

CITY OF SOUTH BEND, INDIANA AUTHORIZATION FOR ENTRY UPON AND THE USE
OF PUBLIC PROPERTY LOCATED AT 1600 EDISON ROAD

THIS AGREEMENT is made effective the 17 day of July, 2023, by the City of South Bend, by and through its Board of Park Commissioners ("City") and East Side Youth Baseball Softball Association ("East Side").

RECITALS

WHEREAS, in accordance with IC 36-10-4 the exclusive control of all property within the City used for park purposes is vested in the City of South Bend Board of Park Commissioners ("Board"); and

WHEREAS, the City is the owner of certain property at 1600 Edison Road within the City of South Bend, Indiana, which property is more specifically described at *Exhibit "A"* attached hereto and incorporated herein ("Property"); and

WHEREAS, East Side desires access to the Property for the purpose of establishing and operating baseball and/or softball fields ("Activity"); and

WHEREAS, the City is willing to permit East Side and its designated agents to gain access to and use of a portion of the Property subject to certain terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The City grants to East Side, its agents, contractors and employees, a non-exclusive right on, in and across the Property for the purpose of conducting the Activity described herein. This non-exclusive right to enter upon and use the Property for said Activity shall be at all reasonable times. This non-exclusive right shall be for an initial term of fifty (50) years, which shall be automatically renewed unless terminated.

2. The non-exclusive rights granted by this Agreement may be terminated by the City by providing written notice to East Side no less than thirty (30) days before the Activity is to cease.

East Side shall provide the City with a copy of its yearly schedule, and the City will make reasonable efforts to provide notice under this Section during the off season.

3. The City shall not be liable for any loss, damage, death or injury of any kind or character to persons or property, arising from any use of the Property, or any part thereof, or caused by the Activities, or caused by or arising from any act or omission of East Side, or any of its agents, employees, sublessees, licensees or invitees, or by or from any accident on the Property or any fire or other casualty thereon, except to the extent caused by the negligent or intentional act or omission of the City or any of its agents, employees, or contractors. East Side shall indemnify, defend and hold harmless the City from and against any and all claims arising from East Side's or East Side's invitee's, licensee's, or a trespasser's use of the Property, or from the conduct of East Side's business, or from any activity, work or things done, permitted or suffered by East Side in or about the Property or elsewhere, and shall further indemnify, defend and hold harmless the City from and against any and all claims to the extent arising from any breach or default in the performance of any obligation on East Side's part to be performed under the terms of this Agreement, or arising from any negligence of East Side, or any of East Side's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or any action or proceeding brought against the City by reason of any such claims, and East Side shall defend the same, at East Side's expense, by counsel satisfactory to the City in its reasonable discretion. East Side hereby waives all claims in respect thereof against the City other than claims arising out of the City's (to include the City's agents, employees, and contractors) negligence or willful misconduct. East Side shall indemnify the City, including reasonable and actual legal costs, should East Side's operation of the baseball and/or softball fields result in a third-party lawsuit, regardless of any negligence or intentional omissions from the East Side, its employees, or agents.

East Side shall not be liable for any loss, damage, death or injury of any kind or character to persons or property, arising from any use of the Property, or any part thereof caused by or arising from any act or omission of the City, or any of its agents, employees, licensees or invitees. The City shall indemnify, defend and hold harmless East Side from and against any and all claims arising from the City's use of the Property, or from the conduct of the City's business, or from any activity, work or things done, permitted or suffered by the City in or about the Property and appurtenant infrastructure, and shall further indemnify, defend and hold harmless East Side from and against any and all claims to the extent arising from any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or any action or proceeding brought against East Side by reason of any such claims, and the City shall defend the same, at the City's expense, by counsel satisfactory to East Side in its reasonable discretion.

4. To the extent that any portion of the Property is disturbed in connection with the exercises of the privileges granted under this Agreement, East Side shall restore the Property to a substantially similar but at least the same condition in which it was immediately prior to such disturbance to the satisfaction of the City at East Side's sole expense.

5. East Side shall be responsible for obtaining any and all environmental, building or other permits, including but not limited to local, state, or federal permits, required for the Activities. The City shall maintain all necessary permits and comply with all applicable requirements thereof, including but not limited to local, state, or federal permits, required for maintenance and operation

of the Property and its associated infrastructure.

6. East Side shall directly pay all utility service tap fees, access fees, and monthly costs for utilities with respect to the Improvements as they become due and payable.

7. East Side shall, at its sole cost and expense, at all times during the term of this Agreement maintain and/or cause to be maintained, in full force and effect, comprehensive casualty and general liability insurance covering East Side's Activity at the Property, naming the City as an additional insured. East Side shall deliver to the City a certificate from each insurance carrier as to each such insurance policy. East Side, or its designee, shall have the sole and exclusive right (without the participation of the City) to adjust and settle any and all claims under insurance policies obtained by East Side or those claiming by or through East Side in connection with or relating to the Property and to receive the proceeds of any such claims. The City shall maintain proof of casualty and general liability insurance for the Property, or a self-insurance program, and provide appropriate proof of such policy or self-insurance program upon request.

8. East Side, at its sole cost and expense, shall keep and maintain any improvements to the Property in good and safe order, condition and repair, and in material compliance with all applicable governmental requirements, ordinary wear and tear excepted.

9. East Side shall comply in all material respects with all federal, state, county and municipal laws, ordinances and regulations of any duly constituted authority or governmental entity governing the Property. East Side, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the validity of any such law, ordinance or regulation, or the application thereof. During such proceedings, compliance with any such law, ordinance and/or regulation may be deferred by East Side upon the condition that East Side shall secure the cost of complying with said law, ordinance or regulation in such manner as the City may reasonably request. The City shall join in such proceedings if necessary to prosecute such proceedings properly, but the City shall not be liable for any expenses in connection therewith. The proceedings referred to herein shall include, without limitation, appropriate appeals from any judgments, decrees or orders made in any such proceedings.

The City shall comply with all federal and state laws, regulations, orders, mandates, and agreements entered into by or on behalf of the City related to the operation, maintenance, and control of the Property. The City shall communicate and cooperate with East Side on any matters that may affect the operation and maintenance of, or access to, the Property and the Activities, including the coordination of event schedules.

East Side, and all programs East Side administers on the Property, shall comply with VPA Park Rules and Regulations, Concussion Protocols, and any other applicable VPA athletic safety policies and procedures.

10. East Side shall have access to the Property as reasonably necessary for the Activities. East Side shall also have the right to traverse other City property, within reason, in order to access the Property, as well as other facilities to conduct the Activities. The City agrees to always maintain at the City's expense ingress and egress points to the Property so that East Side may engage in the Activities. East Side shall communicate and coordinate with the City on all matters that arise

concerning the operation of the Property, including any activities impacting the use of Boehm Park, associated parking, and City lessees associated therewith. It is understood that East Side shall have the ability to access and park vehicles which are directly associated with maintenance and operation of the Property. East Side acknowledges that there shall not be permanent parking associated with the Property. The City shall retain access to the Property at all times for any City purpose, except that the City and East Side will mutually agree upon scheduling of East Side events requiring temporary exclusive East Side use of the Property. Members of the public shall retain access to the Property as a public park at all times.

11. East Side may not at any time sell, assign, convey or transfer (collectively, "Transfer") the rights conveyed by this Agreement, or any obligations or rights hereunder, to any third party without the City's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any such Transfer shall be subject to all the covenants, conditions, agreements, and terms of this Agreement. As a condition to any Transfer, the transferee shall assume and agree to be bound by all of the terms and provisions of this Agreement and East Side shall have no further rights or obligations hereunder.

12. The parties acknowledge at the time of execution that no property taxes exist on the Property. However, should the Property or any land which later becomes subject to this Agreement, for any reason, become subject to property taxes during the term of this Agreement, East Side shall have no obligation to pay or contribute to any tax assessment levied upon the Property unless said assessment is due to East Side's use of the Property. In the event that taxes are imposed on the Property due to reasons unrelated to East Side's occupancy of the Property but the amount of said assessment is higher than it would have been absent the Activities, East Side shall only be liable for the incremental increase attributable to said Activities. Any personal property tax levied as a result of or related to the Activities shall be East Side's sole responsibility.

13. East Side shall be in default of this Agreement if East Side fails to comply with any material term, provision or covenant of this Agreement and East Side does not cure such failure within thirty (30) days after receipt of written notice thereof from the City (or if such failure is of such nature that it cannot be completely cured within such period, if East Side does not commence curing within such thirty (30) day period and thereafter proceed with reasonable diligence and in good faith to cure the default). Upon the occurrence of an event of default by East Side, the City shall have all available remedies at law or in equity. If East Side ceases to exist as an organization, this Agreement will automatically end.

14. The City and East Side shall work together to promote educational and outreach opportunities involving the Property and Activities consistent with the Recitals above.

15. All notices to or demands upon the City or East Side desired or required to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon the earlier of actual receipt, whether in person or via electronic delivery, or, if mailed, three (3) days after being deposited in the United States mail, registered or certified, return receipt requested, postage prepaid and addressed as follows or at such other address as either party may notify the other party as herein specified.:

16. This Agreement may not be amended, modified, or supplemented, except by a written agreement executed by both of the parties hereto. The parties hereto may, by a writing signed by both of the parties, waive the performance by any party of any of the provisions to be performed by such party under this Agreement. The failure of any party hereto at any time to insist upon the

strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provision at a future time. The waiver by either party hereto of a breach of or noncompliance with any provision of this Agreement shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

17. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

18. This Agreement supersedes all other prior and contemporaneous understandings, commitments, representations, negotiations, discussions, and agreements, whether oral or written, express or implied, between the parties hereto relating to the matters contemplated hereby and constitutes the entire agreement between the parties hereto relating to the subject matter hereof.

19. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions. The parties agree that any litigation in connection with this Agreement shall be brought in either the Circuit Court of St. Joseph County, Indiana or the United States Federal Court for the Northern District of Indiana.

20. This Agreement is the product of negotiation by the parties hereto and shall be deemed to have been drafted by such parties. This Agreement shall be construed in accordance with the fair meaning of its provisions and its language shall not be strictly construed against, nor shall ambiguities be resolved against, either party.

21. In case any one or more of the provisions (or any portion thereof) contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or portion thereof) had never been contained herein.


22. If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Agreement by any condition beyond the reasonable control of such party, including without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, an Act of God, unusually severe weather, governmental restriction, regulation or control, terrorist, enemy, or hostile governmental action, civil commotion, insurrection, pandemic, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus thirty (30) days. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefore in this Agreement, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus fifteen (15) days.

23. The persons executing this instrument on behalf of the City and East Side each represent that they have been duly authorized to do so by appropriate action and this Agreement is binding upon such party.

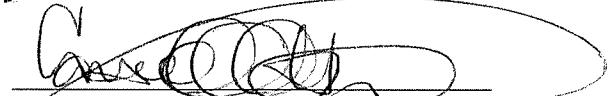
24. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the date first written above.


**CITY OF SOUTH BEND,
BOARD OF PARK
COMMISSIONERS**



Mark Neal, President

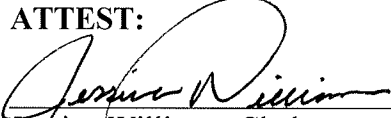


Consuella Hopkins, Vice President



Sam Centellas, Member

Georgianne Walker, Member

ATTEST:


Jessica Williams, Clerk

**EAST SIDE YOUTH BASEBALL
SOFTBALL ASSOCIATION**

Signature

Printed Name and Title