

A RESOLUTION PROVIDING FOR A LEASE AGREEMENT FOR THE OSBORN BALLFIELD

The City of Osborn, Missouri, does hereby enter into this Agreement with the Osborn Ball Association.

The following represents the terms for an agreement between the parties:

SECTION 1. DEFINITIONS:

For the purpose of this Agreement, the following words and phrases are defined, and shall be construed as hereinafter set out, unless it shall be apparent from the context that a different meaning is intended.

<u>City</u>	City of Osborn, Missouri
<u>Facility</u>	Osborn Ball Field, located at East Wells Street, consisting of one field
<u>Osborn Ball Association</u>	Osborn Missouri Ball Association
<u>Agreement</u>	A lease and contract duly executed and legally binding.

SECTION 2. RIGHTS AND PROMISES:

A. **City.** *The City hereby agrees to provide the following:*

- 1) Grant an agreement for the use of the Osborn Ball Field, for the specific term set forth in Section 4 of this Agreement, for the purpose of playing the game of baseball.
- 2) Grant admission and concession rights throughout the duration of the specific term set forth in this Agreement to the Team.

- 3) The City shall be responsible for the maintenance and operation of the ball fields and facilities used by the Team. More specifically, the City shall be responsible for the maintenance and/or replacement of the individual field assets, which include, but are not limited to: (i) concession facilities; (ii) infield and outfield playing surfaces; and (iii) restrooms.
- 4) The City shall be responsible for repair and replacement of all mechanical, electrical, and structural systems owned by the City due to normal wear and tear and aging. The City will also be responsible for all plumbing and electrical maintenance associated with its own equipment.
- 5) The City shall be responsible for the upkeep of the ball fields, which includes the field's concession area, restroom facilities, bleachers, trash pick-up, mowing, fences, and lighting.
- 6) The City shall maintain and repair the parking lots located adjacent to the facility.

B. Osborn Ball Association. *Osborn Ball Association hereby agrees to provide the following:*

- 1) To conduct approved league play and tournaments promoting the advancement of youth baseball and softball, with the understanding that the Team reserves the right to schedule any and all games.
- 2) All of the Team personnel and volunteers, including, but not limited to, umpires, scorekeepers and ball shags, shall be the sole responsibility of the Team for all events sponsored by the Team.
- 3) The Team shall determine the field's playability for all games, practices, and events.
- 4) The Team shall provide general field and Facility maintenance and preparation for all games scheduled by or through the Team, as well as Facility clean-up, including, but not limited to, bleachers, walkways and restrooms, at the conclusion of each game scheduled by or through the Team.
- 5) The Team shall provide the equipment necessary to provide the appropriate and required level of maintenance of the field areas.
- 6) The Team will be responsible for providing any and all equipment necessary to play games at the field. Including bases and equipment to mark the field.

- 7) The Team will be responsible for stocking and maintaining supplies for concessions including equipment to store and cook the food.
- 8) The Team shall be responsible for stocking and maintaining the supplies for the restroom facilities.
- 9) The Team shall be responsible to communicate to the City any emergency repairs to the Facility prior to authorizing the repair.
- 10) The Team shall lock all gates, for security purposes, at the end of each and every use of the Facility. (This includes after each practice.)
- 11) The Team shall have the right to sell Team oriented or promotional souvenirs (hard goods). All proceeds from any such sales shall belong to the Team.
- 12) The Team shall provide prior written notice to the City of any intent to alter the Facility in any way; and refrain from proceeding with any such alteration unless having obtained the prior written approval of the City. The City will consider all reasonable requests.
- 13) The Team shall be responsible for the operation and maintenance of all ticket and concession areas, excluding any repair and/or replacement to be provided by the City as set forth in Section 2A of this Agreement. All ticket sales and concession proceeds in the Facility for all events scheduled by or through the Team shall belong to the Team.
- 14) Hiring and employment of all personnel and independent contractors, if any, for any and all activities and events scheduled by or through the Team shall be the responsibility of the Team. These responsibilities shall include, but are not necessarily limited to, employee payroll, payroll tax deposits, payroll tax reports, and associated duties, as well as procurements from vendors and contractors and timely payments to said vendors and contractors and the filing of 1099 and related reports as may be required by the Internal Revenue Service, the Social Security Administration, and/or other regulatory enforcement agencies.
- 15) The Team shall maintain the playing conditions of the Facility throughout the season. (Refer to Section 2A and 2B3 for specific required maintenance activities.)
- 16) The Team shall have the right to use all areas of the Facility or such other areas adjacent to the Facility on an as needed basis for purposes of corporate advertising during the term of this Agreement, as long as advertising does not permanently alter

the physical appearance of the Facility. Any exterior commercial signage shall be approved and permitted by the City. All proceeds from any such advertising (interior and exterior) shall belong to the Team.

- 17) The Team shall refrain from using the Facility for any special event(s) and/or use(s) other than those for which the Facility is designed and intended, unless authorized by the City. In no event shall the Facility be used for political events or purposes. The City will consider any reasonable requests regarding the scheduling of special events at the Facility.
- 18) The Team shall refrain from the sublease or rental of the Facility, or any portion thereof, including the surrounding premises, to, or otherwise allow the Facility to be used by, any other person and/or entity for a purpose other than providing a season of softball games for the enjoyment of visitors to the Facility. However, if the Team is approached by a person or entity with a request to sublease or rent the Facility for a purpose other than that specifically set forth in this Agreement, then the Team may, if it chooses, submit this request, in writing, to the City. This written request must be received at least *thirty (30) calendar days prior* to the event and written approval of such request must be received from the City at least *ten (10) calendar days prior* to the event.
- 19) The Team and all patrons attending any events at the Facility shall have the right of ingress into and egress from the Facility over and across the real property on which the Facility is located by means of any existing walkways, roads and lanes thereon. The primary parking area shall be the parking lot, and parking in the grassy areas adjacent to the Facility. The parties agree to use reasonable efforts to encourage patrons to park accordingly. The Team shall be responsible for repairing any damage to the grassy areas adjacent to the Facility caused by patrons of the Facility parking in such areas.
- 20) Outside vendors who would like to set up for special events (tournaments, camps, etc.) are required to work with Osborn Ball Association in accordance with the terms and conditions, if any, of this Agreement.
- 21) If the Team engages in, or attempts to engage in, any activity other than that specifically granted to them under this Agreement, the Team will cease and desist from such activity upon receipt of written notice from the City.

SECTION 3. SCHEDULE:

The Team's schedule will start on April 1 and end on July 31 each year. This will result in the Team having a (4) four month long season each year that the Agreement is in effect.

SECTION 4. ORGANIZATION:

The Team shall be organized as a registered association that is administered to by a Board of Directors, elected by its users, which shall have full authority to set all policies, rules and regulations of said organization; said policies, rules and regulations shall be set out in its By-Laws.

SECTION 5. TERM

The term of this Agreement shall be effective from April 1, 2017 through March 31, 2018; unless terminated earlier, as provided. Thereafter, so long as the Team is performing all of its obligations under this Agreement, the City shall renew, by Resolution of the City Council, this Agreement for additional one-year terms under the same terms and conditions.

SECTION 6. FACILITY USE FEE

The City of Osborn will waive the facility use fee for the Osborn Ball Association for each baseball season.

SECTION 7. REVIEW AND MODIFICATION

The City and the Team may review and, if desirable, revise this Agreement in a manner that is mutually satisfactory to the City and the Team, at any time. No change or addition to, or deletion of, any portion of this Agreement shall be valid or binding upon the parties hereto unless the same is approved in writing and signed by each of the parties

SECTION 8. CANCELLATION OR TERMINATION

This Agreement shall govern all transactions between the parties until cancelled or terminated by the City or the Team. It is agreed that either party shall have the right to cancel or terminate this Agreement at any time upon thirty (30) days' prior written notice by certified mail, or by personal delivery, to the other party. Notwithstanding the foregoing, once the Team has commenced a season of games, this Agreement shall not be terminated prior to the conclusion of such season.

SECTION 9. SURRENDER AND POSSESSION

No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The Team hereby agrees that at the expiration date of the term of this Agreement, or at the earlier termination thereof, it will peaceably surrender possession of the Facility, the key to all locks, in good condition, reasonable wear and tear and acts of God excepted, and the City shall have the right to take possession of the Facility, with or without due process of law.

SECTION 10. SEPARATE PROPERTY OF TEAM

During the term of this Agreement, The Team may install, keep and maintain certain supplies and items of equipment on and in the Facility in which the City shall have no property interest ("the

Team's Separate Property"). The Team's Separate Property shall not be considered part of the Facility and may be removed at any time provided that the Team repairs any damage to the Facility caused by such removal.

SECTION 11. INSURANCE

- A. This Agreement is conditioned upon The Team providing the City Clerk with evidence that it has a policy for general liability insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence as required by law, for the term of the Agreement. The general liability policy shall contain an endorsement naming the City of Osborn, Missouri as an additional insured, covering any and all claims arising out of this Agreement.
- B. The City only maintains blanket property insurance for its property, thus the Team should maintain insurance for its own property.

SECTION 12. ADJUSTMENT OF CLAIMS

The Team shall provide for the prompt and efficient handling of all claims arising out of this Agreement.

SECTION 13. INDEMNIFICATION

- A. The Team agrees to indemnify and save harmless the City, its City Council, and its officers, agents and employees from and against any and all loss or damage to property of third persons, or injuries to, or death of, any person or persons, and from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind whatsoever, in any way resulting from, or arising out of, the acts or omissions of officers, employees and volunteers of the Team in connection with this Agreement.
- B. To the extent permitted by law, the City agrees to indemnify and save harmless the Team, its officers, agents and employees from and against any and all loss or damage to property of third persons, or injuries to, or death of, any person or persons, and from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind whatsoever, in any way resulting from, or arising out of, the acts or omissions of officers and employees of the City pursuant to the City's ownership responsibilities of the Facility in connection with this Agreement.

SECTION 14. AMENDMENTS

It is understood that this Agreement shall not be amended, except by Ordinance of the Board of Alderman of the City of Osborn, Missouri.

SECTION 15. COMPLIANCE WITH APPLICABLE LAWS

The Team shall comply with all applicable laws, ordinances, rules and regulations.

SECTION 16. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, whether verbal or written, are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

SECTION 17. GOVERNING LAW

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Missouri, both as to interpretation and performance.

SECTION 18. NO IMPLIED WAIVERS

The right of any party under any provision of this Agreement shall not be affected by its prior failure to require the performance by the other party under such provision or any other provision of this Agreement, nor shall the waiver by any party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself. A waiver of any right or obligation hereunder must be in writing and signed by the parties to this Agreement.

SECTION 19. NO PERSONAL LIABILITY

No councilmember, director, officer, employee or other agent of either party shall be personally liable under, or in connection with, this Agreement.

SECTION 20. USE AND CARE OF CITY PROPERTY

No activities will be allowed that might cause damage to the Facility, or property location in the general vicinity of said Facility. At the conclusion of the Team's season, the Facility, or property located in the general vicinity of said Facility, shall be left in substantially the same condition it was in prior to the Team's season, including, but not limited to, removal of all trash. If damages occur to the Facility, or property located in the general vicinity of said Facility, as a result of the Team's season, including, but not limited to, damages to the grounds (grass, trees, etc.). The Team agrees to take all steps necessary to restore the same to the condition they were in prior to the softball season, or, in the alternative, to reimburse the City for its cost (labor and materials) associated with doing so.

SECTION 21. NOTICES

Except as otherwise expressly provided herein, all notices required to be given to the City hereunder shall be in writing and shall be sent to the City Clerk, City of Osborn, 151 W Georgie, P.O. Box 67, Osborn, Missouri, 64474; all notices, demands and requests by the City to the Team shall be sent to the Osborn Ball Association.

SECTION 22. SEVERABILITY

It is further understood and agreed by the parties that if any part, term or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State where made, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

SECTION 23. SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, subleases and assigns of the respective parties hereto.

SECTION 24. TITLE TO SITE

The Facility from the date hereof, until the termination of this Agreement, shall be owned in fee simple by the City, or in such lesser estate as, in the opinion of the City's Attorney, is sufficient to permit the licensing or letting thereof by the City as herein provided, for the full term provided in this Agreement.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement this 14th day of March, 2018.

CITY OF OSBORN, MISSOURI

David E. Meek, Mayor

A T T E S T:

Jody Barlow, City Clerk

OSBORN BALL ASSOCIATION

A T T E S T:

APPROVED AS TO FORM:

Ed Proctor, City Attorney