

RESOLUTION NO. 28984

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED AGREEMENT WITH MIRACLE LEAGUE OF CHATTANOOGA, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TERM OF TEN (10) YEARS, WITH AN OPTION TO EXTEND FOR FOUR (4) ADDITIONAL FIVE (5) YEAR TERMS, FOR THE CONSTRUCTION AND USE OF THE MIRACLE FIELD FACILITIES AT 185 N. HOLTZCLAW AVENUE ON A PORTION OF TAX PARCEL NUMBER 146G-A-001.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute an Amended and Restated Agreement with Miracle League of Chattanooga, Inc., in substantially the form attached, for a term of ten (10) years, with an option to extend for four (4) additional five (5) year terms, for the construction and use of the Miracle Field facilities at 185 N. Holtzclaw Avenue on a portion of Tax Parcel Number 146G-A-001.

ADOPTED: April 4, 2017

/mem

## AMENDED AND RESTATED AGREEMENT

**THIS AMENDED AND RESTATED AGREEMENT** (this “**Agreement**”), made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Amendment Date**”), by and between **The City of Chattanooga**, a political subdivision of the State of Tennessee (the “**City**”), and **Miracle League of Chattanooga, Inc.**, a Tennessee nonprofit corporation (the “**League**”).

### **WITNESSETH:**

**WHEREAS**, the City and the League (collectively referred to herein as the “**Parties**”) entered into that certain Agreement dated February 19, 2015 (the “**Original Agreement**”); and

**WHEREAS**, the Parties have completed, undertaken, or performed certain duties pursuant to the Original Agreement, and certain provisions of the Original Agreement are no longer applicable or have changed in substance; and

**WHEREAS**, the Parties are desirous of amending and restating the Original Agreement in its entirety; and

**WHEREAS**, the City is the owner of that certain real property known as Warner Park, which property is more particularly described in **Exhibit “A”** attached hereto (referred to herein as “**Warner Park**”); and

**WHEREAS**, the League is desirous of constructing and operating, within that certain portion of Warner Park more particularly described in **Exhibit “B”** (the “**Property**”), (i) a recreational facility known as a “Miracle Field”, which is a baseball field constructed of certain specific materials, and with a certain specific design to accommodate the use of such field by children with disabilities, and a supporting complex, including a roofed structure and bleachers, including, without limitation, the features further described in **Exhibit “C”** (the “**Miracle Field**”), (ii) a recreational facility known as the “Multi-Purpose Field”, which is a generic field usable for many purposes, and constructed of certain specific materials and with a certain specific design to accommodate the use of such field by children with disabilities, including, without limitation, the features further described in **Exhibit “D”** (the “**Multi-Purpose Field**”), (iii) handicap-accessible restrooms, the features further described in **Exhibit “E”** (the “**Restroom Complex**”), and (iv) a playground, the features further described in **Exhibit “F”** (the “**Playground**”); and

**WHEREAS**, the League will construct the Miracle Field and the Multi-Purpose Field (collectively, the “**Specific Use Facilities**”), the Restroom Complex, and the Playground (collectively with the Specific Use Facilities, the “**League Improvements**”) in accordance with the construction plans and specifications attached hereto as **Exhibit “G”** (the “**Plans**”), and upon the terms and conditions set forth herein; and the City is desirous of providing the Property upon which the League Improvements shall be constructed and operated;

**NOW, THEREFORE**, for and in consideration of the mutual terms, covenants, and conditions herein, the receipt and sufficiency of which are acknowledged by each party hereto, the parties, intending to be legally bound, covenant and agree as follows:

1. **Prior Agreement.** This Agreement contains the entire understanding between the parties hereto and amends and restates, supersedes, and replaces any prior agreements, understandings, or promises between the Parties, including, without limitation, the Original Agreement.

2. **Construction.**

a. On or before December 1, 2017 (the “**Completion Date**”), the League shall, at the League’s sole cost and expense, cause to be completed the construction of the League Improvements, pursuant to the terms and conditions herein, and in accordance with the Plans. The City has approved the Plans only as to conceptual design. The League will be responsible for obtaining all other permitting required by law prior to commencement of construction and shall comply with all applicable building, plumbing and electrical codes, along with administrative regulations implementing same, regardless of whether such codes have been implemented by local ordinance or otherwise adopted by local authorities.

b. Construction of the League Improvements shall be done expeditiously and the work shall be performed in a careful, skillful, diligent, good and workmanlike manner and this duty is nondelegable.

c. The League shall enter into a contract with a qualified, licensed and insured contractor for the purposes of construction and development of the League Improvements in accordance with the Plans.

d. The standard provisions against discrimination based on religion, race, sex, age or creed, or any other protected category established by law shall be contained in all construction contracts for the League Improvements.

e. The work to be performed by the League to construct the League Improvements shall be done as an independent contractor and not as an agent or representative of the City. The League shall have no authority to enter into any binding agreements on behalf of the City.

3. **Operation of Facilities.**

a. After completion of the League Improvements, the League shall have the exclusive right and authority to operate and manage the Specific Use Facilities; provided that (i) prior to November 1st of every calendar year, the League shall coordinate its preliminary schedule for the Specific Use Facilities with the director of Youth and Family Development (or such other department of the City that is assigned the responsibility of scheduling for Warner Park) to resolve scheduling conflicts with the City’s “**Master Schedule**” for Warner Park (the “**Master Schedule**”); and (ii) the City shall have the authority to cancel scheduled League events as the City deems necessary because of acts of God or other occurrences outside of the City’s or League’s control that may cause a safety hazard at the Property; and (iii) the League will consider and incorporate into its schedule as feasible from time to time throughout each calendar year other events proposed by the City’s Therapeutic and Recreation Division, which events are consistent with the intended purpose of the Specific Use Facilities.

b. The Restroom Complex and Playground shall be used jointly by the League in connection with its programs at the Specific Use Facilities and by the City as public facilities at Warner Park to be enjoyed by the public generally. The City shall have the right to adopt reasonable rules and regulations in regard to the use of League Improvements and agrees to work with the League to establish such reasonable rules and regulations.

c. The City obligates itself by acceptance of this donation to forever preserve and use the League Improvements for the purposes set forth in this Agreement. The parties acknowledge and agree that the Specific Use Facilities, by their design and construction, shall be intended primarily to benefit persons with special needs, including physical disabilities, and that the rules referenced above may focus on such classes of persons. Notwithstanding the foregoing, however, no rule shall be implemented which (i) is not applied uniformly among all citizens of the City of Chattanooga, Tennessee, (ii) discriminates against or otherwise bars certain classes of persons from use in violation of any law, or (iii) violates any other law, regulation, or ordinance.

**4. Property.** The City agrees to permit the League, its successors, assigns, contractors, guests, players, and other permitted individuals to construct the League Improvements on the Property and to occupy and use the Property during the Term, on and subject to the terms and conditions of this Agreement.

**5. Use.**

a. The League may use and occupy the Property for all of the League's reasonable purposes, including, without limitation:

- i. Construction and maintenance of the League Improvements as set forth herein;
- ii. Organizing, scheduling, and operating events for the benefit of persons with special needs, including physical disabilities;
- iii. Selling concessions, memorabilia, and related items during the League's scheduled events;
- iv. Opening and closing the Specific Use Facilities in accordance with the League's schedule; and
- v. Any such other reasonable activities approved by the City. For any activities contemplated by League which are not listed on the approved Master Schedule, the League shall provide the Director of Recreation with forty-eight hours (48) hours' notice in advance of each activity.

b. The League shall take all commercially reasonable efforts not to hinder the City's use of the remaining property at Warner Park. The City shall take all commercially reasonable efforts not to hinder the League's use of the Property under this Agreement. The parties shall reasonably coordinate with one another as to the use and scheduling of programming and events at the Property and the remainder of Warner Park.

c. The League and its assigns, participants, and staff shall have access to the public parking at Warner Park.

d. The League shall not use or occupy the Property, or knowingly permit the Property to be used or occupied, contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would violate any certificate of occupancy affecting the same or which would make void or voidable any insurance then in force with respect thereto, or which would cause structural injury to the Property or cause the value or usefulness of the Property, or any portion thereof, to diminish, or which would constitute a public or private nuisance or waste, and the League agrees that it will promptly, upon discovery of any such use, take all necessary steps to compel the discontinuance of such use. No rent, fees, taxes (including ad valorem real estate taxes on the Property, which taxes shall be borne by the City), or other expenses shall be payable or required of the League, except as explicitly set forth herein, if any.

e. The League shall retain the right to remove from the Property any or all personal property, or related items (including, without limitation, equipment, scoreboards, and a/v equipment) that the League owns at any time during the Term or any Renewal Term within thirty (30) days after the termination of this Agreement.

**6. Term.** The term of the Original Agreement commenced on February 19, 2015 and shall terminate immediately as of the Amendment Date. Unless sooner terminated as provided herein, this Agreement shall remain in full force and effect for a term of ten (10) years beginning on the Amendment Date (the “**Term**”), with an option to extend for four (4) additional five-year terms (each a “**Renewal Term**”). The Term and each Renewal Term shall be subject to the public notice requirement set forth in T.C.A. § 7-51-904 and approval by the Chattanooga City Council. The League may exercise an option to extend at the end of the Term or the current Renewal Term at any time by sending written notice to City, at least ninety (90) days prior to the end of the Term or current Renewal Term.

**7. Costs; Maintenance and Repair; Utilities.**

a. The League shall bear all costs relating to the construction of the League Improvements prior to the Completion Date.

b. The League shall be responsible for the cost of establishing separately metered utilities during construction of the League Improvements. Upon completion of construction of the League Improvements, the League shall transfer each utility account to the City; and throughout the duration of the Term, the City shall pay for and supply to the Property electricity, water, sewage, and natural gas.

c. The City shall, beginning upon completion of construction of the League Improvements and continuing throughout the Term, at the City’s sole cost and expense, pay for and supply to the League Improvements supplies, janitorial and trash services, and such other services as are consistent with those services provided to other athletic fields at Warner Park. The League may elect to provide or obtain, at the League’s option and expense, any additional or alternative services the League may deem necessary or appropriate. The City shall bear all costs

relating to repairs and maintenance of the Property in order to keep the Property in a reasonable state of repair for the uses contemplated by this Agreement. In the event repairs exceed the sum of Ten Thousand and No/100 Dollars (\$10,000) in any fiscal year during the Term of this Agreement, the City shall be under no obligation to make such repairs.

d. In the event (i) the City fails to conduct any maintenance or repair required by this Section within a reasonable time after the League or its agent provides written notice to the City of the need for such maintenance or repair and (ii) the failure impedes the League's operations at the Property, then the League shall have the right, but not the obligation, to make the needed maintenance or repair. Except for any repairs made or maintenance provided by League as set forth in this Paragraph 7.d., the League shall obtain approval from the Director of Recreation before providing maintenance or making repairs to the Property. In the event the League elects to make any improvements on the Property, League shall submit the plans and specifications to the Director of Recreation for approval, which approval shall not be unreasonably withheld.

#### **8. Insurance/Hold Harmless.**

a. The League shall, at all times during the Term of this Agreement and during any Renewal Term, and at the League's sole cost and expense, obtain and keep in force general public liability insurance against claims for personal injury, death, or property damage occurring on the Property. The insurance required by this clause shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Such insurance policy shall name The City as an additional insured. A certificate of such insurance shall be delivered to the City contemporaneously with League's execution and delivery of this Agreement.

b. The League shall indemnify City and save City harmless from and against any and all claims, actions, damages, liability and expenses (including, but not limited to, court costs, costs of defense and reasonable attorney's fees) in connection with (i) loss or damage to the Property or injury or death to persons occurring in, on or about or arising out of construction on the Property or the construction of improvements by (a) the League or, (b) any agents, employees, the Leagues, invitees, contractors or subcontractors of the League thereon, and (ii) the continued use of League Improvements during the Term of this Agreement and any Renewal Term, which are occasioned primarily by any act or omission of the League or the League's sublessee or assignee. The provisions of this Paragraph 8.b shall survive the expiration or sooner termination of this Agreement.

c. Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to the Property primarily caused by any activities conducted by City on the Property. The provisions of this Paragraph 8.c shall survive the expiration or sooner termination of this Agreement.

**9. Construction Requirements.**

a. League shall set in place adequate procedures to ensure that the League Improvements are properly completed on the Property, including but not limited to the following:

- i. Before disbursing funds upon each request by the general contractor, League shall require its general contractor to provide to League a lien waiver for all work completed by the general contractor and all major subcontractors up to that date. "Major subcontractors" shall be defined as subcontractors providing materials or services in the aggregate value of at least twenty five thousand dollars (\$25,000.00).
- ii. League shall, at all times until the completion of construction of the League Improvements, keep a cash reserve in a separate account used solely for that purpose of at least the amount of (i) One Hundred Fifty Thousand Dollars (\$150,000.00), or (ii) ten percent (10%) of the contract price under the League's general contractor agreement for the construction on the Property, whichever is less (the "**Reserve Account**"). League may only draw from the Reserve Account to make final payments to the general contractor and/or any subcontractors upon (i) issuance of the Certificate of Occupancy or Completion, or (ii) approval of the City Mayor or his designee. Upon a default of League's obligations under this Section 9a or Section 14 of this Agreement and League's failure to cure such default within thirty (30) days after the City provides written notice of the default to League, League grants to the City the power and authority to direct payments from the Reserve Account. At the City's option, following an uncured default as described in this Section 9a.ii, the City may take control of the Reserve Account and direct payments therefrom to any unpaid contractor or subcontractor working on the construction of the League Improvements. The City and League shall take such further actions as may be necessary to facilitate the purpose of this Section 9a.ii.

b. If a judgment or order of a court of proper jurisdiction determines that TCA § 12-4-201 or Chattanooga City Code Section 2-562 applies to this Agreement and requires the League to provide in favor of the City a bond or other security as described in the respective statute or code section, then the League shall obtain such bond or other security as necessary to comply with the judgment or order.

c. League shall provide the City with a monthly report summarizing the percentage of completion of construction, the Reserve Account balance, and any other information relating to the construction of the Project reasonably requested by the City.

**10. Assignment; Subcontracting.**

a. Subject to City's written consent, League shall have the right to assign its interest in this Agreement; provided, however, it shall be reasonable for City to withhold such consent if the proposed assignee, in City's sole judgment, does not have the financial resources or expertise necessary to perform and ensure the performance of League's obligations hereunder.

b. Notwithstanding anything to the contrary in subsection a above, the League shall have the right to contract with a third party for the League's operation of the Property and no such contractual arrangement shall be considered an assignment requiring the City's consent, as described in subsection a.

**11. Compliance Covenants.** The League will comply with all federal, state and local laws, ordinances, rules, regulations, and other governmental requirements relating to the use, condition, or occupancy of the Property.

**12. Risk of Damage.** All of the League's personal property of every kind or description including, without limitation, inventory and trade fixtures, improvements which may at any time be on the Property shall be at the League's sole risk, or at the risk of those claiming under any right by its association, contractual or otherwise, of the League. City shall not be liable and shall be held harmless by the League for any damage or loss of the League's personal property on the Property.

**13. Destruction, Damage or Condemnation.** If all or any portion of the Property shall be damaged by fire or other casualty or taken under power of eminent domain or rendered unusable for the League's uses (as set forth above) by reason of a governmental order or decree, either party may terminate this Agreement upon written notice, and the Term hereof shall expire as of such effective termination date and neither party shall have any obligation to the other whatsoever. If, after such damage by fire or other casualty or taking by eminent domain, neither party has exercised its rights granted within this Section 13 to terminate this Agreement, then this Agreement shall remain in effect.

**14. Liens.** The League shall not suffer or permit any mechanic's lien or other lien to be filed or recorded against the Property whereby the estate, rights, or title of the City are encumbered. If any such mechanic's lien or other lien shall at any time be filed or recorded against the Property, the League shall cause the same to be discharged of record or bonded against within thirty (30) days after the date of filing or recording of the same.



**15. Default.**

a. The City shall be deemed in breach of this Agreement if the City fails, whether by action or inaction, to timely comply with or satisfy any of the obligations imposed on City under this Agreement for a period of thirty (30) days (unless otherwise herein specified) after the League delivers to the City written notice of such default; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but City commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period (and thereafter cures such default as soon as possible with due diligence), then the League shall not exercise its remedies under Section 16, below.

b. The League shall be deemed in breach of this Agreement if the League fails, whether by action or inaction, to timely comply with or satisfy any or all of the obligations imposed on the League under this Agreement for a period of thirty (30) days after City's delivery to the League of written notice of such default; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but if the League commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then City shall not exercise its remedies under Section 16, below.

**16. Remedies.**

a. In the event the League is in substantial breach of this Agreement (as set forth in Section 15, above), after notice to League by City specifically setting forth the nature of such breach, and after the expiration of 30 days from the date of such notice (or such additional reasonable time as is reasonably required) without the League having substantially cured such breach (and in addition to any other remedies provided elsewhere in this Agreement), the City, at its option and after such notice and cure periods have expired, upon additional notice or demand from City, may, in addition to all other rights and remedies provided in this Agreement or otherwise at law or in equity, terminate this Agreement, complete construction of the League Improvements and take possession of the League Improvements. Notwithstanding anything in this Section to the contrary, in the event the construction of League Improvements is not complete, the City shall in no event be obligated to complete construction of the League Improvements, and upon the City's written direction to the League, the League shall be responsible to remove all League Improvements at its own cost and expense.

b. In the event the City is in substantial breach of this Agreement, (and in addition to any other remedies provided elsewhere in this Agreement) the League shall be entitled to terminate this Agreement upon written notice to the City and to exercise and pursue all rights and remedies available at law or in equity. Notwithstanding the foregoing, in the event the City is in breach of this Agreement and such breach continues for forty-five (45) days after receipt by the City of written notice from the League of the City's breach, the League may, at the League's option, (i) cure the City's breach and the cost of such cure shall be due and owing by City to the League, or (ii) terminate this Agreement.

**17. Attorneys' Fees.** In the event of a breach of this Agreement by either party, the prevailing party shall be entitled to recover its costs in enforcing this Agreement, including, without limitation, its reasonable attorneys' fees, litigation expenses, and other costs incurred in

the enforcement of the performance of any of the provisions of this Agreement, and at all levels of suit and appeals through the final determination thereof.

**18. Records Retention and Audit.** The term “**League**” is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Engineer, Contractor, Licensee, Supplier, Vendor, Contractor, Grant Recipient, etc.)

a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the League, or any of the League’s independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the League and its personnel to perform the obligations of this Agreement, and the records of expenses incurred by the League in its performance under said Agreement. The League shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.

b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the League. The City may further audit any of the League’s records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement), or to identify conflicts of interest.

c. The League shall at all times during the term of the contract or agreement, and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this contract or agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the League. Documents shall be maintained by the League, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The League shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

d. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the League and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or agreements relate to fulfillment of the League’s obligations to the City.

e. Costs of any audits conducted under the authority of this Section and not addressed elsewhere will be borne by the City, unless the audit identifies significant findings that

would benefit the City. The League will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

**19. No Waiver.** No waiver of any of the terms, covenants and provisions, conditions, rules, or regulations required by this Agreement, and no waiver of any legal or equitable relief of remedy, shall be implied by the failure of the City or the League to assert any rights, or to declare any forfeiture, or for any other reason, and no waiver of any of said terms, provisions, covenants, rules, or regulations shall be valid unless it shall be in writing signed by the waiving Party.

**20. Notices.** All notices, demands, and requests which may be given or which are required to be given by either party to the other shall be in writing and may be: hand delivered; sent by United States certified mail, postage prepaid and return receipt requested; sent by a nationally recognized overnight delivery service such as Federal Express Corporation, Emery, or United Parcel Service; or by facsimile. All notices, demands, and requests shall be deemed effective either: (A) upon delivery if hand delivered, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (B) upon deposit in the United States mail if by certified mail, return receipt requested, addressed to the intended recipient at the address indicated herein; (C) on the day deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Emery or United Parcel Service, for overnight next day delivery, addressed to such party at the address indicated herein; or (D) upon confirmed transmission, if delivered by facsimile, addressed to the intended recipient at the fax number indicated herein. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City:                      City of Chattanooga  
    c/o Chattanooga Department  
    of Youth and Family Development  
    501 West 12th Street  
    Chattanooga, TN 37402  
    Attention: Administrator

With a copy to:                City Attorney's Office  
    100 East 11th Street – Suite 200  
    Chattanooga, TN 37402

If to the League:              Miracle League of Chattanooga  
    P.O. Box 5814  
    Chattanooga, TN 37406

With a copy to:                The Minor Firm  
    Attention: John T. Minor, V

745 College Drive, Suite B  
Dalton, GA 30720

21. **Estoppel Certificate.** The City and the League mutually agree that, at any time and from time to time, upon not less than ten (10) days' prior request by either party, the parties shall execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and identifying the modifications); and (ii) that, to the best of the certifying party's knowledge, such requesting party is not in default under any provisions of this Agreement (or if there has been a default, the nature of said default). It is intended that any such statement may be relied upon by any person proposing to acquire any interest in this Agreement or Warner Park, or any prospective mortgage of or assignee of any mortgage upon, such interest.

22. **Invalidity of Particular Provisions.** If any covenant, agreement or condition of this Agreement or the application thereof to any person, firm or corporation or to any circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, agreement or condition to persons, firms or corporations or to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each covenant, agreement or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. **Successors and Assigns.** The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of City and the League, and their respective heirs, administrators, successors and assigns.

24. **Times is of the Essence.** The parties agree that time is of the essence for this Agreement and the performance of all obligations hereunder. Failure of the League to timely construct the League Improvements by the Sunset Date may result in the City exercising all remedies under this Agreement.

25. **Captions.** All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Agreement.

26. **Independent Covenants.** Each covenant, agreement, obligation or other provision of this Agreement to be performed by the League are separate and independent covenants of the League, and not dependent on any other provision of the Agreement.

27. **Number and Gender.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require.

28. **Waiver of Jury Trial.** The City and the League waive trial by jury in the event of any action, claim, proceeding or counterclaim, whether judicial, civil, administrative or otherwise, brought by either the City or the League against the other in connection with or arising out of this Agreement.

29. **Governing Law.** This Agreement and all of its provisions shall be construed and interpreted in accordance with the laws of the State of Tennessee.

30. **Construction.** The terms and provisions of this Agreement shall not be construed against or in favor of a party hereto merely because such party or its counsel is the draftsman of this Agreement.

31. **Complete Agreement.** This writing contains the entire agreement between the parties hereto, and no agent, representative, or officer of City hereto has authority to make or has made any statement, agreement or representation, either oral or written, in connection herewith, modifying, adding or changing the terms and conditions herein set forth. No modification of this Agreement shall be binding unless such modification shall be in writing and signed by the parties hereto.

32. **No Partnership.** Nothing contained in this Agreement shall be construed to create a partnership, joint venture or relationship of principal and agent between City and the League. No provision of this Agreement shall be construed to confer any rights or remedies upon any party other than City and the League.

33. **Force Majeure.** Should any matter or condition beyond the reasonable control of either City or the League such as, but not limited to war, public emergency, acts of terrorism, calamity, fire, earthquake, flood, acts of God, strikes, labor disturbances, or actions, civil disturbances or riots, or any governmental restriction, prevent performance of this Agreement in accordance with the provisions hereof, in whole or in part, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such interfering occurrence.

[Signatures on following page.]

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals, The City and The League each signing by and through its duly authorized officer, and have executed this Agreement in duplicate, as of the day and year first above written.

**CITY:**

**LEAGUE:**

**City of Chattanooga, Tennessee**

**Miracle League of Chattanooga, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

*(Description of Warner Park)*



## TRACT 1

**BEGINNING** at a ½-inch rebar with cap set in the south right-of-way of East Third Street, 42 feet from the center of the street, and in the west right-of-way of the Norfolk Southern Railroad, said ½-inch rebar with cap has Tennessee State Plane Coordinates – NAD 83 of North: 259404.7 and East: 2183985.7; runs thence with the right-of way of the Norfolk Southern Railroad as follows:

South 23 degrees 39 minutes 00 seconds West, 312.44 feet;

South 23 degrees 25 minutes 17 seconds West, 643.45 feet;

South 29 degrees 03 minutes 33 seconds West, 117.03 feet;

Along a curve to the left with an arc length of 198.31 feet, a radius of 975.30 feet, and a chord bearing and distance of South 23 degrees 17 minutes 30 seconds West, 197.97 feet;

South 17 degrees 28 minutes 00 seconds West, 40.40 feet to the west right-of-way of North Holtzclaw Avenue, thence with North Holtzclaw Avenue as follows:

North 55 degrees 38 minutes 53 seconds West, 0.87 feet;

South 34 degrees 43 minutes 13 seconds West, 1445.94 feet;

Along a curve to the left with an arc length of 204.15 feet, a radius of 1068.69 feet, and a chord bearing and distance of South 28 degrees 54 minutes 22 seconds West, 203.84 feet;

South 23 degrees 26 minutes 01 second West, 228.69 feet to a ½-inch rebar with cap set, 30 feet from the center of North Holtzclaw Avenue; thence leaving the right-of-way of North Holtzclaw Avenue along a curve to the right with a arc length of 39.42 feet, a radius of 25.00 feet, and a chord bearing and distance of South 68 degrees 36 minutes 20 seconds West, 35.46 feet to a ½-inch rebar with cap set in the north right-of-way of McCallie Avenue, 30 feet from the center of the road; thence with the McCallie Avenue North 66 degrees 11 minutes 59 seconds West, 1376.11 feet to a ½-inch rebar with cap set 31.00 feet from the center of a set of railroad tracks; thence with the right-of-way of the railroad North 39 degrees 38 minutes 26 seconds East, 1988.06 feet to a ½-inch rebar with cap set 33 feet from the center of the railroad tracks and 53 feet from the center of East Third Street; thence with the right-of-way of East Third Street as follows:

South 66 degrees 14 minutes 44 seconds East, 265.05 feet to a ½-inch rebar with cap set;

South 23 degrees 45 minutes 16 seconds West, 40.86 feet to a ½-inch rebar with cap set;

South 66 degrees 14 minutes 44 seconds East, 59.05 feet;

South 74 degrees 45 minutes 24 seconds East, 169.19 feet;

South 72 degrees 36 minutes 46 seconds East, 207.97 feet;

Along a curve to the right with an arc length of 49.94 feet, a radius of 3239.33 feet, and a chord bearing and distance of South 63 degrees 02 minutes 13 seconds East, 49.93 feet;

South 62 degrees 35 minutes 43 seconds East, 21.36 feet;

Along a curve to the left with an arc length of 133.91 feet, a radius of 3322.34 feet, and a chord bearing and distance of South 63 degrees 45 minutes 00 seconds East, 133.90 feet to the Point of Beginning, and containing 50.90 Acres, more or less, as surveyed by Thomas A. Young, Tennessee Registered Land Surveyor Number 2265, of L. I. Smith & Associates, 302 North Caldwell Street, Paris, TN 38242, on June 14, 2007. Bearings are based upon Tennessee State Plane Coordinate System – NAD 83.

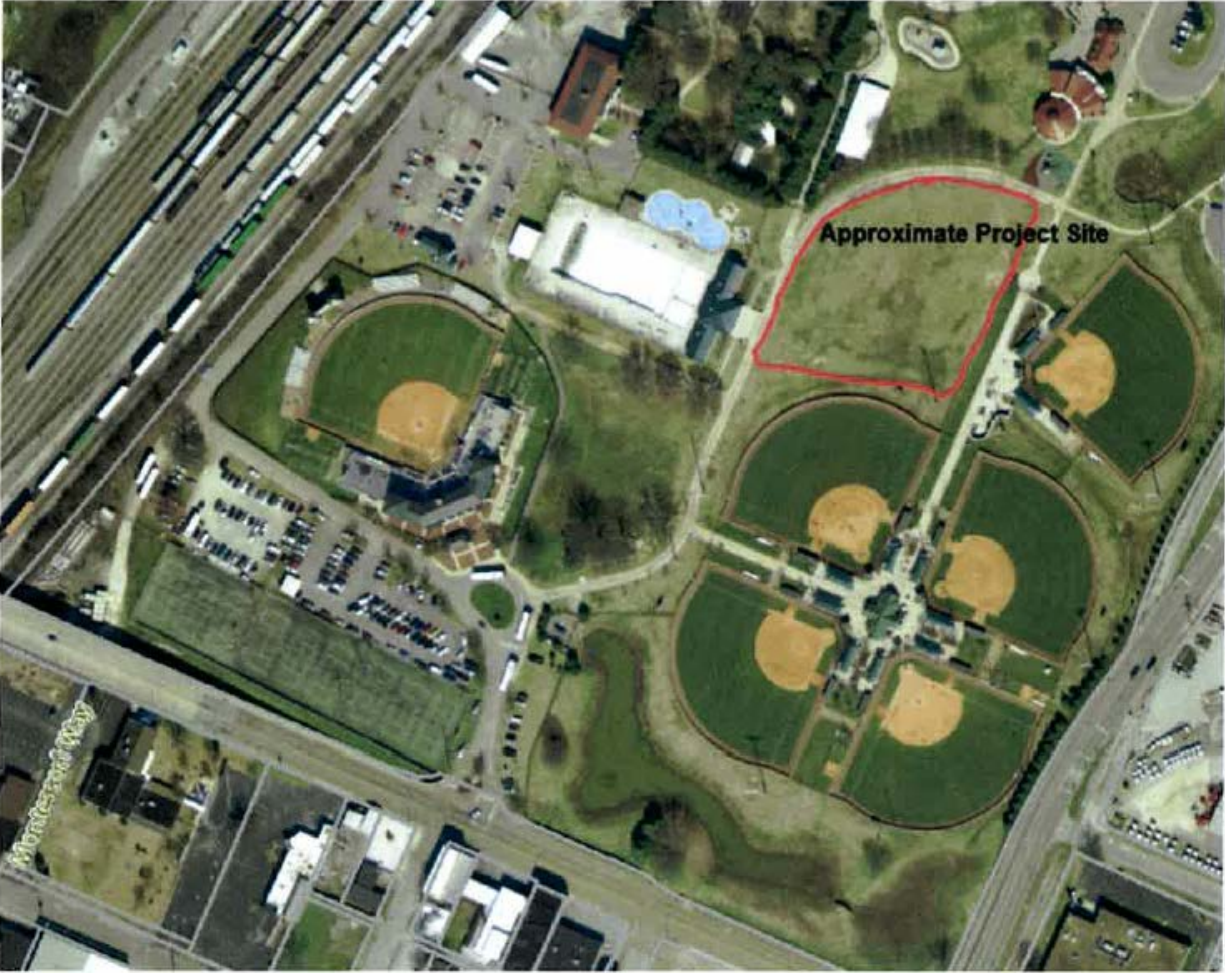


TRACT 2

**BEGINNING** at a 1-inch pipe found at the northwest corner of the State of Tennessee Plat Book 39, Page 409, Tract 104-2, and being the northeast corner of the tract described herein, said 1-inch pipe has Tennessee State Plane Coordinates – NAD 83 of North: 259945.9 and East: 2183483.5; runs thence with the State of Tennessee and then the north right-of-way of East Third Street South 23 degrees 56 minutes 25 seconds West, 185.18 feet to a ½-inch rebar with cap set 53 feet from the center of East Third Street; thence with the north right-of-way of East Third Street North 66 degrees 14 minutes 44 seconds West, 194.85 feet to the east right-of-way of a set of railroad tracks, 33 feet from the center of the railroad; thence with the railroad right-of-way North 39 degrees 38 minutes 26 seconds East, 192.45 feet to a ½-inch rebar with cap set at the southwest corner of Alexian Brothers Community Service, Inc., Plat Book 42, Page 376, Tract 104-5; thence with Alexian Brothers Community Service, Inc. South 66 degrees 16 minutes 33 seconds East, 142.77 feet to the Point of Beginning, and containing 0.72 Acres, more or less, as surveyed by Thomas A. Young, Tennessee Registered Land Surveyor Number 2265, of L. I. Smith & Associates, 302 North Caldwell Street, Paris, TN 38242, on June 14, 2007. Bearings are based upon Tennessee State Plane Coordinate System – NAD 83.

**EXHIBIT "B"**

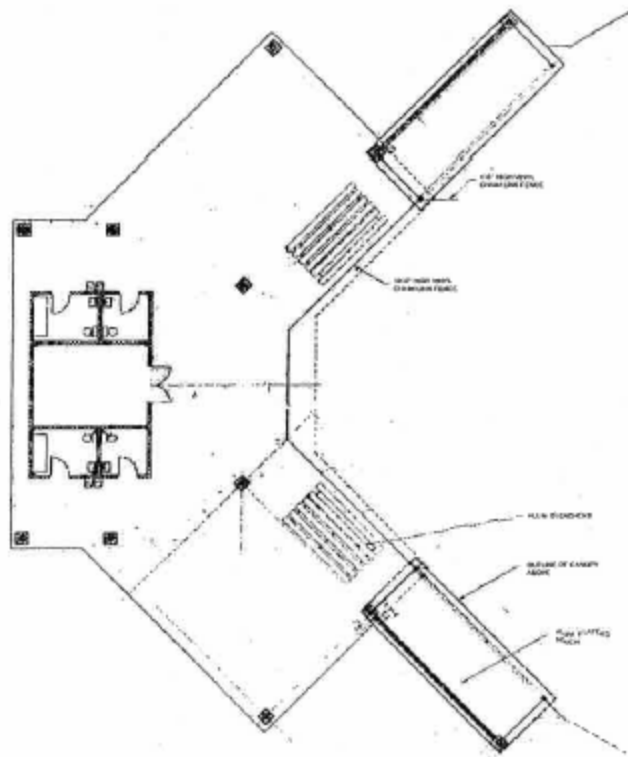
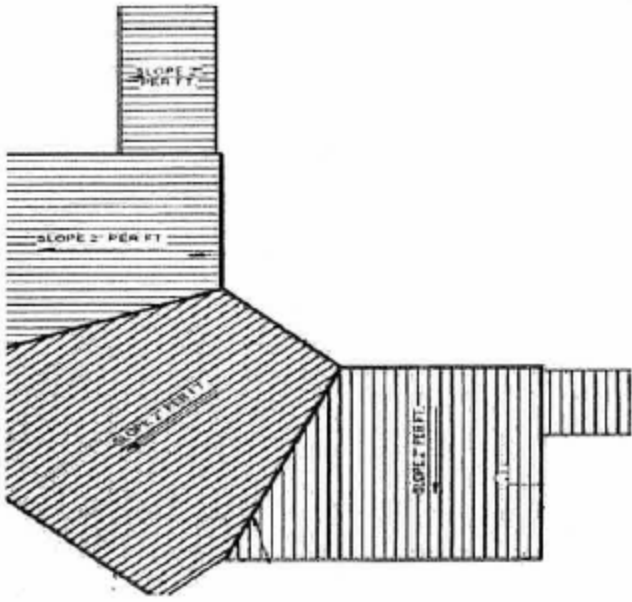
*(Description of Property)*



**EXHIBIT "C"**

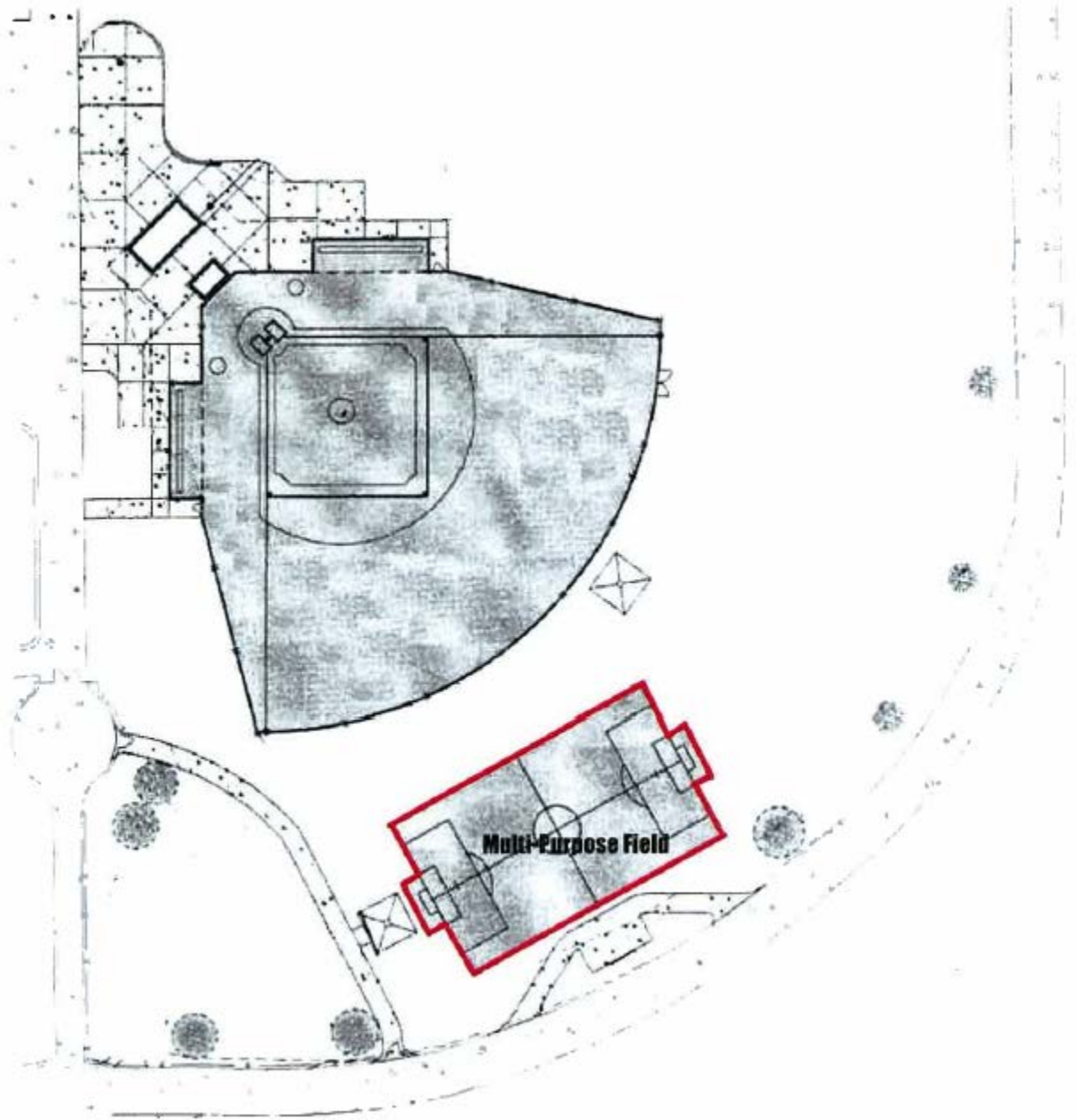
*(Miracle Field)*





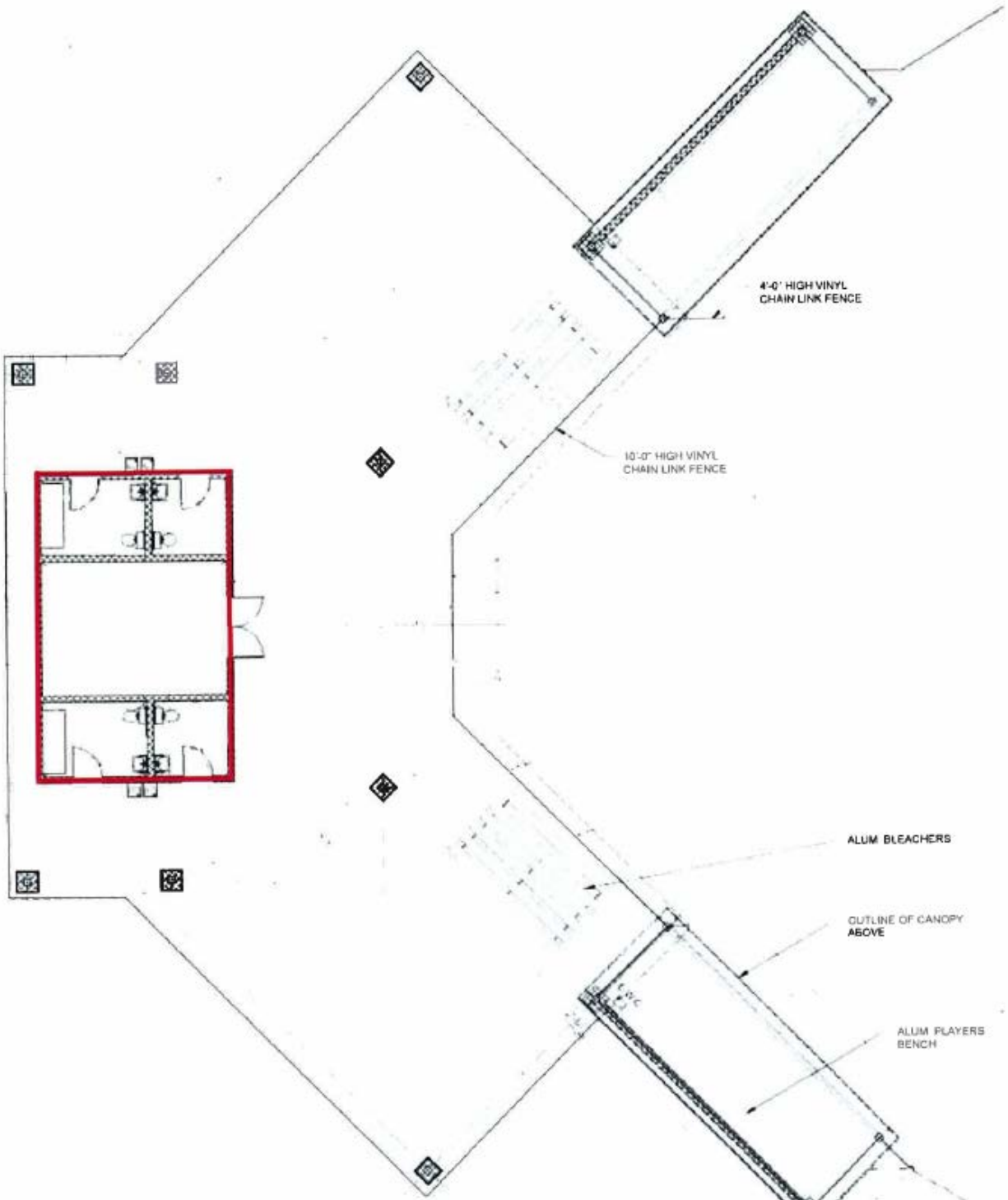
**EXHIBIT "D"**

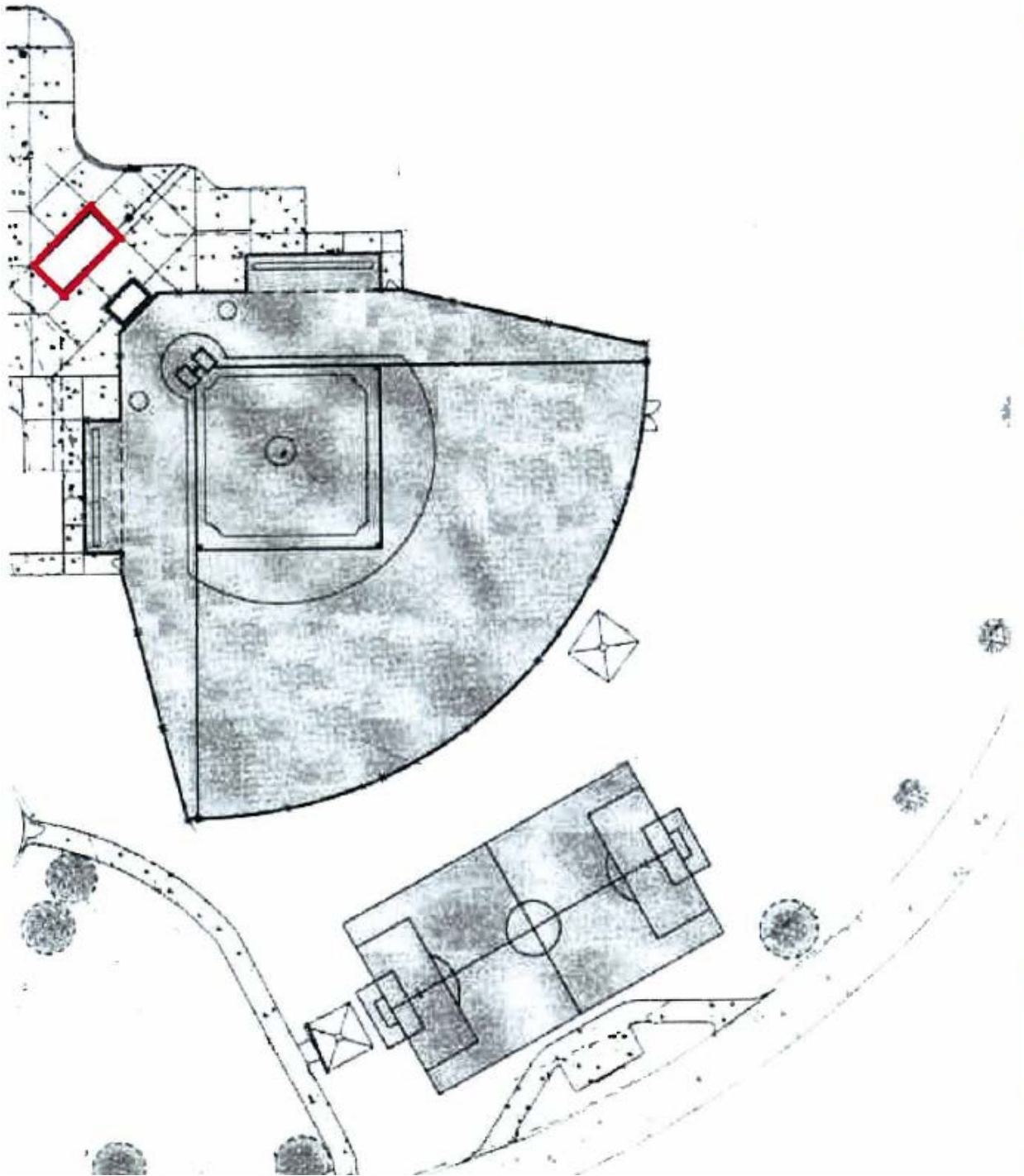
*(Multi- Purpose Field)*



**EXHIBIT "E"**

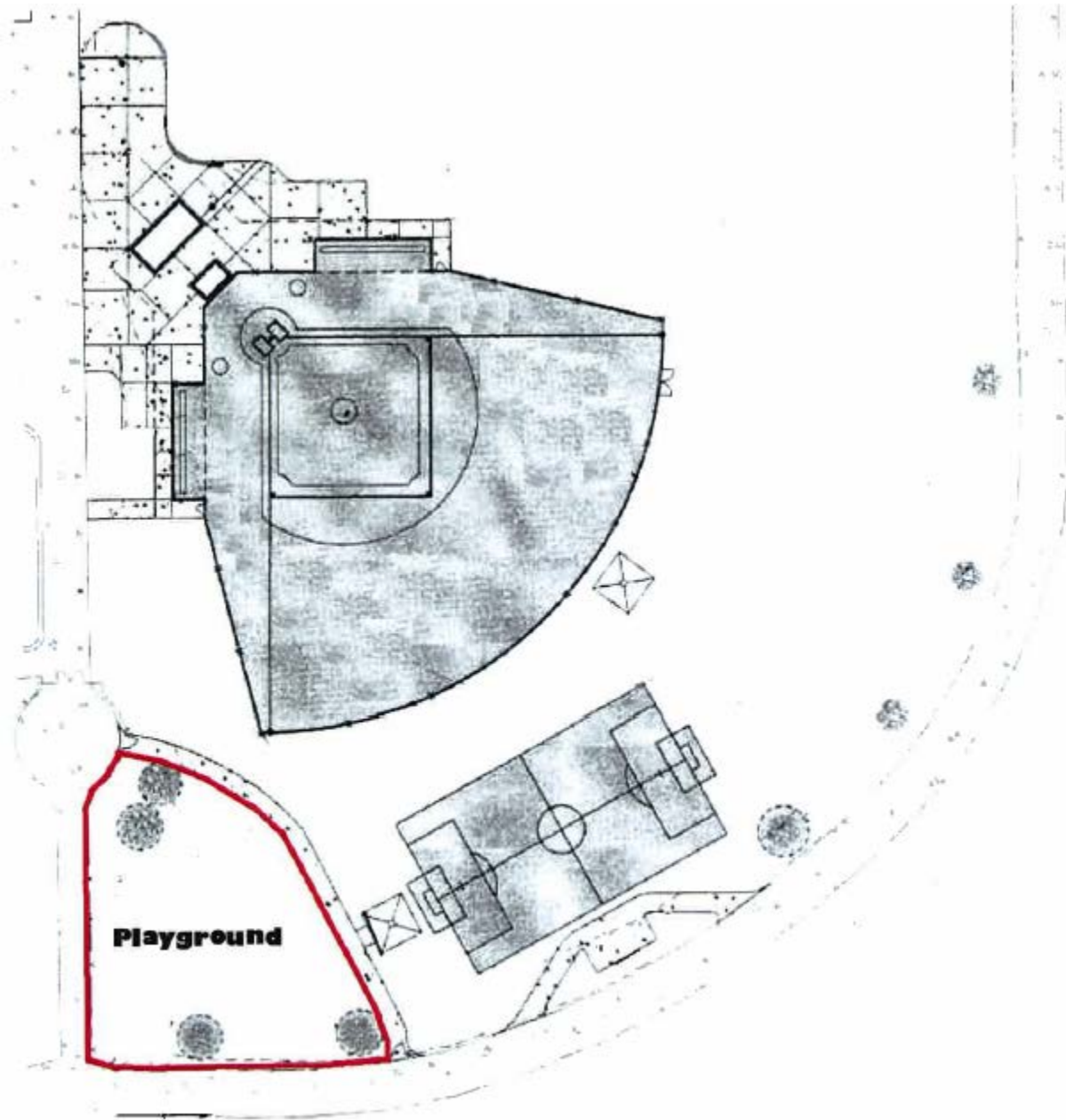
*(Restroom Complex)*





**EXHIBIT "F"**

*(Playground)*





**EXHIBIT “G”**

*(Plans)*

Referenced Plans for Miracle League Field at Warner Park, Project # 101.15.00 were completed on June 24, 2015, by Vance Travis, Jr. of TWH Architects.