



## MEMORANDUM

TO: Scott Gunning

FROM: Rhonda Ritzi *R. Ritzi*

DATE: January 27, 2023

RE: Request to Approve Lease Agreement with Northern Kentucky Baseball Association for the facility management at the Middleton-Mills Park Baseball Complex

At the last Recreation Commission meeting, the board voted unanimously to award the facility management contract at the Middleton-Mills Park baseball complex to Northern Kentucky Baseball Association.

As in past agreements, Northern Kentucky Baseball Association will be responsible for developing and maintaining the baseball complex to the specifications set forth by the Fiscal Court, not limited to field maintenance (topdressing, fertilizing, dragging, and striping the ball fields), cleanliness of property and buildings, and mowing.

The term of this Lease Agreement shall be for an initial period beginning on January 1, 2023, and ending on December 31, 2026. This Lease Agreement shall automatically renew for an additional four years through December 31, 2030, and thereafter for additional four years unless and until either the Lessor or Lessee determine that it no longer wishes to continue the terms of this Agreement. A copy of the lease agreement is attached for your review.

Thank you for your consideration and I look forward to discussing with you further.

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## BASEBALL FIELD LEASE AGREEMENT

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This Lease Agreement is entered into by and between the Kenton County Fiscal Court, Kenton County, Kentucky, 1840 Simon Kenton Way, Suite 5200, Covington, Kentucky, (hereinafter referred to as the “Lessor”), and Northern Kentucky Baseball Association, Inc. PO Box 287, Walton, Kentucky, (hereinafter referred to as “Lessee”),

WITNESS, that in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. **Premises.** The Lessor agrees to lease to Lessee the 15.4 acre area, which includes the baseball fields and a concession stand at Middleton-Mills Park, in Independence, Kenton County. The area being leased is identified in the attached Exhibit A and is hereinafter referred to as “premises” or “baseball fields.”
  - a. In consideration of the use of said premises, Lessee shall pay Lessor the sum of one (\$1.00) Dollar per year, payable within five (5) business days of the first day of each lease year.
2. **Term, effective date of Agreement.** The term of this Lease Agreement shall be for an initial period beginning on January 1, 2023, and ending on December 31, 2026.

This Lease Agreement shall automatically renew for an additional four years through December 31, 2030, and thereafter for additional four years unless and until either the Lessor or Lessee determine that it no longer wishes to continue the terms of this Agreement and terminates same in accordance with the provisions of paragraph three (3) below. The effective date of this agreement is January 1, 2023, regardless of the date executed by Lessor and Lessee.

### 3. **Early Termination of Agreement**

- a. Either party may terminate this agreement prior to the end of the lease term for any reason upon ninety (90) days written notice to the Lessor.
- b. Lessor may terminate this lease agreement prior to the end of the term for cause upon thirty (30) days written notice of a breach of Lessee’s performance obligations under the terms of this agreement, except a material breach which shall be governed by Section 3(c) *infra*.
  - i. Lessee may cure any breach in its performance under Section (3)(b) during the 30 day notice period. If the breach is cured to Lessor’s satisfaction pursuant to the terms of this agreement, Lessor shall rescind its termination.
  - ii. Lessee’s failure to cure the defect within the 30 day notice period shall terminate this lease without further notice to Lessee.

- c. Lessor may immediately terminate this lease agreement at any time upon written notice to the Lessee of a material breach of the terms of this agreement.
  - i. The parties hereby expressly agree that failure to strictly comply with the following Sections and/or Subsections of this agreement shall be considered a material breach:
    - 1. Section 1(a)
    - 2. Section 4(a) and 4(b)
    - 3. Sections 5(b), 5(c), and 5(d)
    - 4. Section 6(a)
    - 5. Section 9
    - 6. Section 13
    - 7. Section 17

#### **4. Capital Improvements.**

- a. Within ninety (90) days of the effective date of this agreement, Lessee at its sole expense, shall complete or have entered into contracts with the requisite service providers to:
  - i. Install separate utility meters for the premises as needed.
  - ii. Make any necessary repairs to fencing and gates on the premises.
  - iii. Paint fences, gates, dugouts, and foul poles on the premises.
  - iv. Install rubber backboards on the bottom of each field's backstop to prevent fence curving.
  - v. Resurface the playing fields to establish proper grading.
  - vi. Aerate, over-seed, and fertilize the grass playing areas.
  - vii. Install new signage, subject to the provisions of Section 15 herein.
  - viii. General cleaning of the premises which shall include power washing of all concrete walking surfaces.
  - ix. Landscaping of the premises which shall, at a minimum, include mulching of existing landscape beds and the removal and replacement of dead plants and shrubbery.
- b. During the ninety (90) day window to complete or initiate these capital improvements, Lessee may request a reasonable extension of time to complete the improvements due to weather conditions, the availability of service providers and/or necessary materials, or any other impediment to completion of the capital improvements which is not due to an act or omission of Lessee.
- c. Lessor agrees to perform any necessary repairs to the roof of the concession stand building within one-hundred eighty (180) days of the effective date of this agreement.

5. **Exclusive rights.** Lessee shall have the exclusive right to use the premises during the park's normal operating hours (currently 7:00 A.M. to dusk, daily), subject to the exceptions set forth below:
- a. Lessee shall, to the extent reasonably practical, share the use of the premises with area baseball clubs and organizations subject to Lessee's approval and scheduling limitations. Any licensee using the premises under the permission of Lessee shall be required to furnish Lessor proof of insurance equivalent to that which Lessee is required to carry under the terms of this agreement. Lessee will schedule all games, tournaments and other special baseball events. Lessee may charge a reasonable usage fee to any club, team, and organization seeking license to use the baseball fields.
  - b. Lessee agrees that the fields are open to the public when not in use by Lessee or its licensee(s) pursuant to Section (4)(a).
  - c. Kenton County Parks and Recreation softball leagues on Friday and Monday nights shall have scheduling priority over that of Lessee or its licensee(s).
  - d. Lessee agrees to coordinate with Lessor during certain recreation events and close all fields with thirty (30) days prior notice of said event. Lessor's request of closure may not exceed two occurrences per calendar year.
  - e. Lessee shall grant Lessor access to view Lessee's online scheduling system/scheduling calendar.
6. **Field Maintenance.** Lessee agrees to maintain the fields in practice and/or game condition to ensure they are safe and suitable for play. Lessee shall cut the grass on the property based on the reasonable and necessary specifications set forth by the Lessor. Lessee will supply all maintenance needs for the premises, including, but not limited to: mowing all areas both on and outside the fields and the area around the parking lots that are utilized for the baseball fields, field lining, aerating and reseeding the fields as needed, regular dragging of any dirt areas of the fields, field leveling, drainage/erosion control, maintenance and replacement of all fencing and dugouts, and trash pickup and removal, including providing waste receptacles. Lessee shall supply all equipment, materials and supplies at its expense to accomplish the required maintenance.
- a. **Modifications.** Lessee shall seek the written approval of the Lessor prior to making any modifications or alterations to the premises outside of the enumerated maintenance duties of Lessee pursuant to Section 6, *supra*. Lessee may petition the Lessor to perform any such modifications or alterations at the cost to the Lessor; however the decision to proceed with any such modification or alteration shall be at the sole discretion of the Lessor and any modification completed by Lessor shall not alter the duties of either party under this agreement.
7. **Concessions.** Lessee agrees to maintain the concession area to ensure that it is clean and sanitary for use. Lessee agrees to provide all equipment and labor at its expense for the use of the concession stand. It shall be Lessee's sole responsibility to provide all licenses and permits necessary for the operation of the concession stands and be responsible for all health and safety inspections in accordance with all state, local, and federal laws and

regulations. Lessee agrees to maintain the building in a safe and aesthetically pleasing manner. This includes, but is not limited to, painting the building when needed, removal of trash, and cleaning the facility. Lessee shall provide all labor and materials needed to accomplish such tasks. Lessee shall have the right to install no more than four (4) vending machines on the premises, subject to approval of their placement by Lessor, which shall not be unreasonably withheld.

- 8. Bathroom Facilities.** Lessee agrees to supply all janitorial supplies/materials for the bathrooms located at the baseball fields. Lessee shall provide all necessary labor to insure the bathrooms are maintained in a clean and healthy manner. The bathrooms shall be closed from October 30 – April 15, weather depending, at the expense of Lessee.
- 9. Utilities.** All electric and water bills associated with the premises as well as associated operations at the park shall be the responsibility of Lessee, who shall have said facilities separately metered from the remainder of any Middleton – Mills Park facilities.
- 10. Parking.** Lessee agrees to insure that ample parking exists so that the public has ready access and parking capabilities at the public shelter house (Shelter #1) located near the property.
- 11. Economic Hardship Policy.** During the term of this agreement Lessee shall implement a policy or program to facilitate participation in each of Lessee’s leagues utilizing the premises by those who present a demonstrable economic hardship which would otherwise prevent or severely limit their participation in Lessee’s league(s).

  - a.** Lessee shall report to Lessor at the conclusion of each league season the terms/criteria of the economic hardship policy and the number of participants assisted therefrom.
- 12. Hold Harmless Agreement.** Lessee and its successors and assigns hereby agree to indemnify, protect and hold harmless the Lessor, its officials, employees and agents, from any and all claims, demands, liabilities, damages or suits brought by any person or other entity arising from or related to Lessee’s occupancy and/or use of the premises, including but not limited to indemnification for reasonable attorney’s fees and cost of defending any action brought against the Lessor.
- 13. Insurance.** Lessee shall maintain a policy of liability insurance on the property with a reputable insurance carrier in an amount not less than \$1,000,000, with the Lessor listed as a named insured on the policy. The policy must provide Lessor at least a ten (10) day advance written notice of any proposed cancellation or termination of the policy. A copy of the policy shall be provided to the Lessor prior to the beginning of each baseball season, but no later than April 1st of each year.
- 14. Dissolution of Contract.** In the event Lessee should become financially insolvent, this Agreement shall be terminated and the Lessor may resume any re-lease rights and field maintenance responsibility. Any Officer, Club Official, Referee, Member, Player or any

other person associated with the Lessee would also be relieved from any obligation associated with this agreement.

- 15. Signage.** All signage must be in compliance with all state, local and federal laws and regulations. The Lessor agrees to cooperate with Lessee to allow lawful signage at the baseball fields; however, Lessor shall retain the right to disallow and/or remove any signage at its sole discretion.
- 16. Compliance with Law.** Lessee shall comply with all federal, state, city, and county laws, statutes and/or ordinances.
- 17. Non-assignment of agreement.** This Agreement shall not be assigned or transferred by Lessee to any other organization or entity without the written consent of the Lessor.
- 18. Law of Kentucky.** This Agreement will be construed according to the laws of the Commonwealth of Kentucky.
- 19. Entire Agreement.** This Agreement is the entire agreement of the parties.
- 20. Waiver of subrogation.** The parties agree that each waives all rights against the other or their agents any right of subrogation that may exist in an insurance contract or otherwise. No third party insurance carrier or other entity will be allowed to assert subrogation rights against a party to this Agreement.
- 21. Inspection.** The Lessor reserves the right to enter upon the property at any reasonable time to inspect the premises in a manner that will not interfere with Lessee's operation of the facilities.
- 22. Surrender of premises.** Lessee agrees to surrender the property to the Lessor in at least the same condition as they were delivered, reasonable wear and tear accepted. Any fixtures or structures installed, erected, placed, or constructed on the premises by Lessee shall become the property of Lessor upon the expiration or termination of this agreement unless waived in writing by Lessor.
- 23. No Unlawful Activity.** Lessee agrees to make a good faith effort to prevent unlawful activity on the premises.
- 24. "As Is" Condition.** The leased premises are being delivered by the Lessor in an "as is" condition, and the Lessor makes no representations to Lessee as the condition of the premises, less the concession stand roof which shall be deemed delivered in an "as is" condition upon completion of repairs pursuant to Section 4(c) herein.
- 25. Annual Report.** Lessee shall provide an annual report to the Lessor.

IN WITNESS WHEREOF, each party has set their signatures on the \_\_\_\_ day of \_\_\_\_\_, 2023.

**KENTON COUNTY FISCAL COURT**

BY: \_\_\_\_\_  
Kris Knochelmann, Judge-Executive

**NORTHERN KENTUCKY BASEBALL**

BY: \_\_\_\_\_  
Mike Harris, President

**Exhibit A**  
 3415 Mills Road, Covington, KY 41015  
 www.kentoncounty.org  
 15.4 Acres



15.4 Acres

1:1,500  
 1 in = 125 ft  
 125 62.5 0 Feet



LINKGIS



These GIS data are deemed reliable and every effort has been made to ensure their accuracy. They are, however, provided "as is" without warranty of correctness, timeliness, reliability, or completeness. Map elements do not represent a legal survey of land. Use of these data for any purpose should be with an acknowledgement of their limitations, including the fact that they are dynamic in nature and in a constant state of maintenance. Field investigation may be necessary.

1840 Simon Kenton Way  
 Covington, KY 41011  
 859.331.8980  
 Office hours M-F 8-5  
 www.linkgis.org  
 Parcel data provided by CCPVA, KCPVA, PCPVA and LINK-GIS.  
 Date: 1/13/2023