

LEASE AGREEMENT

This LEASE AGREEMENT (“AGREEMENT”) entered on _____, 2012, by and between the CITY OF COLUMBUS, OHIO (“LESSOR”), an Ohio municipal corporation, which is acting by and through its DEPARTMENT OF RECREATION AND PARKS, and FREDERICK F. CAMPBELL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF COLUMBUS, OHIO, on behalf of OUR LADY OF PEACE PARISH (“LESSEE”), an Ohio church (collectively “PARTIES”).

RECITALS

- A.** WHEREAS, Lessor, for the consideration and covenants stipulated to be paid and performed by Lessee, does lease to Lessee the following described real property, being part of KENNY PARK, which is located at 5201 DELAWANDA AVE, COLUMBUS, OH 43214, out of FRANKLIN COUNTY TAX PARCEL № 010-013366 (“PARK”, as depicted in the attachment, Exhibit “A”).
- B.** WHEREAS, the CITY OF COLUMBUS, OHIO, intends to provide renovations to improve the Park’s drainage and sports fields, which includes renovating the baseball fields backstops and extension of the infield, in the amount of approximately TWENTY-FIVE THOUSAND AND 00/100 U.S. DOLLARS (\$25,000.00) (collectively “IMPROVEMENTS”, as depicted in the attachment, Exhibit “B”);
- C.** WHEREAS, OUR LADY OF PEACE PARISH wishes to utilize the Park for U-18 youth soccer and baseball instruction, practice, education, and league play.
- D.** WHEREAS, consistent with the permitted uses identified in this Agreement and with Lessor’s prior written approval, OUR LADY OF PEACE PARISH may be permitted to coordinate use of the Park with WATTERSON HIGH SCHOOL and the NORTH COLUMBUS INTRAMURAL LEAGUE; however WATTERSON HIGH SCHOOL and the NORTH COLUMBUS INTRAMURAL LEAGUE shall be subject to and shall pay to Lessor all of Lessor’s applicable event fees;
- E.** WHEREAS, the CITY OF COLUMBUS, OHIO and OUR LADY OF PEACE PARISH agree to set forth in this Agreement their mutual rights and obligations with regard to the lease and use of the Park; and

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, Lessor and Lessee agree as follows:

- 1. TERM:** This Agreement shall be effective for a seasonal duration of seven (7) months commencing on MARCH 1st, 2012 and ending on NOVEMBER 30TH, 2012 (“SEASONAL TERM”).
- 2. RENEWAL:** This Agreement shall automatically renew up to ten (10) additional successive Seasonal Terms, unless Lessee provides Lessor with written notice of termination at least thirty (30) days prior to the expiration of the then current Seasonal Term.
- 3. CONSIDERATION:**
 - 3.1. As consideration for the non-exclusive use of the Park, Lessee shall pay an amount of no less than ONE THOUSAND AND 00/100 U.S. DOLLARS (\$1,000.00) per Seasonal Term for additional lawn mowing, grass seeding and fertilization, weed control, and litter cleanup of the Park.

- 3.2. Upon the conclusion of each Seasonal Term but by no later than DECEMBER 31ST, Lessee shall submit a detailed accounting to Lessor of all additional lawn mowing, grass seeding and fertilization, weed control, and litter cleanup performed during that Seasonal Term.
4. **ASSIGNMENT AND SUB-LEASE:** Lessee shall not enter into any lease, sublease, assignment, or agreement transferring any of this Agreement to any other entity or person use, control, supervision, or occupation of the Park without first obtaining written consent from Lessor, which consent may be denied for any reason.
5. **ENCUMBRANCES, TAXES, UTILITIES, AND ASSESSMENTS:**
- 5.1. Lessee shall not voluntarily or directly create, cause, or allow any other person or entity to create any debt, lien, mortgage, charge, or encumbrance against the Park.
- 5.2. Lessee shall pay to the appropriate authorities all applicable real estate taxes, assessments, or other charges levied against the Park by any public authority in connection with Lessee's use of the Park.
- 5.3. Lessee is responsible for payment of any utilities, including but not limited to water, sewer, gas, electric, storm water, telephone service, and other such utility services in connection with Lessee's use of the Park.
6. **USE, MAINTENANCE, OPERATION, AND CONTROL:**
- 6.1. This Agreement shall be limited to a nonexclusive seasonal duration from MARCH 1ST to NOVEMBER 30TH ("SEASONAL TERM")
- 6.2. Lessee shall use and occupy the Park's fields, as depicted on the attachment, Exhibit "A", only for U-18 youth soccer and baseball education, instruction, practice, leagues, and Lessee provide additional lawn mowing, grass seeding and fertilization, weed control, and litter cleanup for the Park's use.
- 6.3. Lessee shall not manufacture, sell, store, consume, use, distribute, allow, or permit the consumption of any drugs, alcohol, or any other illegal narcotics at the Park.
- 6.4. Lessee shall not permit the accumulation of rubbish, trash, garbage, and other refuse in and around the Park. Lessee shall be responsible for removing its own garbage, trash, and debris to a trash receptacle prescribed by Lessor before dark each Sunday. Lessee shall not, in whole or part, permit, commit, or suffer waste or impairment of the Park.
- 6.5. **Lessee shall not use the Park for any sectarian instruction or religious worship, and Lessee specifically agrees to use the Park nonexclusively for the secular purposes described in this Agreement.**
- 6.6. Lessee shall not discriminate because of race, color, sex, sexual orientation, religion, or national origin in any manner during Lessee's use, occupation, and improvement of the Park.
- 6.7. Lessee shall report as soon as possible, but no more than 24 hours, after the occurrence or discovery of any injuries, accidents, facility damage, dangerous or unsafe conditions, and any unusual or suspicious activity to Lessor.
- 6.8. All trade fixtures, furnishings, equipment and other personal property placed or maintained on the Park by Lessee shall be at Lessee's sole risk, and Lessor shall not be liable for any loss or damage to such property from any cause whatsoever.

- 6.9. For the duration of this Agreement, Lessee shall have no right to use or occupy any portion of the Park other than for the intended purposes stated in this Agreement.
- 6.10. Lessee shall take all reasonable and prudent steps to provide and assure the continued value and integrity of the Park. During Lessee's permitted use and occupancy, Lessee shall comply with all laws, ordinances, codes, and regulations applicable in the occupancy, maintenance, operation, and improvement of the Park.
- 6.11. Lessor will continue to provide for the Park's basic maintenance, which includes mowing the lawn at least once every three (3) weeks, emptying the Park's trash receptacles, and supplying at least (1) portable restroom facility (a.k.a. "PORT-A-JOHN") in the Park.

7. ALTERATIONS AND IMPROVEMENTS:

- 7.1. Consistent with Lessee's consideration to be paid under this Agreement, Lessee shall not make, or cause to be made, any other alterations, additions, or improvements to the Park, without first submitting written plans to Lessor prior to any Seasonal Term and obtaining Lessor's written approval of such plans.
- 7.2. Lessee shall not dig, excavate or erect any permanent or temporary structures upon the Park, except permitted to the extent contained in this Agreement or by written consent from the Lessor.
- 7.3. Lessee's anticipated improvements and upgrades to the Park shall be completed and performed to the satisfaction of Lessor and in a sound and workmanlike manner so as to conform to all applicable building and safety codes.
- 7.4. Pursuant to COLUMBUS CITY CODE SECTION 329.29.1(b), Lessee agrees that it will pay the prevailing wage rates when constructing the Improvements on the Park, in accordance with the limits, guidelines, and regulations set forth by the STATE OF OHIO, DEPARTMENT OF COMMERCE.

8. INDEMNITY, LIABILITY AND INSURANCE:

- 8.1. Lessee shall indemnify and hold harmless Lessor, its directors, representatives, employees, and attorneys, from and against (a) all claims of any persons including, without limitation, Lessee's employees, invitees, customers, suppliers, and shippers arising from Lessee's use or occupancy of the Park, or Lessee's business conduct or any other activity, work, or thing performed, done, permitted, or suffered in or about the Park; (b) any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Agreement; and (c) all costs, attorneys' fees, expenses, and liabilities incurred by Lessor in the defense of any claims or any actions or proceedings including costs of appeal, settlement, or defense. If any action or proceeding is brought against Lessor or any such other person by reason of any such claim, Lessee, upon notice from Lessor, shall defend Lessor at Lessee's expense. As a material part of the consideration of Lessor, Lessee assumes all risk of damage to property of Lessee or injury to persons in or about the Park arising from any cause indemnifiable by Lessee under this Agreement, Lessee Tenant waives all associated claims against Lessor. This indemnity shall survive the expiration or termination of this Agreement.

8.2. During the term and any subsequent renewal of this Agreement, Lessee shall, at Lessee's own cost, maintain in full force and effect comprehensive liability insurance coverage with a financially responsible company covering the Park. The insurance policy shall name Lessor as a co-insured, with limits of liability of not less than:

<u>BODILY INJURY LIABILITY:</u>	
EACH PERSON	\$ 500,000.00
EACH ACCIDENT	\$1,000,000.00

<u>PROPERTY DAMAGE LIABILITY:</u>	
EACH ACCIDENT	\$ 500,000.00
ALL ACCIDENTS	\$1,000,000.00

8.3. Lessee shall furnish a copy of the insurance policy to Lessor prior to execution of this Agreement. All instruments of insurance shall carry the requirement that the Lessor will be notified in writing thirty (30) days prior to the cancellation of any coverage for any reasons. Additionally, for the term of the Agreement, Lessor shall provide the PROPERTY MANAGER and DIRECTOR of the DEPARTMENT OF RECREATION AND PARKS a copy of the insurance policy showing Lessor as a named insured.

9. **INSPECTION OF PREMISE:** Lessor reserves the right to access and enter the Park at all reasonable times for any public purpose and to inspect and determine whether Lessee is complying with all terms of this Agreement.

10. **NOTIFICATION OF CLAIMS:** Lessor and Lessee shall give prompt and timely notice to one another of any claim for injury or otherwise made or suit instituted, which may directly, indirectly, contingently, or that otherwise affects or might affect Lessor or Lessor's rights and liabilities with respect to the Park.

11. **CONDITION, SURRENDER, AND HOLDOVER OF PARK:** Lessee shall have no right to occupy any portion the Park after the expiration or termination of this Agreement. Upon termination of this Agreement, whether by lapse of time or otherwise, Lessee shall at once surrender to Lessor all buildings and property belonging to Lessor in good order and condition, normal wear and tear accepted. Provided all payments due from Lessee have been paid in full, Lessee shall remove its property within ten (10) days after any this Agreement's termination, unless otherwise authorized by the DIRECTOR, RECREATION AND PARKS DEPARTMENT, and PROPERTY MANAGER. If Lessee does not surrender immediate possession of the Park's property and buildings, Lessor may re-enter and repossess the Park without being guilty of trespass or forcible entry and without incurring liability to Lessee for loss or damage to Lessee's property.

12. **DEFAULT:**

12.1. Lessee default's under this Agreement if Lessee violates any provision(s) of this Agreement for any reason and that violation is not be cured or remedied within thirty (30) days after Lessor provides notice of such violations.

12.2. In the event of Lessee's default, Lessor, at its sole option, may deem this Agreement terminated immediately upon expiration of the thirty (30) day period that Lessee had to cure or remedy such default. Lessor's right of termination shall be in addition to any other of its remedies and rights under this Agreement.

12.3. Upon the occurrence of Lessee's default and all subsequent defaults, Lessor shall have the right to terminate or institute any proceeding, action, or suit, in equity or at law, as Lessor deems appropriate against Lessee.

13. **NON-WAIVER:** No waiver of any covenant or condition or breach of any covenant or condition of this Agreement by Lessor shall constitute a waiver of any subsequent breach of any covenants or conditions or breach of any subsequent covenants or conditions of this Agreement.
14. **TERMINATION:** Parties may, any time during its term or any future renewal, terminate this Agreement by giving at least one hundred eighty (180) days written notice to the other party as described in this Agreement.
15. **GOVERNMENT REGULATIONS:** At Lessee's sole cost and expense, Lessee shall comply with all applicable laws and regulations of the government of the UNITED STATES, STATE OF OHIO, COUNTY OF FRANKLIN, and the CITY OF COLUMBUS with respect to Lessee's use, occupancy, or maintenance of the Park.
16. **SEVERABILITY:** If any terms or provisions of this Agreement are deemed invalid or unenforceable, then the remaining terms and provisions of this Agreement shall not be affected, but each term and provision of this Agreement shall be valid and enforced to the maximum extent permitted by law.
17. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the Parties, and any subsequent agreements shall be ineffective to change, modify, or discharge this Agreement, in whole or in part, unless such agreements are in writing, signed by Lessor and Lessee, and approved by Lessor and Lessee's appropriate authorities.
18. **APPLICABLE LAW, REMEDIES:** This Agreement shall be construed and enforced in accordance with the laws of the STATE OF OHIO. All claims, counterclaims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the COUNTY OF FRANKLIN, STATE OF OHIO.
19. **REMEDIES CUMULATIVE:** All rights and remedies of the Parties enumerated in this Agreement shall be cumulative, and, except as specifically contemplated otherwise in this Agreement, nothing in this Agreement shall exclude Lessor's any other right or remedy allowed at law or in equity, and Lessor's rights or remedies may be exercised and enforced concurrently.
20. **TIME OF ESSENCE:** Parties agree that *TIME IS OF THE ESSENCE* in this Agreement, and all provisions contained and relating to this Agreement shall be strictly construed.
21. **RELATIONSHIP OF PARTIES:** Parties understand and agree that no provision or any acts of Lessor or Lessee contained in this Agreement shall be deemed to create any relationship other than the relationship of Lessor and Lessee. Nothing contained in this Agreement shall be deemed or construed by Lessor or Lessee, nor by any third party, as creating any type of agency, partnership, or joint venture relationship between Lessor and Lessee.

22. **NOTICES:** Wherever in this Agreement it shall be required or permitted that notice or demand shall be given or served by either party to the other, then such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail to the Parties as addressed below:

LESSEE

LESSOR

CITY OF COLUMBUS, OHIO
DEPARTMENT OF RECREATION AND PARKS
1111 EAST BROAD STREET
COLUMBUS, OHIO 43205

with a copy to:

CHIEF REAL ESTATE ATTORNEY
REAL ESTATE DIVISION
DEPARTMENT OF LAW
109 NORTH FRONT STREET
COLUMBUS, OHIO 43215

*Either party may change such addresses from time to time by service of notices as provided above.

23. **RECORDING:** Parties do not intend to record this Agreement, but if either party finds it necessary or appropriate to record this Agreement, then the burden to record this Agreement in the appropriate county recorder in the STATE OF OHIO shall fall upon Lessee.
24. **EMINENT DOMAIN:** If any part of the Park shall be acquired or taken under threat of appropriation, by an appropriation proceeding, or by any other right of eminent domain, this Agreement will terminate from the time when possession of the Park is required for public use, and the taking will not operate or be deemed an eviction of Lessee or a breach by Lessor of the covenant of quiet enjoyment. Lessee shall pay all rent due under this Agreement and observe all other covenants until the required possession of the Park for public use.
25. **SURVIVORSHIP:** Notwithstanding the expiration of this Agreement's initial term or any subsequent renewal, all services executed pursuant to this Agreement shall be bound by all the terms and conditions set forth in this Agreement. Furthermore, parties intend for all terms, conditions, and warranties contained in this Agreement to survive any completion, performance, cancellation, or termination of this Agreement.
26. **FORCE MAJEURE:** In the event Lessor shall be delayed, hindered, or prevented from the performance of any obligation required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, failure of power, fire or other casualty, acts of God, restrictive governmental laws or regulations, riots, insurrection, war, or other reason not within the reasonable control of Lessor, then Lessor's performance of that obligation shall be excused and extended for an equivalent amount of time for the period of that delay.
27. **NUMBER AND GENDER:** When used in this Agreement, the singular number and neuter gender of each personal pronoun shall be construed to mean such number and gender as the context, circumstances or its antecedent may require.
28. **CAPTIONS:** The captions of the several sections of this Agreement are not made a part of this Agreement's context and shall be ignored in construing and interpreting this Agreement. All captions are intended only as aids in locating and reading the provisions of this Agreement.

29. **GOOD FAITH AND COOPERATION:** Parties shall execute and apply good faith and cooperation to all terms and conditions contained in this Agreement.

30. **AUTHORITY TO BIND:** The signatories of this Agreement represent that they have the authority to bind themselves and their respective organizations to this Agreement.

IN WITNESS WHEREOF, Lessor, by ALAN D. MCKNIGHT, DIRECTOR, DEPARTMENT OF RECREATION & PARKS, as authorized by COLUMBUS CITY COUNCIL ORDINANCE No _____, voluntarily caused the execution of this Agreement to be subscribed on _____, 2012.

CITY OF COLUMBUS, OHIO,
A MUNICIPAL CORPORATION

ALAN D. MCKNIGHT, DIRECTOR
DEPARTMENT OF RECREATION & PARKS

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBERED that on _____, 2012, this instrument was voluntarily acknowledged before me and signed by ALAN D. MCKNIGHT, DIRECTOR, DEPARTMENT OF RECREATION & PARKS, on behalf of Lessor, CITY OF COLUMBUS, Ohio, an Ohio municipal corporation.

(SEAL)

NOTARY PUBLIC

IN WITNESS WHEREOF, Lessee, by FREDERICK F. CAMPBELL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF COLUMBUS, OHIO, on behalf of OUR LADY OF PEACE PARISH, voluntarily caused the execution of this Agreement to be subscribed on _____, 2012.

FREDERICK F. CAMPBELL, BISHOP

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBERED that on _____, 2012, this instrument was voluntarily acknowledged before me and signed by FREDERICK F. CAMPBELL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF COLUMBUS, OHIO, on behalf of OUR LADY OF PEACE PARISH, an Ohio church.

(SEAL)

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY: (4/5/2012)
COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION
BY: USAMAH ABDULLAH, ASSISTANT CITY ATTORNEY
FOR: DEPARTMENT OF RECREATION AND PARKS, TINA MOHN
RE: KENNY PARK LEASE

EXHIBIT "A" (PG. 1/1)



EXHIBIT "B" (PG. 1/1)



