

RESOLUTION NO. 23-123

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA APPROVING THE LEASE AGREEMENT WITH RHR VENTURES, LLC DBA D-BAT PANAMA CITY BEACH, RELATED TO THE DEVELOPMENT OF THE D-BAT PANAMA CITY BEACH FACILITY AT FRANK BROWN PARK AS MORE FULLY SET FORTH IN THE TERMS AND CONDITIONS OF THE LEASE.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and RHR Ventures, LLC dba D-BAT Panama City Beach, relating to the development of D-BAT Panama City Beach Facility at Frank Brown Park in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 23rd day of February, 2023.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

LEASE AGREEMENT

between

RHR VENTURES, LLC dba D-BAT PANAMA CITY BEACH

and

CITY OF PANAMA CITY BEACH, FLORIDA

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LEASE AGREEMENT

THIS D-BAT PANAMA CITY BEACH LEASE AGREEMENT (the "Lease") is made and executed as of 23rd, February 2023, by and between the City of Panama City Beach (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of Florida, and RHR Ventures, LLC, a Florida corporation (the "Tenant").

ARTICLE I DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. As used in this Lease, the following terms shall have the following meanings, unless the context otherwise requires.

"Additional Rent" means amount equal to two percent (2%) of the monthly Gross Sales up to and including One Million Dollars (\$1,000,000.00) aggregate Gross Sales per year, and thereafter an amount equal to six percent (6%) of the Gross Sales above One Million Dollars (\$1,000,000.00) aggregate Gross Sales per year as generated by businesses operating on the Leased Premises or under this Lease, payable monthly in arrears pursuant to Section 2.04 hereof. As used in this definition, year shall mean the lease year, commencing on the Effective Date and each successive anniversary of the Effective Date.

"Base Rent" means an amount equal to Fifty Thousand Dollars (\$50,000.00) per year, payable monthly in advance in twelve equal installments pursuant to Section 2.04(A) hereof. In year eleven (11), the Base Rent shall increase at two (2) percent on an annual basis for the remaining portion of the initial Lease and any subsequent Leases consistent with the option periods hereinafter stated. **"City"** means the City of Panama City Beach, a municipal corporation duly organized and validly existing under the laws of the State. With respect to any approval, consent or other action required by this Lease, the term "City" will include the City Manager and any other person to whom such responsibility has been lawfully delegated by the City Council.

“Deed Restriction” means that certain restriction contained in the Special Warranty granting the Property to the City and limiting the use to a “public park or parks, including, without limitations, sports and recreational facilities, recorded in the Official Records of Bay County, Florida at Book 2044, Page 34.

"Eight Acre (8-acre) Parcel" means that portion of the land which fronts Frank Brown Park located in Panama City Beach and more particularly described and depicted in Exhibit “A” attached hereto and incorporated herein that is owned by the City.

"Effective Date" means the date of the execution of the Lease herein by the last party’s execution and consistent with Paragraphs 1.01, 2.04 and 2.05 herein regarding payments and the passage of Lease time frames.

"Environmental Law" means any federal, state or local law, rule, regulation or ordinance for environmental protection, including, but not limited to, the Federal Clean Air Act, the Environmental Response Compensation and Liability Act, the National Environmental Policy Act, and the regulations of the Environmental Protection Agency.

"Gross Sales" shall mean the total sum of money in cash, charge or volume discount, collected or uncollected, from charges for the sale of any product or service made in the Leased Premises or pursuant to this Lease.

"Hazardous Material" means all of those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the Environmental Protection Agency or any other substance, element, material or compounds defined or restricted as a hazardous, toxic, radioactive or dangerous substance, material or waste by the Environmental Protection Agency or by any other ordinance, statute, law, code or regulation of any federal, state or local governmental entity or any agency, department or other subdivision thereof, whether now or later enacted, issued or promulgated.

"Impositions" means any ad valorem taxes, assessments, or other governmental charges and assessments lawfully imposed, levied or assessed against or with respect to the Leased Premises or any appurtenance thereto by any governmental authority, including the City.

"Lease" means this Lease Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

"Leased Premises" means the improved real property which is depicted on the map attached and incorporated as Exhibit "A" as will be modified as provided herein.

"Merchant Tax" means the one percent (1%) Merchant Tax which shall be assessed per the municipal code of Panama City Beach, Florida.

"Rent" means the Base Rent and the Additional Rent.

"State" means the State of Florida.

"Term" means the term of this Lease established or extended as provided in Section 2.02.

SECTION 1.02. CONSTRUCTION.

- A. The words "shall" or "will" are always mandatory and not merely directory.
- B. Each recital, covenant, agreement, representation, and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Lease. All parties have participated in the drafting and preparation of this Lease, and the provisions hereof shall not be construed for or against any party by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Lease and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Lease nor affect its meaning, construction or effect.

ARTICLE II LEASE OF PREMISES

SECTION 2.01. LEASE. For and in consideration of the Rent, covenants and agreements specified herein, the City leases to Tenant, and Tenant takes and hires, upon and subject to the conditions and limitations herein expressed, the Leased Premises as depicted on Exhibit "A." Tenant and the City agree that, contingent on Tenant's ability to obtain all required local, state, and federal approvals, Tenant shall utilize the minimum amount of square feet necessary to develop and construct an approximate twenty thousand (20,000+) square foot building consistent with the final artistic rendering in Exhibit "B" to be used for and include a pro shop, concessions, training area, batting cages, meeting space, offices, restrooms, indoor athletic field for baseball and softball and other athletic training and use (collectively referred to herein as the Project Facility) and the Leased Premises shall be accordingly reduced based on the final footprint if the Project Facility.

Tenant shall, subject to the terms herein and the Deed Restriction, design and contract at its sole cost the Project Facility to include a pro shop, offices, party room and restrooms. The project facility shall include enclosed space consisting of an indoor athletic turf field with approximately 20,000+ square feet for baseball and softball training, practice and other athletic use to include approximately eighteen (18) batting/instructional training areas.

Tenant shall construct, install, supply and finish the Project Facility with interior walls, finished flooring system, electrical, plumbing fixtures, furnishings, turf, netting, lighting, baseball and softball mechanics, pro shop fixtures/inventory at its sole cost and responsibility.

All exterior and interior design aspects of the project facility shall conform to all applicable state and city codes, regulations, ordinances, design criteria, building standards and specifications.

Following the issuance of the Tenant's permanent certificate of occupancy, the City shall, at its own expense, cause the 8-Acre Parcel to be surveyed by a licensed professional surveyor to

determine the exact footprint of the Project Facility (the Completion Survey”). The Completion Survey shall be incorporated into this Lease by subsequent addendum which shall be conclusive proof of the final Leased Premises.

SECTION 2.02. TERM. The initial term of this Lease shall be twenty (20) years which will begin and commence on the Effective Date defined herein. This Lease shall begin on the Effective Date and end on a date twenty (20) years thereafter, unless sooner terminated as herein provided.

SECTION 2.03. OPTION PERIOD. This Lease shall commence on the Effective Date and end on February 28, 2043, unless sooner terminated as herein provided (the “Initial Term”). The parties shall have the option by mutual agreement to extend this Lease for four (4), additional terms of five (5) years each (“Renewal Terms”), upon such rent, terms and conditions as they may agree in writing executed with the same formalities as this lease prior to the expiration of the then current term.

SECTION 2.04. RENT COMMENCEMENT DATE. The Rent Commencement Date shall be defined as follows: The date of the issuance of the Tenant’s certificate of occupancy or October 22, 2024, whichever occurs earlier.

SECTION 2.05. RENT.

A. Beginning Rent Commencement Date, Tenant shall pay Base Rent to the City in equal monthly installments, in advance, on the first day of each month. Base Rent shall be due and payable beginning on the Rent Commencement Date and on the first day of each and every month thereafter throughout the Term and shall be paid without demand, set off or deduction to the City; provided however, that if the Rent Commencement Date is a date other than the first day of a calendar month, the monthly amount set forth above for the partial first and last months will be prorated to the end of that calendar month.

- B. In addition to the Base Rent, Tenant shall pay Additional Rent (determined on the basis of sales made during the previous calendar month) to the City on the twentieth (20th) day of each month. Additional Rent shall be due and payable beginning on the twentieth day of the first full calendar month following the Rent Commencement Date and on the twentieth day of each and every month thereafter throughout the Term (and on the twentieth day of the month following the termination hereof) and shall be paid without demand, set off or deduction to the City. At the time Additional Rent is due, Tenant shall tender to the City in a form satisfactory to the City Manager an account of all business transactions conducted pursuant to this Lease during the preceding month, setting forth in particular the Gross Sales for said month. Within ninety (90) days following the end of each calendar year in which this Lease was in effect, Tenant shall submit to the City in a form satisfactory to the City Manager a detailed, certified statement of gross sales generated by Tenant under this Lease prepared by an independent CPA firm. Should payments made to the City during the year be less than required by the percentage of Gross Sales provision as set out in this Lease, such shortage will be paid by check accompanying the statement.
- C. Tenant shall maintain in accordance with generally accepted accounting principles full and accurate books of account and records from which Gross Sales and Additional Rent can be determined, including but not be limited to: sales slips, cash register tapes, credit card invoices, monthly sales tax returns, sales and disbursement journals, general ledgers, bank statements, bank books, and bank deposit slips. Equivalent computer records may be maintained in lieu of some of the records listed above. These books and records shall be maintained for a period of at least three (3) years following the end of each annual period during which this Lease is in effect and shall be made available to the City immediately upon request. The City, acting through its City Manager or other authorized representative, shall have the right to inspect and

audit the Tenant's books of accounts and other records in Panama City Beach, Florida. The City shall have the right to cause an audit of the business of Tenant under this Lease to be made by a CPA firm of the City's selection. If the statement of gross revenues previously made to the City by Tenant shall be found to be intentionally inaccurate in any respect, or to be in error, either intentionally or unintentionally, by a greater margin than five percent (5%) of Tenant's actual gross sales for the period of review, as shown by such audit, then Tenant shall immediately pay to the City the cost of such audit; otherwise, the cost shall be paid by the City. The City reserves and shall have the right, at its sole cost, to perform unannounced cash audits.

- D. Tenant shall pay to the City monthly as accrued any sales or use tax due to the State of Florida on account of Base Rent, Additional Rent or any other sum Tenant is required to pay under this Lease.
- E. Nothing herein shall be construed to relieve or modify Tenant's obligation as a merchant to pay the business tax imposed by the City and measured by gross receipts.
- F. This Section shall survive the expiration or termination of this Lease.

SECTION 2.06. UTILITIES AND IMPOSITIONS.

- A. Tenant shall be responsible for the payment of all utilities and operating costs of the Leased Premises, including but not limited to electricity, gas, water, sewer, solid waste removal and telecommunications. In no event shall City be liable for any interruption or failure in the supply of any utilities to the Leased Premises.
- B. From and after the Effective Date and through and until the end of the Term, Tenant shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all Impositions arising or becoming due during the Term. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition, by any and all proceedings available at law or in equity.

SECTION 2.07. SECURITY DEPOSIT.

A. On the Effective Date, Tenant shall pay to the City a security deposit in the amount of ten thousand dollars (\$10,000). The security deposit shall be held and distributed by City in accordance with the provisions of this Section. During the Term, City may apply all or any portion of the security deposit necessary in satisfaction of Tenant's obligations which remain unperformed after notice and the expiration of the applicable grace period, if any. Should City apply any portion of the security deposit as permitted hereunder, Tenant shall, upon written request of City, remit to City a sufficient amount, in cash, to restore the security deposit to the original amount deposited. No Interest shall be payable on the security deposit. If, upon the expiration or termination of this Lease, the obligations of Tenant hereunder have been fully performed, the amount of the security deposit then held by City shall be returned to Tenant.

**ARTICLE III
USE OF PREMISES**

SECTION 3.01. TENANT'S USE. The Leased Premises shall be used and occupied for the purpose of recreational activities primarily focused on baseball and softball instruction, lessons and leisure equipment, along with limited food and beverage services, pro shop sales and any other use complimenting the public's use and enjoyment of D-BAT Panama City Beach located on the Leased Premises and consistent with the Deed Restriction, and subject always to the affirmative and negative covenants hereinafter written.

SECTION 3.02. CONTINUOUS OCCUPANCY. Tenant shall keep the Leased Premises open continuously during the Term, on such days and for such hours as shall be compatible with the other Frank Brown Park activities and hours that are typical within the baseball and softball training industry. Tenant will not cease operations in the Leased Premises without the express written consent of the City which may be withheld in its sole discretion, unless prevented from

doing business therein by reason of applicable ordinances or other acts of governmental authorities, or by acts of God, or conditions beyond the control of the Tenant.

SECTION 3.03. ADVERTISING.

- A. Tenant shall have the sole right to negotiate, execute and perform all contracts concerning the sale, promotion, marketing and the use of all names, trademarks, logos and similar intellectual property rights related to Tenant and events at the Project Facility. Any contracts are subject to prior written approval of the City, such approval to be timely and not unreasonably withheld.
- B. Tenant has the right, subject to prior written approval from the City to display advertising related to its services and products and approval shall be timely and not unreasonably withheld.

SECTION 3.04. MERCHANDISE. Tenant has the sole right to sell merchandise and all merchandise and revenue generated for any merchandise sold is the sole property of the Tenant, subject to the provisions of “Additional Rent” herein.

SECTION 3.05. SCHEDULING, FEE & USE. Tenant has the sole right to schedule events at the Project Facility, including charging and collecting a fee for the use of activity at the Project Facility. Any revenue generated is the sole property of the Tenant subject to the provisions of “Additional Rent” herein.

**ARTICLE IV
CONSTRUCTION, MAINTENANCE AND REPAIRS**

SECTION 4.01. TENANT'S DUTY TO REPAIR.

- A. Tenant shall keep and maintain in good order, condition, repair and in an attractive appearance, and make such replacements and restorations as are required to the Leased Premises, every part thereof and every appurtenance thereto, including, but without limitation, the exterior and interior portion of all doors, door frames, door checks, windows, window frames, plate glass, store front, all plumbing and sewage facilities within the Leased Premises including fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased

Premises), sprinkler system, if any, walls, floors and ceiling, meters applicable to the Leased Premises, exterior and interior signage, and all installations made by Tenant under the terms of this Lease.

- B. Tenant shall keep and maintain the Leased Premises in a clean, neat, sanitary and safe condition and in accordance with all required rules and regulations of the governmental agencies having jurisdiction of the Leased Premises and of Tenant and City with respect to the Leased Premises, and Tenant shall comply with, and maintain the Leased Premises in compliance with all requirements of law, by statute, ordinance or otherwise, affecting the Leased Premises and the appurtenances thereto.
- C. Tenant shall, at its expense, keep, maintain and repair all furniture, fixtures and equipment in the Leased Premises, in a good working order and safe, sanitary, neat, clean and in an attractive condition, and if necessary replace the same at its expense.
- D. If Tenant fails to commence and to complete repairs, replacements, cleaning or other obligations set forth in this Section, promptly and adequately after written notice from City, City may, but shall not be required to, make and complete said repairs or other obligations and Tenant shall promptly pay the cost thereof upon demand by City.

SECTION 4.02 SURRENDER OF PREMISES. At termination of this Lease the Tenant agrees to deliver the Leased Premises in the same condition as the Leased Premises was on the Rent Commencement Date, reasonably expected wear and tear excepted. Tenant shall surrender to City all keys for the Leased Premises at the place then of the payment of Rent. Tenant's obligation to observe or perform this covenant shall survive the expiration or termination of this Lease. Any items belonging to Tenant remaining in the Leased Premises on the termination of this Lease shall be deemed abandoned for all purposes and shall become the property of the City which may dispose of such abandoned property without liability of any type or nature.

SECTION 4.03. MECHANIC'S LIENS. If Tenant makes any repairs or permitted alterations to the Leased Premises, Tenant shall promptly pay all costs related thereto. Tenant does not have any right or authority to place any lien, claim or encumbrance of any kind against the Leased Premises or City's rights and interest therein. Tenant shall cause all steps as are provided by law for the filing of a statutory bond prior to the initiation of any construction with respect to the Leased Premises. If a mechanic's or material men's lien is threatened or filed by any contractor or supplier, Tenant will promptly pay same and take steps immediately to have same removed. If the lien or claim is not removed or paid within thirty (30) days from the date of written notice from City, then City may, at its option, pay the amount alleged due or any portion thereof and the amounts so paid, including attorney's fees and expenses connected therewith, and interest at the rate of 18% per annum on any sums advanced, shall be deemed to be additional rent and shall be paid to City immediately upon demand. Tenant will indemnify and save harmless City from and against all loss, claims, damages, costs or expenses suffered by City by reason of any repairs, installations or improvements made by Tenant. This provision shall survive the expiration or termination of this Lease.

SECTION 4.05. ROOF and EXTERIOR. Tenant will not cause or permit accumulation of any debris or extraneous matter on the roof of the D-BAT Panama City Beach structure (the "Roof"); will not in any manner cut or drive nails into or otherwise mutilate the Roof; Tenant will not place or affix anything to the Roof, without first obtaining the written consent of City which may be withheld in its sole discretion. Tenant will be responsible for any damage caused to the Roof by any act of the Tenant, its agent, employees, invitees or contractors of any type or nature.

ARTICLE V INSURANCE AND INDEMNIFICATION

SECTION 5.01. INSURANCE. Tenant will throughout the Term (and any other period when Tenant is in possession of the Leased Premises) carry and maintain at its sole cost the

following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Leased Premises and Tenant's operations, in the amounts specified with deductible amounts, where permitted, reasonably satisfactory to the City, and in the form hereinafter provided for:

- A. Commercial General Liability Insurance. Commercial general liability insurance, covering claims arising from bodily injury, death and/or property damage insuring the Tenant and naming the City as an additional insured against all claims, demands or actions related to D-BAT Panama City Beach with a minimum combined single limit of not less than \$1,000,000.00 per occurrence to persons (including death) and for property damage or destruction including loss of use against legal liability of the insured with respect to the Leased Premises or arising out of the maintenance, use or occupancy thereof. Said insurance shall include, but not be limited to, independent contractor liability, products and completed operations coverage, and the Broad Form Comprehensive General Liability Endorsement, including personal injury, death and advertising liability, contractual liability arising under this Agreement, and premises medical payments. The acts or omissions of any permitted sub-tenant shall also be covered.
- B. Hazard Insurance. Special form coverage hazard insurance, including plate glass coverage on a replacement cost basis, with coverage equal to full replacement value of all personal property, decorations, trade fixtures, furnishings, furniture, fixtures, equipment, alterations, leasehold improvements, betterments, inventory, supplies and contents forming a part of or placed in the Leased Premises or used or useful to the performance of the duties, services and/or obligations of Tenant under this Agreement, regardless of whether made or owned by Tenant, the City or, if placed there with Tenant's consent, a third person.
- C. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employer's Liability Insurance with coverages and limits required by the laws of the State of Florida.

- D. Construction. During any permitted construction by Tenant or City in the Leased Premises Tenant shall ensure that all of its contractors and subcontractors performing services in the Leased Premises have and maintain general liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about the Leased Premises, in an amount not less than \$1,000,000.00 per occurrence/aggregate and workers' comprehensive insurance in compliance with requirements imposed by laws of the State of Florida.
- E. Policy Form. All policies referred to above shall insure Tenant and: (1) be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of B+, Class VI, or otherwise approved in advance by the City; (2) name the City as an additional insured (other than for workers' compensation and employers' liability) and a loss payee; (3) name any permitted sub-tenant; (4) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the City; and (5) contain an obligation of the insurers to notify the City by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination of any such policy, which obligation shall be stated on the certificate of such insurance delivered to City. The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible, if permitted, in any insurance policy.
- F. Certificates of Insurance, Notice and Remedy. For all insurance required, Tenant shall cause certificates of insurance to be delivered to the City simultaneously with the issuance of each policy or amendment thereto, naming the City as an additional insured and a loss payee (other than for workers compensation and employer's liability), naming other parties as additional insureds as required herein, and stating that the insurer waives or has no right of subrogation against the City, its officers, agents or employees. In addition, Tenant shall provide written notice to the City not less than thirty (30) days prior to the effective date of any policy change

initiated by Tenant. If Tenant fails to take out or to keep in force any insurance referred to in this Article, or should any such insurance not be approved by the City, and Tenant does not commence and continue to diligently cure such default within 48 hours after written notice by the City to Tenant specifying the nature of such default, then the City has the right, without assuming any obligation in connection therewith, to procure such insurance at the sole cost of Tenant, and all outlays by the City shall be paid by Tenant to the City without prejudice to any other rights or remedies of the City under this Agreement. The certificate shall also name any permitted sub-tenant..

G. Insurance Required Before Possession. Tenant acknowledges that the City will not permit Tenant to enter into possession of the Leased Premises until all required Certificates, proof and evidence of insurance have been provided to the City, and that failure to provide the services required under this Agreement will result in a termination of this Agreement.

H. Increase in Fire Insurance Premium. Tenant agrees not to keep upon the Leased Premises any articles or goods which may be prohibited by the standard form of fire insurance policy. In the event any insurance rates applicable to fire and extended coverage insurance covering the Leased Premises are increased by reason of any use of the Leased Premises made by the Tenant, then Tenant shall pay to City, upon demand, the amount of such increase in the premium as shall be occasioned by said use.

SECTION 5.02. INDEMNIFICATION. For the separate consideration of ten dollars and other valuable consideration paid to it by the City, Tenant agrees to indemnify, defend and hold the City harmless from and against any and all liability for any loss, injury or damage to persons or property, including, without limitation, consequential damage including without limitation, all costs, expenses, court costs and reasonable attorneys' fees, imposed on the City by any person whomsoever that occurs on the Leased Premises, except for any such loss, injury or damage that

is caused by or results from the gross negligence or willful misconduct of the City, its employees, agents or contractors. The commercial liability insurance that Tenant is required to carry pursuant to this Lease shall include coverage of the foregoing contractual indemnity. Nothing herein, or in the provision of insurance required by this Lease shall waive or modify the City's sovereign immunity.

SECTION 5.03. PROPERTY OF TENANT. Tenant agrees that all property owned by it in, on or about the Leased Premises shall be at the sole risk and hazard of the Tenant. City, its officers, employees and agents shall not be liable or responsible for any loss of or damage to Tenant's property, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, steam, gas, leakage, plumbing, electricity or electrical apparatus, pipe or apparatus of any kind, the elements or other similar or dissimilar causes, and whether or not originating in the Leased Premises or elsewhere, irrespective of whether or not City may be deemed to have been negligent whether respect thereto, and provided such damage or loss is not the result of an intentional and willful wrongful act of City.

SECTION 5.04. WAIVER OF SUBROGATION. Tenant shall require all policies of insurance required hereunder to contain or be endorsed with a provision by which the insurer shall waive its right of subrogation against City, its officers, employees and agents, or confirm that it has no such rights.

ARTICLE VI FIRE AND OTHER CASUALTY

SECTION 6.01. PARTIAL DESTRUCTION. In the event of the partial destruction (less than 20% by area) of the building housing D-BAT Panama City Beach by fire or other casualty, Tenant shall restore or repair said building and improvements with reasonable diligence. Tenant shall repair or restore the building to the condition it was in immediately prior to the date of the

destruction. The Base Rent shall be proportionately abated from the date the building became partially untenable until the Leased Premises are made fully tenable.

SECTION 6.02. SUBSTANTIAL DESTRUCTION. In the event of the substantial destruction (20% or more) of the building housing the D-BAT Panama City Beach by fire or other casualty, then Tenant shall have the option to terminate this Lease by giving the City written notice within thirty (30) days after such destruction, and any unearned Rent shall be apportioned and returned to Tenant. If Tenant does not elect to cancel this Lease as aforesaid, then Tenant shall proceed with reasonable diligence to repair or restore or replace the building to the condition it was in immediately prior to the date of the destruction. The Base Rent shall be proportionately abated from the date the building became substantially untenable until the Leased Premises are made fully tenable, unless the building is totally untenable in which case Base Rent shall completely abate.

ARTICLE VII ASSIGNMENT AND SUBLETTING

SECTION 7.01 NO ASSIGNMENT. This Lease shall not be assigned, transferred, pledged, or otherwise encumbered without prior approval of the City, which shall may be withheld in its sole discretion.

SECTION 7.02 SUBLETTING. Notwithstanding the provisions of Section 7.01, upon the prior written approval of the City which may be withheld in its sole discretion, Tenant may enter into sublease with a third-party operator for D-BAT Panama City Beach. Such sublease(s) will require the subtenant to comply with all applicable covenants and terms of this Lease for which Tenant shall remain responsible, including by way of example and not limitation, insurance, maintaining and retaining books and records (which shall be made available at reasonable times to the City and Tenant upon request) of the Gross Sales generated by the subtenant on the Leased Premises and the Affirmative and Negative Covenants herein, and

provide for the survival of such covenants as provided herein. Such sublease shall prohibit further subletting. City must approve the form of the sublease in writing prior to its execution. The City has entered into this Lease because of its confidence in Tenant's expertise, reputation and financial strength to operate and maintain the Leased Premises to serve a public purpose by providing goods and services that will benefit the public and the recreational use of Frank Brown Park and D-BAT Panama City Beach, and to refrain from activities which would be inconsistent with such use or be offensive to the public, and to generate a return to the City to support its public programs. It is this standard, and the judgment of the prospect of financial return, which will guide the City in approving or declining, in its sole discretion, any subleasing of this Lease.

**ARTICLE VIII
AFFIRMATIVE AND NEGATIVE COVENANTS**

- A. **SECTION 8.01. AFFIRMATIVE COVENANTS.** Tenant shall provide high quality sports training facilities, experienced and well-trained personnel, and high quality merchandise available to the public.
- B. Alcohol sales and consumption are allowed consistent with City Ordinances and State Laws.
- C. Tenant shall not allow customers to remove glass containers outside of the D-BAT Panama City Beach facility.
- D. All personnel employed in the Leased Premises to deal with the public shall be trained and have basic knowledge of (1) City ordinances and policies regulating activities at the D-BAT Panama City Beach facility.
- E. Tenant shall make all reasonable efforts to conduct all business on the Leased Premises in a manner that supports City ordinances and policies applicable from time to time at the D-BAT Panama City Beach facility.

SECTION 8.02. NEGATIVE COVENANTS.

- A. Tenant shall not permit the Leased Premises to be used for any unlawful or illegal business, use or purpose or for any business, use or purpose which is immoral, disreputable, hazardous, or constitutes a public or private nuisance of any kind.
- B. No sexually-oriented business as defined in Panama City Beach Land Development Code, as it may be amended, shall be permitted on the Leased Premises. In addition, any entertainment, advertisement or signage offered on the Leased Premises shall be wholesome and family oriented, without sexual references or connotations and avoiding the appearance of nudity, vulgarity or offensive language. By way of illustration and not limitation, wet t-shirt and banana eating contests are prohibited by this covenant.
- C. The Leased Premises is a recreational area. It is not and has never been designated or used as a public forum for political or ideological speech. Unless required by law, no activities shall be conducted on the Leased Premises for the purpose of carrying on propaganda, or otherwise attempting to influence legislation or public policy, or on behalf of or in opposition to any political issue or candidate for public office.
- D. Tenant agrees to comply with the sign and advertising requirements of the Panama City Beach Land Development Code and the Deed Restriction.

SECTION 8.03. RESOLUTION OF CERTAIN DISPUTES.

- A. The parties agree to resolve any dispute related to the interpretation or performance of an affirmative or negative covenant contained in this Article in the manner described in this Section. Either party may initiate the dispute resolution process by providing written notice to the other party.

- B. After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.
- C. If discussions among the parties fail to resolve the dispute within ten (10) days of the notice described in Section (A), the parties shall appoint a mutually acceptable neutral third party to act as a mediator to serve at joint expense. If the parties are unable to agree upon a mediator, the City shall request appointment of a mediator by the Chief Judge of the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida, again to serve at joint expense. The mediation contemplated by this Section is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. It is understood that any settlement may require approval of the City Council.
- D. If the parties are unable to reach a mediated settlement within thirty (30) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other party. In such event, either party may initiate litigation within thirty (30) days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the thirty (30) day period shall be deemed to constitute an acceptance of the interpretation or performance of the other party.

**ARTICLE IX
DEFAULT AND RE-ENTRY**

SECTION 9.01. TENANT'S DEFAULT. Failure on the part of Tenant to pay any Rent within ten (10) days after the same shall become due, or failure of Tenant or any permitted sub-tenant to keep and perform every covenant, condition, agreement and obligation of this Lease (other than payment of Rent) on the part of Tenant to be kept and performed for more than twenty

(20) days after written notice of such failure shall have been given to Tenant, shall, at the option of City, cause the forfeiture of Tenant's right to possession of the Leased Premises and all other rights under this Lease, without, however, releasing Tenant from liability, as hereinafter provided, and possession of the Leased Premises and all improvements thereon shall be delivered to and shall be taken by City, any other notice or demand being hereby waived. Tenant agrees to quit and deliver possession of the Leased Premises to City. Tenant agrees that the Leased Premises shall be in substantially as good condition as when received by Tenant, normal wear and use excepted.

SECTION 9.02. TENANT'S OBLIGATION. Tenant covenants that any forfeiture, annulment or voidance of this Lease or Tenant's right to possession or any other rights hereunder shall not relieve Tenant for the obligation to pay Rent. Upon obtaining possession, City may relet the Leased Premises as the agent for and in the name of Tenant, at any rental readily acceptable, applying proceeds first to the costs incurred in resuming possession then reletting, including the cost of any repairs or remodeling incurred in the reletting, then to the payment of any obligation of Tenant other than the payment of Rent, then to the payment of Rent, herein contained, and the balance, if any, shall be paid to Tenant. Tenant hereby agrees that if City shall recover or take possession of the Leased Premises and be unable to relet or the rent from such reletting is not sufficient to pay the costs incurred in reletting, and any obligation of Tenant contained herein, including the payment of Rent, Tenant shall pay to City any loss or difference for the remainder of the Term. Under the circumstances aforesaid, City shall have the right to re-enter the Leased Premises to assume and take possession of the whole or any part thereof and to remove all persons or personal property by direct or summary action, or in a different type of suit or proceedings, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for the damages therefore. Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law. City, irrespective of the date on which its right of re-

entry shall have accrued or be exercised, shall have the right, exercisable without notice to or demand upon Tenant or any other person, to terminate this Lease. City shall not be deemed to have terminated unless City shall give written notice to Tenant specifically terminating the Lease and releasing Tenant from liability.

SECTION 9.03. ACCELERATION OF RENT. In the event of default on the part of Tenant, or in the event of the bankruptcy of Tenant, all installments of Rent, and all other charges payable by Tenant hereunder, for the residue of the Term shall, at the option of the City become immediately due and payable, notwithstanding any other stipulated date of payment. The amount collectible under this provision shall be reduced by any amount City receives from a subsequent Tenant during this term, less all reasonable start-up costs for the subsequent Tenant spent by City. This remedy is in addition to and not in lieu of any other remedies or relief made available to City herein or under the laws of the State of Florida.

SECTION 9.04. LEGAL REMEDIES. Notwithstanding the provisions of this Lease, it is agreed between the parties that the remedies provided for herein in the event of default on the part of Tenant or any person acting under Tenant are in addition to and not in lieu of any other remedies or relief made available to the City under the laws of the State of Florida, which latter remedies or relief shall be likewise available to City in the event of a breach of any of the terms of this Lease.

ARTICLE X GENERAL PROVISIONS

SECTION 10.01. QUIET ENJOYMENT. If Tenant pays the Rent and fully performs all of its obligations under this Lease, subject to the public rights stated herein, Tenant shall be entitled to peaceful and quiet enjoyment of the Leased Premises for the full Term without interruption or interference by the City or any person claiming through the City.

SECTION 10.02. HAZARDOUS MATERIAL. Throughout the Term, Tenant will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any

Hazardous Material on, under, in, above, to, or from the Leased Premises except that Hazardous Material may be used on the Leased Premises as necessary for the customary operation and maintenance of the Leased Premises provided that same are used, stored and disposed of in strict compliance with Environmental Law.

A. If Tenant's activities on the Leased Premises or Tenant's use of the Leased Premises results in a release of Hazardous Material that is not in compliance with Environmental Law or permits issued thereunder, gives rise to any claim or requires a response under common law or Environmental Law or permits issued thereunder, causes a significant public health effect, or creates a nuisance; then Tenant shall, at its sole cost and expense: (1) immediately provide verbal notice thereof to the City as well as notice to the City in the manner required by this Lease, which notice shall identify the Hazardous Material involved and the emergency procedures taken or to be taken; and (2) promptly take all action in response to such situation required by Environmental Law, provided that Tenant shall first obtain the City's approval of the non-emergency remediation plan to be undertaken.

SECTION 10.03. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Bay County public health unit. At this time, the City does not conduct radon testing with respect to any buildings located on the Leased Premises. Further, the City disclaims any and all representations and warranties as to the absence of radon gas or radon gas producing conditions with respect to the buildings located on the Leased Premises.

SECTION 10.04. COMMISSIONS. The City and Tenant each represent and warrant to the other that they have employed no broker, finder or other person in connection with the

transactions contemplated under this Lease which might result in the other party being held liable for all or any portion of a commission hereunder. The City and Tenant each hereby agree to indemnify and hold the other free and harmless from and against all claims and liability arising by reason of the incorrectness of the representations and warranties made by such party in this Section 8.04, including, without limitation, reasonable attorneys' fees and litigation costs. The provisions of this section shall survive expiration or termination of this Lease.

SECTION 10.05. INSPECTIONS. Tenant will make the Leased Premises available for inspection by the City, or its designee, at any time, for any purpose the City deems necessary or incidental to or connected with the City's rights hereunder or operation or maintenance of the Leased Premises. An employee or designee of Tenant may accompany the City on all inspections of the Leased Premises. Tenant's books and records pertaining to the maintenance, management and operation of the Leased Premises shall be accessible to the City at reasonable times.

SECTION 10.06. COMPLIANCE WITH LAWS. Tenant shall comply with all laws, ordinances, rules and regulations of federal, state, county and municipal governments which may be applicable to Tenant's operation under this Lease. Tenant shall neither commit nor permit waste of the Leased Premises.

SECTION 10.07. NONDISCRIMINATION. No covenant, agreement or other instrument shall be effected or executed by Tenant, whereby the Leased Premises or any portion thereof is restricted by Tenant, upon the basis of race, color, religion, sex or national origin in the lease, use or occupancy thereof; provided however, that Tenant shall comply with Section 110.1155, Florida Statutes, to the extent applicable. Tenant shall comply with all applicable federal state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, sex, or national origin in the lease or occupancy or use of the Leased Premises.

SECTION 10.08. ENTIRE AGREEMENT. This Lease incorporates and constitutes the entire agreement between the City and Tenant pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

SECTION 10.09. AMENDMENTS AND WAIVERS. No amendment, supplement, modification or waiver of this Lease shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision of this Lease, whether or not similar, unless otherwise expressly provided. Neither the failure or any delay by any party in exercising any right or power under this Lease nor any course of dealing between the City, on the one hand, and Tenant, on the other hand, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

SECTION 10.10. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, electronic mail to the parties at the following addresses:

City:
City of Panama City Beach
17007 Panama City Beach Parkway
Panama City Beach, Florida 32413
Attention: City Manager
Attention: City Attorney

Tenant:
RHR Ventures, LLC
315 E. 4th Street
Panama City, FL 32401
Attention: Russell K. Ramey, President

Either of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand, electronic mail, or three (3) days after the date mailed.

SECTION 10.11. BINDING EFFECT. This Lease shall be binding upon the parties, their respective permitted successors and assigns and shall inure to the benefit of the parties, their respective permitted successors and assigns.

SECTION 10.12. SEVERABILITY. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 10.13. APPLICABLE LAW AND VENUE. This Lease shall be governed by and construed in accordance with the laws of the State. Venue for any action or proceeding to construe or enforce the provisions of this Lease shall be in the Circuit Court in and for Bay County, Florida.

SECTION 10.14. ATTORNEY'S FEES. The prevailing party in any litigation brought to enforce any right or remedy under this Lease shall be entitled to recover reasonable attorneys' fees at both trial and appellate levels.

SECTION 10.15. RELATIONSHIP OF THE PARTIES. Nothing in this Lease shall be construed so as to create the relationship of principal and agent, a partnership, joint venture, or any association whatsoever between the City and Tenant, other than the relation of a landlord to its tenant. Nothing herein shall affect or limit the police power of the City to make and enforce its laws.

IN WITNESS WHEREOF, the City Council of the City of Panama City Beach, Florida, has caused this Lease to be executed and delivered as of the date and year first above written.

City of Panama City Beach



Drew Whitman, City Manager

Attest:

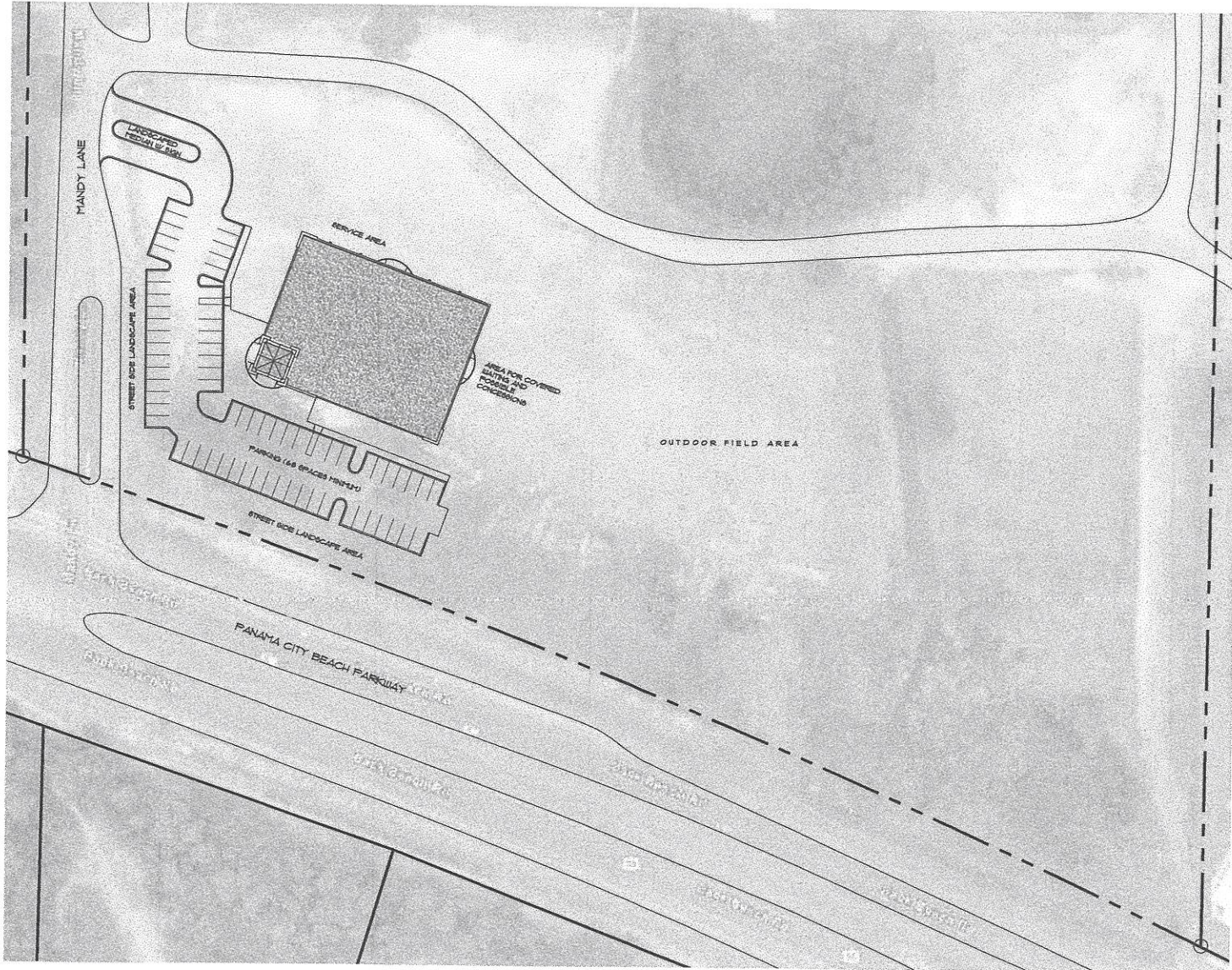
IN WITNESS WHEREOF, RHR Ventures, LLC has caused this Lease to be executed and delivered as of the day and year first above written.

RHR Ventures, LLC



Russell K. Ramey, President

Exhibit A



PROPOSED SITE PLAN
 SCALE: 1" = 40'-0"

PREPARED BY	REVISED BY
JMS	
REVISED BY	CODE
DATE OF ISSUE	DATE OF ISSUE
	08/22/2022

A NEW BUILDING FOR
D-BAT
 BASEBALL AND SOFTBALL ACADEMY
 16,500 PANAMA CITY BEACH PARKWAY

cobe
 3701 PANAMA AVENUE, SUITE 100, PANAMA CITY BEACH, FLORIDA 32413
 ARCHITECTURAL REGISTRATION: LICENSE #1074, ENGINEER LICENSE #14864, ADDRESS 3225 NORTH 30, 4E

SCHEMATIC DRAWINGS

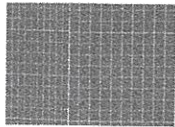
AS1.1
 5 SHEETS TOTAL

PROJECT NO.
 22-38

Exhibit B



split face



caps



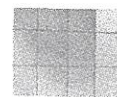
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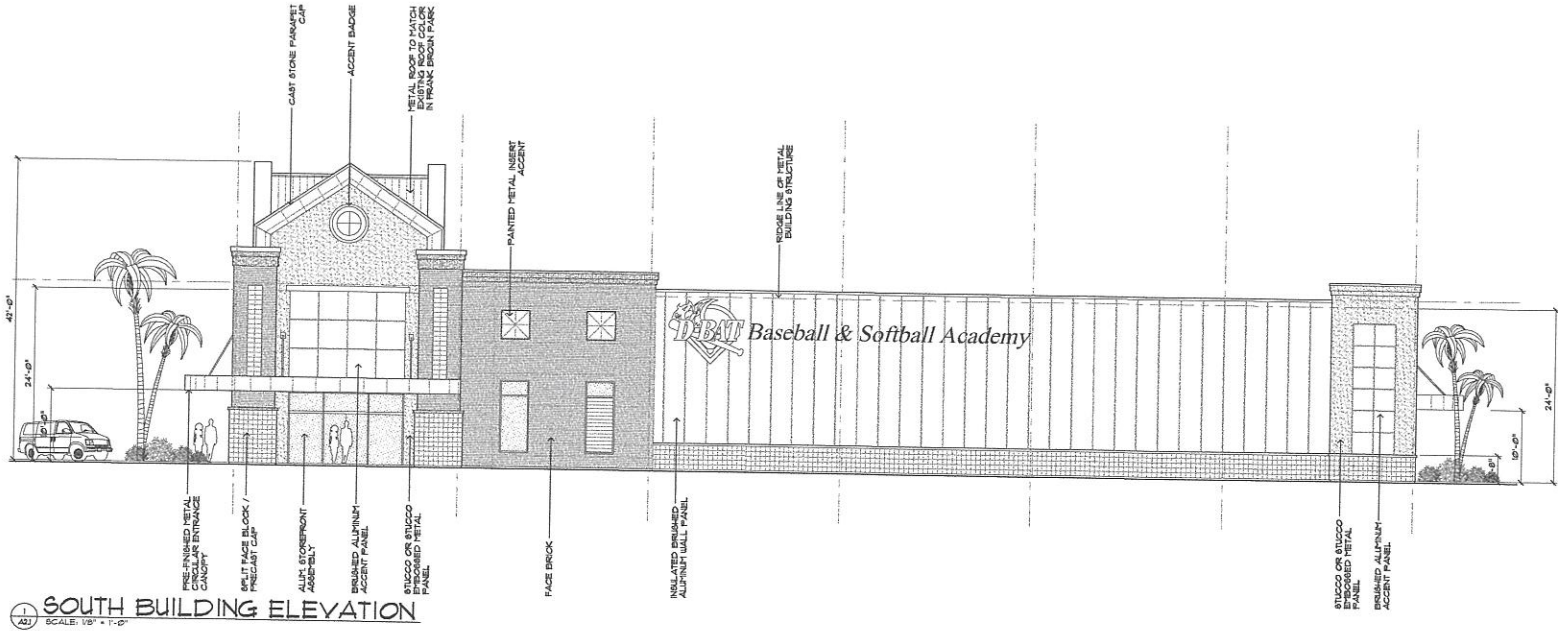


metal accent

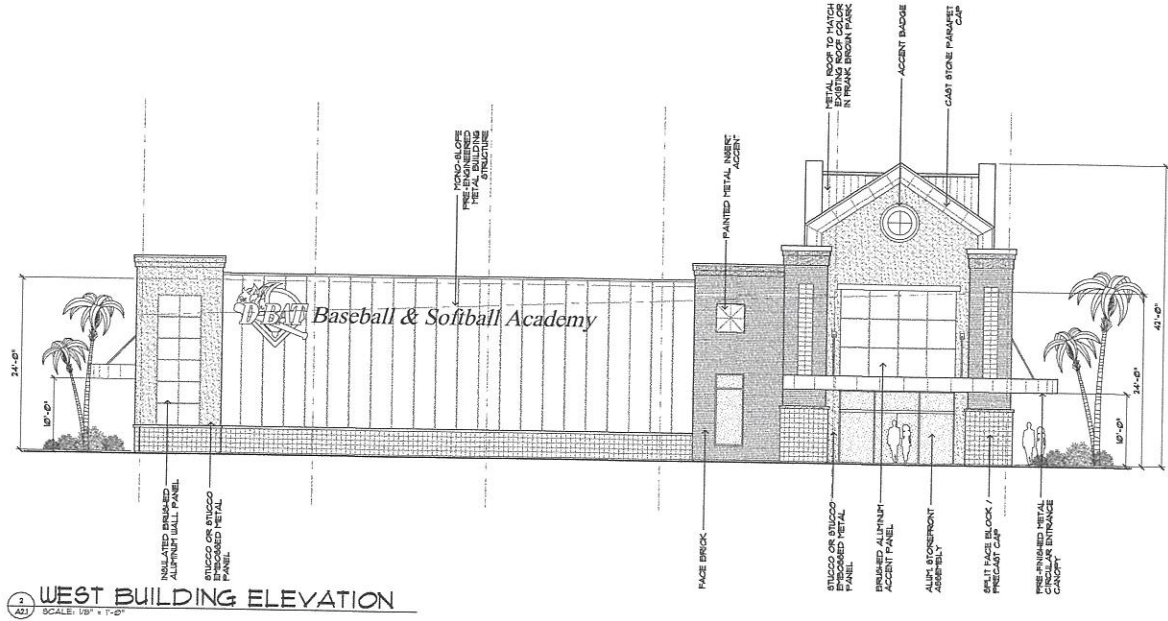


aluminum





1 SOUTH BUILDING ELEVATION
SCALE: 1/8" = 1'-0"



2 WEST BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

PREPARED BY	REVISIONS
JMS	
REVIEWED BY	
CSE	
DATE OF ISSUE	
08/22/2022	

A NEW BUILDING FOR
D-BAT BASEBALL AND SOFTBALL ACADEMY
 16300 PALMVIEW CITY BEACH PARKWAY

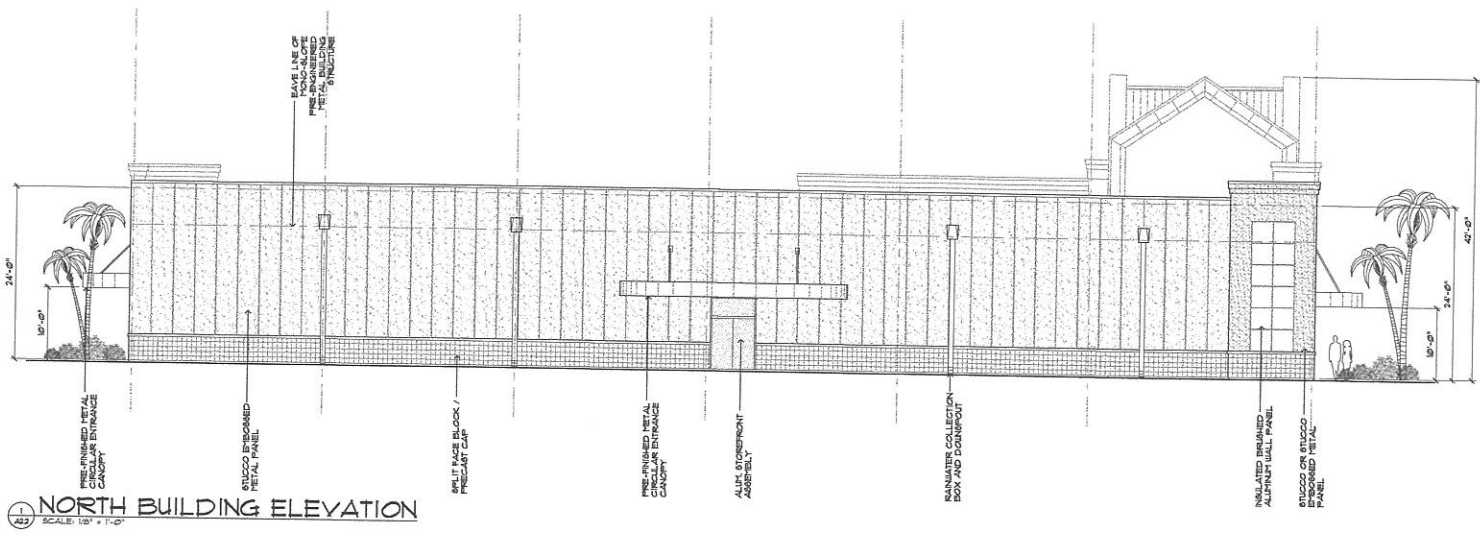
coe

3124 Avenida Drive Panama City Beach, Florida 32407 P.O. Box 9301 (904) 230-3827
 Professional Registration - Florida #14764 - Georgia #4284 - Alabama #3219 - Virginia #3336

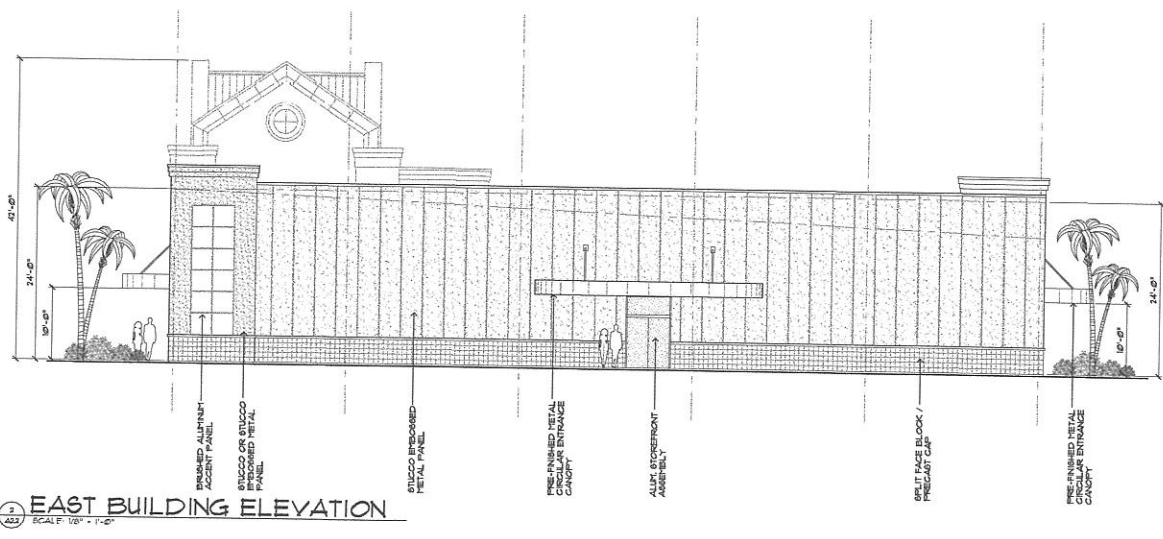
SCHEMATIC DRAWINGS

A2.1
 5 SHEETS TOTAL

PROJECT NO.
 22-39



A22 NORTH BUILDING ELEVATION
SCALE: 1/8" = 1'-0"



A23 EAST BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

PREPARED BY	REVISIONS
NO	
REVIEWED BY	
DATE OF ISSUE	
09/22/2022	

A NEW BUILDING FOR
D-BAT BASEBALL AND SOFTBALL ACADEMY
 16200 PANAMA CITY BEACH PARKWAY

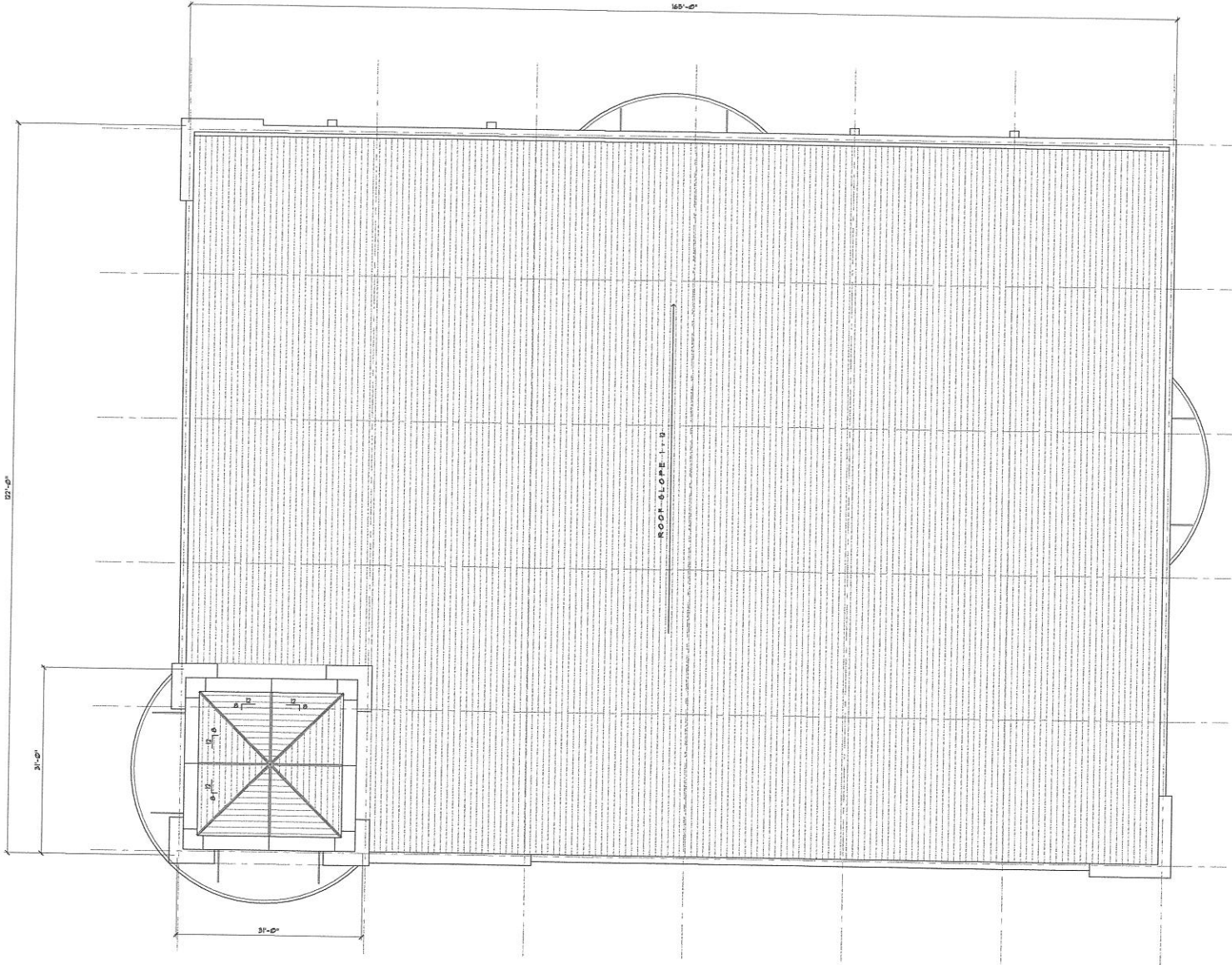


SCHEMATIC DRAWINGS

A22
5 SHEETS TOTAL

PROJECT NO.
22-38

© 2022 Creative Design Engineers, Inc.
 Architectural Drawing
 # 22-38-02
 3704 Thomas Drive - Panama City Beach, Florida 32413, P.O. Box 8931 - (904) 238-3025
 Professional Registration - Florida 15714 - Georgia 4694 - Alabama 3203 - Miami 23-41



1
A.15

PROPOSED ROOF PLAN

SCALE: 1/8" = 1'-0"

15

PREPARED BY	REVISIONS
JPS	
REVIEWED BY	
CEE	
DATE OF ISSUE	
08/22/2022	

A NEW BUILDING FOR
D-BAT
BASEBALL AND SOFTBALL ACADEMY
 16200 PANAMA CITY BEACH PARKWAY

COE

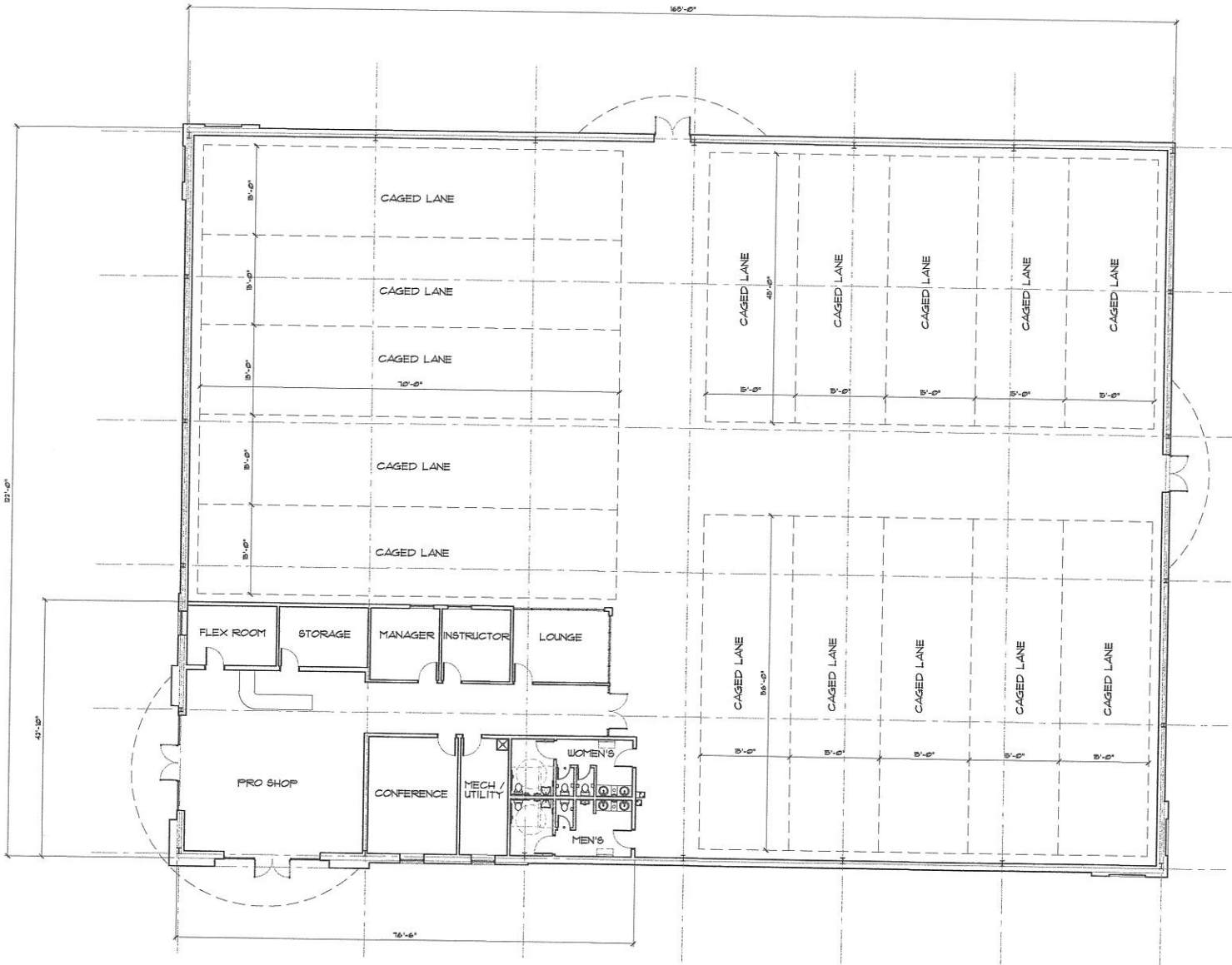
© 2022 COE
 ARCHITECTURAL DESIGN
 4 PLANNING

3754 THOMAS DRIVE PANAMA CITY BEACH, FLORIDA 32413 P. O. BOX 5931 (904) 285-2325
 PROFESSIONAL REGISTRATION: FLORIDA 15114 GEORGIA 4234 ALABAMA 3728 NORTH 2834

SCHEMATIC DRAWINGS

A12
 5 SHEETS TOTAL

PROJECT NO.
 22-35



1 PROPOSED FLOOR PLAN 1
 SCALE: 1/8" = 1'-0"

PREPARED BY		REVISIONS	
JMS			
REVIEWED BY			
DATE OF ISSUE			
DATE OF 100% CDE			

A NEW BUILDING FOR
D-BAT BASEBALL AND SOFTBALL ACADEMY
 16300 PANAMA CITY BEACH PARKWAY

COE
 ARCHITECTURAL DESIGN & PLANNING
 3784 WYOMING DRIVE PANAMA CITY BEACH, FLORIDA 32413 P. O. BOX 9931 (904) 220-1292
 ARCHITECTURAL REGISTRATION - FLORIDA #20147 GEORGIA #2284 VIRGINIA #210 *NORTH #214

SCHEMATIC DRAWINGS

A.I.I.
 5 SHEETS TOTAL

PROJECT NO.
 22-38