

INDIAN RIVER COUNTY BALLFIELDS BULK RENTAL AGREEMENT

THIS PARK BALLFIELDS RENTAL AGREEMENT (hereinafter "Agreement") is entered into as of the _____ day of _____, _____ (hereinafter "Effective Date") by and between Indian River County, Florida, a political subdivision of the State of Florida ("County") and _____ a not for profit organization ("Organization").

WHEREAS, the County owns and maintains the baseball fields throughout the County (hereinafter the "Ballfields") in Indian River County, Florida; and

WHEREAS, the use of the Ballfields is otherwise free to those who use the field without a reservation on a first come first served basis; and

WHEREAS, the County charges various reservation fees for the use of the Ballfields including field and light charges. The standard fee is \$20 per hour / per field and light charges at \$20 per hour/per field (the "Standard Rental Rate"); and

WHEREAS, the Organization is a not-for-profit organization dedicated to the development of sports teams in Indian River County; and

WHEREAS, instead of making individual reservations, the Organization would like to reserve a block of time for the use of a field over the course of 1 year, which will provide the County with a guaranteed source of revenue from the use of the Ballfields; and

WHEREAS, in order to incentivize the mutually acceptable terms of this Agreement, the Organization will rent the Ballfields for a total of not less than 300 hours annually;

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits, undertakings and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Adoption of "Whereas" Clauses. The above recitals are true and correct and are incorporated herein.

Section 2. Term. The term of this Agreement shall be for one year, commencing on the Effective Date and terminating one year after the Effective Date.

Section 3. Rental Fees for the Ballfields. Rental fees due for use of the Ballfields shall be billable at the rate of \$10 per hour / per field and \$10 per hour for lights (The "Adjusted Rental Rate"). All rent due shall be due in advance reservation. At the beginning of each quarter, the County will provide an invoice to the Organization for the following quarter's rent. The Organization will have five business days to pay the invoice. Cancellations shall be confirmed at least 5 days in advance to avoid being charged, except that cancellations due to inclement weather, including but not limited to rain, lighting or unfit conditions of the Ballfield, shall credited toward future use but shall not survive the expiration of this Agreement. .

Regardless of actual usage or cancellation, annually the Organization shall pay for a minimum of 300 hours of field usage.

Section 4. Non-Exclusive Use of the Ballfields. Reservations made pursuant to this agreement are subject to availability as determined by the County in the best interest of equitably balancing competing demands for ball field reservations including those previously reserved under separate but prior agreements. The Organization shall have the exclusive reservation of the Ballfields on (days) _____ between the hours of _____ or as otherwise reserved subject to availability. At all other times, the Ballfields shall remain available for reservation by the public at the Standard Rental Rate. The Ballfields shall remain open to the public during unreserved time periods free of charge on a first come, first served basis.

Section 5. Lining and Dragging the Ballfields. The County lines and drags the Ballfields as part of the routine maintenance of the Ballfields.

Section 6. Advertisement at Baseball Fields Fences. The Organization shall be entitled to obtain revenue from any advertising the Organization secures at the Ballfields. Such advertising shall be limited to banners or signs which are displayed on the inside portion of the outfield fences. Any banners or signs must be approved by the County Recreation Manager prior to display. All signage must comply with any requirements set forth in Chapter 956 of the Indian River County Code of Ordinances, if applicable. The Organization shall pay the County 10% of any revenue earned from advertisement at the Ballfields as set forth in this section. Such payments shall be made to the County quarterly and in addition to the total rent due as set forth in section 3 above.

Section 7. Organization Equipment Storage. The Organization shall have the right to store equipment at the Ballfields, subject to approval by the County Recreation Manager or his Designee. The Organization will be responsible for providing its own storage facilities for such equipment. The Organization shall solely be responsible for any damage or loss of such equipment stored at the Ballfields.

Section 8. Insurance Requirements. Upon the Effective Date of this Agreement, the Organization shall provide the County with evidence of insurance, including commercial general liability, and if applicable, automobile liability and workers' compensation, for all of its organized baseball teams. If the Organization adds any additional organized baseball teams, the Organization shall provide such evidence within 14 days of such addition. If children will be supervised in connection with use of the Ballfields, sexual molestation liability insurance will also be required. All insurance, with the exception of workers' compensation, will name the County as additional insured.

Discretionary Authority – Depending upon the nature of any aspect of the use of the Ballfields and its accompanying exposures and liabilities, the County may, at its sole discretion, require additional insurance coverages or specific coverage amounts, which may or may not require that the County also be named as an additional insured.

Section 9. Liability and Indemnification. The County shall in no way be liable or responsible for any accident or damage that may occur in conjunction with any of the activities described in this Agreement. The Organization shall defend, hold harmless and indemnify the County with respect to any and all actions, causes of action, liabilities, losses, damages or expenses

(including reasonable attorneys' fees) arising out of or relating to any negligence, intentional misconduct, breach of this Agreement or breach of applicable law by the Organization in conjunction with any of the activities described in this Agreement. This section 9 shall survive the termination of this Agreement with respect to any acts or omissions occurring prior to the date of termination.

Section 10. Assignment. The Organization shall not transfer, assign, or sublet this Agreement, or any portion thereof, to any third party without the express written approval of the County, which approval may be granted or withheld in its sole discretion.

Section 11. Termination. Either party may terminate this Agreement if the other party fails to comply with a term of the Agreement. The terminating party shall notify the other party of the decision to terminate this Agreement at least 30 days before the effective date of termination. The party in default may avoid termination by correcting the default to the satisfaction of the other party prior to the effective date of termination stated in the notice. The County reserves the right to terminate this Agreement following 60 days' notice of the County's intent to proceed with any renovation, improvement, or construction project to the Ballfields that will substantially interfere with the use and enjoyment by the Organization of the Ballfields (the "Suspension Period"). Any prepaid ball field reservation fees following termination of this Agreement shall be promptly refunded to the Organization.

Section 12. Ballfield Rules Apply. Unless otherwise stated herein, the Organization shall comply with all of the rules and regulations contained within the Indian River County Recreation Department Athletic Field Permit Application, attached hereto as Exhibit "A".

Section 13. Miscellaneous.

A. Time of the Essence. Time is of the essence in the performance of each and every provision of this Agreement.

B. Force Majeure/Emergency. Any non-performance of the terms or conditions of this Agreement caused by or resulting from an event of Force Majeure (as defined below) shall not constitute a violation or event of default. For the purposes of this Agreement, the term "Force Majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, explosions, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tropical storms, floods, tornadoes, restraints of governments, civil disturbances, unavoidable breakage of machinery or equipment, enactment of applicable laws prohibiting performance, and other such causes not within the reasonable control of the party claiming the occurrence of an event of Force Majeure.

C. No Waiver. The failure of either party to enforce any provision of this Agreement, or the waiver thereof, in any specific instance by either party shall not be construed as a general waiver or relinquishment on its part of such provision in any other instance, and such provision shall nevertheless remain in full force and effect.

D. Binding Affect; Severability. All of the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties. If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby.

E. Governing Law; Venue; Attorney Fees. This Agreement shall be construed, governed and interpreted according to the laws of the State of Florida. Venue for resolution of any dispute shall be in Indian River County, Florida. Each party shall bear its own attorney fees in any dispute arising under this Agreement.

F. Entire Agreement; Amendments. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by written amendment or other appropriate written document. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

G. Construction/Interpretation of Agreement. Each party has participated equally in the negotiation and drafting of this Agreement. In the event that an arbitration panel or court is required to interpret any provision of this agreement, the provision shall not be interpreted for or against either party upon the basis that such party was or was not the preparer of this Agreement.

H. Sovereign Immunity. Nothing herein shall constitute a waiver of the COUNTY'S sovereign immunity.

I. Waiver of Jury Trial. EACH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CAUSE OF ACTION OR ISSUE ARISING OUT OF OR RELATING TO THIS AGREEMENT.

J. Emergency County Use. In an emergency declared by the appropriate authorities under Chapter 252, Florida Statutes, the County reserves the right to use the

Ballfields as a part of its emergency response and recovery operation as long as reasonably necessary in the County's opinion.

K. No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement is solely for the benefit of the named parties, and no enforceable right or cause of action shall accrue hereunder to or for the benefit of any entity or individual not a named party hereto.

L. Notices. Any notice required hereunder shall be in writing and shall be delivered by personal delivery, courier, express or overnight mail, or certified mail, return receipt requested, addressed to the appropriate party as follows:

If to County

Assistant County Administrator or designee
Indian River County
1801 27th Street
Vero Beach, Florida 32960

If to the Organization

Name/dba/Organization Name
Printed Name and Title
Address
Vero Beach, FL 32968

M. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

IN WITNESS THEREOF, the parties have set their hands and seals the date entered below.

(NAME / dba / Organization)

**Owner
Board of County Commissioners
Indian River County, Florida**

By: _____
(signature)

By: _____
Michael C. Zito or designee
Assistant County Administrator

(Printed name)

(Printed title)

Date: _____

Date: _____