

FIELD USE AND INDEMNIFICATION, DEFEND AND HOLD HARMLESS AGREEMENT

This AGREEMENT is made on this 15 day of DECEMBER, 2023 by and between the Stay and Play Social Club contractor Stephanie Puertas, an organization whose address is PO Box 2124, Royal Oak, MI 48068 (hereinafter "SPSC") and the CITY OF MADISON HEIGHTS, a Michigan Municipal Corporation, whose address is 300 West Thirteen Mile Road, Madison Heights, Michigan 48071 (hereinafter "CITY"). In this Agreement, either SPSC and/or the CITY may also be referred to individually as a "Party" or jointly as "Parties."

WHEREAS, SPSC desires to use City Park Land for the purpose of conducting adult sports programs; and;

WHEREAS, the CITY deems it to be in the public interest to promote recreation, including adult sports in its park system under the conditions as hereinafter set forth; and,

WHEREAS, the parties do hereby covenant and agree as follows:

NOW THEREFORE, the CITY, for and in consideration of the covenants to be performed by SPSC, does hereby permit SPSC to use certain fields located in certain parks as hereinafter described for the sole purpose of baseball. The parks to be used by SPSC for sports games and practices are: Civic Center, Huffman and Rosie's.

TERM

The term of this Agreement shall begin January 1, 2024 through December 31, 2028. Specific dates for the use of said fields within the parks by SPSC are hereinafter set forth and the same may be modified from time to time upon mutual consent of the parties hereto: April 1 -October 31.

COVENANTS OF ASSOCIATION

SPSC does hereby covenant and agree with the CITY that SPSC will:

1. SPSC agrees to submit a completed game schedule of all park usage to the Recreation Supervisor or designee no later than March 31.
2. Use and occupy said parks in a careful and proper manner and in particular shall not permit any vehicles to be driven on turf unless supervised by a designated employee from the Department of Public Services; not permit the use of loud speaker system, unless approved by Director of Public Services or designee; and shall not erect or place any buildings, tents, mobile carts, or similar facilities without written permission from the Director of Public Services or designee; and,
3. Not use or occupy said parks for any unlawful purpose; and will conform and obey all present and future laws, ordinances, and all rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the parks; and,
4. Indemnify and hold harmless the CITY, its Council, officers, administrators, employees, attorneys, affiliates, successors and assigns from any and all liability arising, directly or indirectly, from the use of fields and equipment owned by the CITY for adult sports practice, games and events during the term of this Agreement. In the event any suit, proceeding, claim, loss, damage, cost, charge or expense shall be brought against the CITY, its Council, officers, administrators, employees, attorneys,

affiliates, successors and assigns by virtue of the above-referenced activity, during the term of this Agreement, SPSC hereby covenants and agrees to assume the defense thereof and defend the same at its own expense and pay all costs, charges, attorney fees and any other expenses related thereto. Notwithstanding the foregoing, this Field Use and Indemnification, Defend and Hold Harmless Agreement excludes the sole acts and/or the sole omissions to act on the part of the CITY; and,

5. Agree that SPSC sponsored events run by a third party will require City Council approval (to be requested by SPSC) and will require an executed and notarized Indemnification, Defend, and Hold Harmless Agreement from the third party vendor; and,
6. Agree to maintain with the CITY a valid Certificate of Insurance (Acord) including coverages and limits as required by the City's Risk Manager and naming the CITY as an additional insured for the purpose of the activities contained in this Agreement; and,
7. Leave the park, at the expiration or prior termination of this Agreement and any renewal or extension thereof, in as good condition as received, reasonable wear and tear excepted; and,
8. Be responsible for all damage to property, public or private, that may be caused by this operation in the performance of this Agreement; and,
9. Provide supervision, officiating/umpiring, and equipment (e.g. uniforms, bats, balls, bases, helmets) to perform the activities contained in this Agreement and to insure the safety of participants and the public. SPSC agrees to move any equipment as requested by the Director of Public Services or designee; and,
10. Open and close the Park Shelter building restrooms, set out and collect bases at parks, and turn on/off lights when CITY Staff are unavailable; and,
11. When turning on/off lighting, the lights will be turned on no earlier than one hour before sunset and turned off before participants leave the park; and
12. Assist the CITY in their effort to adequately maintain the fields they are assigned. This assistance may include but not be limited to volunteer labor, donation of materials, and financial assistance for such maintenance as re-sodding, top dressing, aeration, fertilization and overseeding; and,
13. Restrict use of certain parks or portions thereof if requested by the CITY to facilitate field maintenance; and,
14. Provide payment for field use as set forth by the CITY at the end of each season in a timely manner as requested by the CITY at \$20 per hour per discretion of the CITY; and,
15. If an event is held at the CITY'S fields and is run by a third party that provides revenue back to SPSC, SPSC shall reimburse the CITY for all costs incurred by the CITY to support such event. SPSC agrees to disclose the revenue percentage split with the third party by providing the CITY: with a copy of SPSC'S operating and/or financial agreement with the third party.

COVENANTS OF CITY

The CITY does hereby covenant and agree with SPSC that the CITY will:

1. Maintain the fields used by SPSC, including mowing, fertilization, weed control, lining/stripping, and seeding or re-sodding, if needed; and,
2. Provide lighting for night games and practices when CITY Staff is available; and,
3. Set out and collect bases at when CITY Staff are available; and,
4. Open and close the Park Shelter building restrooms at parks when CITY Staff are available; and,
5. Schedule other park users so as to minimize the potential for conflict with SPSC activities during the periods specified above under TERM. In the event of a conflict, the CITY will make a good faith effort to find an alternative location for SPSC; and,
6. The CITY reserves the right to determine who may use: the parks outside normal use by SPSC.

MUTUAL COVENANTS

It is mutually agreed by and between the CITY and SPSC that:

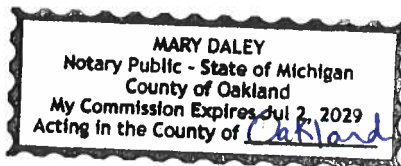
1. This Agreement and all covenants and provisions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under SPSC in violation of any of the provisions hereof shall vest in the assigns any right, title or interest whatsoever;
2. These agreed upon parks are owned and held by the City of Madison Heights for the use and benefit of the general public, and should the CITY determine that said parks are needed for any purpose whatsoever, the CITY shall have the right and privilege of canceling and terminating this Agreement upon giving to SPSC ninety (90) day notice in writing of its intentions to cancel, and terminate this Agreement. SPSC also shall have the right and privilege of canceling and terminating this Agreement upon giving the CITY ninety (90) day notice in writing of its intentions to cancel or terminate this Agreement; and,
3. If SPSC shall at any time be in default in the performance of any of the covenants or provisions of this Agreement, and SPSC shall fail to remedy such default within fifteen (15) days after written notice thereof from the CITY, it shall be lawful for the CITY to cancel this Agreement, and thereupon this Agreement and everything herein contained in the part of the CITY to be done and performed shall cease and terminate, without prejudice, however, to the right of the CITY to recover from SPSC all damages due up to the time of such entry; in case of any such default and entry by the CITY, the CITY may reschedule usage of said parks for the remainder of said term.
4. Nothing contained herein, including the indemnity provisions stated above, shall constitute a waiver of governmental immunity or other defenses to claims or lawsuits alleged by any person or entity.
5. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan.
6. This Agreement contains the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties. This Agreement shall not be changed or supplemented orally. If any provision(s) of this Agreement shall be found to be invalid or unenforceable, the remainder shall not be affected.

IN WITNESS THEREOF, the parties hereto have hereunto signed this Fields Use and Indemnification, Defend, and Hold Harmless Agreement this 15TH day of DECEMBER, 2023.

Stay and Play Social Club ("SPSC")

By: Matt Higley Colin Cote
Matt Higley Witness
SPSC Director

STATE OF MICHIGAN)
COUNTY OF OAKLAND)
On this 26th day of February, 2024, before me, a notary public in and for said County and State, personally appeared the above named Matt Higley to be personally known, who being by me duly sworn, did say that they have read the foregoing Field Use And Indemnification, Defend And Hold Harmless Agreement, that the same was explained to them by their representatives, and that they fully understand the contents thereof, and that they have signed said Field Use And Indemnification, Defend And Hold Harmless Agreement as their own free act and deed and on behalf of the aforesaid organization.



Mary Daley, Notary Public
Oakland County, Michigan
acting in the County of Oakland
My Commission expires: July 2, 2029

CITY OF MADISON HEIGHTS ("CITY")

By: Roslyn Grafstein Witness
Mayor

By: Cheryl Rottman Witness
City Clerk