



RESOLUTION R-19-2023

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT AND ASSOCIATED OPERATING AGREEMENT WITH THE NEW ALBANY JOINT PARK DISTRICT TO FACILITATE THE CONSTRUCTION AND OPERATION OF A PICKLEBALL FACILITY AT BEVELHYMER PARK

WHEREAS, community interest in the sport of pickleball has increased dramatically in the past 5 years; and

WHEREAS, the community lacks adequate public facilities to meet the demand for pickleball play and residents must utilize private facilities or travel to neighboring cities in order to participate in the sport; and

WHEREAS, pickleball is a sport in which people of all ages and abilities can participate and, as such, promotes community health and wellbeing - one of the city's core pillars.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The city manager is hereby authorized and directed to execute a lease agreement with the New Albany Joint Park District for the lease of approximately 2.75 acres of land located at Bevelhymer Park to facilitate the construction and operation of a pickleball facility which shall include courts, a parking lot, and the necessary appurtenances to facilitate pickleball play.

Section 2. Said lease shall be in a form substantially similar to that which is attached hereto and identified as Exhibit A.

Section 3. The city manager is hereby authorized to enter into an associated operating agreement with the New Albany Joint Park District, should it be deemed necessary, to facilitate the operation of the pickleball facility.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 4 day of April, 2023.

Attest:




Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Benjamin S. Albrecht
Law Director

Legislation dates:	
Prepared:	03/23/2023
Revised:	03/30/2023 – Exhibit A
Introduced:	04/04/2023
Adopted:	04/04/2023
Effective:	04/04/2023

“PICKLEBALL COURTS” GROUND LEASE

LANDLORD:

NEW ALBANY PLAIN LOCAL JOINT PARKS DISTRICT
7860 Bevelhymer Road
New Albany, Ohio 43054

TENANT:

CITY OF NEW ALBANY, OHIO
P.O. Box 188
99 W. Main Street
New Albany, Ohio 43054

PREMISES:

2.75+/- Acres in Bevelhymer Park Adjacent to the Southwest Corner of the Public Service Complex between Detention Pond and Michael Lucey Basketball Courts

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GROUND LEASE

THIS GROUND LEASE (this "Lease"), is made this ____ day of April, 2023, (the Commencement Date") by and between the **New Albany Plain Local Joint Parks District** (hereinafter referred to as "Landlord" or "JPD"), with offices at 7860 Bevelhymer Road, New Albany Ohio 43054 and the **City of New Albany, Ohio** (hereinafter referred to as "Tenant" or "City"), an Ohio municipal corporation, with offices at 99 W. Main Street, New Albany Ohio 43054.

WITNESSETH:

WHEREAS, Landlord is the fee owner of a certain tract of real property containing approximately two and three quarter (2.75) acres in Bevelhymer Park, (hereinafter referred to as "the Premises") on which the City is constructing "Pickleball Courts" (hereinafter referred to "Pickleball Courts") which real property is more particularly described and depicted on Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, Tenant desires to lease the Premises from Landlord on which Tenant, and/or its agents and assigns will construct and maintain the Pickleball Courts; and

WHEREAS, Tenant shall further be responsible for the capital improvements and periodic maintenance of the Pickleball Courts, including resurfacing and striping the Pickleball Courts, maintenance of greenspace and parking lot, removal of trash and waste, installation and maintenance of bleachers and light fixtures, if any; on the Premises; and

WHEREAS, Landlord and Tenant intend to enter into an Operating Agreement to address the scheduling of the Pickleball Courts, fee structure and hours of operation; and

WHEREAS, Landlord is the owner of the Premises and is authorized to execute this "Ground Lease" pursuant to Resolution ____; and

WHEREAS, Tenant is authorized to execute this Ground Lease pursuant to Resolution R-19-2023; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

SECTION 1. PREMISES

Tenant shall be responsible for designing, constructing and making the necessary capital improvements of the Pickleball Courts on the Premises (hereinafter "the Improvements" as defined in Sections 4(a) and 4(b), herein) and Landlord does hereby lease unto Tenant, and Tenant hereby leases from Landlord, the Premises pursuant to the following terms.

Landlord expressly authorizes Tenant to enter the Premises for the purpose of designing, constructing and maintaining the Improvements.

SECTION 2. TERM

The initial term of this lease shall be for twenty (20) years from the Commencement Date. The term will be consummated upon Landlord's receipt of compensation in the amount of ten dollars (\$10.00) upon the effective date of this Lease.

It is expressly recognized that Tenant's design, construction and annual capital improvement costs associated with the maintenance of the Improvements on the Premises serve as additional consideration.

SECTION 3. RENEWAL OPTIONS

Provided Tenant has not substantially defaulted on any of the terms, provisions, or conditions to be performed by Tenant under this Lease, and unless Landlord provides Tenant with notice of non-renewal at least twelve (12) months prior to the expiration of the initial term, or any renewal terms, the terms of this lease shall renew individually for successive five (5) year terms, upon the same covenants and agreements as set forth herein.

SECTION 4. CONSTRUCTION OF IMPROVEMENTS

(a) Plans and Specifications. Tenant, its agents and/or assigns shall develop, or cause to be developed at its sole cost and expense, the Pickleball Courts (collectively, the "Improvements") on the Premises, all in accordance with the plans, specifications and a construction/phasing schedule (the "Plans") approved by Landlord in advance of construction. Construction of the Improvements may occur in phases as set forth in the construction/phasing schedule. Re-approval of plans and specifications for subsequent phases is not required, unless Tenant desires to propose material modifications to an approved phase and/or make additional improvements. Any such proposed material modifications to the Plans approved by Landlord, and/or proposed future improvements, shall be subject to the prior written approval of Landlord.

Tenant shall provide Landlord with the Plans for review and approval in a form reasonably acceptable to Landlord at least thirty (30) days in advance of the proposed construction start. Landlord agrees to review expeditiously the Plans and any subsequent proposed changes thereto upon receipt of the same from Tenant, and Landlord shall not unreasonably withhold approval of the Plans or changes, provided that such Plans are consistent with Landlord's design, planning standards and philosophy. Landlord reserves the absolute right to terminate this Lease if the Improvements are not developed according to the Plans.

(b) Upon delivery of the Premises to Tenant, Tenant shall commence preparing the Plans for the Improvements, seek approval therefore from both from the Landlord and, if mandated by existing covenants and restrictions contained in the chain of title, any appropriate board, or commission. Following receipt of all necessary approvals, Tenant shall diligently and reasonably

pursue constructing the Improvements, and shall supply such monies and perform such duties as may be necessary to complete the construction of the Improvements pursuant to and in accordance with the approved Plans. Tenant shall construct the Improvements, and any alterations thereto, in a good and workmanlike manner, in full compliance with all construction, use, building, zoning, health, environmental, and other similar requirements of any governmental entity having jurisdiction.

All such work shall be performed lien free by Tenant. In the event a mechanics' lien is filed against the Premises, Tenant shall discharge or bond off same within thirty (30) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same after inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant.

SECTION 5. USE AND OCCUPANCY

During the terms of the Lease, the Premises shall be used for public purpose and enjoyment, including but not limited to recreational activities, tournaments and leagues as may deemed appropriate by Tenant and Landlord consistent with the Operating Agreement of the Parties.

Landlord and Tenant will enter into an Operating Agreement addressing the operations of the Pickleball Courts, including but not limited to: terms of use; scheduling court time for open play, league play and tournament play; collection of fees; and, Landlord's management responsibilities related to the recreational activities, tournaments and leagues. In the event the parties are unable to agree upon the terms of an Operating Agreement, Tenant will maintain responsibility for said functions.

Tenant shall be responsible for the capital improvements associated with the Pickleball Courts. Capital Improvements may include: resurfacing the Pickleball Courts, installing/repairing/constructing bleachers or other seating arrangements and light fixtures, and/or any required annual capital improvement/maintenance. Further, Tenant shall be responsible for the daily maintenance and upkeep of the Pickleball Courts and adjacent parking lot, including maintaining trash and waste, the nets and/or greenspace.

In the event Landlord believes it is necessary for Tenant to make a capital improvement, it shall notify Tenant of the request as outlined in Section 7 below. Upon the request of Landlord, the parties agree to meet in order to discuss the proposed capital improvement.

Landlord and Tenant shall at all times conduct their operations on the Premises in a lawful manner. Further, Landlord and Tenant shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of all governmental authorities, now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or construction and alteration of the Premises. Landlord and Tenant shall comply with all requirements of the Americans with Disabilities Act, and shall be solely responsible for all alterations to the Premises in connection therewith.

Tenant shall not suffer or permit the Premises, or any portion thereof, to be used by the public without restriction, or in such manner as might tend to impair or otherwise cloud or encumber Landlord's title to the Premises, or any portion thereof, or to be used in such manner as may provide a basis for a claim or claims of prescription, adverse usage, or possession by the public or others, as such, or of an implied dedication of the Premises, or any portion thereof.

SECTION 6. NUISANCES

Tenant shall not perform any acts or carry on any practice that may injure the Premises, or be a nuisance or menace to the neighbors or the public.

During its day-to-day operations, Landlord shall not perform any acts, carry on any practice or permit the performance of any act that may injure the Pickleball Courts, or be a nuisance or menace to the neighbors or the public.

SECTION 7. ALTERATIONS

Tenant, at its option, may make alterations, repairs and/or additions to the Improvements as may be necessary for it to meet its obligations pursuant to this Lease. Tenant shall not make any structural alterations or additions to the Improvements without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld by the Landlord provided that such Plans are consistent with Landlord's design, planning standards and philosophy; provided, however, Landlord agrees not to withhold its consent and approval of such additions depicted as "future additions" on the conceptual drawings, attached hereto as Exhibit B and incorporated herein by reference, if proposed by Tenant.

When seeking the consent of Landlord, Tenant shall submit a written request and the Plans and Specifications for such alterations or additions to the Improvements to Landlord for its approval prior to the commencement of such work.

All such work shall be performed lien free by Tenant. In the event a mechanics' lien is filed against the Premises, Tenant shall discharge or bond off same within thirty (30) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same after inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant.

Notwithstanding anything in this Lease to the contrary, Tenant shall have the right, subject to full compliance with all Laws, at any time and from time to time during the Term, to reconstruct and/or replace all Improvements on the Premises and to demolish, raze, or otherwise remove same, so long as any action taken by Tenant shall be consistent with the terms and purpose of this Lease.

SECTION 8. UTILITIES

Tenant shall be responsible and pay for all public utility services rendered or furnished to the Premises during the term hereof, including, but not limited to, heat, water, gas, electric, telephone

service, and sewer services, together with all taxes, levies, or other charges on such utility services when the same become due and payable.

SECTION 9. PERSONAL PROPERTY

Tenant further agrees that all personal property, goods, and equipment of every kind or description that may at any time be in or on the Premises shall be at Tenant's sole risk, or at the risk of those claiming under Tenant, and that Landlord shall not be liable for any damage to said property or loss suffered by the use of the Premises, unless caused by the actions and/or omissions of Landlord, or its agents.

SECTION 10. SUBLEASE OR ASSIGNMENT

Tenant further covenants and agrees not to assign or sublet the Premises or any part of same unless approved by Landlord in writing.

SECTION 11. CONDEMNATION

Notwithstanding the foregoing, if, during the term of this Lease, there shall be taking or condemned for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain or by private purchase in lieu thereof ("Taking") of the entire Premises or any part thereof, the rights and obligations of Landlord and Tenant with respect to any condemnation award or consideration for any such transfer (such award or consideration being herein called "Condemnation Award") pursuant thereto and with respect to the Premises shall be as hereinafter set forth:

(a) In the event of a Taking of the entire Premises or so much of the Premises that, in the opinion of Tenant, it is not feasible to continue possession and operation of the remaining Premises, this Lease shall terminate twenty (20) days after notice from Tenant to Landlord of such election to terminate, and Tenant shall, upon Landlord's request, if made within thirty (30) days after such notice of termination, demolish all buildings on any part of the Premises not subject to the Taking, and Tenant shall grade the Premises to such condition as is reasonably acceptable to Landlord. The Condemnation Award attributed to the Premises shall be divided and paid as follows:

- (i) First, to Landlord in an amount equal to the "fair market value" of the land only, as of the date of Taking, assuming that there were no improvements thereon, the value of any improvements installed by the Landlord prior to or during the lease term, and any matching funding paid by or on behalf of the Landlord related to a grant; and if there is more Condemnation Award;
- (ii) Next, if additional funds remain after the payment set forth in Paragraph 11 (a) (i) (herein), to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term,
- (iii) Finally, any balance to the Tenant.

(b) In the event of a Taking of a part of the Premises and Landlord or Tenant does not give notice as provided for in paragraph (a) above that it is not economically feasible to continue the same use or uses, this Lease shall continue. The Condemnation Award attributed to the Premises shall be allocated and paid in the following sequence:

- (i) First, to Landlord in an amount equal to the fair market value of the land only taken as of the date of Taking, assuming that there were no improvements thereon, and if there is more Condemnation Award;
- (ii) Next, to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term; and if there is more Condemnation Award;
- (iii) Finally, the balance to Tenant.

(c) Notice of Condemnation. The party receiving any notice of the kinds specified above shall promptly give the other party notice of the receipt, contents, and date of the notice received. Landlord shall have full right and authority to conduct, or to direct the conduct of any such condemnation or settlement proceeding and to settle the same on terms acceptable to Landlord.

SECTION 12. FIRE AND CASUALTY INSURANCE

(a) Tenant, or its agents or assigns per Section 10 (herein), shall at all times during the term of this Lease carry fire, casualty, and extended coverage insurance on the Improvements in an amount equal to the full replacement cost thereof. Landlord shall be under no obligation to maintain insurance on any improvements on the Land.

(b) If the Premises shall be damaged, destroyed, or rendered untenable, in whole or in part, by or as the result or consequence of fire or other casualty during the term hereof, Tenant shall repair and restore all such items that are required to be insured by Tenant hereunder to a good tenable condition with reasonable dispatch.

(c) In the event the Premises, because of such damage or destruction, are not repaired and restored to a tenable condition with reasonable dispatch within one hundred eighty (180) days from the date of such damage or destruction, or such additional time period as may be reasonably required, provided that Tenant exercises due diligence in commencing and completing such restoration or repair, Landlord may, at its option but without any obligation to do so, either (i) terminate this Lease within sixty (60) days following such one hundred eighty (180) day period but prior to the repair and restoration of same by giving prior written notice to Tenant and thereupon Landlord and Tenant shall be released from all future liabilities and obligations under this Lease.

SECTION 13. TENANT'S REPAIRS

(a) Tenant shall maintain, repair, and replace (hereinafter collectively referred to in the noun and verb form as "repair"), at Tenant's expense, all and every part of the Premises that are required to be insured hereunder to keep same in good order, condition, and repair.

If Tenant fails to repair and maintain the Premises as required herein, Landlord may demand in writing that Tenant undertake and complete such repairs and maintenance within thirty (30) days from Landlord's notice to Tenant, unless such repairs and/or maintenance constitute an emergency, in which case such repairs and/or maintenance shall be undertaken and completed immediately.

(b) Tenant shall pay promptly when due the entire cost of repair in the Premises undertaken by Tenant so that the Premises shall at all times be free of liens for labor and materials arising from such work; to procure all necessary permits before undertaking such work; to do all of such work in a good and workmanlike manner, employing materials of good quality; to comply with all governmental requirements.

SECTION 14. COVENANT OF TITLE AND PEACEFUL POSSESSION

Subject to easements, conditions, covenants, restrictions, and reservations of record, zoning ordinances and legal highways, Landlord has good and marketable title to the Premises in fee simple and the right to make this Lease for the term aforesaid. Landlord shall put Tenant into complete possession of the Land in accordance with the provisions hereof, and if Tenant shall perform all the covenants and provisions of this Lease to be performed by Tenant, Tenant shall, during the term hereby demised, freely, peaceably, and quietly enjoy and occupy the full possession of the Premises free from actions by or through Landlord, subject, however, to Landlord's right to use the Premises set forth herein and to the other terms and conditions of this Lease.

SECTION 15. INSURANCE

(a) Casualty Insurance. Tenant shall carry such insurance against loss of its property in, on, or about the Premises by fire and such other risks as are covered by all risk and extended coverage property insurance or other hazards as Tenant deems necessary. As the following relates to this Section 15 (herein), Landlord shall not be liable for any damage to Tenant's property in, on, or about the Premises caused by fire or other insurable hazards regardless of the nature or cause of such fire or other casualty, unless caused by Landlord's negligence. Tenant expressly releases Landlord of and from all liability for any such damage. Tenant and Landlord agree that insurance policy or policies shall include a mutual waiver of "subrogation" recognizing this release from liability.

(b) Public Liability Insurance. Tenant and/or its successors and assigns set forth in Section 10 (herein) agrees to procure and maintain during the demised term a policy or policies of liability insurance, with blanket contractual coverage, written by a responsible insurance company or companies (which may be written to include the Premises in conjunction with other premises owned or operated by Tenant) insuring Tenant against any and all losses, claims, demands, or

actions for injury to or death of any one or more persons, including volunteers working under the direction of Tenant or Landlord or their respective agents or employees, and for damage to property in any one occurrence in the Premises to the limit of not less than \$3,000,000 and \$5,000,000 general aggregate policy limit arising from Tenant's conduct and operation of the Premises, \$500,000.00 limit for fire and legal liability, and \$1,000,000.00 limit for completed operations. Tenant shall furnish to Landlord certificates evidencing the continuous existence of such insurance coverage, which must also name Landlord as an additional insured. All insurance companies must be licensed to do business in the State of Ohio and have an "A" rating or better. Certificates of insurance will be provided at the time this Lease is executed and twenty (20) days prior to expiration of the policy. Certificates of insurance are to specify notification to Landlord of cancellation or termination of policy not less than ten (10) days prior to cancellation or termination.

(c) Miscellaneous Insurance. Tenant agrees to provide and keep in force at all times workers compensation insurance complying with the law of the State of Ohio, including coverage of volunteers, even if such coverage is voluntary under the laws of the State of Ohio. Tenant agrees to provide a certificate as evidence of proof of workers' compensation coverage.

With respect to any alterations or improvements by Tenant, Tenant shall maintain contingent liability and builder's risk coverage naming Landlord as an additional named insured. If Tenant hires contractors to do any improvements on the Premises, each contractor must provide proof of workers' compensation coverage on its employees and agents to Landlord.

SECTION 16. REAL ESTATE TAXES

In the event the Premises is no longer exempt from real estate taxes as a direct result of the actions of the Tenant, then Tenant shall pay any real estate taxes imposed upon the Premises during the term of this Lease, including any extensions or renewals thereof, unless said tax is the direct result of a Landlord Event or the actions of Landlord.

For the purpose of this Lease, the term "real estate taxes" shall include any special and general assessments, water and sewer rents, and other governmental impositions imposed upon or against the Premises of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the lease term be levied, assessed, or imposed upon or against such Premises and of all expenses, including reasonable attorney fees, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate taxes, minus any refund received by Landlord.

The real estate taxes for any lease year shall be the real estate taxes for the tax year terminating during said lease year. If any lease year shall be greater than or less than twelve (12) months, or if the real estate tax year shall be changed, an appropriate adjustment shall be made. If there shall be more than one taxing authority, the real estate taxes for any period shall be the sum of the real estate taxes for said period attributable to each taxing authority. If, upon the assessment day for real estate taxes for any tax year fully or partly included within the term of this Lease, a portion of such assessment shall be attributable to buildings in the process of construction, a fair and reasonable adjustment shall be made to carry out the intent of this section.

Tenant shall pay real estate taxes no later than the due date or, if the tax bill is delivered to Landlord by the taxing authority, thirty (30) days after receipt of a copy of the tax bill from Landlord.

Tenant shall be responsible for applying for and obtaining any available exemptions from real estate taxes, and Landlord shall cooperate with Tenant to obtain the same.

SECTION 17. SURRENDER

Except as otherwise set forth herein, tenant covenants and agrees to deliver up and surrender to Landlord the physical possession of the Premises upon the expiration of this Lease or its termination as herein provided that any and all improvements constructed by or on behalf of the Tenant after the Commencement Date shall be usable and in good order and repair as of the date of surrender.

Alternatively, at Landlord's sole and exclusive option, Tenant will cause the Improvements to be properly demolished and the Premises returned, as nearly as possible, to the condition which existed on the Commencement Date. In the event such requested demolition is not commenced in a reasonable time, Landlord may undertake such demolition subject to reimbursement of such demolition costs by the Tenant.

SECTION 18. HOLDING OVER

Any holding over after the expiration or termination of this Lease by Tenant shall be from day to day on the same terms and conditions at Landlord's option; and no act or statement whatsoever on the part of Landlord or his/her duly authorized agent in the absence of a written contract signed by Landlord shall be construed as an extension of the term or as a consent for any further occupancy.

SECTION 19. NOTICE

Whenever under this Lease provisions are made for notice of any kind to Landlord, it shall be deemed sufficient notice and sufficient service thereof if such notice to Landlord is in writing, addressed to Landlord at 7860 Bevelhymer Road, New Albany, Ohio, Attention: Director, and deposited in the United States mail by certified mail, return receipt requested, with postage prepaid or Federal Express, Express Mail, or such other nationally recognized expedited mail service as normally results in overnight delivery. Notice to Tenant shall be sent in like manner to; with a copy to 99 W. Main Street, P.O. Box 188, New Albany, OH 43054, Attention: City Manager. All notices shall be effective upon receipt or refusal of receipt. Either party may change the place for service of notice by written notice to the other party.

SECTION 20. DEFAULT

(a) Elements of Default. The occurrence of any one or more of the following events shall constitute a substantial default of this Lease by Tenant:

- (i) Tenant fails to maintain at all times all insurance required hereunder to be maintained.

- (ii) Tenant fails to perform or observe any other term, condition, covenant, or obligation required to be performed or observed by it under this Lease for a period of ninety (90) days after notice thereof from Landlord, unless stated otherwise in this Lease.
- (iii) Tenant refuses to take possession of the Premises at the delivery of possession date, vacates or abandons the Premises, or substantially ceases to carry on its reasonable community related activities on the Premises.
- (iv) A trustee or receiver is appointed to take possession of substantially all of Tenant's assets in, on, or about the Premises, or of Tenant's interest in this Lease (and Tenant does not regain possession within sixty (60) days after such appointment); Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on, or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within sixty (60) days thereafter).
- (v) A petition in bankruptcy, insolvency, or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute, and, with respect to any such petition filed against it, Tenant fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same.

(b) **Remedies.** Upon the occurrence of any event of substantial default after any applicable grace or cure period, Landlord shall have the following rights and remedies, any one or more of which may be exercised without further notice to or demand upon Tenant:

- (i) Landlord may re-enter the Premises and cure any substantial default of Tenant, in which event Tenant shall reimburse Landlord for any cost and expenses that Landlord may incur to cure such default plus interest at prime plus one (1%) percent per annum from the date such expense was incurred.
- (ii) Landlord may terminate this Lease or Tenant's right to possession under this Lease as of the date of such substantial default, in which event: (a) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises (including the Improvements thereon), and Tenant shall immediately thereafter surrender the Premises (including the Improvements thereon) to Landlord; and (b) Landlord may re-enter the Premises (including the Improvements thereon) and dispose Tenant or any other occupants of the Premises (including the Improvements thereon) by force, summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy that Landlord may have for possession or otherwise in law or at equity. Tenant shall remain liable for payment of all charges and costs

imposed on Tenant herein, in the amounts, at the times, and upon the conditions as herein provided.

- (iii) Upon termination of this Lease pursuant to this Section 20 (herein), Landlord may recover possession of the Premises (including the Improvements thereon) under and by virtue of the provisions of the laws of the State of Ohio, or by such other proceedings, including re-entry and possession, as may be applicable.
 - (iv) In the event of a breach by either party of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings, and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude either party from any other remedy, in law or in equity.
- (c) Additional Remedies and Waivers. The rights and remedies of Landlord and Tenant set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law and all such rights and remedies shall be cumulative. No action or inaction by Landlord or Tenant shall constitute a waiver of a default and no waiver of default shall be effective unless it is in writing, signed by the party waiving such default.

SECTION 21. WAIVER OF SUBROGATION

Landlord and Tenant, and all parties claiming under each of them, mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance coverage maintained or required to be maintained by the terms of this Lease on the Premises or in connection with activities conducted with the Premises, and waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies of insurance maintained or required to be maintained by the parties hereunder shall contain waiver of subrogation provisions so long as the same are available.

SECTION 22. LIABILITY OF LANDLORD: EXCULPATION

Except with respect to any damages resulting from the negligent, reckless, or willful misconduct of Landlord, its agents, or employees, or a breach of this Lease by Landlord, Landlord shall not be liable to Tenant, its Board, agents, employees, or users for any damages, losses, compensation, accidents, or claims whatsoever. Not inconsistent with the terms herein, it is expressly understood and agreed that nothing in this Lease contained shall be construed as creating any liability whatsoever against Landlord personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve, or sequester any property of Landlord, and that all personal liability of Landlord, to the extent permitted by law, of every sort, if any, is hereby expressly waived by Tenant, and by every person

now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises for the payment thereof.

SECTION 23. RIGHTS CUMULATIVE

Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies, and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies, and benefits or of any other rights, remedies, and benefits allowed by law.

SECTION 24. MITIGATION OF DAMAGES

Notwithstanding any of the terms and provisions herein contained to the contrary, Landlord and Tenant shall each have the duty and obligation to mitigate, in every reasonable manner, any and all damages that may or shall be caused or suffered by virtue of defaults under or violation of any of the terms and provisions of this Lease committed by the other.

SECTION 25. ENTIRE AGREEMENT AND JOINT PREPARATION

This Lease shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect. This Lease cannot be changed, modified, or discharged orally but only by an agreement in writing signed by the party against whom enforcement of the change, modification, or discharge is sought. This Lease has been negotiated by and between the parties and shall be deemed to be jointly prepared.

SECTION 26. BINDING UPON SUCCESSORS

The covenants, conditions, and agreements made and entered into by the parties hereto shall be binding upon and inure to the benefit of their respective successor and assigns.

SECTION 27. HAZARDOUS SUBSTANCES

During the term of this Lease, Tenant shall not suffer, allow, permit, or cause the generation, accumulation, storage, possession, release, or threat of release of any hazardous substance or toxic material, as those terms are used in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and any regulations promulgated thereunder, or any other present or future federal, state, or local laws, ordinances, rules, and regulations. Tenant shall indemnify and hold Landlord harmless, up to the maximum coverage amount of Tenant's insurance policies, from any and all liabilities, penalties, demands, actions, costs and expenses (including without limitation reasonable attorney fees), remediation and response costs incurred or suffered by Landlord directly or indirectly arising due to the breach of Tenant's obligations set forth in this Section. Such indemnification shall survive expiration or earlier termination of this Lease. At the expiration or sooner termination hereof, Tenant shall return the Land to Landlord in substantially the same condition as existed on the Commencement Date free of any hazardous substances in, on, or from the Premises.

Prior to any renovation or demolition activities containing any asbestos-containing materials or asbestos-containing building materials, as defined by federal, state, or local laws, ordinances, rules, and regulations, which are the responsibility of Tenant hereunder, or in connection with any renovation or demolition by Tenant, Tenant shall notify Landlord at least thirty (30) days prior to commencing such renovation or demolition. Such notification shall include the scope of work to be performed and the schedule of the renovation or demolition. Tenant shall be responsible for compliance with all applicable asbestos and environmental regulations for its own employees and any other persons under their control or direction, including but not limited to employee training.

SECTION 28. FORCE MAJEURE

If either party hereto shall be delayed or hindered in or prevented from the performance of any obligation required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, military or usurped power, sabotage, unusually severe weather, fire or other casualty, or other reason (but excluding inadequacy of insurance proceeds, financial inability, or the lack of suitable financing) of a like nature beyond the reasonable control of the party delayed in performing its obligations under this Lease, the time for performance of such obligation shall be extended for the period of the delay.

SECTION 29. HEADINGS

The headings are 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.

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

Signed and acknowledged
in the presence of:

Landlord:

NEW ALBANY PLAIN LOCAL JOINT PARKS
DISTRICT

Print Name: _____

By: _____

Its: _____

STATE OF OHIO :
 :ss.
COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by _____ of the New Albany-Plain Local Joint Parks District, for and on behalf of said District.

Notary Public



RESOLUTION R-20-2023

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE NEW ALBANY JOINT PARK DISTRICT TO FACILITATE THE EXPANSION OF BEVELHYMER PARK AND THE CONSTRUCTION OF A FIELDHOUSE WITHIN THE EXPANDED PARK

WHEREAS, the New Albany Joint Park District desires to construct a fieldhouse in order to provide for the recreational needs of the community; and

WHEREAS, the community has demonstrated its desire to have the New Albany Joint Park District construct a fieldhouse by virtue of its passage of a bond issue and operating levy for that purpose; and

WHEREAS, the New Albany Joint Park District lacks the necessary land on which to construct a fieldhouse and future playing fields within Bevelhymer Park; and

WHEREAS, the City of New Albany recently purchased approximately 73 acres of land adjacent to the Bevelhymer Park for the purpose of providing the community public grounds for additional opportunities for active and passive recreation; and

WHEREAS, the construction of a fieldhouse shall not interfere with the City of New Albany's use of the land recently purchased or unduly endanger the public.

NOW, THEREFORE, BE IT RESOLVED by Council for the city of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The city manager is hereby authorized to execute a lease agreement with the New Albany Joint Park District to facilitate the construction and operation of a fieldhouse on Parcel # 220-001355 fronting Bevelhymer Road.

Section 2. The city manager is hereby authorized to execute lot splits, lot combinations and any associated legal documents necessary to create a parcel of adequate size to accommodate a fieldhouse and associated facilities. It is anticipated that the lot will be approximately 30+/- acres in area.

Section 3. Said lease shall be in a form substantially similar to that which is attached hereto and identified as Exhibit A.

Section 4. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action

were in meetings open to the public, in compliance with Section 121 of the Ohio Revised Code, and further pursuant to Ohio General Assembly 133 – House Bill 197 effective March 27, 2020.


Section 5. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 4 day of April, 2023.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Benjamin Albrecht
Law Director

Legislation dates:	
Prepared:	03/24/2023
Revised:	03/30/2023 – Exhibit A
Introduced:	04/04/2023
Adopted:	04/04/2023
Effective:	04/04/2023

“FIELDHOUSE” GROUND LEASE

LANDLORD:

CITY OF NEW ALBANY, OHIO
P.O. Box 188
99 W. Main Street
New Albany, Ohio 43054

TENANT:

NEW ALBANY PLAIN LOCAL JOINT PARKS DISTRICT
7860 Bevelhmer Road
New Albany, Ohio 43054

PREMISES:

Approximately 30+/- Acres on Parcel # 220-001355 with Frontage on Bevehlymer Road

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GROUND LEASE

THIS GROUND LEASE (this "Lease"), is made this ____ day of April, 2023, (the Commencement Date") by and between the **City of New Albany, Ohio** (hereinafter referred to as "Landlord" or "City"), an Ohio municipal corporation, with offices at 99 W. Main Street, New Albany Ohio 43054 and the **New Albany Plain Local Joint Parks District** (hereinafter referred to as "Tennant" or "JPD"), with offices at 7860 Bevelhymer Road, New Albany Ohio 43054.

WITNESSETH:

WHEREAS, Landlord is the fee owner of a certain tract of real property containing approximately thirty (30) acres on Bevelhymer Road across from Bevelhymer Park and identified as Parcel ID # 220-001355, (hereinafter referred to as "the Premises") on which the JPD wishes to construct a "Fieldhouse" and associated facilities (hereinafter referred to "Fieldhouse") which real property is more particularly described and depicted on Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, Tenant desires to lease the Premises from Landlord on which Tenant, and/or its agents and assigns will construct and maintain the Fieldhouse; and

WHEREAS, Tenant shall further be responsible for the capital improvements, operation and periodic maintenance of the Fieldhouse; and

WHEREAS, Landlord wishes to facilitate the construction of the Fieldhouse for the benefit of the community through said Ground Lease; and

WHEREAS, Landlord is the owner of the Premises and is authorized to execute this "Ground Lease" pursuant to Resolution _____; and

WHEREAS, Tenant is authorized to execute this Ground Lease pursuant to Resolution _____;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

SECTION 1. PREMISES

Tenant shall be responsible for designing, constructing and making the necessary capital improvements of the Fieldhouse on the Premises (hereinafter "the Improvements" as defined in Sections 4(a) and 4(b), herein) and Landlord does hereby lease unto Tenant, and Tenant hereby leases from Landlord, the Premises pursuant to the following terms.

Landlord expressly authorizes Tenant to enter the Premises for the purpose of designing, constructing and maintaining the Improvements.

SECTION 2. TERM

The initial term of this lease shall be for forty (40) years from the Commencement Date. The term will be consummated upon Landlord's receipt of compensation in the amount of two hundred dollars (\$200.00) upon the effective date of this Lease.

It is expressly recognized that Tenant's design, construction and annual capital improvement costs associated with the maintenance of the Improvements on the Premises serve as additional consideration.

SECTION 3. RENEWAL OPTIONS

Provided Tenant has not substantially defaulted on any of the terms, provisions, or conditions to be performed by Tenant under this Lease, and unless Landlord provides Tenant with notice of non-renewal at least twelve (12) months prior to the expiration of the initial term, or any renewal terms, the terms of this lease shall renew individually for successive ten (10)-year terms, upon the same covenants and agreements as set forth herein.

SECTION 4. CONSTRUCTION OF IMPROVEMENTS

(a) Plans and Specifications. Tenant, its agents and/or assigns shall develop, or cause to be developed at its sole cost and expense, the Fieldhouse (collectively, the "Improvements") on the Premises, all in accordance with the plans, specifications and a construction/phasing schedule (the "Plans") approved by Landlord in advance of construction. Construction of the Improvements may occur in phases as set forth in the construction/phasing schedule. Re-approval of plans and specifications for subsequent phases is not required, unless Tenant desires to propose material modifications to an approved phase and/or make additional improvements. Any such proposed material modifications to the Plans approved by Landlord, and/or proposed future improvements, shall be subject to the prior written approval of Landlord.

Tenant shall provide Landlord with the Plans for review and approval in a form reasonably acceptable to Landlord at least thirty (30) days in advance of the proposed construction start. Landlord agrees to review expeditiously the Plans and any subsequent proposed changes thereto upon receipt of the same from Tenant, and Landlord shall not unreasonably withhold approval of the Plans or changes, provided that such Plans are consistent with Landlord's design, planning standards and philosophy. Plans and specifications for the construction of the Fieldhouse shall be provided to the City for approval which shall not be unreasonably withheld. In reviewing the plans and specifications, the City shall confirm the Fieldhouse does not interfere with its intended uses for the property, or unduly endanger the public. Landlord reserves the absolute right to terminate this Lease if the Improvements are not developed according to the Plans.

(b) Upon delivery of the Premises to Tenant, Tenant shall commence preparing the Plans for the Improvements, seek approval therefore from both from the Landlord and, if mandated by existing covenants and restrictions contained in the chain of title, any appropriate board, or commission. Following receipt of all necessary approvals, Tenant shall diligently and reasonably pursue constructing the Improvements, and shall supply such monies and perform such duties as

may be necessary to complete the construction of the Improvements pursuant to and in accordance with the approved Plans. Tenant shall construct the Improvements, and any alterations thereto, in a good and workmanlike manner, in full compliance with all construction, use, building, zoning, health, environmental, and other similar requirements of any governmental entity having jurisdiction.

All such work shall be performed lien free by Tenant. In the event a mechanics' lien is filed against the Premises, Tenant shall discharge or bond off same within thirty (30) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same without inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant.

SECTION 5. USE AND OCCUPANCY

During the term of this Lease, the Premises shall be used for public purpose and enjoyment, including but not limited to recreational activities, tournaments, and leagues as may be deemed appropriate by Tenant.

Tenant shall keep the Facility in good repair and be responsible for the ongoing regular maintenance of the Fieldhouse at no expense to the Owner.

In the event Landlord believes it is necessary for Tenant to make a capital improvement to the Fieldhouse in order to maintain its appearance, function or structural integrity, it shall notify Tenant of the request as outlined in Section 7 below. Upon the request of Landlord, the parties agree to meet in order to discuss the proposed capital improvement.

Tenant shall at all times conduct its operations on the Premises in a lawful manner. Further, Tenant shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of all governmental authorities, now in force or which may hereafter be in force, which shall impose any duty upon Tenant with respect to the use, occupancy, or construction and alteration of the Premises. Tenant shall comply with all requirements of the Americans with Disabilities Act, and shall be solely responsible for all alterations to the Premises in connection therewith.

Tenant shall not suffer or permit the Premises, or any portion thereof, to be used by the public without restriction, or in such manner as might tend to impair or otherwise cloud or encumber Landlord's title to the Premises, or any portion thereof, or to be used in such manner as may provide a basis for a claim or claims of prescription, adverse usage, or possession by the public or others, as such, or of an implied dedication of the Premises, or any portion thereof.

SECTION 6. NUISANCES

Tenant shall not perform any acts or carry on any practice that may injure the Premises, or be a nuisance or menace to the neighbors or the public.

During its day-to-day operations, Landlord shall not perform any acts, carry on any practice or permit the performance of any act that may injure the Fieldhouse, or be a nuisance or menace to the neighbors or the public.

SECTION 7. ALTERATIONS

Tenant, at its option, may make alterations, repairs and/or additions to the Improvements as may be necessary for it to meet its obligations pursuant to this Lease. Tenant shall not make any structural alterations or additions to the Improvements without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld by the Landlord provided that such Plans are consistent with Landlord's design, planning standards and philosophy; provided, however, Landlord agrees not to withhold its consent and approval of such additions depicted as "future additions" on the conceptual drawings, attached hereto as Exhibit B and incorporated herein by reference, if proposed by Tenant.

When seeking the consent of Landlord, Tenant shall submit a written request and the Plans and Specifications for such alterations or additions to the Improvements to Landlord for its approval prior to the commencement of such work.

All such work shall be performed lien free by Tenant. In the event a mechanics' lien is filed against the Premises, Tenant shall discharge or bond off same within thirty (30) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same after inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant.

Notwithstanding anything in this Lease to the contrary, Tenant shall have the right, subject to full compliance with all Laws, at any time and from time to time during the Term, to reconstruct and/or replace all Improvements on the Premises and to demolish, raze, or otherwise remove same, so long as any action taken by Tenant shall be consistent with the terms and purpose of this Lease.

SECTION 8. UTILITIES

Tenant shall be responsible and pay for all public utility services rendered or furnished to the Premises during the term hereof, including, but not limited to, heat, water, gas, electric, telephone service, and sewer services, together with all taxes, levies, or other charges on such utility services when the same become due and payable.

SECTION 9. PERSONAL PROPERTY

Tenant further agrees that all personal property, goods, and equipment of every kind or description that may at any time be in or on the Premises shall be at Tenant's sole risk, or at the risk of those claiming under Tenant, and that Landlord shall not be liable for any damage to said property or loss suffered by the use of the Premises, unless caused by the actions and/or omissions of Landlord, or its agents.

SECTION 10. SUBLEASE OR ASSIGNMENT

Tenant further covenants and agrees not to assign or sublet the Premises or any part of same unless approved by Landlord in writing.

SECTION 11. CONDEMNATION

Notwithstanding the foregoing, if, during the term of this Lease, there shall be taking or condemned for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain or by private purchase in lieu thereof ("Taking") of the entire Premises or any part thereof, the rights and obligations of Landlord and Tenant with respect to any condemnation award or consideration for any such transfer (such award or consideration being herein called "Condemnation Award") pursuant thereto and with respect to the Premises shall be as hereinafter set forth:

(a) In the event of a Taking of the entire Premises or so much of the Premises that, in the opinion of Tenant, it is not feasible to continue possession and operation of the remaining Premises, this Lease shall terminate twenty (20) days after notice from Tenant to Landlord of such election to terminate, and Tenant shall, upon Landlord's request, if made within thirty (30) days after such notice of termination, demolish all buildings on any part of the Premises not subject to the Taking, and Tenant shall grade the Premises to such condition as is reasonably acceptable to Landlord. The Condemnation Award attributed to the Premises shall be divided and paid as follows:

- (i) First, to Landlord in an amount equal to the "fair market value" of the land only, as of the date of Taking, assuming that there were no improvements thereon, the value of any improvements installed by the Landlord prior to or during the lease term, and any matching funding paid by or on behalf of the Landlord related to a grant; and if there is more Condemnation Award;
- (ii) Next, if additional funds remain after the payment set forth in Paragraph 11 (a) (i) (herein), to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term,
- (iii) Finally, any balance to the Tenant.

(b) In the event of a Taking of a part of the Premises and Landlord or Tenant does not give notice as provided for in paragraph (a) above that it is not economically feasible to continue the same use or uses, this Lease shall continue. The Condemnation Award attributed to the Premises shall be allocated and paid in the following sequence:

- (i) First, to Landlord in an amount equal to the fair market value of the land only taken as of the date of Taking, assuming that there were no improvements thereon, and if there is more Condemnation Award;

- (ii) Next, to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term; and if there is more Condemnation Award;
- (iii) Finally, the balance to Tenant.

(c) Notice of Condemnation. The party receiving any notice of the kinds specified above shall promptly give the other party notice of the receipt, contents, and date of the notice received. Landlord shall have full right and authority to conduct, or to direct the conduct of any such condemnation or settlement proceeding and to settle the same on terms acceptable to Landlord.

SECTION 12. FIRE AND CASUALTY INSURANCE

(a) Tenant, or its agents or assigns per Section 10 (herein), shall at all times during the term of this Lease carry fire, casualty, and extended coverage insurance on the Improvements in an amount equal to the full replacement cost thereof. Landlord shall be under no obligation to maintain insurance on any improvements on the Land.

(b) If the Premises shall be damaged, destroyed, or rendered untenable, in whole or in part, by or as the result or consequence of fire or other casualty during the term hereof, Tenant shall repair and restore all such items that are required to be insured by Tenant hereunder to a good tenable condition with reasonable dispatch.

(c) In the event the Premises, because of such damage or destruction, are not repaired and restored to a tenable condition with reasonable dispatch within one hundred eighty (180) days from the date of such damage or destruction, or such additional time period as may be reasonably required, provided that Tenant exercises due diligence in commencing and completing such restoration or repair, Landlord may, at its option but without any obligation to do so, either (i) terminate this Lease within sixty (60) days following such one hundred eighty (180) day period but prior to the repair and restoration of same by giving prior written notice to Tenant and thereupon Landlord and Tenant shall be released from all future liabilities and obligations under this Lease.

SECTION 13. TENANT'S REPAIRS

(a) Tenant shall maintain, repair, and replace (hereinafter collectively referred to in the noun and verb form as "repair"), at Tenant's expense, all and every part of the Premises that are required to be insured hereunder to keep same in good order, condition, and repair.

If Tenant fails to repair and maintain the Premises as required herein, Landlord may demand in writing that Tenant undertake and complete such repairs and maintenance within thirty (30) days from Landlord's notice to Tenant, unless such repairs and/or maintenance constitute an emergency, in which case such repairs and/or maintenance shall be undertaken and completed immediately.

(b) Tenant shall pay promptly when due the entire cost of repair in the Premises undertaken by Tenant so that the Premises shall at all times be free of liens for labor and materials arising from such work; to procure all necessary permits before undertaking such work; to do all of such work in a good and workmanlike manner, employing materials of good quality; to comply with all governmental requirements.

SECTION 14. COVENANT OF TITLE AND PEACEFUL POSSESSION

Subject to easements, conditions, covenants, restrictions, and reservations of record, zoning ordinances and legal highways, Landlord has good and marketable title to the Premises in fee simple and the right to make this Lease for the term aforesaid. Landlord shall put Tenant into complete possession of the Land in accordance with the provisions hereof, and if Tenant shall perform all the covenants and provisions of this Lease to be performed by Tenant, Tenant shall, during the term hereby demised, freely, peaceably, and quietly enjoy and occupy the full possession of the Premises free from actions by or through Landlord, subject, however, to Landlord's right to use the Premises set forth herein and to the other terms and conditions of this Lease.

SECTION 15. INSURANCE

(a) Casualty Insurance. Tenant shall carry such insurance against loss of its property in, on, or about the Premises by fire and such other risks as are covered by all risk and extended coverage property insurance or other hazards as Tenant deems necessary. As the following relates to this Section 15 (herein), Landlord shall not be liable for any damage to Tenant's property in, on, or about the Premises caused by fire or other insurable hazards regardless of the nature or cause of such fire or other casualty, unless caused by Landlord's negligence. Tenant expressly releases Landlord of and from all liability for any such damage. Tenant and Landlord agree that insurance policy or policies shall include a mutual waiver of "subrogation" recognizing this release from liability.

(b) Public Liability Insurance. Tenant and/or its successors and assigns set forth in Section 10 (herein) agrees to procure and maintain during the demised term a policy or policies of liability insurance, with blanket contractual coverage, written by a responsible insurance company or companies (which may be written to include the Premises in conjunction with other premises owned or operated by Tenant) insuring Tenant against any and all losses, claims, demands, or actions for injury to or death of any one or more persons, including volunteers working under the direction of Tenant or Landlord or their respective agents or employees, and for damage to property in any one occurrence in the Premises to the limit of not less than \$3,000,000 and \$5,000,000 general aggregate policy limit arising from Tenant's conduct and operation of the Premises, \$500,000.00 limit for fire and legal liability, and \$1,000,000.00 limit for completed operations. Tenant shall furnish to Landlord certificates evidencing the continuous existence of such insurance coverage, which must also name Landlord as an additional insured. All insurance companies must be licensed to do business in the State of Ohio and have an "A" rating or better. Certificates of insurance will be provided at the time this Lease is executed and twenty (20) days prior to expiration of the policy. Certificates of insurance are to specify notification to Landlord of

cancellation or termination of policy not less than ten (10) days prior to cancellation or termination.

(c) Miscellaneous Insurance. Tenant agrees to provide and keep in force at all times workers compensation insurance complying with the law of the State of Ohio, including coverage of volunteers, even if such coverage is voluntary under the laws of the State of Ohio. Tenant agrees to provide a certificate as evidence of proof of workers' compensation coverage.

With respect to any alterations or improvements by Tenant, Tenant shall maintain contingent liability and builder's risk coverage naming Landlord as an additional named insured. If Tenant hires contractors to do any improvements on the Premises, each contractor must provide proof of workers' compensation coverage on its employees and agents to Landlord.

SECTION 16. REAL ESTATE TAXES

In the event the Premises is no longer exempt from real estate taxes as a direct result of the actions of the Tenant, then Tenant shall pay any real estate taxes imposed upon the Premises during the term of this Lease, including any extensions or renewals thereof, unless said tax is the direct result of a Landlord Event or the actions of Landlord.

For the purpose of this Lease, the term "real estate taxes" shall include any special and general assessments, water and sewer rents, and other governmental impositions imposed upon or against the Premises of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the lease term be levied, assessed, or imposed upon or against such Premises and of all expenses, including reasonable attorney fees, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate taxes, minus any refund received by Landlord.

The real estate taxes for any lease year shall be the real estate taxes for the tax year terminating during said lease year. If any lease year shall be greater than or less than twelve (12) months, or if the real estate tax year shall be changed, an appropriate adjustment shall be made. If there shall be more than one taxing authority, the real estate taxes for any period shall be the sum of the real estate taxes for said period attributable to each taxing authority. If, upon the assessment day for real estate taxes for any tax year fully or partly included within the term of this Lease, a portion of such assessment shall be attributable to buildings in the process of construction, a fair and reasonable adjustment shall be made to carry out the intent of this section.

Tenant shall pay real estate taxes no later than the due date or, if the tax bill is delivered to Landlord by the taxing authority, thirty (30) days after receipt of a copy of the tax bill from Landlord.

Tenant shall be responsible for applying for and obtaining any available exemptions from real estate taxes, and Landlord shall cooperate with Tenant to obtain the same.

SECTION 17. SURRENDER

Except as otherwise set forth herein, tenant covenants and agrees to deliver up and surrender to Landlord the physical possession of the Premises upon the expiration of this Lease or its termination as herein provided that any and all improvements constructed by or on behalf of the Tenant after the Commencement Date shall be usable and in good order and repair as of the date of surrender.

Alternatively, at Landlord's sole and exclusive option, Tenant will cause the Improvements to be properly demolished and the Premises returned, as nearly as possible, to the condition which existed on the Commencement Date. In the event such requested demolition is not commenced in a reasonable time, Landlord may undertake such demolition subject to reimbursement of such demolition costs by the Tenant.

SECTION 18. HOLDING OVER

Any holding over after the expiration or termination of this Lease by Tenant shall be from day to day on the same terms and conditions at Landlord's option; and no act or statement whatsoever on the part of Landlord or his/her duly authorized agent in the absence of a written contract signed by Landlord shall be construed as an extension of the term or as a consent for any further occupancy.

SECTION 19. NOTICE

Whenever under this Lease provisions are made for notice of any kind to Landlord, it shall be deemed sufficient notice and sufficient service thereof if such notice to Landlord is in writing, addressed to Landlord at 99 W. Main Street, P.O. Box 188, New Albany, OH 43054, Attention: City Manager, and deposited in the United States mail by certified mail, return receipt requested, with postage prepaid or Federal Express, Express Mail, or such other nationally recognized expedited mail service as normally results in overnight delivery. Notice to Tenant shall be sent in like manner to; with a copy to 7860 Bevelhymer Road, New Albany, Ohio, Attention: Director. All notices shall be effective upon receipt or refusal of receipt. Either party may change the place for service of notice by written notice to the other party.

SECTION 20. DEFAULT

(a) Elements of Default. The occurrence of any one or more of the following events shall constitute a substantial default of this Lease by Tenant:

- (i) Tenant fails to maintain at all times all insurance required hereunder to be maintained.
- (ii) Tenant fails to perform or observe any other term, condition, covenant, or obligation required to be performed or observed by it under this Lease for a period of ninety (90) days after notice thereof from Landlord, unless stated otherwise in this Lease.

- (iii) Tenant refuses to take possession of the Premises at the delivery of possession date, vacates or abandons the Premises, or substantially ceases to carry on its reasonable community related activities on the Premises.
- (iv) A trustee or receiver is appointed to take possession of substantially all of Tenant's assets in, on, or about the Premises, or of Tenant's interest in this Lease (and Tenant does not regain possession within sixty (60) days after such appointment); Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on, or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within sixty (60) days thereafter).
- (v) A petition in bankruptcy, insolvency, or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute, and, with respect to any such petition filed against it, Tenant fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same.

(b) Remedies. Upon the occurrence of any event of substantial default after any applicable grace or cure period, Landlord shall have the following rights and remedies, any one or more of which may be exercised without further notice to or demand upon Tenant:

- (i) Landlord may re-enter the Premises and cure any substantial default of Tenant, in which event Tenant shall reimburse Landlord for any cost and expenses that Landlord may incur to cure such default plus interest at prime plus one (1%) percent per annum from the date such expense was incurred.
- (ii) Landlord may terminate this Lease or Tenant's right to possession under this Lease as of the date of such substantial default, in which event: (a) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises (including the Improvements thereon), and Tenant shall immediately thereafter surrender the Premises (including the Improvements thereon) to Landlord; and (b) Landlord may re-enter the Premises (including the Improvements thereon) and dispose of Tenant or any other occupants of the Premises (including the Improvements thereon) by force, summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy that Landlord may have for possession or otherwise in law or at equity. Tenant shall remain liable for payment of all charges and costs imposed on Tenant herein, in the amounts, at the times, and upon the conditions as herein provided.
- (iii) Upon termination of this Lease pursuant to this Section 20 (herein), Landlord may recover possession of the Premises (including the Improvements thereon) under and by virtue of the provisions of the laws of

the State of Ohio, or by such other proceedings, including re-entry and possession, as may be applicable.

- (iv) In the event of a breach by either party of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings, and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude either party from any other remedy, in law or in equity.
- (v) In the event the Tenant is unable to financially operate the Fieldhouse and is therefore in breach or default, Landlord reserves the right to take over possession and operations of the Fieldhouse.
- (c) Additional Remedies and Waivers: The rights and remedies of Landlord and Tenant set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law and all such rights and remedies shall be cumulative. No action or inaction by Landlord or Tenant shall constitute a waiver of a default and no waiver of default shall be effective unless it is in writing, signed by the party waiving such default.

SECTION 21. WAIVER OF SUBROGATION

Landlord and Tenant, and all parties claiming under each of them, mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance coverage maintained or required to be maintained by the terms of this Lease on the Premises or in connection with activities conducted with the Premises, and waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies of insurance maintained or required to be maintained by the parties hereunder shall contain waiver of subrogation provisions so long as the same are available.

SECTION 22. LIABILITY OF LANDLORD: EXCULPATION

Except with respect to any damages resulting from the negligent, reckless, or willful misconduct of Landlord, its agents, or employees, or a breach of this Lease by Landlord, Landlord shall not be liable to Tenant, its Board, agents, employees, or users for any damages, losses, compensation, accidents, or claims whatsoever. Not inconsistent with the terms herein, it is expressly understood and agreed that nothing in this Lease contained shall be construed as creating any liability whatsoever against Landlord personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve, or sequester any property of Landlord, and that all personal liability of Landlord, to the extent permitted by law, of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are

concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises for the payment thereof.

SECTION 23. RIGHTS CUMULATIVE

Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies, and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies, and benefits or of any other rights, remedies, and benefits allowed by law.

SECTION 24. MITIGATION OF DAMAGES

Notwithstanding any of the terms and provisions herein contained to the contrary, Landlord and Tenant shall each have the duty and obligation to mitigate, in every reasonable manner, any and all damages that may or shall be caused or suffered by virtue of defaults under or violation of any of the terms and provisions of this Lease committed by the other.

SECTION 25. ENTIRE AGREEMENT AND JOINT PREPARATION

This Lease shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect. This Lease cannot be changed, modified, or discharged orally but only by an agreement in writing signed by the party against whom enforcement of the change, modification, or discharge is sought. This Lease has been negotiated by and between the parties and shall be deemed to be jointly prepared.

SECTION 26. BINDING UPON SUCCESSORS

The covenants, conditions, and agreements made and entered into by the parties hereto shall be binding upon and inure to the benefit of their respective successor and assigns.

SECTION 27. HAZARDOUS SUBSTANCES

During the term of this Lease, Tenant shall not suffer, allow, permit, or cause the generation, accumulation, storage, possession, release, or threat of release of any hazardous substance or toxic material, as those terms are used in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and any regulations promulgated thereunder, or any other present or future federal, state, or local laws, ordinances, rules, and regulations. Tenant shall indemnify and hold Landlord harmless, up to the maximum coverage amount of Tenant's insurance policies, from any and all liabilities, penalties, demands, actions, costs and expenses (including without limitation reasonable attorney fees), remediation and response costs incurred or suffered by Landlord directly or indirectly arising due to the breach of Tenant's obligations set forth in this Section. Such indemnification shall survive expiration or earlier termination of this Lease. At the expiration or sooner termination hereof, Tenant shall return the Land to Landlord in substantially the same condition as existed on the Commencement Date free of any hazardous substances in, on, or from the Premises.

Prior to any renovation or demolition activities containing any asbestos-containing materials or asbestos-containing building materials, as defined by federal, state, or local laws, ordinances, rules, and regulations, which are the responsibility of Tenant hereunder, or in connection with any renovation or demolition by Tenant, Tenant shall notify Landlord at least thirty (30) days prior to commencing such renovation or demolition. Such notification shall include the scope of work to be performed and the schedule of the renovation or demolition. Tenant shall be responsible for compliance with all applicable asbestos and environmental regulations for its own employees and any other persons under their control or direction, including but not limited to employee training.

SECTION 28. FORCE MAJEURE

If either party hereto shall be delayed or hindered in or prevented from the performance of any obligation required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, military or usurped power, sabotage, unusually severe weather, fire or other casualty, or other reason (but excluding inadequacy of insurance proceeds, financial inability, or the lack of suitable financing) of a like nature beyond the reasonable control of the party delayed in performing its obligations under this Lease, the time for performance of such obligation shall be extended for the period of the delay.

SECTION 29. HEADINGS

The headings are 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.

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

Signed and acknowledged
in the presence of:

Landlord:

CITY OF NEW ALBANY,
An Ohio Municipal Corporation

By: _____

Joseph F. Stefanov,
City Manager

Print Name: _____

STATE OF OHIO :

:ss.

COUNTY OF FRANKLIN :

Approved as to Form:

Benjamin S. Albrecht, City Law Director

STATE OF OHIO :

:ss.

COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this ____ day of _____,
2023 by _____, _____ of the City of New Albany for
and on behalf of said City.

Notary Public

