

DELLINGER SOFTBALL COMPLEX USE AGREEMENT

This Dellinger Softball Complex Use Agreement (“Agreement”) is entered into by and between the City of Cartersville School Board, on behalf of the City of Cartersville School System, (hereinafter “School”) and the City of Cartersville, Georgia, a municipal corporation of the State of Georgia, (hereinafter “City”), as of the date set forth below.

WHEREAS, City owns, controls, and/or operates certain athletic facilities, which from time to time are available for use and provides services in connection with such use being identified as the new field house to be constructed at Dellinger Park Softball Complex (hereinafter “Fieldhouse”); and

WHEREAS, School desires to use the Fieldhouse for the purposes set forth in this Agreement and City is willing to extend to School the use of those facilities and services under the terms and conditions set forth in this Agreement; and

WHEREAS, it is acknowledged between the parties that School is a component system of City, and said agreement is for the sole purpose of allocating funds and use of the Fieldhouse.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City and School do hereby consent, covenant, and agree as follows in connection herewith:

1. **LICENSE TO USE DESIGNATED FACILITIES.** Subject to and in accordance with the terms and conditions stated in this agreement City hereby grants to School and School hereby accepts and agrees to exercise, a license to use the new Fieldhouse at Dellinger Softball Complex as referred to on Exhibit “A.” The Fieldhouse shall be for the sole use of School; however, nothing prohibits School from allowing other users, if same are approved by the Cartersville Parks and Recreation Department.
2. **TERM.** The term of this Agreement shall run from June 1, 2025 through and including December 31, 2074.
3. **TERMINATION BY EITHER PARTY.** Either party may terminate this Agreement in the event of a breach or default by the other party of any term or condition of this agreement that is not cured within thirty (30) calendar days following written notice from the non-breaching party to the breaching party.
4. **FORCE MAJEURE.** In the case that the athletic facilities or any party thereof shall be destroyed or damaged by an Act of God, storm, fire, water, or other cause, or if any casualty or unforeseen occurrence shall render the fulfillment of this Agreement by City impossible, including without limitation thereto, requisitioning of the property by the United States Government, or any arm or instrumentality thereof, or the sale of or closing of the athletic facilities by City, then and thereupon this Agreement shall terminate, and School shall be entitled to a refund of any monies theretofore prepaid by School and yet unearned by City.

5. **RESPONSIBILITIES OF CITY.** City shall abide by the following responsibilities:
- a. City shall contract for the initial design and construction of the Fieldhouse and provide School with exclusive access to the Fieldhouse and any other related facilities as referenced on Exhibit “A” attached hereto and incorporated herein.
 - b. City shall permit School to bring into the Fieldhouse necessary equipment, including but not limited to tents, tables, chairs, softballs, and softball-related equipment to conduct its activities.
6. **RESPONSIBILITIES OF SCHOOL.** School shall abide by the following responsibilities:
- a. School shall be responsible for all costs associated with the design and building of the Fieldhouse. School shall pay any invoices from City within twenty (20) days of receipt. It is anticipated that the costs shall be as follows:
 - i. Estimated costs of construction \$1,350,000.00; and
 - ii. Compensation for architectural design and construction documents based on 7.4% of the estimated cost of construction of \$1,350,000.00 being \$99,900.00; and
 - iii. If the costs exceed \$1,350,000.00, City shall receive permission from School before proceeding and shall also receive permission for any and all change orders. City shall provide School written notice of same, and School shall have twenty (20) days to approve or reject. If no response is received within said time frame, the change order shall be considered to be approved by School.
 - b. School shall be responsible for all maintenance, utility, and operational costs of the Fieldhouse, which include the interior and exterior of the building, immediately following the issuance of the certificate of occupancy. School shall comply with all requirements of City of Cartersville Parks and Recreation Department as to access to said facility and yearly maintenance and cleanliness.
 - c. School shall provide a monthly schedule, which includes hours of operation for use of the Fieldhouse if outside of Dellinger Park normal operating hours. School and Parks and Recreation Department may adjust said schedule as they determine necessary for the use of said Fieldhouse by School.
 - d. Alcohol is prohibited at all Cartersville Parks and Recreation Department Facilities. It is the responsibility of School to ensure that all individuals who will be attending the event are aware of this policy.

School must agree and adhere to using assigned Maintenance Personnel to be recommended by School and approved by the City Parks and Recreation Department Director. Should School not choose the Maintenance Personnel or should City not approve the School’s selection, then City shall be responsible for appointing Maintenance Personnel. School’s custodian, if in compliance with City

standards in accordance with Section 11 herein, would be considered acceptable Maintenance Personnel.

During the time of use by School, the company will pick up all trash around Fieldhouse, fields, and bleachers; empty all trash containers, located within the usage area of School, which are at $\frac{1}{2}$ to $\frac{3}{4}$ full and replace with new trash bags. Additionally, during the time of use by School, the restrooms serving the field(s) used by School shall be maintained and stocked with appropriate restroom products.

When facilities are not in use by School, City shall be responsible for all maintenance and upkeep. City shall be responsible for providing security on the same basis as provided throughout the park regardless of whether facilities are in use by School.

7. SPECIAL CONDITIONS AND USES. City and School hereby agree to the additional conditions and uses related to the Fieldhouse and also Fields at the Dellinger Park Softball Complex:

- a. Field 1 shall be reserved for sole use of School's Middle School program upon request. Said request to be submitted to the Parks and Recreation Director at least fifteen (15) days prior to proposed date and time of use.
- b. Field 2 shall be reserved for sole use by School's High School program as follows. Field 2 of the Dellinger Park Softball Complex shall be closed to the public for the first full week before the GHSA official start date for Girls Softball and throughout the entire softball season, including post-season play, if any.
- c. Fields 3 through 6 shall be reserved for sole use by School for tournament purposes upon request. Said request to be submitted to the Parks and Recreation Director at least fifteen (15) days prior to proposed date and time of use.
- d. School is allowed to host a camp for one (1) week or as otherwise mutually agreed to by School and City during park hours. The date and time of the camp shall be approved by the Parks and Recreation Director annually and School shall provide fifteen (15) days' notice of proposed dates and time for the camp.
- e. In June and July, Field 2 shall be reserved for three-hour, daily segments, for practice by School softball team(s) one day a week. Said date and time will be determined by the Parks and Recreation Director annually, upon request by School with fifteen (15) days' notice prior to said uses.
- f. School may host no less than two (2) fundraising events per year at Field 2, with each fundraising event lasting no more than three (3) days. Said dates and times are to be approved by the Parks and Recreation Director annually, based

on the field's availability. All requests must be received at least fifteen (15) days prior to the proposed dates and times of use.

- g. The Fieldhouse's locker room, storage area, and adjacent hitting facility are for School's exclusive use, provided that said facilities are maintained as required by the Parks and Recreation Director. City employees shall at all times have access to said facilities. Access shall be limited to approved remote card access only.
 - h. Except for the time and dates and uses specified herein or otherwise established by the Parks and Recreation Director, City shall have the right to use Field 2 for all purposes approved by the Parks and Recreation Director. However, and notwithstanding anything contained herein to the contrary, School shall be informed of and consent to all City-approved entry and use.
 - i. Parties acknowledge the importance of communication between the City and School is essential for promoting mutual understanding and cooperation. Parties will make every effort to maintain open lines of communication, ensuring timely updates on event scheduling and performance of respective responsibilities.
- 8. **INSURANCE.** School shall be responsible for obtaining and maintaining proper insurance coverage for the Fieldhouse and the contents of the Fieldhouse. In addition, during the term of this Agreement, School shall obtain and keep in full force, at the sole cost and expense, general liability insurance coverage to cover School, and its employees, agents, and volunteers for claims, injuries, or damages that could arise out of or relate to School's activities and/or the performance of its responsibilities under the Agreement. The general liability coverage shall inure against liability for bodily injury and personal injury and against liability for property damage in amounts of at least \$2,000,000.00 combined single limit per occurrence. School shall name City as the certificate holder and as an additional insured on the policy.
- 9. **BROADCAST & RECORDING RIGHTS.** School is granted all rights and privileges for radio, television, and internet broadcasts, and all visual and audio recordings originating from the Fieldhouse Press Box during the activities.
- 10. **WARRANTY.** Both parties and their respective employees, agents and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders while performing under this Agreement.
- 11. **BACKGROUND CHECKS.** City and School agree that all individuals associated or affiliated with their performance of duties and/or services within the scope of this Agreement, shall have a current (completed within 365 days prior to the termination of this Agreement) state/local criminal background check and National Sex Offender Registry check on file. Background check and National Sex Offender Registry check documents must be made available upon request by either party.

12. **NO ASSIGNMENT/SUBLEASE.** The rights and responsibilities granted in the Agreement and not assignable, and School may not sublease City's property under any circumstances. Any attempted assignment or sublease hereunder shall be deemed null and void.

13. **WAIVER.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14. **NOTICES.** Any notice demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by personal service, by air courier with receipt of delivery, or mailed via certified mail, return receipt requested, with adequate postage affixed thereto, to the address of the other party as indicated below:

If to City:
City of Cartersville
Attn: City Manager
PO Box 1390
1 North Erwin Street
Cartersville, GA 30120

If to School:
Cartersville City Schools
Attn: Superintendent
PO Box 3310
15 Nelson Street
Cartersville, GA 30120

15. **GOVERNING LAW, VENUE & ATTORNEY'S FEES.** This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Georgia, without regard to its choice of law principles. The parties to this Agreement consent to the exclusive jurisdiction and venue of any court of competent jurisdiction sitting in Bartow County, Georgia. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses.

16. **BINDING EFFECT.** The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, personal representatives, successors, and assigns of the parties.

17. **SEVERABILITY.** If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties.

18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one Agreement. Copies of signatures to this Agreement may be relied on to the same extent as the originals.

19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties.

20. **AUTHORITY.** By signing below, the representative from each party represents that he/she is duly authorized to sign this Agreement and bind their respective organizations.

WITNESSES, the signatures of the parties hereto, on this the _____ day of _____, 2025.

**CITY OF CARTERSVILLE SCHOOL
BOARD**

CITY OF CARTERSVILLE, GEORGIA

By: _____ (SEAL) By: _____ (SEAL)
Kelley Dial, President Matthew J. Santini, Mayor

Attest: _____ (SEAL) Attest: _____ (SEAL)
Carolyn R. Davenport, Secretary Julia Drake, City Clerk