BASEBALL CONTRACT

Issue:

Approval of the ten year extension of the baseball facility contract from Oct 2012 thru Oct 2022 between UVU and Berry Berry Gud, LLC.

Background:

The original contract between UVU and Berry Berry Gud, LLC was from 4 June 2004 and is set to expire in Oct 2014. The Owlz owners have asked for a ten year extension to the original contract. The extension of the contract would continue the short season A farm team affiliated with the Angeles Angels on the UVU campus from June 9 until Sep 9 of each year.

Recommendation:

UVU administration recommend approval of the lease extension between Berry Berry Gud, LLC and UVU.
BASEBALL FACILITY USE AGREEMENT

This Agreement (hereafter the “Agreement”) is made effective as of the 1st day of October 2012 (“Effective Date”) and supersedes the Baseball Facility Use Agreement of the 12th day of March, 2004 between Utah Valley State College and Never Say Never Again (as later assumed by Bery Bery Gud To Me, LLC). This Agreement is entered into by and between UTAH VALLEY UNIVERSITY, (hereinafter called “UVU”), a public institution of higher education in the State of Utah, and BERY BERY GUD TO ME, LLC, a California Limited Liability Company, currently doing business as the Orem Owlz (hereinafter called the “Team”). UVU and the Team are hereinafter sometimes collectively referred to as the “Parties”.

RECITALS:

1. UVU currently owns a baseball stadium that is leased to the Team on its campus in Orem, Utah.

2. While the baseball stadium facility will be utilized by UVU for its baseball team and other UVU activities, UVU leases the Team use of the baseball stadium facility to play professional minor league baseball and for other purposes related thereto as the Team’s permanent home during the term of this Agreement.

3. The Team, a Professional Baseball Club, uses the baseball stadium facility in order to play Rookie-Advanced (sometimes referred to as Short Season A) level professional baseball games and for other purposes related thereto.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the Parties mutually agree and covenant as follows:
1. DEFINITIONS

1.0 Definitions

Solely for the purposes of this Agreement the following words, terms, and abbreviations are described and defined as follows:

“Effective Date” means \text{June 1, 2012}.

“Facility” means the UVU baseball stadium, which is the subject of this Agreement.

“Force Majeure” means occurrences beyond the reasonable control of either Party, as the case may be, including but not limited to the following: acts of God; act of war, rebellion or sabotage, or damage resulting therefrom; fires; earthquake, floods, explosions, riots, strikes; termination, or rescission of the PBA or the imposition of a rule, regulation, or policy by Major League Baseball which would preclude the Team from operating in Utah County or at all.

“Office Space” means a secured space or spaces within the Facility designated for the Team’s administrative purposes.

“Opening Day” means the day on which the Team takes exclusive control over the entirety of the Stadium. Such date shall be June 1 of each year.

“PBA” means the Professional Baseball Agreement.

“PBA Facility Standards” means requirements for the design, maintenance, and operation of the Facility as adopted by the PBA.

“PBL” means the Pioneer Baseball League.

“PBL Season” means the period of time during which the Team plays minor league baseball, including the playoffs and championship games when the Team is in the playoffs and or
championship series, during the months of June, July, August, and September of each year. While the exact dates of each Season may vary, the Season is concentrated primarily between June 10 and September 15 of each and every year. Team shall be given control over the Stadium during those dates. Should MiLB and/or MLB modify the start date of the Pioneer Baseball League to June 1 or otherwise, the dates in this Agreement shall also so modify. Should this earlier date conflict with UVU’s participation in the College World Series, UVU shall be given scheduling priority for such dates.

“Serious Misconduct” means:

1. Failure to respect the right of every person to be secure and protected from fear, threats, intimidation, harassment, hazing, and/or physical harm that rises to the level of criminal activity.
2. Sexual assault, harassment, or any other unwelcome verbal or physical sexual activity, including the support or assistance of such activities.
3. Unauthorized seizure or occupation of any University building or facility.
4. Unlawful obstruction, disruption, or interference with teaching, disciplinary proceedings, University-sponsored activities, services or events.
5. Use or possession of any weapon, explosive device, or fireworks or storage of such on University property without prior written approval from the Chief of Campus Police.
6. Unlawful use, possession, distribution, sale, manufacture, or possession for purposes of distribution or sale of controlled substance or illegal that arises to level of criminal activity.
7. Initiation or circulation of any false report, warning, or threat of fire, bombs, or explosives on University premises or during University-sponsored events.
8. Violation of the Utah Indoor Clean Air Act and/or the University no smoking policy.
9. Unlawful sale, possession, manufacture, distribution, or consumption of alcoholic beverages on University properties.
10. Unauthorized possession, forgery, alteration, misuse, or mutilation of University documents, records, educational materials, identification, (i.e. personal ID, parking decal) library material or other University property.
11. Violation of city ordinances and/or state statutes regarding gambling resulting in a conviction.
12. Theft or malicious destruction, damage, or misuse of University property.
13. Intentional or reckless destroying, defacing, vandalizing or damaging property, equipment, materials, services, or data of the University.
14. Unauthorized possession or use of a key, or a combination to any University facility or equipment.
“Storage Space” means the agreed secured areas with the Facility and on University property (including, but not limited to, a Conex Storage facility outside of the right field line) designated for the Team’s storage of equipment, uniforms, furniture, and supplies.

“Team” means the name of the baseball club which Bery Bery Gud To Me, LLC uses as its ‘doing business as’ name.

“Lease Fee” means the consideration paid by the Team to UVU for use of the Facility.

“UVU approval” means written approval by the UVU Vice President of Administration.

“Expendable equipment” means any equipment used to maintain, practice or protect the field such as screens, tarps, nets; batting cages, weight equipment, etc.

2. RIGHT OF USE

2.0 The Team shall have the right to use the Facility, as follows:

a. During each PBL Season and subject to the terms of this Agreement, which occurs during the term of this Agreement, the Team shall have the exclusive right to use the entire Facility (excluding UVU’s administrative offices and UVU coaches’ areas), room numbers (See Schedule A) on the Team’s home game days and the day before and after each home stand, for practices and games and related activities. Usage of the Facility on the Team’s home game days shall be for the entire day and usage of the Facility for Team’s home games including pre- and post-season games shall not exceed more than 50 dates during the PBL Season. On or before April 1st of each year of this Agreement, commencing in 2005, the Team shall notify UVU in writing, of the precise dates of its home game dates for the upcoming PBL Season;

b. The Team will also be entitled to use the Facility (excluding UVU administrative offices and UVU coaches’ areas), room numbers (See Schedule A) on non-home
game days for other activities reasonably related to playing or marketing professional baseball or related activities, so long as all of the following conditions are met:

1. Written notice of the game, practice or other baseball related event is provided by the Team to UVU at least fifteen (15) days prior to the event or ten (10) calendar days prior to the public advertisement for the event, whichever date is earlier;
2. The event does not conflict with any events previously scheduled by UVU at the Facility. Neither Party may schedule an event in the Facility more than one year in advance;
3. such usage does not exceed more than a total of twenty ten (20) (10) days during the calendar year; and
4. such usage does not include the playing of organized baseball games.

c. Commencing on the Occupancy Date and continuing at all times thereafter during the term of this Agreement, the Team shall have the exclusive right to the use of its Office Space (See Schedule A); and

d. Commencing on the Occupancy Date and continuing at all times thereafter during the term of this Agreement, the Team shall have the exclusive right to the use of its Storage Space (See Schedule A).

e. Attached hereto and incorporated, in haec verba, as Schedule A is the agreed usage and designation of the rooms in the Stadium and duration of annual use.

2.1 The Team agrees that, upon fifteen days (15) prior written notice to Team, UVU may schedule events in the Facility (that do not interfere with Team’s use of its administrative and coaches’ offices and workout training areas) any time during the PBL Season when no regularly scheduled, exhibition, pre-season, or post-season game or practice of the Team or other
baseball related event is scheduled. In such event, the Facility shall be immediately and fully restored to the condition necessary for Team’s games and practices.

2.2 During the term of this Agreement, the Facility shall not be used for any professional baseball games other than those involving the Team, or promoted by the Team, without the prior written consent of the Team.

2.3 During the PBL Season and commencing on the Occupancy Date, UVU may schedule events in the UCCU Center, only if:

1. UVU uses reasonable efforts to minimize any negative impact upon Team, its players, its games, its fans and operators, that will result or may foreseeably occur as a result of simultaneously scheduling a UCCU Center event when Team has a scheduled home game; so long as the Team made UVU aware of such home game prior to the UVU scheduled event at the UCCU Center;

2. UVU meets with Team’s General Manager or owner no less than twice annually, once in about March and once, in or about July, of each year of this Agreement, to discuss ways to: (a) jointly promote or cross-promote events in the UCCU Center with Team’s games; and (b) minimize negative impact that either party has caused or may cause to the other’s game or event; and

3. As soon as UVU has been made aware of the Team’s home game dates, UVU gives Team written notice of the dates and times of all events previously scheduled to take place in the UCCU Center which are on any of Team’s game days. Once UVU has been made aware of the Team’s home game days, UVU will use all reasonable efforts to avoid scheduling future events in the UCCU Center on such game days.
4. Team and UVU shall cooperate with all scheduling conflicts and shall use best efforts to reasonably resolve such. Subject to any other terms in this Agreement, UVU shall have first right of priority for all periods between September 16 to June 9 of each year and Team shall have first right of priority for all periods between June 10 thru September 15 of each year.

3. FACILITY

3.0 RESERVED

3.1 OFFICE SPACE. The Office Space shall be for year-round use by the Team for administrative purposes, and located within the Facility. The Office Space for the Team is designated on Schedule A.

3.2 STORAGE SPACE. The Storage Space for year round use by the Team shall be designated on Schedule A.

3.3 SOUVENIR STORE AND STAND AND CONCESSIONS. The Facility shall include adequate concession stands as designated on Schedule A. Team may, if it wishes and at its expense, construct a permanent BBQ facility on the Premises as long as design is approved by UVU’s design approval process and the cost is under One Hundred Thousand Dollars ($100,000).

4. PARKING

4.0 PUBLIC PARKING. UVU agrees to make available adequate, adjacent, convenient parking for the Facility for Team’s staff year round and for Team’s fans on game dates. UVU shall provide no less than 900 parking spaces in parking lots A, T, and U, closest to the Facility as possible on game days. During the PBL Season Team shall be provided with eight (8) reserved parking spots (2 of which shall be thirty minute spots) in the lot adjacent to right
field. Team shall be provided with three (3) reserved parking spots in the lot adjacent to right field year round.

5. TERM

5.0 TERM. The initial term of this Agreement shall commence on the Effective Date and end on October 15, 2022.

5.1 EXCEPTION TO TERM. In the event of a Force Majeure event, which prohibits the Team from being able to play in the Facility for any one or more PBL Seasons Team shall not be obligated to occupy, use or pay a Use Fee for the Facility for that season or seasons or any portion thereof. Notwithstanding anything in this Agreement to the contrary, if games cannot be played, but the Team is still occupying and using this Office Space and Storage Space or the field for practice, the amount of rent payable shall be adjusted to be in accordance with the then existing market rate in Utah County for such space and use.

In the event of a Force Majeure event which prohibits UVU from being able to provide the Team use of the Facility for one full PBL Season or more, the Team’s right of use shall be suspended during the Force Majeure event and at all times thereafter until the Facility can be occupied and used as envisioned by this Agreement.

5.2 ESCAPE CLAUSE. UVU shall have the right to exercise an option for the early termination of the Agreement, as set forth herein. Notwithstanding anything to the contrary herein, upon two years written notice, UVU has the right to terminate the Agreement and terminate the Team’s right to use the Facility, including all office and storage space, but only in the event of any one of the following extraordinary events:

1) Legitimate, yet material, incurable, major, irreconcilable disputes between the Parties remain unresolved for more than 90 business days;
2) Any Serious Misconduct by the Team, its players, coaches, employees, or owners that, in the sole reasonable discretion of UVU is detrimental to the UVU community; and that has not been effectively addressed or dealt with by the Team;

3) A Force Majeure event, which renders it impossible for the Team to play at the Facility for at least one full season or more.

6. CONSIDERATION

6.0 FIXED PAYMENT. Team shall pay an annual Use Fee to UVU in the following amounts for each year of this Agreement:

- 2012 through and including 2017 .................. $48,400
- 2017 through and including 2022 ................. $55,560

All Use Fees are payable each year as follows: one-half of each year’s annual Use Fee on or before June 30 of that year, and the other one-half of each year’s annual Use Fee on or before November 30 of that year. Failure to pay such fee within thirty days (30) of the due date shall subject team to a ten percent (10%) late charge on the amount due.

6.1 PARKING REVENUE – TEAM EVENTS. The Team shall have sole and exclusive discretion whether to charge its patrons for parking at its games and if so, how much. Team shall keep such parking revenue. Team grants a “Right of First Refusal” (as hereafter defined) to UVU Parking Services Department if Team decides, in its sole and exclusive discretion: (a) to charge patrons for parking; and (b) desires not to handle parking duties in house, but desires to contract parking out to a third party company. Any such third party company shall be approved by UVU, which approval may not be unreasonably witheld. A Right
of First Refusal as used throughout this Agreement shall require the Team to: (a) obtain a written bid from a company of Team’s choice for the needed services; and (b) submit said written bid to UVU with a letter referencing the Right of First Refusal and the scope of services to be provided to the Team; and then UVU shall have ten (10) business days within which to respond in writing to Team’s letter and the written bid. Said response shall clearly state the scope of services to be provided and fees to be charged for same if UVU elects to exercise its Right of First Refusal.

6.2 CONCESSION REVENUE. The Team shall operate or may cause to be operated all of its own concessions, and the Team shall be entitled to one hundred percent (100%) of the revenue generated from concessions at all of the Team’s games and baseball-related events. However, if Team agrees, in its sole and exclusive discretion, to hire UVU Concessions Department to operate Team’s concessions, the amount of revenue that Team shall be entitled to shall be negotiated at that time. Should UVU hire a third party vendor to operate its concessions University wide, Team grants a “Right of First Refusal” (as hereafter defined) to UVU should Team decide to utilize a third party vendor for its concessions. A Right of First Refusal as used throughout this Agreement shall require the Team to: (a) obtain a written bid from a company of Team’s choice for the needed services; and (b) submit said written bid to UVU with a letter referencing the Right of First Refusal and the scope of services to be provided to the Team; and then UVU shall have ten (10) business days within which to respond in writing to Team’s letter and the written bid. Said response shall clearly state the scope of services to be provided and fees to be charged for same if UVU elects to exercise its Right of First Refusal.
6.3 **BASEBALL REVENUES.** Unless specifically provided otherwise in this Agreement the Team shall collect, market and otherwise be responsible for generating and receipt of all revenues related to baseball events which are conducted or sponsored by the Team, including but not limited to, sales of tickets for seats, suites, concessions, parking, novelties, souvenirs, merchandise, advertising, broadcasting, and media arrangements. Unless otherwise specifically provided in this Agreement, the Team shall retain all such revenue generated by such activities and events.

6.4 **TICKET/ADMISSION PRICES.** The Team shall have the sole, exclusive and absolute authority to fix the ticket prices and to fix admission, advertising, promotion, parking, participation and any fees and charges to be charged and/or assessed at the Facility for any and all the Team’s activities and for all events conducted or sponsored by the Team. Unless otherwise specifically provided in this Agreement, the Team shall retain all such revenues generated by such activities or events.

6.5 **FACILITY NAMING RIGHTS.** UVSC UVU reserves the right to select the name of the Facility and the name of the field, to the extent that UVSC UVU is able to generate revenue from naming the Facility and the field at the Facility, and UVSC UVU shall have the exclusive right to retain all revenues so generated. UVU may not associate, promote, market or otherwise mention Team in conjunction with any such naming rights without the express written consent of Team.

6.6 **TEAM NAME.** The Team also has the sole and exclusive right to determine and to change its name, colors, logo and the like, and to exclusively reap the profits and benefits therefrom.

7. **CONCESSION/NOVELTIES, SOUVENIRS, AND MERCHANDISE**
7.0 **VENDOR SELECTION.** Notwithstanding anything to the contrary, the Team shall have the role and exclusive right to select the food and drink products and food and drink vendor(s) for all activities and events conducted and sponsored by the Team. The items intended to be covered by this paragraph include, but are not limited to, foods, beverages, candy products, gifts, and novelty items, and both Team logo and non-logo merchandise which may be sold or distributed from fixed or portable concession stands at events and games sponsored by Team and conducted in the Facility.

7.1 **PRICES.** The Team shall have the sole, exclusive, and absolute authority to fix the prices of all items to be sold by the Team and their concessionaires/vendors pursuant to this Article 7. The Team shall post, in a conspicuous place, at each concession stand, a list of prices of all items offered for sale.

7.2 **QUALITY.** All concession and concession services permitted under this Agreement shall be of first quality, wholesome and pure and commensurate with industry standards prevailing in stadiums similar to the Facility. The Team shall provide and require concessions and concession services to be in a sufficient number involving properly trained concession personnel. The Team shall maintain high standards of cleanliness and product quality and maintain a level of service which will provide effective and convenient operation of food and refreshment concessions. All food, drinks, beverages, confections and other items sold or kept for sale will conform in all respects to applicable, federal, State, City, UVU Campus, and County Health Department regulations and laws.

7.3 **NOVELTY AND SOUVENIRS.** The Team shall have the sole and exclusive concession for the sale and distribution of novelty and souvenir items, which includes but is not limited to souvenir, caps, equipment, wearing apparel, gifts, novelties, programs and other merchandise (both logo and non-logo), at all home games during the PBL Season. The Team
shall retain all revenues generated from the sale of such items. The Team also has the exclusive right to market and sell such items in off-campus locations other than the Facility, including but not limited to internet and website markets.

7.4 **ALCOHOLIC BEVERAGES/TOBACCO PRODUCTS.** Alcoholic beverages (beer and wine) will not be sold in the Facility. No tobacco products will be sold in the Facility, and the use of smoke producing tobacco products will be strictly prohibited in the Facility, except in certain limited designated areas.

8. **PROMOTION/ADVERTISING/FIREWORKS**

8.0 **ADVERTISING AND SIGNAGE.** Except on the scoreboard which contains year round signage and as provided in paragraph 8.1 below and only during the PBL Season, the Team shall have the sole, exclusive and absolute right to erect, install, and fix signs, banners and advertising materials and information at the Facility, provided structural modifications are not made to the Facility. Team shall also be permitted to place a year round sign with Team name and logo on the full stadium exterior wall next to the doors to the entrance to its offices. Nothing herein shall be construed to limit or restrict the ability of UVU, pursuant to Section 6.5 of this Agreement, to name the Facility (or any other name) or to name the playing field and place appropriate name identification in or on the Facility, at UVU’s sole and exclusive expense. Except for UVU’s right of Facility name identification and subject to paragraph 8.1 below the Team shall have the ability sell any and all advertising space at the Facility, including the right to place signs, banners, and advertising materials on the interior surface of any fence and at other locations on the interior of the Facility at, upon or within the Facility during the period June 1 through September 15 of each season of this Agreement. UVU shall have the right to install signs and ads during all other times of the year. Each of the Parties hereto shall remove their sponsor’s
signs to allow the other to install their sponsor’s signs for their periods of time under this Agreement. The Team shall be entitled to retain all of the revenue generated by the Team from the sale of such advertising for the Team’s seasons. Any advertising signage that the Parties and sponsors jointly agree is to be displayed year round, or permanently, other than the Facility naming rights, shall be installed at the joint expense and benefit of UVU and the Team, in proportion to the aggregate attendance at the respective games/events of each at the Facility. Each party shall pay for the production, installation, sales commissions and retain all payments and earnings from the sale of advertising sold in the stadium. Notwithstanding the above provisions, no alcohol or tobacco advertising shall be permitted. Any permanent UVU signage may be covered by Team or removed by Team, at Team’s expense, during the PBL season. Team shall not permit political signage in the Stadium. Political is defined as “running for office or a change in law”.

8.1 **UVU APPROVALS.** The location, design and content of any sign or promotional item installed by the Team on or in the Facility shall be subject to the approval of UVU, which approval shall not be unreasonably withheld or delayed. **UVSC UVU** shall have the right to review and disapprove any signage logos or phraseology which UVU finds in its sole reasonable discretion to be offensive or inappropriate. If UVU objects, UVU shall then have seven (7) days to provide written notice to Team of any disapproval as well as the reasons therefore and give Team a reasonable opportunity to cure.

8.2 **SCOREBOARD AND OTHER PERMANENT ADVERTISING.** Both UVU and Team joined in paying for a supplying a scoreboard for the Stadium. Both UVU and the Team shall have the ability to have their name or team name visible as the home team on the scoreboard during each team’s respective season. Both UVU and the Team shall have the right to sell all year round advertising, including advertising on the face of the scoreboard (the side facing the
interior of the Facility), and the revenue therefrom shall be divided as set forth in this paragraph. Signage will be in compliance with federal and state regulations for an interstate interchange. To the extent that either UVU or the Team sells advertising on the scoreboard, the advertising revenue shall be shared in proportion to the aggregate attendance at respective UVU/Team games and events each year at the Facility, a 60/40 split; 60% to the Team and 40% to UVU or by other, mutually agreed upon proportion. Such advertising must comply with Paragraph 8.4 below. The pricing for scoreboard advertising shall be discussed and agreed upon by and between the Team and UVSC UVU in advance, and the entity responsible for the sale of any scoreboard advertising and any other permanent advertising (that is not covered, removed or replaced during each user’s season), shall receive a sales commission of 7% of the sales price off the top (upon payment), to either reward its sales staff (as shall be the case in the event that the Team is responsible for said sale), or to be added to the UVU general budget or a Facility improvement fund (as shall be the case, at UVU’s election, if a UVU representative or employee is responsible for said sale). If UVU’s and Team’s marketing representatives team up to sell any year round or permanent Facility advertising, the 7% commission will be shared equally between the two entities. The team shall provide a scoreboard operator, any other personnel, at the Team’s sole expense, for the Team’s games and the Team shall be solely responsible for the scoreboard operation during all of Team’s home games and at all other Team-sponsored events.

8.3 **PROMOTION PRICES AND FEES.** The Team shall have the sole, exclusive and absolute authority to fix the prices for all signs, banners, and advertising materials sold under this Article 8, except for the Facility and field naming rights and any and all year round or permanent items, as specified above.

8.4 **SIGNAGE MAY NOT INTERFERE WITH ANY EXCLUSIVITY DEALS.** Consistent with Section 7.0 above, Team shall have the right to contract with any company,
vendor, product and/or beverage for exclusive marketing, advertising, and product and/or beverage use agreements for its PBL season. During the PBL season, UVU may not display advertising or promotional materials in the Facility that are in derogation of exclusive marketing agreements made by the Team. Team will inform UVU in writing of all exclusive agreements with reasonable notice to remove advertising or promotional materials. During the non-PBL season, Team may not display advertising or promotional material in the Facility that are in derogation of exclusive marketing agreements made by UVU. UVU shall inform the Team in writing of all exclusive agreements with reasonable notice to remove advertising or promotional materials.

8.5 During the PBL Season, at Team’s expense Team may cover UVU logos and signage, or remove UVU signage in agreement with the Associate Vice President for Facilities. Any damage to UVU signage caused by the Team must be repaired or replaced by Team. At Team’s expense after PBL Season, Team logos and signage must be removed.

9. OPERATION/MAINTENANCE/CAPITAL IMPROVEMENTS

9.0 STRUCTURAL RESTORATION AND REPAIR. UVU, at its sole and exclusive expense, shall maintain the structural integrity of the following:

A. All structural parts of the Facility, permanent fixtures and other improvements that are a part of the premises, including, without limitation, the foundations, bearing walls, flooring, subflooring, ceiling, roof, window frames, gutters and down spouts, plumbing, HVAC, fences, light poles, grandstands, grass, filed, berms and bleachers.
B. The unexposed and exposed electrical, plumbing, irrigation, and sewage fixtures, all equipment, including but not limited to concession equipment, and systems, including, without limitation, those portions of the systems lying outside the premises.

9.1 **TEAM REPAIR OF DAMAGE.** The Team agrees to repair, at its sole and exclusive cost and expense, any material damage down to the Facility as a result of any act or omission to act by the Team, its assigns, sublessees, agents, officers, employees, contractors, guests, invitees, customers and/or patrons, and to pay UVU the cost of such repair to the extent that UVU is not compensated therefor by insurance.

9.2 **ROUTINE MAINTENANCE AND CLEANING.** UVU, at its sole and exclusive expense, shall maintain in good and safe repair and condition, all portions of the Facility, and provide operating repair and maintenance for the Facility during each year which is the subject of this Agreement. Operating, repair and maintenance costs shall be those ordinary and recurring expenses for the current repair and maintenance of the Facility which do not improve or restore an asset, but which repair, maintain, or add to the Facility’s useful life in accordance with generally accepted accounting principles. UVU’s obligations under this paragraph do not include the repair and maintenance of equipment, property or assets owned by the Team or its concessionaires. UVU’s routine maintenance under this paragraph shall include, without limitation, general janitorial service to the staff offices of the Team and bathrooms, replacing light bulbs, including floodlights, and backstop and scoreboard repair, during the season and off-season. UVU shall provide and pay for all expenses, supplies, and labor necessary in performing the above repair and maintenance. Notwithstanding, Team shall pay for toilet paper, paper towels and cleaning supplies for the concourse bathrooms during the PBL Season. UVU shall provide Team with access to the supply closets on the concourse to store such. UVU shall be responsible for the following routine maintenance and operation functions;
A. Provide all cleaning, housekeeping and sanitation services for all Team Offices, all Team and visiting team facilities, including, but not limited to, club houses, dressing, shower and toilet facilities; and

B. Maintenance of the playing field as provided in paragraph 9.3 below. UVU shall be responsible for cleaning the Facility, removal of debris and cleaning all restroom, concession and all other areas of the Facility after use of the Facility by UVU. Removal of all refuse from the Facility shall be the responsibility of UVU, year round. UVU shall cause refuse removal to be made with the frequency and in a manner so as to prevent an excessive accumulation or the occasion of sanitation hazards.

After each PBL game, Team shall, at its expense, clean and sweep the concourse and seating areas and concourse bathrooms. Team shall reimburse up to four (4) hours of work per PBL home game night at ten ($10) dollars per hour for the cleaning of the clubhouse areas and the supervision walk through of the concourse and seating areas.

C. All costs for repair, replacement or acquisition of expendable equipment shall be shared on a 50/50 basis. Team shall be billed for its share of costs and be subject to 10% fee for late payment after 30 days and a total amount not to exceed $3000 per year.

9.3 MAINTENANCE OF PLAYING FIELD/GROUNDSKEEPING. For an annual fee to be paid by Team to UVSC UVU of $15,000 per season (payable by October 15 of each season), UVU shall supply two (2) full time (40 hours per week) grounds keeping supervisors. UVU shall maintain and prepare the baseball playing field at the Facility at its sole cost and expense, consistent with PBA Facility Standards. UVU’s obligations hereunder shall include but are not limited to the following:

A. Initial pre-season preparation of the field, including grading and filling
non-turf areas (such as base paths, pitcher’s mound, home plate area and warning track) to bring the field to PBA standards, including the installation of appropriate lights and scoreboard;

B. Regular off-season mowing, fertilizing and irrigating, and

C. Once the first regularly scheduled baseball game of Team’s PBL Season begins, UVU shall provide team with its own or an experienced grounds keeper and grounds crew responsible for the following preparation of the field for all of Team’s game days:

1. Dragging, raking and edging non-turf areas and any necessary mowing and trimming of the field;

2. Chalking boundary lines; and

3. Installing bases and appropriate placement of the batting cage.

D. Once each PBL game has started, UVU will not have field maintenance duties for the remainder of the game, The team will:

1. Drag the infield mid game, and

2. Drag the dirt areas, remove the bases and tarp the mound the home plate areas post game. Team shall use drag equipment and tarps supplied by UVU.

3. Replace clay in mounds, plate and bull pens.

4. Any work not done will be charged to Team at the overtime rate.

5. Team will be charged for turf’s supplies to dry field in event of rain not to exceed $1000 per year

6. Team will hire 3 UVU baseball players to put the field “to bed” each night after each game.
E. Any of the above defined work will be reviewed for proper execution as determined by the AVP of Facilities or the designee mutually agreed upon by UVU and the Orem OWLZ.

It is the intent of the parties that UVU’s groundcrew have no duties on PBL game days after the first pitch of the game.

9.4 REMOVAL OF TEAM IMPROVEMENTS AND FIXTURES AND USE OF PRACTICE AND TRAINING EQUIPMENT. Any fixture or improvement of a permanent nature proposed to be installed or affixed by the Team must be pre-approved in writing by the Office of the Associate Vice President for Facilities at UVU. Any permanent additions, improvements or fixtures which are made, installed or fixed to the Facility by the Team, in a manner that renders them removable only without material physical damage to the premises, shall become the property of UVU. Any additions, improvements or fixtures made, installed or fixed to the Facility by the Team in a manner that they may be removed without material physical damage to the premises and all trade fixtures, machinery and equipment installed by the Team shall remain the property of the Team and may be removed or replaced by the Team at any time during the term of this Agreement. Any damage to the premises occasioned in the course of such removal shall be repaired by the Team, at its sole and exclusive expense. During the PBL season the Team shall be entitled to use all field practice, weight and fitness equipment at the Facility during the term of this Agreement.

9.5 NOTICE OF SIGNIFICANT REPAIR AND MAINTENANCE. UVU will provide written notice to the Team at least fourteen (14) calendar days prior to any scheduled significant structural restoration and repair activity, in order to assist the Team in planning any
events at the Facility. UVU will coordinate any capital repair and maintenance projects to take place before or after the PBL Season and only in the event of severe and unavoidable need shall UVU schedule such activity during the PBL Season. In that event, UVU will act with the objective of causing a minimum of interruption with the Team’s activities provided for under this Agreement.

9.6 TEAM IMPROVEMENTS. The Team may from time to time, at its own expense, make such non-structural and minor alterations or improvements to, and decorate the interior of the Facility in those areas of its exclusive use, as it may deem advisable for the conduct of its business. However, prior to the commencement of any such alteration, improvement or any permanent or major decoration, the Team shall first submit in writing the plans and specifications therefor and obtain approval, in writing, from the Associate Vice President of Facilities of UVU. Such approval shall not be unreasonably withheld or delayed.

9.7 UTILITIES AND TELEPHONE/WIRELESS. UVU shall pay, at its sole and exclusive expense, all utility charges for utilities furnished to the Team at the Facility both during the PBL Season and at all other times throughout the term of this Agreement, including but not limited to the following items: electricity, sewage, storm sewer assessments, water, garbage, trash removal, natural gas, and culinary and irrigation water. Notwithstanding the foregoing, the Team shall pay all of its telephone and Internet access charges and expenses and hold UVU harmless therefrom. UVU will pass along to the Team any favorable on-campus telephone and wireless system rates it enjoys, if that does not violate the terms of any campus contracts, and in the event such rates are extended to the Team, UVU shall bill the Team for same regularly. The Team agrees to cooperate with UVU and use its best reasonable efforts to minimize such utility expenses.
9.8 **SECURITY AND EMERGENCY SERVICES.** The Team shall provide security at the Facility for all events or activities held therein which are sponsored by the Team at its own cost and expense. UVU shall provide one (1) UVU policeman, at Team’s expense, to provide security during each of Team’s PBL games. On nights where Team is having a firework event, UVU may, at its discretion, also have the fire marshal attend the game, at Team’s expense. Such security personnel shall be provided in a reasonable manner and appropriate personnel shall begin service when the gates open for a game, activity or event conducted or sponsored by the Team. Adequate personnel shall remain at the Facility, until at least thirty (30) minutes following the conclusion of any such event or activity. The Team shall provide for first aid and other paramedical personnel in connection with all PBL games at the Facility at its own cost and expense.

9.9 **OTHER PERSONNEL.** Except as otherwise provided herein, Team shall provide at its sole and exclusive expense, all personnel reasonably necessary for the operation of the Facility for all games and other Team sponsored events, including, without limitation, ticket sellers, ticket takers, ushers, paramedical personnel, sound and scoreboard persons and other supervisory personnel.

10. **HOLD HARMLESS/INDEMNITY/INSURANCE**

10.0 **INDEMNIFICATION AND HOLD HARMLESS.** The Team shall defend, indemnify, and hold harmless UVU, its trustees, officers, employees, agents, students, faculty members, and contractors from and against any and all claims, demands, and causes of action and expense associated with same, including attorney fees, asserted against UVU and by any third party which arises out of any negligent act, activity, omission, or violation of any applicable law by the Team, its assigns, sublessees, agents, officers, employees, contractors, guests, invitees, customers and/or patrons. The foregoing notwithstanding, Team shall not be liable for any
damage due to negligent or unintended acts of UVU, its agents, contractors, employees or officers which are committed in the performance by UVU of any work or activity at the Facility.

10.1 UVU INDEMNIFICATION. UVU shall defend, indemnify and hold harmless Team, its officers, owners and directors, employees, agents, and contractors from and against any and all claims, demands and causes of action and expense associated with same, including attorney fees, asserted against Team by any third party which arises out of any negligent act, activity or violation of any applicable law on the part of UVU, its agents, contractors, employees, or officers. UVU shall provide Team with written information concerning its existing insurance coverages.

10.2 INSURANCE. The Team shall, at its sole and exclusive expense, procure and at all times during the term of this Agreement and any extension thereof, maintain, with insurance companies or underwriters authorized to do business or to issue policies of coverage in the State of Utah, in a form satisfactory to UVU, the following insurance coverages:

A. Workers’ Compensation. Insurance covering all employees meeting statutory limits and in compliance with all applicable State of Utah and federal laws.

B. Commercial General Liability. Insurance coverage shall be maintained by the Team that has minimum limits of One Million Dollars ($1,000,000) per occurrence, combined single limit for bodily injury, personal injury, and property damage and $5,000 medical expense for any one person. This commercial general liability coverage shall include the premises and operations, broad form property damage, ECU coverage, independent contractors, product and contractual liability. This commercial general liability coverage policy shall be endorsed to include and cover the consumption of alcoholic beverages, if and only alcoholic beverages are permitted to be sold. Such coverage shall be provided on an occurrence basis not on a claims-made basis.
10.3 **INSURANCE CERTIFICATES.** Certificates of insurance with original endorsement evidencing the coverage required by this Article and in the form specified shall be provided to UVU not less than ten (10) calendar days prior to the commencement of any Team use, provided in this Agreement. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Team and to UVU. If policy expires during any period of use by the Team contemplated by this Agreement, a renewal certificate must be sent to UVU within fifteen (15) calendar days prior to said expiration date. If the certificates are not filed as required, such will constitute a material breach of this Agreement and entitle UVU to all remedies provided by law.

10.4 **UVU NAMES AS AN ADDITIONAL INSURED.** The policies required herein, shall contain, or be endorsed to contain, provisions which list UVU, its officers, officials, agents and employees as an Additional Insured. The insurance coverage shall be primary insurance and any insurance or self-insurance maintained by UVU, its officers, officials, agents or employees shall be excess to the Team’s insurance and shall not contribute with it. Any deductibles or self-insured retentions must be declared to and be approved by UVU. Insurance is to be placed with insurers acceptable to and approved by UVU.

10.5 **PROPERTY INSURANCE.** UVU shall provide insurance against damage or destruction by fire or other casualty to the Facility; provided, however, that it is understood that UVU will not insure against damage or destruction by fire or other casualty to any furnishings, equipment or personal items belonging to the Team, its assigns, sublessees, agents, contractors or subcontractor, officers, employees, guests, invitees, customers and/or patrons. The Team shall be responsible for the purchase and maintenance of any property insurance covering the Team’s assets and contents located in the Facility, and for purposes of this paragraph, “contents” shall be
furnishings, equipment and personal property owned by the Team, its agents, employees or officers, which are not fixtures of the Facility.

10.6 **MUTUAL WAIVER OF INSURED LOSSES.** The Team and UVU mutually waive as against each other any claim or cause of action for any loss, cost, damage or expense as a result of the occurrence of perils covered under UVU’s or the Team’s property insurance policies.

10.7 **CASUALTY LOSS; UVU DUTY TO REPAIR AND REBUILD.** If all or any significant portion of the Facility is damaged or destroyed by fire or other casualty, and in the event such loss is covered by insurance to the extent of ninety percent (90%) or more of the value of such portion(s), UVU shall repair and rebuild the Facility with reasonable diligence to the condition immediately before the loss, to the condition required by law, or to the condition then required by Minor League Baseball with such repair or rebuilding to be completed as soon as it is reasonably possible. If, in good faith judgment of the Parties, there is substantial interference with the operation of the Team’s use of the Facility due to such damage or destruction, that requires the Team to temporarily use another facility, there will be a temporary abatement of all monies due under the terms of this Agreement from the Team to UVU for the period of such interference. It is specifically understood by and between the Parties that during the period of such interference, the Team shall have the right to scheduled home games at another facility in a location to be determined by the Team in its sole and exclusive discretion. If, at the sole option of UVU, the Facility is not, cannot or will not be restored to the conditions immediately before such casualty or fire loss, to the condition required by law, or to the condition then required by Minor League Baseball, within three hundred fifty (350) calendar days following said loss, this Agreement may be voided by the Team or by UVU, in each Parties’ discretion, and shall be of no
further force and affect. Under such termination, neither party shall have claims whatsoever against the other party as a result of such termination.

11. CONTINUATION OF PROFESSIONAL BASEBALL

11.0 TEAM DUTY TO OPERATE PROFESSIONAL BASEBALL IN UTAH COUNTY. During the term of this Agreement, the Team agrees to maintain and operate a Rookie Advanced or Short Season A Level Professional Baseball Team or team or equivalent level and quality at UVU and to use the Facility for this purpose. In the event that the Team does not use the Facility for the operation of professional baseball on a regular basis during any calendar year, the Team shall be deemed to have breached this Agreement. Notwithstanding the foregoing sentence, the Team shall not be deemed to have breached this Agreement if its failure to operate a professional baseball team during a season is caused by a Force Majeure event.

11.1 TEAM’S DUTY TO MAINTAIN MEMBERSHIP IN THE NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC. During the term of this Agreement, the Team covenants to use all reasonable and financially feasible means to maintain its membership in the National Association of Professional Baseball Leagues, Inc. aka Minor League Baseball (“NAPBL”) and maintain its status as a professional affiliated Rookie Advanced or Short Season A Level ball club. In the event of the dissolution of the NAPBL, or in the event of the Team’s loss of membership therein through no fault of its own, the Team agrees to use all reasonable and financially feasible means to obtain membership in another such organization and maintain the status of or equivalent to a professional Rookie Advanced or Short Season A Level ball club.

12. DEFAULT

12.0 NOTICE. If either party shall default in any material obligation under this Agreement, the non-defaulting party shall provide written notice of default to the defaulting party
and afford it a grace period of thirty (30) calendar days to cure such default; provided, however, that if a non-monetary default occurs which cannot be remedied within said thirty (30) day period, the non-defaulting party shall afford the defaulting party such additional time as may reasonably be required to cure such default, providing the defaulting party proceeds with immediate and due diligence to cure the default.

12.1 REMEDIES. The Parties shall be entitled, in addition to any other remedy provided under this Agreement, to remedy any default following the expiration of the above stated notice permitted by law and shall include, without limitation the following:

A. Recovery of monies due and owing, together with interest thereon at the highest legal rate from the date such monies were due;

B. A right of specific performance of non-monetary covenants and agreements;

C. Cancel and terminate this Agreement immediately or at any date elected by the non-defaulting party;

D. Seek damages equal to the payments due by the Team, which should have been paid for the period from the date of default to the end of the current term of the Agreement, less a credit for any payments actually received that are applicable to that period.

13. GENERAL

13.0 STATUS OF TEAM AS INDEPENDENT CONTRACTOR. In assuming and performing its obligations under this Agreement, each party is an independent party and shall not be considered nor represent itself as a joint venture, partner, nor agent of the other party. This Agreement shall not create any rights in or issue to the benefit of any third parties. Nothing in
this Agreement shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties. The Team is and shall be deemed an independent contractor and operator. UVU shall in no way be responsible to any person, firm or corporation for any acts or omissions of the Team or any of its employees, agents or servants. The Team will pay any and all claims as a result of its operations.

13.1 **LIEN PROHIBITION.** Neither the Team nor anyone claiming by, through or under the Team shall have the right to file or place any mechanic, materialmen or other lien of any kind or character whatsoever upon the Facility, premise or upon any building or improvement thereon. Notice is given thereby that no contractor, subcontractor or anyone else who may furnish any material, service, or labor for any building improvements, alterations, repairs or part thereof at any time may be or become entitled to any lien thereon. For further security of UVU, and the Team, both parties covenant and agree to fully comply with Utah statutory law requiring a mechanic or materialmen’s bond in advance of any and all contractors and subcontractors performing work on the Facility during the term of this Agreement and to provide a copy thereof to UVU and the Team in advance of any and all contractors or subcontractors performing work, material, service or labor on said Facility.

13.2 **PROPERTY, PRIVILEGE TAXES.** During the term of this Agreement or any extension thereof, the Team shall be responsible for the payment of all personal property taxes, if any, on its property located on the Facility. It is the contemplation of the Parties that all parts of the Facility and its uses by the Team will be tax exempt from real property and privilege taxes, and each party covenants to cooperate and assist in providing information, documentation, or other materials that may be necessary to establish such exemptions. If a tax liability accrues to Team as a possessor or user of the Facility, it is understood and agreed that such Team shall be responsible for payment of said tax under the terms of this Agreement.
13.3 ASSIGNMENT. Neither party to this Agreement shall transfer, sublet or assign any rights or interests in this Agreement, or the Agreement itself (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Such written consent shall not be unreasonably withheld.

13.4 BINDING ON SUCCESSORS. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successor, heirs, administrators and assigns of the Parties hereto.

13.5 NOTICES. Except as otherwise provided herein, any notices required to be given or which are given hereunder shall be in writing and mailed, postage prepaid, by United States certified mail, return receipt requested, and addressed to the Parties as follows, unless a different address is later designated by either party in writing:

Notices to the Team:

BERY BERY GUD TO ME, LLC
4558 Sherman Oaks Avenue
Sherman Oaks, CA 91403
Attn: Jeff Katofsky, Managing Member
jeff@oremowlz.com

UVU
c/o Val Peterson, Ph.D.,
V.P. of Finance and Administration
800 W. University Parkway
Orem, Utah 484058
petersva@uwseuvu.edu

With a copy to be sent to:

David Jones, Assistant Attorney General
Office of the Utah Attorney General
P.O. Box 140853
Salt Lake City, UT 84114-0853
djones@utah.gov
13.6 **ATTORNEY’S FEES AND COSTS.** If any party defaults under this Agreement and it becomes necessary for the other party to employ the services of an attorney in connection therewith, either with or without litigation, the losing party to the controversy arising out of the default shall pay to the successful party reasonable attorney fees and, in addition, such costs and expenses as are incurred in enforcing or in terminating this Agreement.

13.7 **NO PRIOR COMMITMENTS.** This Agreement constitutes the entire understanding of the Parties and no representation or agreements, oral or written, made prior to the execution hereof shall vary or modify the terms herein.

13.8 **AMENDMENTS.** Any amendment or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of all Parties.

13.9 **APPLICABLE LAW.** The laws of the State of Utah will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of the State of Utah, without application of choice of law rules.

13.10 **CAPTIONS.** Section titles or captions to this Agreement are for convenience only and shall not be deemed to be part of this Agreement and in no way define, limit, augment, or describe the scope, content, or intent of any part or parts of this Agreement.

13.11 **WAIVER.** The failure by any Party to insist upon strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any rights or remedy consequent upon a breach thereof, shall not constitute a waiver of any such breach or of such or any other covenant, agreement, term, or condition. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall
continue in full force and effect with respect to any other then existing or subsequently occurring breach.

13.12 OPERATIONAL COMMUNICATIONS. The Parties shall use all reasonable efforts to timely identify and resolve all operational problems that may arise and be inherent in the use of the Facility. These reasonable efforts shall include, without limitation, clear communication of the exact nature of the any operational problem, either in writing or verbally, between the Parties.

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed in several counterparts, each of which shall constitute an original and all of which taken together shall constitute a single instrument and to be a legally binding agreement on this the ___ day of __________, 2012.

UVU

By: ________________________________

Its: ________________________________

________________________________
Print name here

Team
BERY BERY GUD TO ME, LLC.,
DBA Orem OWlz

By: ________________________________
Jeff Katofsky, Managing Member
## SCHEDULE A

<table>
<thead>
<tr>
<th>Room Number</th>
<th>Exclusive Use UVU</th>
<th>Exclusive Use Team</th>
<th>Exclusive Use by Team During PBL Season Only</th>
<th>Joint Use During Non-Home Games Season</th>
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<td>Visiting Locker Room (Clubhouse) 008</td>
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