination for Cause.** This Lease may be terminated for cause (i) by either party hereto upon thirty (30) days written notice to the other as provided in Section 16, if the other party fails to perform or to comply with any of the material terms, covenants, agreements or conditions hereof (such failure to perform to be described with reasonable specificity in the written notice for termination) and such failure is not cured during such thirty (30) day period, or (ii) by either party hereto by written notice to the other party upon the other party being adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred and twenty (120) days after appointment, or such other party shall (a) make an assignment of its property for the benefit of creditors, (b) file a voluntary petition in bankruptcy or insolvency, (c) apply for bankruptcy under the bankruptcy or insolvency laws now in force or hereinafter enacted (federal, state or otherwise), or (d) have an involuntary petition filed against the other party that is not dismissed within one hundred and twenty (120) days after such filing.

(b) **Effect of Termination.** Upon expiration or termination of this Lease, Tenant shall (i) promptly discontinue the performance of all Activities as of the noticed date of termination or as otherwise provided for herein and (ii) promptly pay

Landlord all amounts owed due Landlord up to the date of the noticed termination (subject to proration if the Term ends other than at the end of a month).

13. Indemnity.

(a) Tenant shall indemnify, save, defend and hold harmless Landlord, and all of its officers, board members, agents, employees, representatives, successors and assigns (the "Landlord Parties"), from and against any and all claims, demands, causes of action, judgments, costs and expenses (including, but not limited to, attorneys' fees and court costs), liabilities, losses and damages (whether common law or statutory, whether actual, punitive, consequential or incidental but excluding those caused by the gross negligence or other fault or strict liability of any party indemnified herein), of any conceivable character, including, without limitation, those arising from injuries to persons (including death) or to property (both real and personal), created by or arising from Tenant's and/or any subtenant's conducting of the Activities in the Building. Neither Landlord, nor any of the other Landlord Parties shall be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising directly from the Activities unless such loss or damage was proximately caused by the negligence or other fault or strict liability of Landlord or Landlord Parties. Tenant agrees that it shall require that any subtenant of the Premises indemnify Landlord Parties as provided in this Section 13 and to include such indemnification requirement in any sublease agreement between Tenant and its subtenant. The failure of Tenant to require indemnification of Landlord Parties by any subtenant shall be considered a default of this Lease. Tenant shall provide evidence of a subtenant's insurance to Landlord upon request.

This section shall survive the expiration or termination of this Lease and Indemnity Agreement.

(b) To the fullest extent allowed by law, Landlord shall indemnify, save, defend and hold harmless Tenant, and all of its officers, board members, agents, employees, representatives, successors and assigns (the "Tenant Parties"), from and against any and all claims, demands, causes of action, judgments, costs and expenses (including, but not limited to, attorneys' fees and costs), liabilities, losses and damages (whether common law or statutory, whether actual, punitive, consequential or incidental and expressly including those caused by the negligence or other fault or strict liability of any party indemnified herein), of any conceivable character, including, without limitation, those arising from injuries to persons (including death) or to property (both real and personal), created by, arising from or in any manner relating to Landlord's (or any of the other Landlord Parties') activities in or about the Building, without limitation. Neither Tenant, nor any of the other Tenant Parties shall be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the use, construction, operation, maintenance, repair or removal of, or other action or event arising from or related to (or alleged to arise from or relate to) any event, condition or activity in or about the Building. This section shall survive the expiration or termination of this Lease and Indemnity Agreement.

14. Landlord Representations and Warranties. Landlord represents, warrants and covenants to Tenant that:

(a) Landlord has the right, power and authority to enter into this Lease and Indemnity Agreement and to consummate the transactions contemplated herein and that Landlord has obtained all consents or approvals that Landlord may require to permit Landlord to enter into this Lease and Indemnity Agreement;

(b) Omitted.

(c) Omitted.

(d) Except with the advance written consent of Tenant and subject to the provisions of Section 29: (i) Landlord will not organize, operate, or provide (or encourage any party or third party to organize, operate or provide) services at the Complex that directly compete with the youth and individual athletic performance activities, athletic training activities, and athletic, health, safety, educational, and development activities offered by Tenant; (ii) Without limiting in any manner the prohibition contained in subsection (i) of this Section 14(d), Landlord will not offer space at the Complex to any party that would engage in youth or individual athletic performance training, or athletic, health, safety, educational and development activities or any other activities that compete with Tenant's Activities on the Premises nor will Landlord enter into any lease or licensing agreement with any party who engages or will engage in youth and individual athletic performance training, athletic, health, safety, educational and development activities that compete with Tenant's Activities on the Premises; and (iii) Landlord will not solicit employees or coaches of Tenant.

Notwithstanding, Landlord shall not be restricted from hosting or engaging others to host camps, training, educational, tournaments or other competitive events at the Complex, except that Landlord is expressly prohibited from allowing any party or third party to engage in the provision of any athletic performance, athletic health, athletic safety, or athletic training at the Complex, without the express written consent of Tenant (which shall not be unreasonably withheld) or unless the provision of such athletic services is provided by an attendee group to such group at an event. Except as otherwise set forth above, the parties expressly agree that Tenant will be Landlord's sole and exclusive provider of health, safety, performance and sports medical services for the Complex; however, Tenant expressly consents to allowing an event organizer and/or team attending an event at the Complex to bring athletic services and/or medical coverage for such event only. The Parties further agree that J. Smith Hoops program does not directly compete with Tenant's activities.

15. Assignment; Sublease. Tenant shall not assign this Lease in whole, without prior written approval from Landlord. Any assignment in whole by Tenant without the prior approval from Landlord in contravention of this Section shall be void.

Tenant may sublease any portion of the Premises for the purpose of conducting the Activities so long as any subtenant complies with the terms of this Lease. Tenant shall

provide a copy of any sublease agreement to Landlord within ten (10) days following execution thereof. The failure to provide a copy of a sublease agreement to Landlord may be deemed a default in the terms of this Lease at the option of Landlord.

16. **Notices.** All notices, consents, approvals and other communications that may be or are required to be given by either party under this Lease and Indemnity Agreement shall be properly given only if made in writing and sent by (a) hand delivery, or (b) certified mail, return receipt requested, or (c) nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air or Airborne Express), designated for next business day delivery, with all postage and delivery charges paid by the sender and addressed to the recipient, as follows, or at such other address (or telecopy number) as each may subsequently designate in writing. Such notices delivered by hand, by telecopy (subject to the provisions hereof), or overnight delivery service shall be deemed received upon the earlier of actual receipt or the next general business day. Such notices sent by certified mail shall be deemed received five (5) days after the date of mailing. Said notice addresses are as follows:

If to Landlord:

General Manager
The Finley Center
1000 RV Trace
Hoover, AL 35244

with a copy to:

Bruce Rector
General Counsel
Sports Facilities Management, LLC
600 Cleveland Street
Suite 910
Clearwater, FL 33755

with a copy to:

Allan Rice, City Administrator
City of Hoover, Alabama
100 Municipal Lane
Hoover, Alabama 35216

If to Tenant:

Dr. Lawrence Lemak, Founder
Alabama Sports Foundation
c/o Waldrep, Stewart & Kendrick, LLC
2323 2nd Avenue North
Birmingham, AL 35203

17. **Multiple Counterparts.** This Lease and Indemnity Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement, but in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

18. **Force Majeure.** Neither party shall be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay (a) is beyond the reasonable control of a party, (b) materially affects the performance of any of its obligations under this agreement, and (c) could not reasonably have been foreseen or provided against, but such party will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

If the Premises are damaged from any cause whatsoever or if any casualty or unforeseeable cause beyond the control of the parties, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, each party is hereby released by the other from any damage so caused thereby.

19. **Evacuation.** Landlord reserves the right, in its sole discretion, to order the evacuation of the Complex, the Building, the Premises, the Activity Space or any portion thereof, when deemed necessary to preserve the safety, health and welfare of the public.

20. **Limitation of Liability.** Except as expressly set forth herein, in no event shall Landlord incur any liability for special, incidental or consequential damages.

21. **Copyright Liability.** Tenant represents and warrants that all copyrighted or trademarked material to be displayed or performed at the Building by Tenant has been duly licensed or authorized by the copyright or trademark owner(s) or authorized representative(s) of the owner(s) that all applicable royalties have been or will be paid. Tenant shall supply, within ten (10) days of Landlord's written request, written documentation as evidence of Tenant's lawful right to display or perform copyrighted or trademarked material.

22. **Property Interest.** Tenant understands and agrees that this Lease does not confer any right, title or interest in the leased Premises, its facilities or equipment to Tenant, but merely grants Tenant a personal privilege revocable on the terms outlined herein.

23. **Surrender of Premises.** Tenant shall quit and surrender the leased Premises and all equipment contained therein to Landlord at the end of the Term or Renewal Term as appropriate in the same condition as on the beginning of the Term, normal wear and tear excepted, and shall ensure that any sublease agreement entered into by Tenant also allows for such surrender.

24. **Binding Effect.** All negotiations, considerations, representations and understandings between the parties with respect to this Lease have been reduced to writing and are incorporated herein, shall be binding on the parties, their respective heirs, successors and assigns, and cannot be waived by any oral representations unless the same be reduced to writing, signed by the parties or their duly authorized agent(s) and incorporated herein.

25. **Waiver.** No waiver by Landlord of any default shall operate as a waiver of any other default, or of the same default on a future occasion. No delay or omission by Landlord in exercising any right or remedy shall operate as a waiver thereof, and no partial exercise of a right or remedy shall preclude any other or future exercise thereof, or the exercise of any other right or remedy.

26. **Severability.** If any provision contained in this Agreement is held invalid, illegal, or unenforceable, all remaining provisions shall continue in full force and effect.

27. **Headings.** The headings of the section contained herein are for convenience only and do not define, limit, or construe the contents of such sections or this Agreement.

28. **Proprietary Information.** Proprietary Information may be disclosed between Landlord and Tenant during the Term and Renewal Term (if applicable) of this Lease. If such information is disclosed to either party and such party is notified of its proprietary nature, then Landlord and Tenant shall limit disclosure to their directors, officers, employees, agents or representatives on a need to know basis. Landlord or Tenant may disclose the Proprietary Information pursuant to any subpoena, governmental, judicial order for information or as otherwise required by law. If a disclosure of proprietary information is requested, the Landlord or Tenant shall notify the other party prior to such disclosure if reasonably possible.

29. **Other Terms.**

(a) Any event that is not part of the Activities and is not specifically agreed to in writing and in advance by both Landlord and Tenant will be the sole responsibility of Landlord. Landlord shall not authorize use in such cases of any personal property owned or rented by Tenant.

(b) Tenant will be Landlord's sole and exclusive authorized operator of the Sports Performance Center. This Section 29(b) does not preclude or limit official high school or junior high-school teams, Southern Performance Volleyball Club, future sports tenant organizations, sport camps, J Smith Hoops, SEC Baseball Tournament, or the City of Hoover Parks and Recreation's traditional programming from utilizing the Building for practices, games, tournaments or any other of their traditional programming. Except with written consent of Tenant, this Section 29(b) does preclude all other parties from operating youth or individual sports performance training.

(c) The terms and conditions of other events to be co-promoted by Tenant and Landlord and co-hosted by Tenant and Landlord at the Building and/or

Complex during the Term and any Renewal Term shall be set forth in a separate written agreement. If the terms of any separate agreement and this Lease and Indemnity Agreement conflict, the terms of this Lease and Indemnity Agreement shall prevail.

(d) The provisions of this Agreement shall continue to be binding upon the City of Hoover, Alabama and the Public Park and Recreation Board of the City of Hoover, even if Sports Facilities Management, LLC no longer acts as their authorized agent.

(e) Tenant may place signage of a reasonable size on the front of and inside of the Building in accordance with applicable City of Hoover ordinances and regulations and as approved in advance by Landlord, which approval shall not be unreasonably withheld.

30. Immigration Compliance. By signing this Lease, Tenant affirms, for the duration of the Lease, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed to be in breach of the Lease and shall be responsible for all resulting damages.

IN WITNESS WHEREOF, the parties have executed this Lease and Indemnity Agreement on the date first written above.

LICENSOR:

The City of Hoover, Alabama and
The Public Park and Recreation Board of the
City of Hoover

By its authorized agent, Sports Facilities
Management, LLC, a Florida Limited
Liability Company

By: _____
Print Name: _____
Title: General Manager

LICENSEE:

Alabama Sports Foundation, an Alabama
501 (c)3 non-profit organization

By: _____

Print Name: Dr. Lawrence Lemak

Title: Founder

Exhibit A

Attached as Annex 1 to Exhibit A is a Sports Performance Center floor plan identifying the area which is for the sole and exclusive use of Tenant and referred to in the Lease and Indemnity Agreement as the Premises. The Premises shall consist of: a 7,200 square foot space within the Building on the Northwest corner that Tenant agrees to fully build out with the mutual agreement between Tenant and Landlord for the performance space, training, educational, office space, storage space and all other needs of Tenant incidental to the performance of the Activities.

Exhibit A-1

Tenant shall have access to the Finley Center for the limited purpose of the management and operation of a community-based non-profit organization and its conducting the Activities described in Section 1 "Grant of Lease" of the Agreement as follows:

- Exclusive use of the Sports Performance Center which is defined as the sectioned off 7,200 square foot space within the Building on the Northwest corner.
- Use of the Activity Space for athletic performance activities, which shall include any Tenant-sponsored activity involving, or incidental to, athletic performance, athletic training and athletic educational activities of teams and individuals except during times of other licensed events. The Activity Space is defined as the 82,000 square foot court space within the Building.

In addition to the Premises and the Activity Space, Landlord shall provide Tenant with the following at no additional cost:

- Non-exclusive use of and access to men's and women's restroom/showers and lockers in the Building, unless previously scheduled by Landlord for another licensed event;
- Non-exclusive use of and access to the walking track surface in the Building without disruption of public access or unless previously scheduled by Landlord for another licensed event; and
- Non-exclusive use of and access to the event lawn at the Finley Center unless previously scheduled by Landlord for another licensed event.

Tenant shall provide the following to Landlord at no additional cost:

- Access to training space and time for a licensee and/or tenant in the Building to conduct supervised weight training of its/their members within the Sports Performance Center. Access shall be for a minimum of three (3) hours per week from 5:30 pm-7:30 pm Monday-Thursday and as agreed upon between Landlord and Tenant.
- Access to the Sports Performance Center within the Premises from the Sunday prior to the Southeastern Conference ("SEC") Baseball Tournament through the conclusion of said tournament to accommodate two (2) SEC baseball teams.

Exhibit A – Annex 1

Floor Plan

Exhibit B

It is understood that the amount of the Rent required to be paid by Tenant pursuant to **Section 2** of this Agreement shall be modified in accordance with the following:

- Tenant shall provide baseline athletic trainer coverage (“Baseline Coverage”), defined as the provision of one (1) athletic trainer, for all events at the Met Complex as requested by Landlord. Said Baseline Coverage shall be provided by Tenant at no charge to Landlord. The estimated benefit to Landlord of the Baseline Coverage is \$50,000. Except as provided below, Tenant shall receive an annual credit of \$25,000 toward the Rent for the Baseline Coverage, with each monthly Rent payment by Tenant to be reduced by \$2,083.33 during the Term and any Renewal Term as appropriate.
 - To the extent that any event or multiple simultaneous events at the Met Complex, for which athletic trainer coverage is requested by Landlord, will require the presence of more than one (1) athletic trainer at the Met Complex, Landlord will be responsible for ensuring that adequate additional athletic trainer coverage is provided unless otherwise agreed to in advance between the Landlord and Tenant.
 - The Baseline Coverage shall be computed at a rate of \$35 per hour (hourly rate charged by Landlord for event trainer hours) for a total of 1,429 hours of baseline athletic trainer coverage to be provided by Tenant to Landlord per year. In the event that the number of hours for which Tenant provides Baseline Coverage to Landlord does not equal 1,429 hours, then the amount of the annual credit to Tenant shall be computed as follows: (total number of coverage hours multiplied by \$35 per hour) / 2 = annual credit amount to Landlord.
- Tenant shall provide any desired athletic trainer coverage beyond the Baseline Coverage referenced above at a rate of \$35/hour, to be paid directly to Tenant by the individuals receiving said additional athletic trainer coverage. Any requests for additional trainer coverage and the contractual arrangement for engaging such athletic trainer(s) shall be direct between Tenant and the individual, organization and entity requesting Tenant’s additional services.
- Tenant shall initiate a novel training and certification curriculum devoted to promoting and nurturing safe cities, and shall ensure that the City of Hoover shall become the first certified “Safe City” and the accreditation model for this certification curriculum. In consideration of the certification of the City of Hoover as a “Safe City”, Tenant shall receive an annual credit of \$10,000 toward the Rent, with each monthly payment by Tenant to be reduced by \$833.33 for the duration of the Term and any Renewal Term. In the event that the “Safe City” program is not established, does not continue in duration, and/or Landlord does not qualify for such certification, then at such time, Tenant will no longer receive the annual credit described herein.

Exhibit C
Contractor's Insurance Requirements

1. INSURANCE REQUIREMENTS

A. GENERAL

- (1) **RESPONSIBILITY.** The contractor shall be responsible to Landlord and Tenant from the time of the signing of the construction agreement or from the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the work by the contractor, a subcontractor, anyone directly employed by them or anyone for whose acts they may be liable, regardless of who may be the owner of the property.
- (2) **INSURANCE PROVIDERS.** Each of the insurance coverages required below shall be issued by an insurer licensed by the Insurance Commissioner to transact the business of insurance in the state of Alabama for the applicable line of insurance, and such insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) must have a Best Policyholders Rating of "A-" or better and financial size rating of Class VII or larger.
- (3) **NOTIFICATION ENDORSEMENT.** Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire for any reason until **thirty** days after Landlord and Tenant have received written notice by certified mail as evidenced by return receipt or until such time as other insurance coverage providing equal protection shall have been received, accepted and acknowledged by Landlord and Tenant. Such notice shall be valid only as to the project as shall have been designated by project name in said notice.
- (4) **INSURANCE CERTIFICATES.** The contractor shall procure the insurance coverages identified below, or as otherwise required in the construction agreement, at the contractor's own expense, and to evidence that such insurance coverages are in effect, the contractor shall furnish Landlord and Tenant an insurance certificate(s) acceptable to Landlord and Tenant and listing Landlord and Tenant as the certificate holders. The insurance certificate(s) must be delivered with the construction agreement for final approval and execution of the construction agreement.

- (5) **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** The contractor will be responsible for deductibles and self-insured retentions for claims made under its policies.
- (6) **ADDITIONAL INSURED and CONTRACTOR'S INSURANCE AS PRIMARY.** The contractor's insurance policies shall name Landlord and Tenant, and their agents, elected officials, representatives, members, and employees, as Additional Insureds; state that this coverage shall be primary insurance for additional insureds and shall be non-contributory with regard to any insurance carried by Landlord and Tenant and shall contain no exclusions of the additional insured(s) relative to job related injuries or illness. The benefits of being an additional insured shall also extend to include completed operations coverage under General Liability.
- (7) **COMBINATION OF COVERAGES.** Any combination of primary and umbrella/excess coverage is acceptable as long as it satisfies the combined minimum coverage limits of each line. The limits specified below shall not reduce the coverage available if the contractor carries higher limits.

B. INSURANCE COVERAGES

The contractor shall possess the types of insurance coverages with liability limits not less than as follows:

(1) WORKERS' COMPENSATION and EMPLOYER' LIABILITY INSURANCE:

- a. Workers' Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the contractor qualifies to pay its own workers' compensation claims.
- b. Employer's Liability Insurance limits shall be at least:
- (i) Each accident - \$1,000,000
 - (ii) Disease – each employee \$1,000,000
 - (iii) Disease – policy limit \$1,000,000
- c. No proprietor/partner/executive officer/member of the contractor shall be excluded.

- d. The contractor's worker's compensation policy shall contain a waiver of subrogation clause in favor of Landlord and Tenant.

(2) COMMERCIAL GENERAL LIABILITY INSURANCE:

Commercial General Liability Insurance, shall be written on an ISO Occurrence Form (current edition as of the date of Advertisement for Bids) or equivalent. The Commercial General Liability Insurance shall provide at minimum the following:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate *with dedicated limits per project*
- \$2,000,000 completed operations aggregate limits per project
- Additional insured endorsement(s)
- Blanket contractual liability
- Blasting and explosion, collapse of structure and underground damage (XCU) shall not be excluded
- Bodily Injury and broad form property damage arising from premises operation liability
- Contractor's Liability
- Personal Injury liability
- Products & Completed Operations Liability, maintained for at least seven years after completion of project
- Punitive damages shall not be excluded
- Severability of interests

(3) COMMERCIAL AUTOMOBILE LIABILITY INSURANCE:

Commercial Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any **owned, non-owned or hired** automobile. The Commercial Automobile Liability Policy shall provide not less than \$1,000,000 Combined Single Limit for each occurrence.

(4) COMMERCIAL UMBRELLA OR EXCESS LIABILITY INSURANCE:

- a. Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Automobile Liability and the Employer's Liability coverage of Workers' Compensation.
- b. Excess/Umbrella Limits of:
 - (i) \$4,000,000 per Occurrence
 - (ii) \$4,000,000 per Aggregate

(iii) The policy must be on an “occurrence” basis.

(5) BUILDER’S RISK INSURANCE:

a. The contractor shall effect and maintain builder’s “all risk” insurance upon the entire structure on which the work of the construction contract is to be done and upon all materials, in or adjacent thereto, and intended for use thereon, to the full insurable value thereof. Insurable portions of the work shall be included on a completed work, value of work in progress, and value of stored materials. Fire and Lightning, Extended Coverage, Vandalism and Malicious Mischief shall be named in the policy, and other perils associated with the particular nature and character of the work. The policy verbiage shall permit partial or beneficial occupancy or use of the work prior to completion of acceptance of the entire work. The loss, if any, is to be made adjustable with and payable to the City of Hoover, Alabama, as trustee for whom it may concern. Policy may be blanket type but with not more than \$5,000 deductible clause.

b. Substitution of Builder’s Risk Insurance for Projects.

Due to the significant value of the existing structure, if Builder’s Risk coverage is not provided on the entire facility, an Installation Floater in the amount of the value of the work to be performed PLUS written confirmation by contractor’s insurance agent verifying that the contractor’s General Liability Insurance will provide coverage for any damage to the existing structure caused by the contractor, may be substituted.

C. SUBCONTRACTOR’S INSURANCE:

(1) WORKERS’ COMPENSATION and EMPLOYER’S LIABILITY INSURANCE.

The contractor shall require each subcontractor to obtain and maintain Workers’ Compensation and Employer’s Liability Insurance coverages or to be covered by the contractor’s Workers’ Compensation and Employer’s Liability Insurance while performing work under the construction agreement.

(2) LIABILITY INSURANCE.

The contractor shall require its subcontractor to obtain and maintain the following insurance coverage:

General Liability -- \$1 million per occurrence; \$2 million per aggregate; \$2 million completed operations aggregate.

Commercial Automobile Liability of not less than \$1,000,000 Combined Single Limit for any owned, non-owned or hired automobiles.

Commercial Umbrella or Excess Liability Coverage of \$4,000,000 per occurrence and \$4 million aggregate to provide excess coverage above the Commercial General Liability, Commercial Automobile Liability and the Employer's Liability coverage of Worker's Compensation.

All coverage shall be in effect at all times that a subcontractor is performing work under the construction agreement.

D. INDEMNIFICATION

- (1) To the fullest extent permitted by law, the contractor shall defend, indemnify, and hold harmless Landlord and Tenant, and collectively their agents, elected officials, boards, members, employees, and consultants (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, related to, or resulting from performance of the work, provided that such claim, damage, loss or expense is (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use, and (2) is caused in whole or in part by negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not it is caused in part, or is alleged but not legally established to have been caused in part, by a party indemnified under the construction agreement.
- (2) This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the work.

(3) This indemnification does not apply to the extent of the sole negligence of the Indemnitees.

E. TERMINATION of OBLIGATION to INSURE:

Unless otherwise expressly provided in the construction contract, the obligation to carry insurance coverages shall remain in effect after the Date(s) of Substantial Completion until such time as all work required by the construction contract is completed. Equal or similar insurance coverages shall remain in effect if, after completion of the work, the contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, returns to the project to perform warranty or maintenance work pursuant to the terms of the construction contract.

F. WAIVERS of SUBROGATION:

The contractor and any subcontractors they may hire shall have a waiver of subrogation in favor of Tenant and Landlord on all insurance policies required.

