

## LEASE AGREEMENT

This LEASE AGREEMENT (LEASE), entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the Board of Education of the Columbus City School District (LESSOR), and the City of Columbus, Ohio (LESSEE).

WHEREAS LESSOR and the LESSEE share a commitment to provide safe playgrounds and recreation areas for residents of the City of Columbus, and

WHEREAS, The Columbus Building Safe Playgrounds and Neighborhoods Program was formed to identify locations and funding for areas with inadequate playground facilities, and

WHEREAS, playgrounds located at Broadleigh Elementary School and Northtowne Elementary School have been identified as those with the most immediate need by the Columbus Building Safe Playgrounds and Neighborhoods Program, and

WHEREAS, LESSOR in consideration of LESSEE's promise to make certain improvements to the Premises is willing to grant the below described Premises to LESSEE for use as a city park when the Premises are not in use during school hours;

NOW, THEREFORE in consideration of the mutual covenants and obligations set forth herein LESSOR and LESSEE hereby agree as follows:

1. PREMISES. Upon and subject to the terms and conditions hereinafter set forth, this LEASE shall cover the playgrounds located at LESSOR's Northtowne and Broadleigh Elementary Schools, the "Premises" and as outlined in Exhibit A.

2. TERM. The "LEASE Term" shall commence upon the completion of the construction of the Improvements as defined and described in paragraph 4 hereof and shall expire on the fifteenth anniversary of the commencement date. The Commencement Date shall be the earlier of the substantial completion of the contract for the construction of the Improvements which date shall be set forth in a written notice by LESSEE to LESSOR, provided, or April 15, 2006. Prior to commencement of the LEASE Term, upon execution hereof, LESSOR hereby grants to LESSEE, its agents and assigns, the irrevocable right to enter the Premises during all hours, including school hours, for the purposes of designing and construction the Improvements so long as such entry does not unreasonably interfere with school operations.

3. USE. Subject to the right of entry in paragraph 2 above, LESSOR reserves the exclusive right to possession of the Premises during normal school hours. At all times other than normal school hours LESSEE may possess, occupy and use the Premises during the LEASE Term as a public park and such ancillary uses during such hours of operation as determined by LESSEE. LESSOR shall provide the LESSEE annually notice of its normal school hours.

4. ALTERATIONS AND IMPROVEMENTS. As set forth in the attached Exhibit B, LESSEE, at its sole expense, shall have the right to construct playground structures, safety surfacing, landscaping, lights and other public park type amenities, hereinafter collectively referred to as "Improvements" on the Premises, subject to LESSOR's approval, which shall not be unreasonably withheld. Provided, however nothing contained herein shall be construed to obligate LESSEE to construct said improvements. In the event LESSEE has not entered upon the Premises to commence construction prior to April 15, 2006 LESSOR may elect to terminate this LEASE. In such event LESSOR's sole remedy shall be termination of this LEASE and LESSOR shall not be entitled to any damages arising from LESSEE's failure to construct the Improvements.

5. RENT. Construction of the Improvements shall constitute prepaid rent for the LEASE Term.

6. MAINTENANCE AND REPAIR. Upon completion of the Improvements and commencement of the LEASE LESSOR, at its sole expense, shall take, keep and maintain all portions of the Premises, including the Improvements thereon, in good order, condition and repair in a safe condition and replace to the same when necessary. LESSEE shall have no obligation to make repairs or replacement rendered necessary by LESSOR's breach of this covenant. Furthermore, LESSEE shall be under no obligation to inspect the Premises and the Improvements to determine LESSOR's compliance with this covenant.

7. SIGNS. Subject to LESSOR's approval, which shall not be unreasonably withheld, LESSEE may install signs at the entrance to the Premises indicating the hours of operation as a public park.

8. DEFAULT BY LESSOR. It shall be a default and breach of this LEASE by LESSOR if it fails to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this LEASE for a period of thirty (30) days after written notice thereof by LESSEE, provided, however, that if the term, condition, covenant or obligation to be performed by LESSOR is of such nature that the same cannot be reasonably performed with such thirty (30) day period, such default shall be deemed cured if LESSOR commences such performance with said thirty (30) day period and thereafter diligently undertakes to complete the same.

9. REMEDIES OF LESSEE. Upon the occurrence of any event of default by LESSOR, LESSEE shall have the right, but not the obligation, after notice to LESSOR and a reasonable period for LESSOR to cure such default, to cure any default by LESSOR, in which event LESSOR shall reimburse LESSEE for any costs and expenses which LESSEE may incur to cure such default.

10. QUIET ENJOYMENT AND WARRANTY OF TITLE LESSOR warrants that it is lawfully seized of and in possession of the Premises and agrees that if the LESSEE performs all of the covenants, obligations and agreements herein stipulated

to be performed on the LESSEE's part, the LESSEE shall have the peaceable and quiet enjoyment and possession of said Premises during the term hereof without any manner of hindrance from the LESSOR or any other person lawfully claiming through the LESSOR.

11. NOTICE. Any notice required by this LEASE to be given by either LESSOR or LESSEE to the other shall be in writing, sent by certified mail, return receipt requested and deemed to be given when deposited in the United States mail, postage prepaid, addresses to LESSOR or LESSEE at their respective addresses as follows:

If to LESSOR: Capital Improvements Office  
Columbus Public Schools  
270 East State Street  
Columbus, OH 43215

or at such other address as LESSOR may give notice of to LESSEE.

If to LESSEE: Executive Director  
Department of Recreation and Parks  
90 West Broad Street  
Columbus, OH 43215

or at such other address as LESSEE may give notice of to LESSOR.

12. HEADINGS. It is understood and agreed that the headings of the various Sections of this LEASE have been inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this LEASE or any of its provisions. The singular number and gender of personal pronouns as used throughout this LEASE shall be construed to mean such number and gender of personal pronouns as the context, circumstances or its antecedent may require.

13. SUCCESSIONS AND ASSIGNS. Any term, covenant or condition of this LEASE which inures to the benefit of or is binding upon LESSOR shall also inure to the benefit of and be binding upon the successors and assigns of LESSOR. Any term, covenant or condition of this LEASE Agreement which inures to the benefit of or is binding upon LESSEE shall also inure to the benefit of and be binding upon the successors and assigns of LESSEE.

14. ENTIRE AGREEMENT. This LEASE and the Exhibits hereto constitute the entire agreement between LESSOR and LESSEE in respect of the subject matter thereof and this LEASE supersedes all prior and contemporaneous LEASE and agreements, if any, between LESSOR and LESSEE in connection with the subject matter of this LEASE. This LEASE may be modified only in writing, signed by both LESSOR and LESSEE.

15. WAIVER. No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this LEASE or to exercise any right or remedy contingent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, condition, agreement, and the

term of this LEASE shall continue in full force and effect with respect to any other then existing or subsequent breach.

16. RELATIONSHIP OF LESSOR TO LESSEE. Nothing contained in this LEASE shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between LESSOR and LESSEE.

17. GOVERNMENTAL REGULATIONS. LESSOR at its sole cost and expense shall comply with all applicable laws, and regulations of the Government of the United States, State of Ohio, and ordinances of general application of the City of Columbus with respect to the use, occupancy, construction, or maintenance of the Premises and the Improvements.

18. GOVERNING LAW. This LEASE shall be governed and construed in accordance with the laws of the State of Ohio. Any legal action arising out of this LEASE shall be brought in a court of competent jurisdiction in Franklin County, Ohio.

19. SEVERABILITY. If any provisions of this LEASE or any application thereof shall be invalid or unenforceable, the remainder of this LEASE and any other application of such provision shall not be affected thereby.

20. NON-DISCRIMINATION. During the term of this LEASE, LESSEE shall operate the Premises without discrimination as to race, creed, color, age, sex, religion, national origin, sexual orientation, Vietnam veteran's status, or disability with respect to its employees, vendors, contractors, business invitees, and guests.

LESSOR:

THE BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOL DISTRICT

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Stephanie Hightower, President

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Michael Kinneer, Treasurer

LESSEE:

CITY OF COLUMBUS, OHIO

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Wayne A. Roberts, Executive Director  
Per Ordinance No 1744-2005

STATE OF OHIO )  
COUNTY OF FRANKLIN) SS:

In the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the subscriber, a Notary Public in and for said county, personally came \_\_\_\_\_, President of the Board of Education of the Columbus City School District, and acknowledged the signing of the foregoing LEASE on behalf of said municipal corporation to be his/her free and its voluntary act and deed.

(seal)

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
COUNTY OF FRANKLIN) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the subscriber, a Notary Public in and for said county, personally came \_\_\_\_\_, Treasurer of the Board of Education of the Columbus City School District, and acknowledged the signing of the foregoing LEASE on behalf of said municipal corporation to be his/her free and its voluntary act and deed.

(seal)

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
COUNTY OF FRANKLIN) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the subscriber, a Notary Public in and for said county, personally came Wayne A. Roberts, Executive Director of Recreation and Parks Department of the City of Columbus, and acknowledged the signing of the foregoing LEASE on behalf of said municipal corporation to be his free and its voluntary act and deed.

(seal)

\_\_\_\_\_  
Notary Public