

## VILLAGE PARK BALL FIELD USE AGREEMENT

This Village Park Ball Field Agreement (“Agreement”) is made and entered into the date last executed below, by and between, the Village of Thornville (“Village”), an Ohio municipal corporation, with its principal place of business at 1 S. Main St., Thornville, Ohio, and Thornville Youth Recreation Association (“TYRA”).

### RECITALS

- A. The Village owns a park land located at or near the intersection of Park Drive South and Veterans Memorial Drive, where among other things, two baseball diamonds/fields are located.
- B. TYRA wants to use the two baseball diamonds/fields, restroom facilities (located next to the concession stands), and concession stands for its youth baseball games and tournaments (“Premises”).
- C. With this Agreement, the Village wants to grant TYRA use of the two baseball diamonds/fields, restroom facilities, and concession stands for its youth baseball games and tournaments.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and TYRA agree as follows:

1. **The Event.** The Village grants TYRA permission to use the Premises subject to the rules, regulations, guidelines, terms, conditions, and agreements set forth herein.
2. **Fees and Security Deposit.** TYRA shall pay a monthly fee of \$0.00 to use the Premises (“Monthly Fee”). TYRA also shall pay a refundable security deposit of \$0.00 (“Security Deposit”). TYRA also shall pay a flat fee for use of electricity at the Premises (“Electricity Fee”) of \$300.00. The payment of the Security Deposit and the Electricity Fee is a condition precedent to any use of the Premises. The Security Deposit will be applied to any cost of repairs made necessary due to the activities of TYRA at the Premises. Once that deduction is made, all further portions of the Security Deposit shall be returned to TYRA within sixty (60) days after the conclusion of the last baseball game. TYRA shall pay one (1) month fee for use of the Port- a John. The Village shall invoice TYRA.
3. **Term.** This Agreement shall be from March 1, 2022 until October 31, 2022.
4. **Insurance.** TYRA shall not use the Premises until it has provided evidence satisfactory to the Village of the insurance required under this Agreement as to limits, form and amount. TYRA is required to obtain and maintain for the period of this Agreement comprehensive general liability insurance and excessive liability insurance. The policy or policies of insurance shall name the Village as additional named insured on the TYRA’s general liability policy and excess liability policy, and TYRA shall indemnify and hold harmless the Village, its officials (elected and appointed), employees, agents, representatives, attorneys, and insurers from any and all claims and damages arising out of the involvement or participation in the events and/or baseball games described herein at the Premises.

The insurance coverage required to be maintained by TYRA hereunder shall include a broad form contractual liability endorsement and an endorsement providing that the insurance provided to the Village and that any insurance maintained by the Village is excess of and not contributing with the insurance required to be maintained by TYRA hereunder. Further, the insurance coverage required to be maintained by the TYRA hereunder shall be not less than \$1,000,000 for bodily injury, property damage and personal injury liability. As evidence of coverage, the Village is to receive a Certificate of Insurance on a form satisfactory

to the Village setting forth the type of the coverage, the limits of liability, the name of the insurance carrier, policy number and the date of expiration of the coverage required to be maintained by TYRA hereunder. Such Certificate shall confirm that each carrier shall provide at least ten (10) days written notice to the Village prior to cancellation or material change of coverage. The insurance company providing the coverage required to be maintained by Licensee hereunder shall be licensed to do business in the State of Ohio.

**5. Indemnification, Waiver, and Release.** In addition to, and not in limitation of, anything herein or hereafter provided in this Agreement, TYRA shall indemnify, hold harmless, and defend the Village, its officials (elected and appointed), employees, agents, representatives, attorneys, insurers, successors and assigns (hereinafter collectively referred to as the "Indemnified Parties" and individually as an "Indemnified Party") harmless from and against, and shall release and waive any Indemnified Party and their agents and employees for, from and against any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, allegations and expenses (including, without limitation, reasonable attorney's fees) related to, or arising from:

- (A) the use of the Premises by TYRA or by any person or entity acting on behalf or, together with, or at the direction of TYRA
- (B) the use of the Premises by any participant, spectator, invitee, or any other individual or entity on the Premises because of, or related to, the use of the Premises under this Agreement;
- (C) any activity, work, or thing done or permitted by TYRA on or about the Premises.

If any action or proceeding is brought against an Indemnified Party by reason of any of the foregoing (1) through (3), TYRA, upon written notice from such Indemnified Party, shall defend the same at TYRA's expense, with counsel selected by the Village.

**6. Obligations of TYRA.** TYRA is responsible for complying with the following conditions. The TYRA shall:

- (A) Maintain discipline on and off the fields at all times.
- (B) Use and occupy the Premises in a safe and proper manner.
- (C) Make certain all participants and invitees maintain the smoke free, alcohol free, and firearm free regulations that govern the Premises.
- (D) Comply with all valid and applicable laws, ordinances, rules, regulations, requirements, and orders of any governmental authority concerning use and occupancy of the Premises.
- (E) Keep the Premises free of nuisance(s).
- (F) Keep the Premises locked and secure when not in use.
- (G) Use and occupy the Premises only for the activities set forth in this Agreement.
- (H) Be responsible for general maintenance and upkeep of the Premises.
- (I) Be responsible for the maintenance, including light bulb replacement of the baseball field lights.
- (J) Be responsible for all damages caused by its employees, agents, representatives, invitees, participants or their guests.

- (K) Empty all trash cans and make certain all trash is taken to the dumpster every night it uses the Premises under this Agreement. The Village will assess TYRA, and TYRA will immediately pay, Sixteen Dollars and Forty-Nine Cents (\$16.49) per day, for every day all trash cans are not emptied and/or all trash is not taken to the dumpster.
- (L) Provide the Village a schedule of all regular season and tournament games at least ten (10) days prior to any baseball game being played.
- (M) Return to the Village all keys to the Premises within three (3) days of the last baseball game played under this Agreement.

**7. Inherent Risks.** TYRA acknowledges there are inherent risks in the game of baseball and the use of grass fields, which as a result of the natural condition of the grass contain irregularities, depressions, soft spots, and/or ruts, many of which may be subtle or not visible, may cause participants to stumble or fall, and accordingly TYRA by commencing and executing this Agreement, specifically accepts the fields in the condition presented and accepts for itself and its participants any risks associated with ruts, soft spots or depression areas or the like that may be present thereon. Furthermore, TYRA acknowledges the Village does not make any warranties, express or implied, to the Premises.

**8. Annual Meetings.** TYRA and the Village agree to meet prior to the start of the baseball season and inspect the Premises. TYRA and the Village will agree on all repairs the Village must make before the start of the baseball season. TYRA and the Village agree to meet immediately after the last baseball game of the season and inspect the Premises. TYRA understands and agrees to repair, at its sole cost and expense, all damages caused by the TYRA, its officials, employees, agents, representatives, invitees, participants, and/or anyone using or visiting the Premises for any activity conducted under this Agreement.

**9. Improvements.** Any and all improvements, alterations, or additions made to the Premises by either the Village or TYRA, including, but not limited to, all equipment, signs and fixtures added to the premises during TYRA's use, the same shall either be and remain a part of the real estate of the sole option of the Village, or the Village may require TYRA to remove the same or a portion thereof, with such removal to be accomplished at TYRA's sole cost and expense, promptly and in a good and workmanlike fashion. With any damage caused thereby being repaired immediately by TYRA.

**10. Village Access.** The Village, its officials (elected and appointed), employees, agents, representatives, attorneys, successors and assigns reserve the right to enter upon the Premises, at any time and in any manner deemed reasonable by the Village, for the purposes of inspecting and examining the Premises.

**11. COVID-19.** The novel coronavirus, COVID-19 and its subsequent variants, has been declared a worldwide pandemic by The World Health Organization and was the impetus for Ohio's initial March 2020 Stay-at-Home Order and the numerous Orders that followed.

TYRA understands and acknowledges, the original COVID-19 strain, as well as the new strains being discovered, are extremely contagious and spread easily. TYRA acknowledges the circumstances regarding COVID-19 and vaccines/booster shots are changing from day to day and that, accordingly, the CDC's, the Ohio Department of Health's, and Perry County's guidelines are modified and updated regularly. TYRA accepts full responsibility for familiarizing itself with, and complying with, the most recent updates/guidelines and agrees to make certain all its participants, coaches, and spectators will do the same.

While the Village has taken, and will continue to take, preventative measures to try to reduce the risk of contracting COVID-19, TYRA understands and acknowledges the Village cannot eliminate the risk of contracting the virus while at the Premises,

even though vaccine and booster shots are readily available. TYRA decided, upon its own freewill, to use the Premises despite the on-going pandemic.

By utilizing the Premises, TYRA, and its participants, spectators, coaches, and volunteers assume all risk related to the COVID-19 Pandemic, including but not limited to, the risk of contracting the virus or a subsequent variant, some other illness, and/or death. By utilizing the Premises, TYRA understands and appreciates these risks may result from its actions or omissions as well as the actions or omissions of others, including their negligence. By being allowed to utilize the Premises, TYRA knowingly, voluntarily, and fully assumes all such risks, whether foreseeable or not reasonably foreseeable.

12. **Assignment.** This Agreement may not be assigned by TYRA.
13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without reference to the selection of the forum or the principles of conflicts of law. Venue and jurisdiction for any dispute arising out of this Agreement shall be filed only in the Court of Common Pleas of Perry County, Ohio or the United States District Court for the Southern District of Ohio.
14. **Miscellaneous.** The terms and conditions of this Agreement shall supersede the terms and conditions of any other agreement, whether oral or written, between the TYRA and the Village, relating to the subject matter of this Agreement. This Agreement constitutes the entire agreement between TYRA and the Village. This Agreement may be executed in multiple counterparts, each of which is identical and each of which shall be deemed to be an original; and all such counterparts together shall constitute but one instrument. Neither this Agreement nor any Provision hereof may be amended, modified, waived, discharged, or terminated orally, but only by an instrument in writing duly signed by or on behalf of the TYRA and the Village. If a term or provision of the Agreement is determined by a Court of competent jurisdiction to be unenforceable or illegal, the remaining terms and provisions of the Agreement shall remain valid and enforceable.


[Signatures Appear on the Following Page]

**Village of Thornville**

By:   
Its: Village Administrator  
Date: 1/24/2022

By:   
Its: Fiscal Officer  
Date: 2/2/2022

**Thornville Youth Recreation Association**  
("TYRA")

By:   
Its: President  
Date: 1/24/22

APPROVED:

Approved as to form this 5<sup>th</sup> day of January 2022.

A handwritten signature in cursive script, appearing to read "B. M. Zets", written over a horizontal line.

Brian M. Zets, Esq.  
Village Solicitor