

PUBLIC FACILITY USE AGREEMENT
Golden Park Columbus, Georgia

This *Public Facility Use Agreement*, hereinafter the “Agreement”, is made and entered into as of the _____ day of September, 2020 (hereinafter, the effective date) by and between COLUMBUS, GEORGIA, a consolidated City/County Government (“Columbus”) acting by and through its Columbus Parks and Recreation Department (“CPRD”), collectively (“Lessor”) and Golden Park Restorations, INC. (“GPR”) or (“Lessee”) to operate Golden Park and secure the placement of a collegiate summer baseball team which is a member of the Sunbelt Baseball League. (“Team.”)

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and one dollar per year and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

1. BACKGROUND.

- A. The parties desire to enter into an Agreement for the use of the Golden Park.
- B. The Lessor is the owner of Golden Park which contains a baseball stadium, with additional offices, locker rooms all enclosed in a fenced in area.
- C. The Lessee is a Georgia corporation which will operate Golden Park and secure a high-level collegiate summer baseball team which is a member of the Sunbelt Baseball League and wishes to play its home games at Golden Park. GPC shall identify Team by January 1, 2021, and its name shall be mutually agreeable to GPC and Columbus.
- D. Lessee may also bring in and receive the revenues from professional baseball exhibitions, tournaments, and other baseball related events during this lease.
- E. Lessee is willing to make an initial investment in the renovation of the Facilities at Golden Park and undertake their ongoing maintenance throughout the term of this Agreement.
- F. Lessee will also be responsible for booking and overseeing other events not related to baseball at the Golden Park in return for receiving the revenue from those events.
- G. Lessor wishes to grant certain rights to Lessee to manage and operate Golden Park and Lessee wishes to use Golden Park, all in accordance with and pursuant to the terms and conditions set forth herein.

2. DEFINITIONS. As used in the Agreement, the following words and terms shall have the following meanings, notwithstanding any other definitions to the contrary whatsoever:

A. "Party," or "Parties to this Agreement" shall mean Lessor/Columbus, Georgia and Lessee/ GPR, either individually or collectively.

B. "Team" shall mean a baseball team which is a member of the Sunbelt Baseball League, designated in accordance with 1. C. above and will play its home games at the Facility.

C. "Golden Park" or "Facility" shall mean the baseball stadium and associated facilities which are walled or enclosed by a fences as shown on the map attached hereto as Attachment A to this Agreement located at Golden Park at South Commons Complex located in Columbus, County of Muscogee, Georgia at which the Team shall play its home games.

D. "Home game" shall mean any Sunbelt League game scheduled to be played or played by the Team at the Facility during any season (to include any league playoffs or All-Star games).

E. "Baseball Event" shall mean any game, tournament, clinic or exhibition that charges any form of entry fee, tracks time or other results in any fashion, and/or that generally resembles a tournament and relates to baseball whether for the Team or other baseball organizations. A Baseball Event does not include an informal group game or practice scheduled by Team or any other party for which no ticket or admission fee is charged.

F. "Special Event" shall include any event which is to provide general entertainment and is not for the purpose of promoting the sport of baseball. A Special Event may be one for which the Facility is sub-leased to a third party for purposes of sponsoring and promoting the event.

G. "Term" shall mean that period commencing as of the Effective Date and expiring September __, 2025, unless earlier terminated as provided hereunder.

H. "Effective Date" shall mean September __, 2020.

I. "Complex" shall mean the South Common Sports Complex where the Facility is located.

3. USE OF FACILITY. GPR shall have exclusive use of the Facility during the Term of this Agreement to the exclusion of all parties. Except as expressly permitted otherwise in this Agreement, Lessee will have the exclusive right to schedule Golden Park for Baseball Events. Any Special Events held within the Facility must have prior approval from Columbus Parks and Recreation and the Columbus Civic Center.

4. REQUIRED INVESTMENT IN LIEU OF RENT.

A. The Lessee shall commit to upgrade/repair and invest in Golden Park at least One Hundred Thousand Dollars (\$100,000), ("Required Investment") as specified in paragraphs B, C, and D below.

B. The Required Investment that must be performed by the Lessee at its cost, shall at a minimum include the following:

- i. Repair the grandstand roof.
- ii. Install field lighting to make baseball playable at night.
- iii. Repair and replace concession stand equipment.
- iv. Locker room- GPR shall replace the water heater (commercial) Lessor agrees repair the locker room before the start of the season.
- v. Initial cleaning and painting.

C. The work qualifying as the Required Investment specified in paragraph B. above shall be finished by May 15, 2021 provided that the Lessee may request an extension of six months if they have begun the work in good faith and circumstances beyond their control have prevented its completion. Lessee will provide written proof to CPRD that this work has been completed, by whom and the cost. If this work is not performed by May 15, 2021 with any agreed upon extensions, this Agreement shall terminate at that time.

D. Any remaining amounts of the Required Investment not spent completing the items required in paragraph B. above will be spent during the remainder of the lease term to complete the following items:

- i. Suites/Press Box repairs
- ii. A souvenir shop
- iii. A padded outfield wall
- iv. Grandstand Cooling Fans

E. All work performed in accordance with this Section 4 will be done in accordance with specifications and plans approved in advance by CPRD.

5. MAINTENANCE OF FACILITY.

A. The LESSEE will be responsible for all Normal Maintenance and Extraordinary Maintenance, as defined below, of any area inside of the fence of the Golden Park Complex.

B. Assistance from CPRD. CPRD will be responsible for all maintenance of any area outside of the fence of the Facility.

C. Consultation. Before undertaking any maintenance, construction, or other similar activities that might impact the field, CPRD will consult with Lessee and

consider reasonable ways in which the impact on the field could be minimized.

D. Normal Maintenance.

- (i) Definition. Normal Maintenance will consist of such activities as the removal of limbs, leaves, and other natural debris from the field, picking up litter, drainage, berming, maintenance of existing signage, and other similar activities. Normal Maintenance may include rerouting and/or armoring not more than approximately 10 yards of the field to address drainage, erosion, and other similar issues. It will also include field maintenance and marking necessary to make it playable for baseball.
- (ii) No Notice Required. Lessee may conduct or authorize Normal Maintenance without notifying CPRD so long as Lessee reasonably believes such Normal Maintenance will not materially change the nature of the field or interfere with the future utilization of Golden Park by other users.
- (iii) Normal Maintenance Issues. In the event CPRD notifies the Lessee of an issue regarding Normal Maintenance being undertaken by Lessee, or on its behalf, the Lessee will cease such Normal Maintenance until they receive CPRD's permission to proceed. In the event that CPRD notifies Lessee that certain items constituting Normal Maintenance are not being performed in a timely manner, Lessee will undertake and complete such requested maintenance as soon as reasonably practicable.
- (iv) "Fixing" Normal Maintenance. If Lessee performs or authorizes a maintenance activity that, in CPRD's judgment, exceeds Normal Maintenance, is unreasonable and inconsistent with Golden Park as a whole, and would not Lessee be approved as Extraordinary Maintenance, then the Lessee will undo the maintenance activity and restore the affected area as nearly as possible to its condition prior to the maintenance activity at issue.
- (v) The failure of the Lessee to timely provide Normal Maintenance or fix Normal Maintenance in accordance with this paragraph within thirty (30) days' notice of such issue from Lessor will result in the termination of this Agreement.

E. Extraordinary Maintenance.

- (i) Definition. Extraordinary Maintenance will consist of such activities as building or installing wooden buildings, kiosks, or any other non-natural structure, rerouting and/or armoring the field, building a new field, and other similar activities.
- (ii) Notice and Consent Required. Before performing any Extraordinary Maintenance, Lessee will provide specifications for the proposed activity to the satisfaction of CPRD and obtain consent from CPRD.

6. FACILITY OPERATIONS

A. Lessee shall have exclusive use of and act as the booking agent for Golden Park to include Baseball Events as well as Special events for which it may lease the Facility to another event sponsor. All Special Events will be subject to the advance approval of CPRD and the Columbus Civic Center. All parties agree Golden Park should be used to attract events that are positive for the community, the CCG and the Facility.

B. Promotion of Field: Games, Tournaments and Special Events. GPR will promote the field by hosting games, clinics and tournaments. As the GPR baseball grows, Lessee will seek to increase its promotion of Golden Park generally, and the introduction of new athletes to the sport of baseball.

C. Web Site. Lessor will create and maintain a website with information about the field sufficient to enable new users to access and navigate and understand the sport of baseball and the use of the field.

D. Rental fees. Standard fees for Baseball Events and Special Events shall be agreed upon by Lessor and Lessee together and shall cover the cost of field maintenance, cleaning the stadium and utilities. GPR, with the consent of CPRD, shall have the authority to alter the fee structure for a Special Event.

7. UTILITIES: The Lessor will provide and invoice Lessee monthly for the cost of electric/gas, water and sewer, and any other utilities in the name of and paid for by the Lessor, and such invoices shall be paid within 10 days of receipt. Should utility payments be more than thirty (30) days past due, the Lessee shall be considered in default of this Agreement, and Lessor will have the right to move to immediate termination. Lessor will provide a designated area for Lessee to place trash receptacles. Trash may be placed in the area designated for pick up by CPRD free of charge. Lessee will be responsible for removing any other trash not placed in the designated pick up area at its own expense. Lessee will be responsible for opening accounts and bearing the full financial responsibility for obtaining telephone, television, wireless, internet, satellite, cable and other communications services as needed.

8. PARKING. Lessee will have non-exclusive use of Parking Lot "A", as shown on the Attachment 1 to this Agreement during Golden Park events so long as it does not interfere with any Civic Center events. Additional parking requests (other than Parking Lot "A") must be approved in advance by both the Columbus Civic Center and CPRD. Lessee shall cooperate with Columbus regarding the use of such parking area or areas and shall permit such parking area or areas to be used to accommodate temporary vehicular parking during other activities held at the Complex.

9. CONCESSIONS. Lessee shall be the sole and exclusive vendor of food, drink, and novelty items for all home games, Baseball Events and Special Events held at the Facility for the

Term of this Agreement. Lessee may grant concession rights to a third party or third parties (i.e., concessionaires) as is appropriate for the conduct of its business at the Facility subject to the approval of CPRD.

GPR agrees to conduct concession sales in a clean, professional, and businesslike manner and agrees to comply with all local, state and federal laws and regulations. Lessee may, after application and approval of appropriate licenses to sell alcoholic beverages, sell beer at all home games of the Team, and at all other activities and events held at the Facility, subject to the approval of Columbus through the normal alcoholic beverage licensing process. Notwithstanding anything to the contrary contained in this Agreement, neither Columbus nor any third party shall be allowed to sell any souvenirs or novelties anywhere on the premises of the Facility during the Term of the Agreement unless approved in writing by the Lessee and CPRD.

10. FIREWORKS & COMPLIANCE WITH LAWS. In a manner consistent with the requirements of local Ordinances, the Columbus Police Department and the Columbus Department of Fire and EMS, the Lessee may use firework displays at the Facility. Columbus will provide the Lessee with all requirements and procedures of the Columbus Police Department and the Department of Fire and EMS for utilizing fireworks at the facility.

11. ADVERTISING SIGNS/SCOREBOARD. Lessee shall have the sole and exclusive right to erect advertisement signs and banners on the premises of the Facility. Such right shall include the ability to sell advertising space at the Facility and to place advertising signs on the interior surface of the outfield fence and at other locations within and around the Facility, and to retain all monies collected from such sales. Notwithstanding anything to the contrary contained in the foregoing, the type, size, and location of all advertisements shall be in keeping with the professional character of the Facility, GPR and Columbus.

Lessor shall maintain the main video board located at the main entrance of the Complex (and on similar signage located elsewhere in the Complex) in good working condition. Lessee shall have the right to advertise the dates, times and other appropriate information of the Team's home games, Baseball Events and Special Events held at the Facility on the main video board located at the main entrance of the Complex (and on similar signage located elsewhere in the Complex) without cost or expense to Lessee. Furthermore, the Lessee may erect other signs promoting such home games, activities, and events on or about the premises of the Complex subject to the consent of the CPRD. Lessee will not hold Columbus responsible for any malfunction of video board or other signage.

12. BROADCASTING, CABLECASTING OR TELECASTING. Team shall have the right to broadcast, cablecast and telecast its home games, activities and events without need to obtain the consent of Columbus, and the Team shall have the sole right to receive and retain any and all revenue, income, receipts, or benefits, if any, generated therefrom.

13. REVENUES. Lessee shall be entitled to charge and retain all ticket, admission, participation, rental, and other fees collected relating to the Team's home games, and all other Baseball Events and Special Events or conducted by Lessee at the Facility during the Term of this Agreement. Lessee shall be responsible for all costs and expenses related to any and all such ticket, admission, participation sales and promotional costs, including the cost of ticket sellers, ticket takers, advance local promotion, advertising sales, and distribution of tickets, to all Team home games, and other events and activities held at the Facility.
14. SECURITY. Lessee shall pay for and provide all security within the Facility and shall provide all security outside the Facility and in the parking areas for all home games and Baseball Events held at the Facility. If Lessee sub-leases the Facility for Special Events, it shall either provide adequate security at its own expense or require the Sub-lessee to provide such security. An adequate security detail for the Facility during an event shall be determined in accordance with Attachment 2 to this Agreement.
15. LESSEE'S PERSONNEL. Lessee shall hire and be responsible for all personnel necessary to conduct its business. Such personnel shall include, but are not limited to, ushers, ticket takers, concession workers, first-aid attendants, and other related personnel. Lessee agrees to use its best efforts to recruit a labor pool from the local population.
16. ADHERENCE TO LAW. Lessee agrees to abide by all applicable municipal, county, state and federal laws, ordinances, rules and regulations and to obtain all necessary and proper licenses permits and authorizations for the conduct of its business at the Facility.
17. TAXES AND LICENSES. GPR shall pay all lawful taxes, assessments, licenses, and charges on its business operations or sale of alcoholic beverages or other merchandise, as well as on all goods, merchandise, fixtures, appliances, equipment, and property owned by it and located at the Facility.
18. QUIET ENJOYMENT. During the Lessee's use and occupancy of the Facility hereunder, and for so long as the Lessee is not in default, the Lessee shall have and be entitled to the quiet enjoyment with respect to the use and occupancy of the Facility, use of all assets located at the Facility as of the Effective Date, and the enjoyment of the privileges herein granted without interruption or interference by any person.
19. ASSIGNMENT/SUBLEASE. GPR shall not assign this Agreement or sublet the Facility or any portion of the parking area or areas without the prior written consent of the Lessor. Notwithstanding anything to the contrary contained in this Agreement, the Lessee may sub-lease the premises to sponsors of various Special Events with the approval of CPRD and the Civic Center. Lessee may grant concession rights to a third party or third parties, subject to the approval of the Lessor, which will not be unreasonably withheld.

20. FACILITY REPAIR AND INSURANCE.

A. FACILITY REPAIR. Lessee shall repair any material damage (excluding ordinary wear and tear) to the structure, water apparatus, electric lights, or any fixtures, appliances, furniture, lockers or other appurtenances of the Facility resulting from any act of the GPR, its assigns, sub lessees, agents, officers or patrons of any Home Game, Baseball Event or Special Event.

B. INSURANCE. Lessee shall secure and maintain during the Term of this Agreement, the following insurance coverages:

- (i) Workers' Compensation. "Workers" Compensation insurance covering all employees meeting statutory limits in compliance with all applicable state and federal laws.
- (ii) Comprehensive General Liability. Coverage shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, Combine Single Limit for Bodily Injury Liability and Property Damage Liability. This Comprehensive General Liability coverage shall include Premises and Operations, Broadform Property Damage, XCU Coverage, Independent Contractors, Products and Completed Operations, and Contractual Liability. This Comprehensive General Liability coverage policy shall be endorsed to include and cover Liquor Liability.
- (iii) Business Auto Liability. Coverage shall have minimum limits of One Million Dollars (\$1,000,000.00) Per Occurrence, Combines Single Limit for Bodily Injury Liability and Property Damage Liability. This Business Auto Liability policy shall include and cover: Owned Vehicles, Hired and Non-Owned Vehicles, Employee Non-Ownership, and such coverage as is necessary to protect the Parties against liability for the operation of the parking area or areas and any other area or areas used for parking at the Facility.
- (iv) Personal Property and Casualty Insurance. Lessee shall maintain acceptable personal property and casualty insurance for its own personal property brought onto the premises as well as that of its sublessees, contractors or concessionaires.
- (v) Additional Insured. Lessee shall require and cause its insurer or insurers to list Columbus, Georgia as an additional insured (and not as a named insured) on the Comprehensive General Liability, the Business Auto Liability, and the Garage Keepers Legal Liability Policies.

(vi) Insurance Policies/Certificates of Insurance. Current valid insurance policies meeting the requirements herein shall be maintained by the Lessee during the Term of this Agreement. Lessee shall furnish copies of all policies to the City Manager upon request.

21. INDEMNIFICATION. Lessor shall not be liable for loss by theft or otherwise of any property of the Lessee or its sub-lessees or concessionaires placed or left at the Facility. Lessee hereby covenants and agrees that it will indemnify and hold harmless Lessor for any loss of life or injury which may occur to any property on the premises of the Facility or that area of the parking lot adjacent to the Facility used by Lessee or anyone attending its events during the Term of this Agreement, or any extension of this Agreement, caused by the negligence of Lessee or its agents, servants, or employees. GPR further agrees that the payment and settlement of any such loss, injuries and damages shall devolve upon and be made by Lessee; and the Lessee shall and will, at its own cost, defend any and all suits therefore brought against Columbus, and pay all attorney's fees of attorneys which Columbus shall select, and expense incidents to the defense therefore, or growing out of any such suits.

22. TERMINATION. This Agreement shall expire at the end of the Term unless the parties negotiate an extension of the Agreement. Upon termination of this Agreement, Lessee shall not remove any property which was placed, constructed, or affixed at or on the Facility as of the effective date or that was a replacement or addition of property thereafter by Columbus. Any repaired/replaced or new structures connected to the park shall be considered part of Golden Park in the event of Termination. Either party may terminate this Agreement for convenience by giving sixty (60) days written notice to the other Party.

23. GENERAL PROVISIONS.
 - A. The Parties agree to execute and deliver any instruments in writing, necessary to carry out any agreement, term, condition, or assurance in this Agreement, whenever the occasion shall arise and request for such instrument shall be made.

 - B. This Agreement shall constitute the full and complete understanding between the Parties. There are no oral understanding, terms or conditions and neither Party has relied on any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented orally, but only by an agreement in writing and signed by the Parties to this Agreement.

 - C. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

D. The Parties at all times during the Term of this Agreement shall act and deal in good faith with each other in the performance of this Agreement and in working toward the commercial success of the GPR.

E. This Agreement shall be construed under the laws of Georgia.

24. EXTENSION. Upon the conclusion of the Term, the Parties agree that GPC will have the right of first refusal to negotiate the terms for an extension of this Agreement for an additional five (5) years, until August 31, 2030 providing that GPC has complied with the following conditions:

- 1) GPR has made the required investments and repairs and carried out all other contractual obligations during the initial five (5) year Agreement;
- 2) GPR has acted as a positive member of the Columbus community during the execution of the original five (5) year agreement; and
- 3) GPR can provide evidence that they will continue to field a high level summer collegiate or a professional baseball team.

If the above conditions are met, the Parties will negotiate in good faith and take into account additional investments made by GPR as well as those still needed and the projected revenues that can be expected from the Facility.

25. DISCOVERY. Both parties acknowledge the current state of Golden Park and the known issues while entering this agreement. Both parties agree that should any significant structural issue be discovered during the duration of this agreement, either party may void the agreement.

26. NOTICES. Any formal notice required to be given hereunder shall be in writing and mailed, postage prepaid, by U.S. Certified mail, Return Receipt Requested, addressed to the Parties as follows unless a different address is later designated by either Party under this notice provision. All consents, approvals, or permissions required to be obtained under this Agreement shall be in writing and may be delivered by facsimile or electronic transmission.

For Notices to Columbus, Georgia:

Mr. Isaiah Hugley
City Manager
100 Tenth Street
6th, Floor, Government Center Tower
Columbus, Georgia 31901
Telephone: (706) 653-4029
Facsimile: (706) 653-4032

Email: IHugley@columbusga.org

For Notices to CPRD:

Tommy Groce, tgroce@columbusga.org, (706) 225-4190
Backup contact Carson Revell, crevell@columbusga.org, (706) 225-4655.

For Notices to the Golden Park Restorations, INC:

Scott Brand, scottb@rdragons.com, (706) 940-0448
Jeff Croop, jeff@usaignite.com, (804) 833-1518

27. COMMITMENT TO EQUAL OPPORTUNITY EMPLOYMENT AND CONTRACTING PRACTICES. GPR shall abide by all federal, state and local equal opportunity employment and contracting practices.
28. TIME IS OF THE ESSENCE. In all matters concerning or affecting this Agreement, time is of the essence.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in several counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single instrument, by the appropriate officials and the necessary seals to be affixed thereto on the ____ day of _____, 2020.

COLUMBUS, GEORGIA

GOLDEN PARK RESTORATIONS, INC

By: _____

Isaiah Hugley
City Manager

By: _____

Scott Brand
President