

AGREEMENT

BETWEEN

OSHKOSH AREA SCHOOL DISTRICT

AND

WINNEBAGO COUNTY, WISCONSIN

LEASE AGREEMENT

BETWEEN

WINNEBAGO COUNTY

AND

OSHKOSH AREA SCHOOL DISTRICT

A. Parties. This Lease Agreement is hereby executed this \_\_\_\_\_ day of April, 2019, by and between WINNEBAGO COUNTY, a State of Wisconsin Municipal Corporation, Oshkosh, Wisconsin 54901, hereinafter referred to as "LESSOR" and OSHKOSH AREA SCHOOL DISTRICT, a State of Wisconsin School District, Oshkosh, WI 54901 hereinafter referred to as "LESSEE".

B. Lease Agreement. The LESSOR hereby agrees to and does lease unto the LESSEE and the LESSEE agrees to and hereby does lease from the LESSOR the premises hereafter described for the term and at the rental and upon the conditions hereinafter set forth:

1. Length of Lease.

Term. This Lease Agreement shall be for a period of five (5) years commencing on the 1<sup>st</sup> day of January, 2019 and ending on the 31<sup>st</sup> day of December, 2023.

2. Rent. Upon commencement of this Lease Agreement, LESSEE agrees to pay LESSOR a one-time rental payment of one dollar (\$1.00) for the five (5) year term of this

Lease Agreement.

C. Description of Leased Premises. The Leased Premises consist of 5.1 acres more or less as outlined in Exhibit "A" attached hereto and incorporated herein by reference.

D. Authorized Use of Leased Premises.

1. Softball Facility. LESSEE shall have the right to use and occupy the Leased Premises for the sole purpose of engaging in the operation, maintenance and programming of softball and kickball related activities.

2. Use of Common Park Facilities. LESSEE is authorized to use in common with others, existing and future Winnebago County Community Park facilities located outside the Leased Premises. Allowing for exceptions indicated within this Lease Agreement, such use shall be subject to the rules, regulations and associated fees applicable to all such users in common.

3. Access to and Occupation of Leased Premises.

a. Given the exceptions indicated in Section D., Sub. 3.b. & c., each year LESSEE shall be granted unrestricted access to the Leased Premises from April 1<sup>st</sup> through October 31<sup>st</sup> over the course of the lease term.

b. Unless prior verbal permission has been granted by

the Winnebago County Parks Director or his designee, LESSEE shall not be permitted to access the Community Park grounds on any given day between the hours of 11 p.m. and 7 a.m. or when access into the Community Park has been prohibited by the LESSOR due to extenuating circumstances.

- c. Should LESSEE find it necessary to enter the Leased Premises between November 1<sup>st</sup> and March 31<sup>st</sup> or during hours when the Community Park is closed to access, LESSEE shall be obligated to contact the LESSOR in order to arrange a date and time to access the site. Such access shall be reasonably permitted at LESSOR'S convenience.

E. Operation, Maintenance and Programming of Leased Premises.

LESSEE shall comply with all local, state and federal laws and codes relating to the operation, maintenance and programming of the softball facility, including but not limited to ADA requirements. LESSEE shall also assume all costs involved in modifying the Leased Premises in response to specific LESSEE needs as they pertain to the operation, maintenance and/or programming of the Leased Premises. Such modifications shall include, but are not limited to, the following areas: projects involving structural or design changes as well as activities

involving the attaching or moving of in ground or wall mounted fixtures. Additionally, LESSEE shall promptly repair any damages that occur to the Leased Premises as a result of LESSEE'S attempts to implement such modifications and shall pay all costs related to such repairs. Should LESSEE fail to expedite repairs to the Leased Premises, LESSOR may, at its sole discretion, make said repairs and bill LESSEE for the costs thereof and may terminate this Lease Agreement should LESSEE fail to pay said costs within thirty (30) calendar days of being invoiced for said costs.

- F. Permission to Engage in Facility Modifications within Leased Premises. As a pre-requisite to LESSEE'S being allowed to perform facility modification within the Leased Premises, LESSEE shall prepare and have on file with LESSOR the following:
1. For Projects in Excess of One Thousand Dollars (\$1,000.00).
    - a. For projects that are to exceed one thousand dollars (\$1,000.00) in expenses, LESSEE shall provide LESSOR a complete set of concept design plans along with general specifications for such construction or alterations.
    - b. LESSOR shall have a minimum of thirty (30) working days in which to review said plans and associated documents before providing LESSEE a written response either rejecting or approving the proposed construction or

alterations. Approval of said plan shall not be unreasonably withheld.

c. Given LESSOR'S approval, LESSOR shall indicate to LESSEE its decision as to whether or not LESSEE shall be required to provide a complete set of design drawing(s) and construction contract(s) for all proposed construction or alterations. The foregoing items are to be submitted to LESSOR for examination and shall be approved, altered, or rejected. LESSOR shall provide a reasonable explanation for any alteration or rejection. Subsequently, LESSOR shall present LESSEE with a written statement either approving said design drawings and construction contract(s), or indicating corrective measures required as a prerequisite to LESSOR'S final written approval. Once LESSEE obtains final written approval, LESSEE shall be permitted to proceed with actions necessary in order to complete said improvement project(s) according to LESSOR'S approved plans and time constraints as indicated hereunder in Section G..

d. Any construction or alterations shall be subject to the conditions as described in Section AA.

G. Requirements for Implementing Facility Modifications within Leased Premises. Upon commencement of any work entailing a

modification or alteration that is to be made to an existing structure or site fixture upon the Leased Premises, LESSEE shall have one hundred and twenty (120) working days in which to complete all such work or LESSOR may, at its option, complete said work and bill LESSEE for the costs thereof and terminate this Lease Agreement should LESSEE fail to pay said costs within thirty (30) calendar days of receipt of LESSOR'S invoice.

H. LESSOR'S Obligations. The following items are to be considered tasks which LESSOR is responsible for in fulfilling LESSOR'S obligations for maintaining the Leased Premises. In executing the tasks described herein, and in consideration of any input provided by LESSEE as set forth in Section I., Sub. 7., LESSOR shall retain sole discretion in deciding matters as they relate to both the disposition and commitment of resources used in addressing the tasks set forth.

1. Turf Maintenance. LESSOR agrees that it shall, during the term of this Lease Agreement and any extension or renewal thereof, be responsible for turf maintenance in the grass areas both within and immediately adjacent to the Leased Premises (see Exhibit "A"). LESSOR shall be responsible for payment of all costs for maintenance.

2. Pavement Repairs. LESSOR agrees that it shall, during

the term of this Lease Agreement and any extension or renewal hereof, be responsible for activities involving the repair of all pavement surfaces within the Leased Premises. LESSOR shall be responsible for payment of all costs related to such repairs except when it has been determined that the need for such repairs originated from action(s) of the LESSEE, its agents, program participants or subcontractors.

3. Fencing, Bleachers and Tree Maintenance. LESSOR agrees that it shall, during the term of this Lease Agreement and any extension or renewal hereof, be responsible for maintaining the fencing, bleachers and tree stock both within and immediately adjacent to the Leased Premises. LESSOR shall also be responsible for payment of all costs related to such maintenance.

I. LESSEE'S Obligations. The following items are to be considered tasks for which LESSEE is responsible for in fulfilling LESSEE'S obligations for operating and maintaining the Leased Premises as a softball/kickball facility.

1. Acceptance of Premises. LESSEE, by execution of this Lease Agreement, represents that it has inspected the Winnebago County Community Park and the Leased Premises, and that it accepts the condition of same as they now



exist and fully assumes all risks incident to the use thereof. LESSEE accepts the Leased Premises in their present condition and during periods of its occupancy agrees to maintain and keep in good repair any improvements, fixtures, or any other none infrastructure related items on the Leased Premises, without expense to LESSOR.

2. Pick up of Trash and Recyclables. LESSEE agrees to remove or cause to be removed from the Leased Premises, any trash or recyclables, generated during LESSEE'S occupancy of the Leased Premises.
3. Disposal of Trash and Recyclables. In accordance with Section I., Sub. 2., LESSEE shall cause to have hauled outside the boundaries of the Community Park, all trash and recyclables collected in association with LESSEE'S occupancy of the Leased Premises. Dumpster and/or recyclable container rentals, and any charges for the same, are the sole responsibilities of LESSEE. LESSEE shall arrange to have said Dumpster and/or containers serviced by the vendor(s) currently contracted by the Winnebago County Solid Waste Department to provide trash and/or recyclable disposal for Winnebago County owned properties. Said trash and recyclables shall be taken to the Winnebago

County Landfill and recyclables taken to the Winnebago County Recycling Facility, as often as necessary to maintain sanitary conditions on the Leased Premises.

4. Prohibition on Smoking. Smoking is not allowed inside any building within the Leased Premises.
5. Prohibition on Glass Material. Beverage and/or food related glass storage containers are banned from the Leased Premises.
6. Concessions.
  - a. Given LESSOR'S written permission, which shall not be unreasonably withheld, and under the provisions as stipulated in Section L. Sub. 3 a. and 4. a. & b. and Section S., LESSEE shall have the right to directly sell, or engage a contractor to sell, either some or all of the following items during its programmed use of the Leased Premises: food, beverages, suntan/sunscreen lotions; and various souvenir items including, but not limited to: t-shirts, sweatshirts, plastic beverage containers, sunglasses, frisbee discs and the like.
  - b. LESSEE shall be prohibited from serving alcoholic beverages without LESSOR'S prior written permission.
  - c. LESSEE shall secure all necessary permits required for

the sale of the aforementioned concessions from the City of Oshkosh/Winnebago County and provide proof of such permits to LESSOR.

- d. LESSEE shall not permit food to be eaten within the confines of the dugouts or ball field areas.
- e. Nothing herein shall limit LESSOR'S exclusive right to establish its own gate admission fee or other considerations for attendance at any of the events other than those the LESSEE schedules, programs or conducts at diamonds described in "Exhibit A" or to establish any other fees or considerations it deems appropriate, at its sole discretion, as owner and operator of the Winnebago County Community Park. No admission fee, consideration or any other fee will be charged for any softball/kickball events the LESSEE schedules, programs or conducts at the diamonds described in Exhibit "A".

In the event LESSOR establishes a gate admissions fee or other consideration for attendance at any events other than those the LESSEE schedules, programs or conducts at the diamonds described in Exhibit "A", the LESSOR agrees to provide the LESSEE with prior notification.

f. Nothing in this article or agreement shall prohibit the LESSEE from unilaterally charging, collecting or otherwise receiving user costs including but not limited to player fees, team entry fees, diamond improvement fund fees or similar fees.

7. Exterior Lighting, Signs, and Sound Generating Equipment.

With the exception of any softball diamond related rules/regulation placards, posters, concession information, bulletin boards or fliers, LESSEE shall secure LESSOR'S written approval, which shall not be unreasonably withheld, prior to placing any temporary or permanently mounted exterior lighting, signs or sound generating equipment on the Leased Premises. Installation of said items shall be performed pursuant to the conditions stipulated in Sections F. & G..

8. Monitoring of Facility. LESSEE shall be responsible for the regular monitoring, detection, and prompt reporting of any and all facility problems or safety concerns as they relate to the execution of LESSOR'S obligations as stated in Section H. herein whenever LESSEE'S activities are scheduled. LESSEE'S reporting of problems and/or safety concerns shall be performed through direct written or verbal communication with the Winnebago County Parks

Director.

9. Expo Event Accommodations. During the term of this Lease Agreement it shall be incumbent upon LESSEE to accommodate LESSOR'S needs in arranging to have the softball lighting systems used by LESSOR during specific expo event periods. For the duration of the Lease Agreement it shall be incumbent upon LESSOR to annually provide LESSEE with written notification of the applicable expo event period(s) and to obtain LESSEE'S approval prior to May 1<sup>st</sup>. LESSOR shall not be required to reimburse LESSEE for utility costs.
10. Alterations to Locking Mechanisms. LESSEE shall be prohibited from instituting changes to any locking mechanisms on the Leased Premises without LESSOR'S written permission.
- J. Alterations Made Pursuant to Jurisdictional Mandate. LESSOR shall retain the right to materially alter the terms of this Lease Agreement or, in the alternative, to terminate this Lease Agreement with sixty (60) calendar days prior written notice to LESSEE should any changes in federal or state law or regulation or City of Oshkosh ordinance require such alteration or termination.
- K. Diggers Hotline. LESSEE shall be responsible for contacting

Diggers Hotline, the LESSOR, and/or other utility line locator agencies to locate all utility lines on the Leased Premises if LESSEE, its vendors, agents, servants or employees shall be inserting into the ground tent stakes, posts, poles, or other below grade appurtenances. Failure of LESSEE to locate utility lines shall obligate LESSEE to repair or replace any damaged utility line at LESSEE'S sole expense.

L. Naming Rights and Licensing Agreements.

1. Official Facility Name. In the event LESSEE, and/or the LESSEE'S agents, vendors, or subcontractors choose to promote Community Park softball or kickball related activities through the use of radio, television, placards or other advertising media, LESSEE shall be responsible for ensuring that all such forms of advertising identify the site and location of the Leased Premises as the WINNEBAGO COUNTY COMMUNITY PARK, located on County Road Y, 1/2 mile east of the intersection of Highway 76 and County Road Y, unless permitted otherwise by LESSOR.
2. Required Use of Sponsor's Name. In the event LESSOR enters into a naming rights (sponsorship) agreement for all or any part of the Leased Premises, effective as of the date of LESSOR'S written notification to LESSEE, use of the official sponsor's name and accompanying

designations, shall replace all previous facility references in all new promotional and advertising materials incorporated by LESSEE, and/or LESSEE'S agents, vendors, or subcontractors, for the remainder of the Lease Agreement. LESSEE shall be obligated to complete said name replacements effective upon any subsequent renewal of this Lease Agreement.

3. Licensing Agreements. Should LESSOR enter into one or more licensing agreements that in any way bear upon LESSEE'S engagement in program activities within the Leased Premises, LESSEE shall be bound to conduct its operations in accordance with any/all applicable provisions as stipulated within the aforementioned licensing agreements. Additionally, for purposes of communicating the general terms and conditions of said licensing agreements currently in effect, LESSEE shall fully comply with the following restrictions:

a. ORIGINAL - While present in the Community Park, LESSEE shall not be permitted to sell, distribute or advertise any other food, beverage or souvenir products than those listed in Exhibit "B". LESSOR may amend Exhibit "B" upon one-hundred eighty days (180) prior notice to LESSEE.

a. *REVISED* - While present in the Community Park, LESSEE shall not be permitted to sell, distribute or advertise any beverage products unless prior written authorization is granted to LESSEE by LESSOR.

b. While present in the Community Park, neither the LESSEE nor its contractors or representatives shall be permitted to provide ATM services other than those made available through the County licensing agreement with Cornerstone Processing of Oshkosh. Additionally, LESSEE shall not be permitted to display advertising pertaining to any ATM services except for such advertising that may inform and provide directions to the availability of ATM services within the Community Park.

4. Concessionaire License Agreement

a. Should LESSOR enter into a concessionaire license agreement at a time when LESSEE has already established a concession operation within the Leased Premises, LESSEE shall be obligated to discontinue its concession operations given sixty (60) written notice by the LESSOR.

b. In the event LESSOR no longer engages in concession operations within the Leased Premises, LESSEE shall be



allowed to start-up or resume concession operations within the Leased Premises under the stipulation that it first receive LESSOR'S written permission to engage in said activity.

- M. Compliance with Laws, etc. LESSEE agrees to comply with all laws, ordinances, rules and regulations promulgated by LESSOR and any governmental unit having jurisdiction, applicable to the use of said premises and to use said premises in compliance therewith.
- N. Liens. LESSEE agrees to promptly pay all sums legally due and payable on account of any labor it has performed on or materials it has furnished for the Leased Premises. LESSEE shall not permit any liens to be placed against the Leased Premises on account of labor performed or material furnished and in the event such a lien is placed against the Leased Premises, LESSEE agrees to save LESSOR harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens within 120 days. Failure to comply with this paragraph shall be cause for immediate termination of this Lease Agreement.
- O. Repair of Premises. To the exclusion of damages not the fault of the LESSEE, the LESSEE shall, at its sole expense, keep, maintain and repair such facilities and equipment within the

Leased Premises that it is hereto responsible for, in a good and well-maintained condition consistent with sound business practice and in a manner which will preserve, enhance and protect the general appearance and value of the Leased Premises and of the common park facilities. In the event LESSEE fails to comply with Section O., Repair of Premises, LESSOR shall issue a written notice to LESSEE regarding its failure to maintain and repair. Said notice shall state with reasonable specificity: (1) the nature of LESSEE'S failure to keep, maintain or repair; and, (2) the remedy required by LESSOR to cure the default. In the event that LESSEE fails within thirty (30) days after receipt of LESSOR'S default notification under this paragraph, to commence appropriate action to cure such default, LESSOR shall have the right thereafter, at its sole discretion, to terminate this Lease Agreement immediately, or in the alternative, to cure said default in an efficient, effective, and good workmanlike manner, and to assess the costs thereof against LESSEE. LESSEE hereby agrees to pay any and all such assessments, including all costs and disbursements incurred by LESSOR in curing said default within thirty (30) calendar days after LESSOR'S demand. In the event LESSEE fails to pay said assessment in its entirety, LESSOR shall have the right thereafter, at its

discretion, to terminate this Lease Agreement immediately.

P. Non-Assignment and Deviation from Normal Softball and Kickball Related Programming.

1. LESSEE shall not at any time assign any part of this Lease Agreement nor sublease nor assign any of the Leased Premises without prior written approval of LESSOR (see Section P., Sub. 2. a. & b., Section P., Sub. 3. and Section S.). Said prohibition against non-assignment shall include, but not be limited to, any arrangement whereby LESSEE permits a third person organization to perform activities within the Leased Premises that depart from what would otherwise be considered normal day-to-day softball and kickball programming operations.
2. LESSEE shall not at any time deviate from, or include alternative programming in what would otherwise be considered normal day-to-day softball and kickball programming operations without prior written approval of LESSOR (see Section P., Sub. 2.a. & b., Section P., Sub. 3. and Section S.). As a pre-requisite to submitting a request to LESSOR for special consideration of non-assignment or deviation from normal softball and kickball programming, LESSEE shall have the option of performing one or both of the following:

- a. A minimum of 15 working days prior to LESSEE'S May 1<sup>st</sup> occupancy, LESSEE shall submit to LESSOR a written narrative describing in sufficient detail all pertinent information as it relates to either LESSEE'S need(s) to address non-assignment of the Leased Premises and/or LESSEE'S need(s) to deviate from normal softball and kickball programming.
  - b. A minimum of 30 working days prior to the planned date for implementing non-assignment or deviation from normal softball and kickball programming, LESSEE shall submit to LESSOR a written narrative describing all pertinent information as it relates to LESSEE'S need(s).
3. Upon receipt of LESSEE'S written request for consideration of non-assignment or deviation from normal softball and kickball programming, LESSOR shall, within 5 working days, provide LESSEE a written response indicating one of the following:
  - a. Approval of request, said approval to not be unreasonably withheld.
  - b. Denial of request.
  - c. Approval of request, said approval to not be unreasonably withheld, given stipulations that shall

be expounded upon within LESSOR'S response. It is thereafter understood that LESSEE shall comply with said stipulations to LESSOR'S full satisfaction.

Q. Utilities.

1. Electrical Services.

a. During LESSEE'S period of occupancy, it shall be incumbent upon LESSEE to pay for all costs associated with the electrical utilities servicing the Leased Premises. LESSOR shall not be held accountable for reimbursing LESSEE the cost of all or any part of the electrical utilities associated with the softball facilities.

b. Between the months of November and March, after providing verbal notification to LESSOR, LESSEE shall be granted a period of up to ten (10) working days in which it will be allowed to inspect the Leased Premises to insure proper and efficient use of electrical utilities. Such inspection shall include determining if LESSEE'S electrical based system(s) are in optimal running order.

R. Quiet Enjoyment. LESSOR covenants, warrants, and represents that it has full right and power to execute and perform this Lease Agreement and to grant the estate leased herein and that

LESSEE, upon payment of rent herein specified and performance of the covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease Agreement, subject to LESSOR'S right to inspect the premises as stated in Section T. hereunder.

S. Subcontracting. LESSEE may subcontract with other municipalities, private agencies or businesses in the development, maintenance and/or operation of the Leased Premises. Additionally, this Lease Agreement shall not be construed so as to prevent LESSEE from delegating all or any part of the softball and/or kickball operations to a third person organization. All such relationships shall be covered under separate agreements which LESSEE shall hold with its contractors and any such agreements shall stipulate that all terms within this Lease Agreement shall be binding onto the contractor.

T. LESSOR'S Right of Entry. LESSOR, its agents, and employees shall have the right to inspect the Leased Premises at any reasonable time in order to determine if the facilities and equipment which the LESSOR maintains, are in good repair and in compliance with existing laws and regulations (see whole of Section H.). Prior to any inspection by LESSOR, LESSOR

shall arrange with LESSEE for a suitable time to make such inspection, except in emergency situations such as fire or other conditions hazardous to property or life.

U. Civil Rights Assurances. LESSEE, in the use of the Leased Premises for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Leased Premises that (1) no person on the grounds of sex, race, color, creed, physical condition, developmental disability, sexual orientation, marital status, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of sex, race, color, creed, physical condition, developmental disability, sexual orientation, marital status, national origin or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.; (3) that the LESSEE shall not discriminate in its employment practices in contravention of Section 111.322, Wisconsin Statutes.

V. Condemnation. If at any time during the term hereof the

whole of the demised premises shall be taken for any public or quasi public use, under any statute, or by right of eminent domain, then, in such event, when possession of the demised premises shall have been taken thereunder by the condemning authority, the term hereby granted, and all rights and obligations of the LESSEE hereunder, shall immediately cease and terminate.

W. Damage to Premises. In the event of partial or complete loss to the Leased Premises by fire, the elements, accident, or other occurrence, LESSOR shall have no obligation to compensate LESSEE for any loss incurred except that caused by LESSOR'S negligence. LESSEE shall, within thirty (30) days of said loss, give notice to LESSOR of its intent to repair or rebuild, or give notice of its intent to terminate this Lease Agreement. In the event that LESSEE chooses to repair or rebuild, the term and provisions of the Lease Agreement shall continue unabated, provided that repair or reconstruction substantially commences within 180 days of the date of loss. In the event that a loss or occurrence on the Leased Premises, caused by an act of neglect on the part of LESSEE, produces a loss to any of the Leased Premises, LESSEE shall, at its expense, repair, replace, rebuild or cause to be repaired, replaced or rebuilt, any such property damaged



or lost to its previous condition as soon as reasonably possible, and to reimburse LESSOR, its agents, employees, other lessees, contractors and suppliers for any and all costs and expenses, or loss of gross revenue, incurred as a result of such loss or damage.

X. Future Development.

1. LESSOR reserves the right to further develop or improve the common park facilities or the Leased Premises at LESSOR'S sole discretion, subject to LESSEE'S right to Quiet Enjoyment of the Leased Premises as provided for in Section R. herein.
2. LESSOR further reserves the right to take any action it considers necessary to preserve the appropriate environment within the whole of the Winnebago County Community Park facility in whatever manner it determines is of most benefit to the general public. Such actions shall include, but are not limited to, preventing LESSEE from erecting, or causing to be erected, any building or other structure on the Leased Premises which, in the opinion of the LESSOR, would compromise the aesthetic values within the park setting, subject to LESSEE'S right to Quiet Enjoyment of the Leased Premises as provided for in Section R. herein.

Y. LESSOR'S Right to Terminate.

1. LESSOR shall have the right to terminate this Lease Agreement in its entirety immediately upon occurrence of any of the following events:

- a. Upon material default of this Lease Agreement by LESSEE.
- b. The filing of a petition, voluntary or involuntary, for the adjudication of LESSEE as a bankrupt.
- c. The making by LESSEE of any general assignment for the benefit of creditors.
- d. The abandonment by LESSEE of its demised premises, except in connection with its surrender to an assignee, sublessee, or other parties succeeding to LESSEE'S interest hereunder, provided however, that such surrender shall be subject to prior written approval by LESSOR, and further provided that nonuse of the Leased Premises by LESSEE, so long as the premises available for bona fide lease or sublease for any use or purpose authorized hereunder, shall not be deemed abandonment as long as LESSEE is not in default of any of the terms of this Lease Agreement.
- e. Upon enactment of a resolution by the Winnebago

County Board of Supervisors and the Winnebago County Executive altering or terminating this Lease Agreement and upon 120 days prior written notice to LESSEE of enactment of said resolution. Should the Lease be terminated pursuant to this provision, LESSOR shall reimburse LESSEE for the fair market value of LESSEE'S improvements to the demised premises, said value to be determined by an independent appraiser agreed to by both parties.

2. Failure of LESSOR to declare this Lease Agreement terminated upon a default by LESSEE for any of the reasons set forth above shall not operate to bar or destroy the right of LESSOR to cancel this Lease Agreement by reason of any subsequent violation of the terms of this Lease Agreement.

Z. LESSEE'S Right to Terminate.

1. LESSEE shall have the right to terminate this Lease Agreement in its entirety immediately upon occurrence of any of the following events:
  - a. Upon material default of this Lease Agreement by LESSEE.
  - b. The filing of a petition, voluntary or involuntary, for the adjudication of LESSEE as a bankrupt.

- c. The making by LESSEE of any general assignment for the benefit of creditors.
  - d. Upon enactment of a resolution by the Oshkosh Area School District Board of Education and the Oshkosh Area School District Superintendent terminating this Lease Agreement and upon 120 days prior written notice to LESSOR of enactment of said resolution. Should the Lease Agreement be terminated pursuant to this provision, LESSEE shall reimburse LESSOR for the fair market value of LESSOR'S improvements to demised premises, said value to be determined by an independent appraiser agreed to by both parties.
2. Failure of LESSEE to declare this Lease Agreement terminated upon a default by LESSOR for any of the reasons set forth above shall not operate to bar or destroy the right of LESSEE to cancel this Lease Agreement by reason of any subsequent violation of the terms of this Lease Agreement.
- AA. LESSEE'S Rights upon Termination. At the termination of this Lease Agreement, LESSEE shall be entitled to elect one of the following options:
- 1. LESSEE shall return the Leased Premises to LESSOR clear of all or any specifically designated improvements above

ground level which have been purchased or constructed by LESSEE, its agents, employees, assigns or successors; provided, however, that LESSEE shall have sixty (60) calendar days after termination in which to remove all such improvements or those specifically designated by LESSOR. Such demolition by LESSEE shall be completed within a sixty (60) calendar day period following date of termination.

2. LESSEE may negotiate the sale of the improvements existing on LESSOR'S property to the LESSOR.

BB. Liability.

1. Damages. It is understood and agreed that LESSOR shall not be liable for any repairs arising out of injury or damage to LESSEE'S property caused by LESSEE or other involved third party.

CC. Insurance. LESSEE agrees, at its own cost and expense, to furnish the County Insurance Administrator with a Certificate of Insurance indicating proof of the following insurance:

1. Workers Compensation - statutory - in compliance with the Compensation law of the State.
2. General Liability Insurance - with a minimum combined single limit of liability per occurrence for bodily injury and property damage of \$1,000,000 during periods

of construction or improvements on the property. At all other times, the minimum combined single limit of liability per occurrence for bodily injury and property damage shall be \$300,000. This insurance shall include on the Certificate of Insurance the following coverages:

- a. Premises - Operations
- b. Products and Completed Operations
- c. Broad Form Property Damage
- d. Blanket Contractual
- e. Professional Liability, if applicable.

Such insurance shall include Winnebago County as an additional insured as pertains to the negligence of the LESSEE. Such insurance shall include a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to the Winnebago County Insurance Administrator, 112 Otter Street, P. O. 2808 Oshkosh, Wisconsin 54903. All such notices shall name the LESSEE and identify this Lease Agreement.

3. Automobile Liability Insurance with a minimum combined single limit of liability per occurrence of \$1,000,000 for bodily injury and property damage for the following coverages:

- a. Owned Automobiles, if applicable
  - b. Hired Automobiles
  - c. Non-Owned Automobiles
4. During construction LESSEE and its contractors shall provide all of the above insurance requirements where applicable including increased general liability limits of \$2,000,000 if explosion, underground and/or collapse is involved and \$5,000,000 if asbestos is involved.
  5. LESSEE shall name Winnebago County as an additional insured on all such insurance policies, unless such requirement is waived in writing by Winnebago County's Insurance Administrator.
  6. LESSEE shall without undue delay inform Winnebago County of the occurrence of any events which might alter LESSEE'S minimum general liability limits as set forth in Section CC., Sub. 2.
  7. LESSOR may review and alter those insurance requirements pertaining to the LESSEE on an annual basis.
- DD. Indemnification by LESSEE. LESSEE shall indemnify LESSOR and hold it harmless against and from all loss, costs and expenses including, but not limited to, attorneys fees and other costs of defense, occasioned to LESSOR at any time by reason of liability imposed by law upon LESSOR for damages because of

operations of LESSEE conducted at or from the Leased Premises pursuant to rights granted hereunder, but only if such liability arises in whole or in part by reason of any negligent act or omission of LESSEE or of any person or organization for whose acts or omissions the LESSEE is legally responsible.

EE. Indemnification by LESSOR. LESSOR shall indemnify LESSEE and hold it harmless against and from all loss, costs and expenses including, but not limited to, attorneys fees and other costs of defense, occasioned to LESSEE at any time by reason of liability imposed by law upon LESSEE for damages because of operations of LESSOR conducted at or from the Leased Premises pursuant to rights granted hereunder, but only if such liability arises in whole or in part by reason of any negligent act or omission of LESSOR or of any person or organization for whose acts or omissions the LESSOR is legally responsible.

FF. Severability. In the event that any provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision contained herein provided that the validity of any such provisions does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid provisions of this Lease Agreement.



GG. Notice. Any notice required or desired to be served by either party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the LESSOR:

Robert Way  
Winnebago County Parks Director  
625 E. County Road Y, Suite 500  
Oshkosh, WI 54901

To the LESSEE:

Al Wenig  
Director of Recreation  
Oshkosh Area School District  
425 Division Street  
Oshkosh, WI 54901

Or to such other address or person as shall from time to time be designated by the parties in writing.

HH. Easements. LESSEE hereby agrees that it shall grant LESSOR easements necessary to supply utilities and/or drainage pathways to the subject Leased Premises. Determination of the origin and positioning of said easements within the common park facilities shall be at LESSOR'S sole discretion. Additionally, LESSOR reserves the right to access said easements at any future date for the purpose of providing improvements to the common park facilities. All construction costs associated with accessing utilities within said

easements shall be borne by LESSOR, however, LESSEE shall provide all rights of access to, as well as all rights for future use of such easements, at no charge and with no encumbrances attached to said access or use by LESSOR.

II. Entire Agreement. This Lease Agreement constitutes the entire agreement between the parties and each party understands that there are no other oral understandings or agreements other than those set out herein. This Lease Agreement cannot be added to, altered or amended in any way except by written agreement signed by both of the parties hereto.

JJ. Successors and Assigns. The conditions, covenants, and agreements contained in the foregoing Lease Agreement are to be kept and performed by the parties hereto and shall be binding upon said respective parties, their successors and assigns.

KK. Resolution of Disputes. This Lease Agreement shall be covered by the laws of the State of Wisconsin. Claims, disputes, and other matters in questions between the parties to this Lease Agreement arising out of, or relating to this Lease Agreement or the breach thereof, may be decided by litigation through the Winnebago County Court System.

LL. Venue as to Legal Actions. The venue for all legal actions relating to this Lease Agreement shall be the Circuit Court

for Winnebago County, Wisconsin.

IN WITNESS WHEREOF the parties have caused this Lease Agreement to be executed by their proper officers thereunto duly authorized as of the day and year above written.

In the Presence of: WINNEBAGO COUNTY (LESSOR)

\_\_\_\_\_ BY: \_\_\_\_\_

Mark Harris, County Executive

\_\_\_\_\_ \_\_\_\_\_  
Susan Ertmer, County Clerk

In the Presence of: OSHKOSH AREA SCHOOL DISTRICT (LESSEE)

\_\_\_\_\_ BY: \_\_\_\_\_  
Vickie Cartwright, Superintendent  
Oshkosh Area School District

