

RESOLUTION NO. 2021-48

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF CALEDONIA APPROVING A PARK USE AGREEMENT FOR CALEDONIA BASEBALL/SOFTBALL LEAGUE, INC. FOR USE OF THE CRAWFORD PARK.

The Board of Trustees of the Village of Caledonia, Racine County, Wisconsin do resolve as follows:

WHEREAS, the Village of Caledonia owns and operates Crawford Park located at 5199 Chester LN, Racine, WI 53402, which is located in the Village of Caledonia; and

WHEREAS Caledonia Baseball/Softball League, INC. has a history of playing baseball at the ball diamond at Crawford Park; and

WHEREAS, the Village of Caledonia and Caledonia Baseball/Softball League, INC wish to enter into an agreement governing the use of Crawford Park by Caledonia Baseball/Softball League, INC;

NOW THEREFORE BE IT RESOLVED THAT, the Board of Trustees of the Village of Caledonia approves the agreement set forth in **Exhibit A** with an effective date of April 1, 2021.

Adopted by the Board of Trustees of the Village of Caledonia, Racine County, Wisconsin, this 5 day of April, 2021.

Village of Caledonia

By: 

James Dobbs
Village President

Attest: 

Joslyn Hoeffert
Village Clerk

**PARK USE AGREEMENT BETWEEN
THE BOARD OF TRUSTEES OF THE VILLAGE OF CALEDONIA
AND CALEDONIA BASEBALL/SOFTBALL LEAGUE, INC.**

This Park Use Agreement (the "Agreement") is made and entered into as of the date last executed by either Party below, (the "Effective Date"), by and between the **VILLAGE OF CALEDONIA**, (the "Owner"), and **CALEDONIA BASEBALL/SOFTBALL LEAGUE, INC.** (the "User"), as represented by a Board Member. Referenced together, the Owner and the User are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, the Owner operates Crawford Park located at 5199 Chester Ln, Racine, WI 53402, (the "Park"), which is located in the Village of Caledonia (the "Village") and shown in **Appendix A**; and

WHEREAS, Appendix A also depicts the location LCpl Daniel R. Wyatt Ballpark, which includes the concession stand and two ball diamonds located in the Park; and

WHEREAS, the User operates a youth baseball league for Caledonia children, which needs a baseball diamond to play its games and a concession stand to operate concessions; and

WHEREAS, the Parties wish to enter into an agreement governing the use of the Park by the User; and

NOW THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

- 1) **Term; Not Assignable.** This Agreement shall be in effect for the period from April 1 through September 1, for operations and for the purpose of cleaning the concession stand. This agreement shall have an initial term of one year from the effective date. Upon expiration of the initial term, this agreement shall automatically renew from year to year for a period of five years from the initial term or until either party notifies the other in writing of an intent not to renew the contract. The Village's Development Director or Designee is authorized to give a notice of not to renew under this Agreement. Any notice of termination is required to be delivered between the month of September 1 and March 15. This Agreement is not assignable by the User.
- 2) **No Ownership Granted.** This Agreement does not grant any ownership interests.
- 3) **Concession Stand.** The User shall have all property removed from the concession stand and the stand completely cleaned by August 31, unless the Owner grants additional time in writing at least thirty (30) days in advance. Other than the dates indicated, such use of the concession stand is not exclusive, and the Village Board or Village staff reserves the right to rent the concession stand to third parties at all other times outside of the listed period without prior notification to the User. The Owner reserves the right to rent the shelter area attached to the concession stand to any third party at any time it is not reserved by the User and without notice to the User.

- 4) **Ball Diamonds; Not Exclusive Use.** This Agreement allows the User use of the two ball diamonds at Crawford Park for the term above. This does not authorize exclusive-use of the ball diamonds; members of the public may use these areas before the fields have been prepped by the User or are not in-use for User activities and prior to 3:00 p.m. on weekdays. For avoidance of doubt, unless specifically authorized by the Village's Development Director or Designee, the fields should not be prepped before 3:00 pm on weekdays.
- 5) **General use of the Park.** The Park is a public Park, and nothing in this agreement prohibits use of the Park for by the general public.
- 6) **Permits/Approvals.** The User shall be responsible for all needed permits and approvals from any governmental entity related to the operation of the concession stand and for staffing the concession stand at any time it is in operation.
- 7) **Inventory/Equipment.** The User shall be solely responsible for providing and maintaining all inventory and equipment at the concession stand. The Owner reserves the right to refuse use of any inventory or equipment it deems unreasonable, excessive or unsafe or that may damage the premises.
- 8) **Keys.** The User shall have access to four (4) keys for the concession stand, the accompanying storage room and the adjacent restrooms at all times. If any keys are lost, the User shall be responsible for costs for rekeying the locks if determined necessary by the Owner. The User shall be responsible for ensuring that the restrooms are open and accessible to the general public at all times the concession stand is in use. The User shall lock the restrooms when games are completed at the end of each day or immediately after the games are concluded if activities will conclude for the day at that time. The User shall ensure that the restrooms are clean at the end of each day of use by the User. The User shall place all full bags of trash and boxes from restroom in the assigned area as agreed upon by the Parties for pick-up. The User shall return the keys to the Owner by August 31, 2021.
- 9) **Cleaning; Maintenance.** The User shall be responsible for the cleaning and general maintenance of the LCpl Daniel R. Wyatt Ballpark area for the term of this Agreement during and after games and practices. The User shall make certain that the grounds, concession stand (daily cleaning after use), and surrounding areas are clean and presentable at all times while in use. The User shall be responsible for maintaining the ball diamonds and returning them at the end of the season in a condition equal to or better than they were received at the start of the season. The Owner shall be responsible for the cleaning and general maintenance at all other times. The User shall ensure that the restrooms are clean at the end of each day of use by the User. The User shall place all full bags of trash and boxes in the assigned area for pick-up. The bathrooms will be clean and fully stocked by the Owner at the beginning of each weekday. User shall be responsible to restock supplies in the bathrooms as needed each day during use.
- 10) **Repairs.** Any repairs that are needed to the concession stand or grounds must be reported to the Owner in a timely manner, and a reasonable time must be allowed for repairs to be completed. Beyond the normal wear and depreciation of assets, the User is responsible for

any damages to the premises and facility. The Owner reserves the right to bill the User for repairs and or maintenance as a result of any damage, waste and/or neglect caused by the User or its invitees and guests during the term of this Agreement.

- 11) **Supplies.** The User shall provide all supplies required for field preparation, including, but not limited to, chalk, and related equipment. The User shall provide all first aid supplies to its participants, invitees and guests. The Owner will spray for weeds as it determines necessary prior to the season and provide help and direction to the User in prepping the diamonds for the start of the season to ensure that the preparation is in compliance with Owner requirements. The Owner shall provide all supplies required for the bathrooms, including, but not limited to, toilet paper, hand towels and soap for washing hands. The User shall restock for needs over the course of the day.
- 12) **Improvements.** Permanent improvements shall only be installed with prior approval of Owner at the cost of the User, unless otherwise agreed by Owner. Any permanent improvements to the premises will become property of the Village of Caledonia. Examples of permanent improvements include lighting, adding dirt to low areas, possible drain tiles and reseeding the grass. Temporary equipment and signage require prior approval by Owner. Banners may be temporarily placed on the premises with the prior approval of the Owner. Any banners placed shall be maintained in good condition or taken down if damaged. Owner reserves the right to sell advertising space and place permanent or temporary signs and banners on any part of the premises, including, but not limited to, fencing, scoreboards and permanent structures except for the areas referred to in appendix B during the duration of this agreement. Banners may be displayed on the premises by the User for the duration of this agreement. See **Appendix B** for the Users placement of banners. However, in no case shall any banner be placed on the concessions building or bathroom building.
- 13) **Storage Space.** The User will be provided space in the Maintenance Building at Crawford Park to store one motorized piece of equipment to be used for dragging the fields and a limited number of manual tools and supplies needed for proper field upkeep and preparation, such as rakes, wheelbarrows, lining machines, etc. All items must be clearly marked as "Property of Caledonia Ball," or similar wording, and must be removed by August 31, 2021, unless granted specific permission in writing at least 30-days prior from The Owner to leave them in the Maintenance Building. The Village of Caledonia, the Owner and its employees, officials, volunteers and any agents thereof shall not be held responsible for any loss or damage to any items or property left on Park premises.
- 14) **Insurance.** Owner assumes no responsibility for any loss or damage to User's personal property while in use or stored at or on the Park. User shall maintain comprehensive liability insurance as required below, including full replacement of damaged property. No less than 15 days prior to the first calendared Event, User shall provide Owner with evidence of said coverages as set forth herein, including insurance certificates and all referenced riders and endorsements, in forms reasonably satisfactory to Owner. All insurance shall be issued by insurers with a license to do business in the State of Wisconsin. User's insurance coverage shall be primary and noncontributory as respects Owner, the

Village, including all of its respective officials, officers, employees and agents. User's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

- a) Comprehensive Commercial General Liability: One Million Dollars (\$1,000,000) per occurrence and at least Two Million Dollars (\$2,000,000) aggregate; policy shall provide coverage for volunteers and invitees and guests of User.
 - b) Owner, the Village of Caledonia, and its respective officials, officers, employees, and agents, shall be named as an additional insured for General Liability and Automobile Liability by specific endorsement.
 - c) Workers Compensation: When applicable- Statutory Limits;
- 15) **Hold Harmless; Indemnification.** The User agrees to protect, save, defend and hold harmless and indemnify the Village of Caledonia and its boards, commissions, committees, and each member of said boards, commissions and committees, and all Caledonia's officials, agents and employees, from any and all claims, liabilities, expenses or damages of any nature, including attorney fees and litigation costs, for injury or death of any person, or damage to Premises, including any liability under environmental protection laws, or interference with use of Premises, arising out of or in any way connected with the User's activities under this Agreement, other than with respect to any negligent acts, errors or omissions or willful misconduct by the Village of Caledonia, or its employees, officials or agents. This hold harmless shall apply to all liability regardless of whether any insurance policies are applicable, and any policy limits shall not act as a limitation upon the amount of indemnification to be provided. If the Village of Caledonia initiate legal or other action to enforce the terms of this Agreement and the outcome is in favor of the Village of Caledonia, the User shall be liable to the Village of Caledonia for reasonable attorney's fees and costs in enforcing the terms of this Agreement. User shall indemnify Owner, the Village of Caledonia, along with all its respective officials, officers, agents, and employees, from, and hold them harmless against all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of User's use of the Park related to the novel virus COVID-19.
- 16) **COVID-19 Waiver of Liability:** User, its employees, volunteers, players, parents, and other attendees, by utilizing Owner's park, may be exposed to or have an increased risk of contracting or spreading COVID-19. User hereby accepts the risk of contracting COVID-19 for User's employees, volunteers, players, parents, and other attendees. User, its employees, volunteers, players, parents, and other attendees, and User, its employees, volunteers, players, parents, and other attendees hereby forever releases and waives any right to bring suit against Owner, the Village of Caledonia, and Owner's officers, directors, managers, officials, trustees, agents, employees, or other representatives in connection with exposure, infection, and/or spread of COVID-19 related to utilizing the Park. User understands that this waiver means User, its employees, volunteers, players, parents, and other attendees give up their right to bring any claims including for personal injuries, death,

disease or property losses, or any other loss, including but not limited to claims of negligence and give up any claim they may have to seek damages, whether known or unknown, foreseen or unforeseen.

- 17) **Scheduling.** The User will provide the User a schedule of all games and events, such as tournaments, prior to April 1 and these times shall be considered reserved. Every effort will be made by the Owner to block out additional weeknights and Saturday mornings during the listed period to allow for make-up games and team practices. The Owner cannot reserve or rent out the ball diamonds to a third party at Crawford Park for the listed period without written approval from the User unless the User is notified prior to April 1 of not more than 6 separate dates during the terms of this agreement.
- 18) **Consideration.** In exchange for assuming the upkeep of the fields and Ballpark area, no other remuneration will be required from the User for related expenses for the duration of this Agreement, except as may be required to repair attributable to uses by the User under this Agreement.
- 19) **Copies of permits and certificates.** The User shall provide copies of its certificate of insurance, permits related to the operation of the concession stand and User schedules prior to receiving keys on April 1.
- 20) **Pre-term and Post-term Walkthrough; Deposit.** A representative of the Owner and a representative of the User will perform a walk-through of the facilities prior to the exchange of keys on or about April 1, at which time any deficiencies will be noted and addressed. The User shall pay the Owner a Deposit of \$750, due by April 1, 2021. Representatives of the two parties will again walk-through and inspect the facilities at the end of the season and prior to August 31, 2021. The Deposit will be refunded to the User within 30-days, minus any charges based on condition, damage or deficiency attributable to the User. The parties may agree to allow the Deposit to roll over from year-to-year.
- 21) **Termination.** The Owner shall notify User in writing of any conditions listed above that are not being followed by the User. The User will be required to resolve the defaulted condition within a reasonable amount of time and provide the Owner a written solution within 10 days. If the User does not provide the written solution within 10 days the Owner will have the right to terminate this License under Agreement. The User shall be provided five (5) days advance written notice of termination and afforded the opportunity for corrective action before termination takes effect, except in the case of an emergency in which the premises are deemed unsafe or to prevent additional damage from occurring to the premises and in such case the Owner is not required to give notice prior to corrective action. If the Village incurs any costs for corrective action, User shall be responsible for the cost. The Village Development Director is authorized to provide any necessary notice of Termination under this Agreement or notices to correct or violation.
- 22) **User Waiver.** The User hereby waives all right to any claim for compensation for any loss or damage sustained by reason of and defect, deficiency, failure, or impairment to the water supply, drainage, electrical, or any systems provided by the Owner or the Village of

Caledonia. The Owner and the Village of Caledonia shall not be liable for any claim if the premises are damaged by fire or other casualty, or for any other act, including strikes, utility failure or acts of God, which prevent the intended use provided for herein. The Owner and the Village of Caledonia shall have no liability to User for any injury, or damage caused by third parties, or by any condition of the facilities.

- 23) **Safe Use Required.** All standard Village park ordinances, rules and regulations apply to this use. The User, its employees, subcontractors, vendors, guests, patrons, and invitees shall use the premises in a safe, careful and lawful manner, and use reasonable, best efforts not to allow any act to be done which will alter, mar, deface, or injure any part of the premises, or other property of Crawford Park. The User shall conduct all operations in compliance with all fire, health and safety standards specified by applicable law.
- 24) **No Discrimination.** User shall not discriminate against any participant, employee or any applicant for employment because of race, religion, or national origin, and further agrees to likewise not discriminate for those same reasons against any person relative to admission, service or privileges offered to, or enjoyed by, the general public.
- 25) **Fee Structure.** The fee schedule that sets forth the costs and charges for the use of Crawford Park Grounds and/or Services shall be in accordance with the fee schedule adopted by the Village of Caledonia from year-to-year. User agrees to pay Caledonia Village the fees specified in such adopted fee schedule that is on file with the Village of Caledonia.
- 26) **Force Majeure.** Neither party will be liable for failure or delay to perform obligations under this Agreement, which have become practicably impossible because of circumstances beyond the reasonable control of the applicable party. Such circumstances include without limitation natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than five (5) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Agreement affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.
- 27) **Notices.** All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To User:

Caledonia Baseball/Softball League, Inc.
Robin Posnanski
PO Box 194
Franksville, WI 534____

With a copy to the Registered Agent per WI DFI Record of User.

To Owner:

Village of Caledonia
Village Clerk
5043 Chester Lane
Racine, WI 53402

With a copy to the Village
of Caledonia Development Director at the same address:
Either party may designate a new address for purposes of this Agreement by
written notice to the other party.

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The Parties have executed this Agreement effective as of April 1, 2021.

VILLAGE OF CALEDONIA

By: *James R. Dobbs*
James Dobbs, Village President

Attest: *Joslyn Hoeffert*
Joslyn Hoeffert, Village Clerk

CALEDONIA BASEBALL/SOFTBALL LEAGUE, INC.

By: *Robin Sosnanski*

Name: *Robin Sosnanski*

Title: *Treasurer / Legal Caledonia
Baseball
Softball*

APPENDIX A

EXHIBIT A



Signage will be sold and placed in the following order:

- 1) On the fence of the dugouts
 - a. Dugouts facing the parking lot
- 2) On the fence
 - a. Behind the Grandstand
 - or
 - b. Dugouts facing the walkway behind the concession stand
- 3) On the fence behind Homeplate

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