

## **Lease Agreement**

This Lease is made this 24<sup>th</sup> day of June, 2013, by and between the Brecksville-Broadview Heights Board of Education, ("Landlord") with a notice address of 6638 Mill Road, Brecksville, Ohio 44141, and the City of Brecksville, ("Tenant") with a notice address of 9069 Brecksville Road, Brecksville, Ohio 44141.

**1.00 Premises.** Landlord hereby leases to Tenant the playing field located at the Highland Drive Elementary School located in Brecksville, Ohio (collectively, the School") consisting of one (1) youth softball/baseball playing field. The use and occupation by Tenant of the Playing Field shall be limited to the summer season when the School is not in session, and during those times in which there are no Landlord related activities including, but not limited to, academic events, interscholastic competition or practice, physical education, and recess. The Tenant shall be assured the use of the Playing Field for all regularly scheduled programs, insofar as possible, and the Tenant's programs on the Playing Field shall not be canceled except in the event of an emergency or the termination of this Lease.

**2.00 Term.** The initial term of this Lease shall for ten (10) years and shall commence on the 1<sup>st</sup> day of July, 2013 and end on the 31<sup>st</sup> day of August, 2023 ("Initial Term") so long as no event of default exists hereunder, the Landlord and the Tenant may elect to extend the Initial Term for two (2) additional terms of ten (10) years each. ("Extension Terms"). An Extension Term may be requested by either party not less than 180 days prior to the expiration of the then current term. The party receiving the request to extend shall respond at least 90 days prior to the end of the then current term. Unless otherwise agreed by Land lord and Tenant, any Extension Term shall be upon the same terms and conditions as provided herein for the Initial Term.

**3.00 Rent.** Tenant shall pay to Landlord as rent during the initial term the sum of One Dollars (\$1.00) per year, payable on the execution of the Lease, and at the beginning of each new year.

### **4.00 Maintenance and Repair of the Playing Fields.**

**4.01 Tenant's Obligation.** The Tenant has an absolute obligation to upgrade and improve the Playing Field to a standard comparable to Brecksville Youth Fields A, B, and C (excluding lighted fields). These upgrades and improvements shall be capped at \$250,000. The standard of playing condition includes, but is not limited to, the grooming of the diamond; cutting the grass; maintaining the back stop and benches in a rust free manner and insuring that they are in stable condition. Throughout the term of this Lease, Tenant, at its sole expense, shall keep and maintain the Playing Field in good repair and in playing condition and shall make all repairs, replacements and renewals, whether structural or nonstructural, foreseen or unseen, ordinary or extraordinary, necessary to put or maintain the Playing Field in that state of repair and condition. Landlord shall not be required to maintain, repair or rebuild all or any part of the Playing Field. Tenant waives the right to: (a) require Landlord to maintain, repair or rebuild all or any part of the Playing Field, or (b) make repairs at the expense of Landlord pursuant to any legal requirement, contract, easement, covenant, condition or restriction at any time in effect. In addition, Tenant shall keep the Playing Field in a safe and sanitary condition as required by all applicable governmental laws, codes and regulations. During those times when the Landlord occupies and uses the fields for its purposes, the Landlord shall assume

responsibility and liability for such usage. During this time, both the Landlord and the Tenant shall provide for general public liability and property damage insurance. Both parties shall provide for appropriate waivers of subrogation of insurance claims by their respective carriers.

## **5.00 Insurance.**

**5.01 Liability Insurance.** During the term of this Lease, Tenant shall maintain general public liability insurance insuring Landlord and Tenant, as their interests may appear, against all claims, demands or actions for injury to or death, of any one person in an amount of not less than \$1,000,000.00, for any one occurrence in an amount not less than \$1,000,000.00, and for damage to property in an amount not less than \$300,000.00, made by or on behalf of any person arising from, or relating to or connected with the conduct and operation of Tenant's business in, on or about the Playing Field. Such insurance shall be procured from a responsible insurance company reasonably satisfactory to Landlord and authorized to do business in the state where the Playing Field is located and may be obtained by Tenant by endorsement on its blanket insurance policies. All such policies shall provide that they shall not be canceled by insurer or altered except upon fifteen (15) days' prior written notice to Landlord.

**5.02 Playing Fields Insurance.** During the term of this Lease, Landlord shall maintain and provide an all-risk fire insurance policy with extended coverage endorsements including, but not limited to, vandalism and malicious mischief, upon the Playing Fields in an amount equal to the full replacement cost thereof.

**5.03 Contents Insurance.** Tenant shall maintain and provide an all-risk fire insurance policy with extended coverage endorsements including, but not limited to, vandalism and malicious mischief, upon the personal property of Tenant within the Playing Field in an amount equal to the actual cash value thereof.

**5.04 Landlord Liability.** Landlord shall not be liable for any damage or injury to persons occasioned by Tenant's failure to keep the Playing Field in repair, any damage or injury to persons arising out of or during Tenant's use of the Playing Field, and/or any damage or injury to persons arising from the negligence of Tenant.

**6.00 Destruction of Playing Field.** If the Playing Field shall be damaged or destroyed by fire, the elements or other cause as to be unfit for occupancy and such damage or destruction can reasonably be repaired within one hundred fifty (150) days from the happening of such occurrence, then Tenant shall not be entitled to surrender possession of the Playing Field nor shall this Lease terminate. In case of such damage or destruction, Tenant shall repair the Playing Field with all reasonable speed and shall complete such repairs within fifty (50) days from such occurrence.

**7.00 Default.** If there is a default in the performance of any provision of this Lease incumbent upon Tenant to be performed hereunder other than the obligation to pay rent and such default is not cured or is not commenced to be cured within thirty (30) days after receipt by Tenant of written notice from Landlord, Landlord may, but shall not be obliged so to do, cure such breach for the account of Tenant. Tenant shall reimburse Landlord for any monies expended by Landlord in curing Tenant's default on the first day of the month following the Landlord's demand upon Tenant for such reimbursement. Monies

expended by Landlord under the provisions of this paragraph shall bear interest at the rate of 18% per annum from the date such monies were paid by Landlord to the date of Tenant's reimbursement to Landlord therefore. Landlord's right to cure a default by Tenant shall not become effective if within the thirty (30) day period Tenant commences to cure the default and thereafter diligently performs such acts as may be necessary to cure its default.

**8.00 Quiet Enjoyment.** Upon payment by Tenant of the rents herein provided and upon the observance and performance of all of the provisions of this Lease on Tenant's part to be observed and performed, Landlord represents that Tenant shall peaceably and quietly hold and enjoy the Playing Field for the term hereof without hindrance of interruption by Landlord or any person or persons lawfully claiming by, through or under Landlord.

**9.00 Termination and Surrender.**

**9.01 Termination by Landlord.** Landlord may terminate this Lease after the fifth year at its sole discretion upon sixty (60) day prior written notice to Tenant of such termination. Landlord shall reimburse Tenant for Tenant's documented expenses associated with capital improvements and upgrades of the Playing Field ("Expenses") excluding routine maintenance such as dragging the field on a pro rata basis, so that if Landlord terminates this Lease at the end of the fifth year, all Expenses shall be reimbursed up to 55%; the sixth year, up to 45%; the seventh year, up to 30%; the eighth year, up to 15%; the ninth year, up to 5%; and the last year, 0%. The Landlord will be provided a document of capital improvement and upgrade annually.

**9.02 Surrender of Playing Field.** At the expiration or earlier termination of this Lease, Tenant shall surrender and deliver the Playing Field to Landlord in as good condition and repair as at the commencement of the term of this Lease, normal wear and tear, damage by fire, explosion, the elements, and other casualty, together with items of maintenance and repair to be undertaken by Landlord hereunder only excepted.

**10.00 Holding Over.** Except as provided in Section 2.00, should Tenant hold over the expiration of the initial term or any extended term of this Lease, such holding over shall not be deemed to extend the term or renew this Lease, but the tenancy thereafter shall continue on a month-to-month term upon the terms and provision herein set forth at the monthly rental then in effect.

**11.00 General Provisions.**

**11.01 Waiver.** The waiver by either party of any breach of any provision of this Lease by the other party shall not be deemed to be a waiver of such provision of any subsequent breach of the same or any other provision herein contained.

**11.02 Entire Agreement.** The exhibits attached to this Lease form a part hereof and are incorporated by references as if fully set forth herein. This Lease and the exhibits attached hereto set forth all the promises, agreements, conditions and understandings between Landlord and Tenant concerning the Playing Field and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided no subsequent alternation, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to writing and signed by them.

**11.03 Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor trouble, inability to procure materials, failure of power, restrictive government laws or regulations, riot, insurrection, war or other reason of a like nature not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse either party from prompt payment of any payments required by terms of this Lease.

**11.04 Consents.** No consent which is required to be obtained by one party from the other hereunder shall be reasonable withheld by the party requested to give consent.

**11.05 Notices.** All notices required by this Lease shall be in writing and shall be sent by certified mail, postage prepaid, return receipt requested to the notice address set forth in the preamble of this Lease, or at such other address for a party as shall be specified by notice pursuant hereto.

**11.06 Binding Effect.** Except as may be otherwise provided herein, this Lease and all the provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

**11.07 Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the State of Ohio.

**11.08 Severability.** If any provision of this Lease shall be unenforceable, invalid, or void to any extent, for any reason, such provision shall remain in force and effect to the maximum extent allowable, if any, and the enforceability of the remaining provisions of this Lease shall not be affected thereby.

**11.09 Construction.** The language in this Lease shall be deemed to be the language chosen by the parties hereto to express their mutual intent and no rule of construction shall be applied against any party.

IN WITNESS WHEREOF Landlord and Tenant have executed this Lease as of the day and year first written above.

**BRECKSVILLE-BROADVIEW HEIGHTS  
BOARD OF EDUCATION**

Witness

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David Tryon, Board President

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Richard A. Berdine, Treasurer/CFO

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Scot Thomas Prebles, Superintendent

Witness

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**CITY OF BRECKSVILLE**

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Mayor Jerry N. Hruby