

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----x
ELMIRA BASEBALL, L.L.C.
849 Quince Orchard Boulevard, Suite I
Gaithersburg, MD 20878,

Plaintiff,

COMPLAINT

Civil No. _____

COUNTY OF CHEMUNG
203 Lake Street
Elmira, NY 14902-0588,

Defendant.

-----x

Plaintiff, Elmira Baseball, L.L.C., alleges:

1. That Plaintiff is a limited liability corporation incorporated in the State of Maryland and maintaining its office and place of business at 849 Quince Orchard Boulevard, Suite I, Gaithersburg, MD 20878.
2. That the County of Chemung is a municipal corporation maintaining its principal place of business at 203 Lake Street, Elmira, NY 14902, which is located within the Western District of New York.
3. That jurisdiction is based on diversity in that Plaintiff is a limited liability corporation incorporated under the laws of the State of Maryland, having its principal place of business in the State of Maryland, and the Defendant is a municipal corporation organized and existing under the laws of State of New York, having its principal place of business in a state other than the State of Maryland. The matter in controversy exceeds, exclusive of interest and costs, the sum specified in 28 U.S.C. § 1332.

4. That venue is placed in the Western District of New York based on the existence of Chemung County as a municipal corporation maintaining its principal office and place of business at 203 Lake Street, Elmira, New York in the Western District of New York.

5. That Plaintiff Elmira Baseball, L.L.C., after at least six months of negotiating terms, entered into a lease agreement on April 20, 2000 that had been prepared by Defendant County of Chemung and executed by the County Executive on April 14, 2000 for the purpose of Elmira Baseball, L.L.C. maintaining a minor league professional baseball team at Dunn Field in the County of Chemung. A copy of said lease agreement is attached hereto, made a part hereof, and marked Exhibit "A."

6. That the lease agreement provided in paragraph 13 that "COUNTY certifies that this lease is made and executed subject to approval and resolution of the COUNTY Legislature."

7. That Elmira Baseball, L.L.C. provided minor league baseball at Dunn Field in the City of Elmira, Chemung County in 2000, 2001, 2002, 2003, and 2004 under the provisions of the lease agreement.

8. That the lease agreement paragraph 10 allowed Elmira Baseball to "have an option to extend this agreement for a period of five years upon the same terms and conditions as set forth herein." Elmira Baseball, L.L.C. notified Chemung County, in writing, of its intention to so renew on July 30, 2004.

9. That the lease agreement provided in paragraph 16 that the County agreed to pay Elmira Baseball, L.L.C. management fees of \$50,000.00 per year.

10. That the lease agreement further provided that both the County and Elmira Baseball, L.L.C. had the right of early termination by providing the other party with a six-month

written, formal notice of termination but said early termination clause provided, "Any such early termination will not, however, relieve the COUNTY of its obligation to pay management fees."

11. By letter dated July 8, 2003, Steven Hoover, Director of Budget and Research for the County of Chemung, informed Elmira Baseball, L.L.C. that it "would not be recommended to receive county funding in 2004" because the "county is suffering from a fiscal crisis." The letter encouraged Elmira Baseball L.L.C. to "lobby your state representative for Medicaid reform." A copy of said letter is attached hereto, made a part hereof, and marked Exhibit "B."

12. By copy of a letter to the Elmira City Manager dated December 1, 2003, Chemung County Executive, Thomas J. Santulli, exercised on behalf of Chemung County the right to early termination of the lease agreement between the County of Chemung and Elmira Baseball, L.L.C. A copy of said letter is attached hereto, made a part hereof, and marked Exhibit "C."

13. That, in spite of said early termination of the lease agreement, Elmira Baseball, L.L.C. operated a minor league baseball team known as the Elmira Pioneers during the 2004 baseball season. Chemung County paid the \$50,000.00 management fee for the 2004 baseball season.

14. On Monday, November 22, 2004, the Chemung County Legislature voted 11-4 to pull funding for the Elmira Pioneers baseball team in the 2005 budget including funding for the \$50,000.00 management fee despite the inclusion of funding for Elmira Baseball in the budget submitted by the County Executive. This constituted termination of the lease agreement.

15. That despite elimination of funding by Chemung County, Elmira Baseball, L.L.C. provided minor league baseball at Dunn Field in the City of Elmira, Chemung County in 2005.

16. That on June 13, 2005, Elmira Baseball, L.L.C. made a demand for the first installment of the management fee for the 2005 season.

17. That on July 7, 2005, Defendant informed Plaintiff that its position was that the lease agreement was never renewed, that there was no lease to terminate, and thus no obligation to pay management fees and would not pay the management fee for the year 2005.

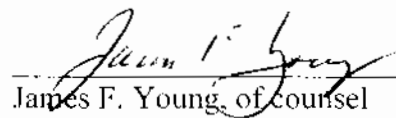
18. That as a result of Elmira Baseball, L.L.C. exercising its option to extend the agreement, Elmira Baseball, L.L.C. is entitled to the management fee of \$50,000.00 per year for the years 2005, 2006, 2007, 2008, and 2009.

19. That Chemung County has failed and refused to pay the \$50,000.00 annual management fee due and owing Elmira Baseball, L.L.C. based on Chemung County's refusal to accept Elmira Baseball's exercise of its option to extend the agreement for a period of five years on the same terms and conditions as the original agreement.

WHEREFORE, Elmira Baseball, L.L.C. demands judgment against Chemung County in the amount of \$250,000.00, together with costs, interest, disbursements and attorney's fees in this action.


Dated: August 22, 2007

Sayles & Evans


James F. Young, of counsel
Attorneys for Plaintiff
One West Church Street
Elmira, NY 14901
Telephone Number: (607) 734-2271

State of New York)
 : ss.
County of Steuben)

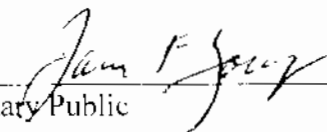
John Ervin, being duly sworn, deposes and says that he is the President of Elmira Baseball, L.L.C., the corporation named in the foregoing Complaint; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.



John Ervin

Sworn to before me, this

22 day of August, 2007



Notary Public

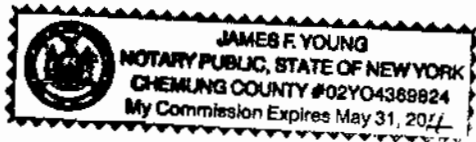


EXHIBIT A

**LEASE AGREEMENT
DUNN FIELD**

THIS AGREEMENT between the **COUNTY OF CHEMUNG**, a municipal corporation, with offices located at 203 Lake Street, Elmira, NY 14902-0588 (hereinafter referred to as **COUNTY**), and **ELMIRA BASEBALL, L.L.C.**, with offices at 4550 Montgomery Avenue, Suite 650 North, Bethesda, MD 20814 (hereinafter referred to as **ELMIRA BASEBALL**).

WITNESSETH:

WHEREAS, the City of Elmira is the owner of certain premises and surrounding parking areas known generally as Dunn Field in Elmira, and the **COUNTY** has heretofore entered into a cooperative agreement for a period of five (5) years commencing January 1, 2000, and ending December 31, 2004, whereby the **COUNTY** acquired the right to enter into contracts regarding the concessions and other franchise agreements, including minor league baseball, for the purpose of the continuation of professional baseball at Dunn Field, and

WHEREAS, consistent with that goal and mission, the **COUNTY** is desirous of entering into an agreement with **ELMIRA BASEBALL** for the purpose of maintaining a minor league professional baseball team at Dunn Field.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions herein contained, the parties agree as follows:

1. **LEASE TERM.** This Lease Agreement shall be in effect for a period of five (5) years commencing on **January 1, 2000**, and terminating on **December 31, 2004**.

2. **LEASED PREMISES.** The COUNTY hereby leases to ELMIRA BASEBALL, and ELMIRA BASEBALL hereby leases from the COUNTY the premises commonly known as Dunn Field and as more particularly described in the deed dated July 29, 1938, given by Dunn field Corporation to the City of Elmira and recorded in Book 300 of Chemung County Deeds at page 525. Such premises are commonly known as Dunn Field and consist of a baseball stadium with facilities and adjoining parking lots. The premises are shown as the highlighted premises on the annexed Schedule "A".

It is understood that the use and occupancy of the premises by ELMIRA BASEBALL shall be partially exclusive and partially non-exclusive during the lease term. Throughout the lease term and any renewal thereof, ELMIRA BASEBALL shall have the sole and exclusive possession of that portion of the premises currently occupied as their offices consisting of approximately 952 square feet together with the trainers room, washer and dryer room and storage room. ELMIRA BASEBALL shall have the non-exclusive use and occupancy of the entire ball park

leased premises from April 1 to September 30 in each of the leased years, subject to the rights of COUNTY as set forth herein.

3. **RENT.** ELMIRA BASEBALL shall pay to the COUNTY as and for rent for the use of the leased premises the sum of ONE (\$1.00) per year payable upon execution of this agreement. In addition to the foregoing, ELMIRA BASEBALL shall pay to the County twenty-five percent (25%) and twenty-five (25%) to the City of Elmira of its net operating income in excess of \$60,000 annually^{ON A CUMULATIVE BASIS} derived from the management of the minor league baseball team at Dunn Field. ELMIRA BASEBALL'S obligation to make any payment to the City of Elmira is conditioned upon the City replacing the existing scoreboard and providing a carrousel at Dunn Field and ensuring the physical integrity of the stadium including, but not limited to the transformers. For the purposes of this section, net operating income is to be determined in accordance with Generally Accepted Accounting Principles (GAAP) as adjusted for the amortization of the Owners capital invested in ELMIRA BASEBALL. Further, the term revenues shall mean all operating revenues relevant to the operation of the Elmira Pioneers Baseball team. The term expenses shall mean items which are paid or incurred and permitted in accordance with Generally Accepted Accounting Principles. Types of expenses include, but are not limited to cost of sales, salaries, supplies, travel, uniforms, lodging, depreciation, amortization, outside contracts, management fees, legal, accounting, advertising, interest, etc.

4. **USE OF PREMISES.** ELMIRA BASEBALL shall undertake the following tasks in the management of the baseball facility: to utilize the leased premises for minor league baseball games, baseball clinics, baseball camps, baseball try-outs and other similar promotional athletic activities or other events. In furtherance thereof, ELMIRA BASEBALL shall use reasonable efforts to provide as many baseball clinics as possible to the public using minor league baseball personnel under contract and available.

During the baseball season (i.e., April 1 - September 30), ELMIRA BASEBALL shall have the sole and exclusive right to use and occupy the concession stands and related facilities on the leased premises as well as the sole and exclusive right to sell food and refreshments, including alcoholic beverages, and other concessions during baseball games and other permitted events such as concerts, attractions or sporting events conducted by ELMIRA BASEBALL. ELMIRA BASEBALL shall further have the first option of providing food, refreshments, including alcoholic beverages, and other concessions during any event conducted by the COUNTY or other individuals, firms or entities during the term of the lease. ELMIRA BASEBALL shall be given twenty (20) days notice of all events and shall exercise or decline its option within ten (10) days after receipt of notice. Notwithstanding the forgoing, ELMIRA BASEBALL agrees to accommodate local baseball teams who are permitted to play at Dunn Field who use the sale of hot

dogs and pop and similar items during such events as a primary fund raiser. In this event, there shall be permitted no more than twelve (12) games where ELMIRA BASEBALL shall not have the exclusive concession rights. ELMIRA BASEBALL will be informed at least five (5) days prior to such events of the COUNTY'S election to permit such exemption.

ELMIRA BASEBALL shall have the exclusive right to sell advertising signage throughout the leased premises during the entire term of the lease.

The COUNTY shall provide and pay for all utilities for the leased premises. ELMIRA BASEBALL agrees to use reasonable efforts to reduce the need to turn on the lighting system for night baseball in an effort to reduce electricity usage and shall otherwise take reasonable steps and cooperate with the COUNTY to conserve the use and consumption of utilities on the leased premises, provided however, the foregoing shall not be construed in any way to limit ELMIRA BASEBALL's right to reasonably use the lighting system and to comply with the needs and expectations of professional baseball.

ELMIRA BASEBALL represents that neither it nor its agents, employees or contractors will engage in any activity which would expose the property to any toxic or hazardous materials or otherwise violate any public health, environmental or safety laws and regulations of the COUNTY, State or Federal government.

That ELMIRA BASEBALL will keep or cause true, accurate and complete records of business conducted hereunder and ELMIRA BASEBALL further agrees that COUNTY shall have the right to examine all pertinent records at any and all reasonable times. That ELMIRA BASEBALL shall meet all expenses incurred by it in connection with its use of the leased premises hereunder.

That ELMIRA BASEBALL will keep the premises in broom clean condition at all times including as early as practicable after every event.

5. **USE BY OTHERS.** The parties agree that the primary purpose of the leased premises during the term of this lease is to provide a home for a minor league baseball team known as the Elmira Pioneers, but that other uses of the premises shall be permitted subject to the provisions hereof.

The proposed schedule for all events to be sponsored by the COUNTY at Dunn Field shall be submitted to ELMIRA BASEBALL as soon as practicable, but no such schedule shall conflict with any scheduled Elmira Pioneers' baseball games or previously scheduled events of ELMIRA BASEBALL pursuant to this agreement.

6. **INSURANCE.** The parties each agree that throughout the entire term of this lease each party shall maintain and keep in force and effect a policy of general liability insurance with a limit of not less than \$1,000,000.00 per occurrence and with the other party and the City of

Elmira and the COUNTY of Chemung named as additional insured. Each party, at reasonable intervals, but not less than annually, shall provide the other party with a certificate of insurance evidencing said insurance.

7. MAINTENANCE OF PREMISES. Throughout the term of this lease, and any renewal term thereof, the COUNTY represents that it shall have the primary responsibility for maintaining the leased premises which shall be limited to the following:

(A) To provide a minimum of one (1) staff worker as needed to be supplemented by additional workers, if necessary. The COUNTY shall provide a minimum of three (3) and up to five (5) volunteers to assist on Pioneer game days who shall work as a so-called grounds crew or other activities consistent with the work necessary to make the premises suitable for baseball per the direction of either COUNTY or ELMIRA BASEBALL.

The times that the workers and volunteers shall be available on game days shall be worked out between ELMIRA BASEBALL and the COUNTY.

(B) To provide the necessary equipment and labor to maintain the baseball field in a condition reasonably acceptable to minor league baseball, the Elmira Pioneers and their affiliate(s).

(C) To provide two (2) sets of bases for each minor league baseball game at the leased premises.

(D) To perform a complete wash down of the stadium at least two (2) times during each baseball season as requested by ELMIRA BASEBALL, one of which shall be prior to the first event of the season. The wash down may be performed by hand or with a fire hose as determined by COUNTY.

(E) To provide reasonable access to all tools, mowers, scaffolds, ladders and other equipment for use by employees of ELMIRA BASEBALL as needed for Dunn Field. No such items shall be removed from Dunn Field without the written permission of the COUNTY and only for the purpose of repair. The COUNTY will be responsible for repair or replacements of equipment made necessary by its negligent use thereof.

(F) To provide and maintain a full supply of Diamond Dry, chalk/paint, equipment, bathroom supplies, etc. as would reasonably be needed to conduct the business of minor league baseball at the leased premises.

(G) To provide and maintain rubberized covers over all sprinkler heads to reduce the risk of injury.

(H) To maintain the stadium infrastructure in reasonable working order at all times and all other facilities and structures as required by the NABISCO/MOB Professional Baseball Agreement pursuant to the terms of this agreement.

In conjunction therewith, the COUNTY agrees to use its maximum efforts to respond as quickly as possible to make reasonably

necessary repairs to the lights, water, sewer, and electrical fixtures of the premises recognizing the City shall be responsible for the replacement of any component parts including electrical transformers.

In the event that the COUNTY shall fail to use its best efforts to correct such problems and further that such problems constitute an emergency situation threatening personal safety or undue damage to the structure after reasonable notice of same and having a reasonable opportunity to respond, ELMIRA BASEBALL shall have the right to do so and ELMIRA BASEBALL shall be compensated for the reasonable cost of such repairs.

(I) Prior to April 1, 2000, and at such other times as ELMIRA BASEBALL shall reasonably request, COUNTY shall change the locks on all doors and gates at the leased premises. Thereafter, ELMIRA BASEBALL shall be notified and must approve the release of all keys to third parties.

(J) To provide full and unencumbered access between April 1 and September 30 of each year to all parking lots and areas immediately surrounding the stadium and shown on the annexed Schedule "A" as part of the leased premises for all minor league baseball games and other events conducted by ELMIRA BASEBALL.

(K) To provide trash removal, including a dumpster, on the leased premises at all times.

(L) In no event shall the County be required to make any structural repairs or capital improvements unless the City of Elmira agrees to pay for same.

8. **CANCELLATION.** In the event ELMIRA BASEBALL shall fail or refuse to pay said rental or shall violate any of the terms and conditions of this contract as herein provided, COUNTY shall have the right to notify ELMIRA BASEBALL in writing of such default and if ELMIRA BASEBALL shall fail or refuse to make good such default within fifteen (15) days from the date of making regular notice, the COUNTY shall have the option to cancel and terminate this lease agreement and retake possession of leased premises, without liability to ELMIRA BASEBALL for any loss or damage which it may sustain as the result of the closing of the ball park.

9. **EARLY TERMINATION.** The COUNTY and ELMIRA BASEBALL have the right of early termination by providing the other party with a six (6) month written, formal notice of termination. Any such early termination will not, however, relieve the COUNTY of its obligation to pay management fees.

10. **RENEWAL OPTION.** ELMIRA BASEBALL shall have an option to extend this agreement for a period of five (5) years upon the same terms and conditions as set forth herein. ELMIRA BASEBALL shall notify COUNTY in writing of its intention to so renew on or before September 1, 2004. The COUNTY intends to extend its lease referred to above with the City of Elmira to encompass the lease term and the option

period. The COUNTY shall advise ELMIRA BASEBALL in writing once that extension is completed.

11. ASSIGNMENT AND SUB-LEASE. Neither party shall sell or assign this lease or let or sub-let the leased premises or any part thereof without first obtaining the written consent of the other party. It is agreed that ELMIRA BASEBALL may assign the lease to any new owner(s) of the Elmira Pioneers without the consent of the COUNTY and upon such assignment, ELMIRA BASEBALL shall be released from further liability under this lease. However, upon any such assignment or transfer, the COUNTY shall have the right to cancel the management fee as provided for herein.

12. RETURN OF PREMISES. At the expiration of the term of this lease or any renewal thereof, ELMIRA BASEBALL agrees to deliver up the leased premises to COUNTY in as good condition as they received the leased premises, with normal wear and tear excepted, and further excepting damage caused by users other than ELMIRA BASEBALL.

13. REGULAR COURSE OF BUSINESS. ELMIRA BASEBALL certifies that the within lease is made in the usual and regular course of business of the corporation within the meaning of Section 909 of the New York State Business Corporation Law.

COUNTY certifies that this lease is made and executed subject to approval and resolution of the COUNTY Legislature.

14. **ALTERATIONS.** COUNTY reserves the right during the term of this lease to make minor alterations to the premises that will not effect ELMIRA BASEBALL's ability to conduct its business in order to accommodate same for other events. Said alterations, if made, shall be made with the least interference to ELMIRA BASEBALL during the baseball season. Said work shall commence only after written notification of at least fifteen (15) days to ELMIRA BASEBALL.

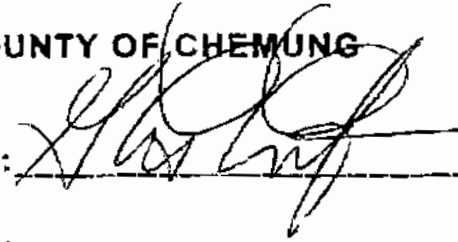
15. **RIGHT OF FIRST REFUSAL.** The COUNTY agrees to give ELMIRA BASEBALL the right of first refusal for any franchise that may be offered to CHEMUNG COUNTY for affiliation with the New York Penn minor baseball league.

16. **MANAGEMENT FEE.** COUNTY agrees to pay ELMIRA BASEBALL for its management of the facility as herein provided the sum of FIFTY THOUSAND DOLLARS (\$50,000) per year payable in two equal installments, the first of which will be payable on or before training camp opens and the second of which will be payable on or before the last home game of the season. Chemung County shall be entitled to deduct from the management fee payable pursuant to this paragraph the amount of money it receives as operating net income pursuant to paragraph "3" hereof. Said deduction shall occur in the year following any distribution of net operating income aforesaid first out of the management fee installment due on or before training camp opens and any balance remaining shall be

deducted from the payment due on or before the last home game of the season.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

DATE: 4-14-2000

COUNTY OF CHEMUNG
BY: 

DATE: 4/20/2000

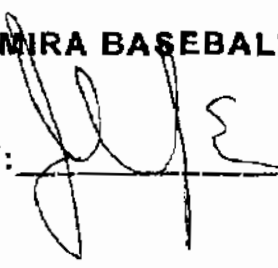
ELMIRA BASEBALL, L.L.C.
BY: 

EXHIBIT B



**Office of the Executive
County of Chemung**

**Division of Budget
203 Luce Street
P.O. Box 588
Elmira, New York 14902**

**Steven L. Hoover, CPA
Director of Budget & Research**

**607-737-2041
Fax 607-737-0351
E-mail: S.Hoover@Co.Chemung.NY.US**

July 8, 2003

**Mr. John Ervin
Elmira Baseball, LLC
546 Luce Street
Elmira, NY 14904**

Dear John:

The County of Chemung is currently planning its 2004 budget and, at the direction of the County Executive, I must regretfully inform you that your organization will not be recommended to receive County Funding in 2004.

Our county, along with the State of New York, is suffering from a fiscal crisis. State Mandated programs, namely Medicaid, are increasing at alarming rates and are consuming larger portions of County and State resources, while the local and State economies continue to slump. Therefore these State Mandated programs, for which we have no control, are squeezing out support for programs/services your organizations provide. Here, within the County, we have been forced to lay off workers, consolidate departments, forgo pay raises and require higher employee contributions for health care. Still even with these measures, we are facing large property tax hikes.

Rest assured, our difficult decision was not a reflection upon the fine level of service your organization provides the community. Rather, it is simply the harsh consequence of our inability to continue to feed insatiable appetite of State mandated programs. Hopefully, these programs will be restructured and the economy will recover soon. At that time we will seriously consider reinstatement of funding to your organization.

We encourage you to lobby your State Representatives for Medicaid reform.

Please call with any questions.

Sincerely,

Steven L. Hoover

EXHIBIT C



Thomas J. Santulli
County Executive
(607) 737-2912

OFFICE OF THE EXECUTIVE
COUNTY OF CHEMUNG
203 Lake Street
P.O. Box 588
Elmira, New York 14902
(607) 737-0351 FAX

Michael S. Krusan
Deputy County Executive
(607) 737-2031

December 1, 2003

Samuel F. Iraci, Jr.
Elmira City Manager
317 East Church Street
Elmira, New York 14901

Dear Sam:

As you know, the County has been very concerned about the structural integrity of the grandstands at Dunn Field. To that effect, we gave you a letter dated January 15, 2003 to our Safety Officer from Gary Bowen, the Supervising Safety and Health Inspector. In that letter, Mr. Bowen outlined in general terms the noticeable structure fatigue, corroded steel supports and the cracking of the concrete in the grandstands. In fact, portions of the grandstands were roped off throughout last season due to these concerns. At a meeting that was held in my office on January 31, 2003, we discussed the problem at length in the presence of Mike Belosky and Ron Hawley. During the meeting you stated that because the City of Elmira was the owner of the premises it would be your responsibility to hire an engineering firm to determine the magnitude of the structural problem. Since that date, Mike Belosky has had several conversations with your Director of Public Services and Tom O'Mara, the Chemung County Attorney has had several conversations with John Ryan, Corporation Counsel. A few weeks, John Ryan informed the County Attorney that because of the cost of having an engineering firm conduct a structural study, the City had decided not to proceed in that direction.

I have made a decision after consulting with my staff, the Legislative leadership and the County Attorney, that Chemung County will no longer assume the day-to-day operational responsibility for Dunn Field. We cannot go through another season with this structural problem unchecked and the liability that would be put upon the County if there was a structural failure. Therefore, the County hereby elects to terminate the Cooperative Agreement with the City pursuant to Section 11 thereof.

Also, by copy of this letter to Elmira Baseball, LLC, the County hereby exercises its right of early termination of the lease agreement for Dunn Field between the County of Chemung and Elmira Baseball, LLC.

Sincerely,

Thomas J. Santulli
County Executive

cc: Hon. Stephen Hughes
Elmira Baseball LLC

Printed on Recycled Paper