

COUNTY OF NEW HANOVER

AGREEMENT BETWEEN
THE CITY OF WILMINGTON, NORTH CAROLINA
AND
CAPE FEAR YOUTH SOCCER ASSOCIATION, INC.

THIS AGREEMENT, (hereinafter the “Agreement”) is made and entered into this _____ day of _____, 2019, by and between the CITY OF WILMINGTON, a North Carolina municipal corporation (hereinafter called “CITY”) and Cape Fear Youth Soccer Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina, (hereinafter referred to as “MANAGER”), for facility management services for the future Sports Complex (hereinafter referred to as “VENUE”).

WHEREAS, Cape Fear Soccerplex, LLC (hereinafter referred to as “OWNER”) owns a sixty-five point four seven (65.47) acre property located at 205 Sutton Steam Plant Road in New Hanover County, North Carolina (hereinafter referred to as “the PROPERTY”).

WHEREAS, approximately thirty-two (32) acres of the PROPERTY is undeveloped (hereinafter referred to as “UNDEVELOPED PORTION”).

WHEREAS, approximately thirty-two (32) acres of the PROPERTY are already developed and is the site of Cape Fear Regional Soccer Park (hereinafter referred to as “DEVELOPED PORTION”), operated since 2001 by the MANAGER and primarily used for Cape Fear Soccer Club and Hammerheads Youth soccer programming.

WHEREAS, the Wilmington City Council agrees that development of a sports complex on the PROPERTY to accommodate a diversity of programming, including but not limited to, youth and adult soccer, lacrosse, football, and ultimate Frisbee, is the most cost effective means of addressing the needs of local sports leagues and the residents of the City of Wilmington.

WHEREAS, the appraised value of the PROPERTY is three million, four hundred and sixty thousand dollars (\$3,460,000) according to an independent appraisal report provided by Ingram & Company, Incorporated dated February 18, 2019.

WHEREAS, subject to the conditions precedent contained herein, the OWNER agrees to convey the PROPERTY to the CITY and the CITY wishes to accept the OWNER’s conveyance.

WHEREAS, the CITY intends to annex the PROPERTY as soon as practicable following conveyance.

WHEREAS, MANAGER, doing business as Hammerheads Youth Football Club, provides programming to approximately three thousand five hundred (3,500) of Wilmington and area youth.

WHEREAS, MANAGER intends to continue to support player development and requires the use of seven (7) soccer fields Monday through Friday, January through June and August through November and scheduling priority for Saturdays and Sundays during the same periods for the duration of the Agreement.

WHEREAS, the CITY finds the continuation of the MANAGER'S soccer youth development program to provide significant benefits to Wilmington youth, including the positive impacts of physical activity, teamwork, character, and confidence building.

WHEREAS, in consideration of the value of the PROPERTY being conveyed to the CITY, the CITY wishes to lease to the MANAGER for a nominal fee of \$1.00 per year the DEVELOPED PORTION of the PROPERTY during the design phase and construction of the UNDEVELOPED PORTION.

WHEREAS, the CITY proposes to develop the UNDEVELOPED PORTION of the PROPERTY and, upon completion of the development of the UNDEVELOPED PORTION, the entire site shall become the VENUE.

WHEREAS, pursuant to the terms of this Agreement and subject to satisfaction of the conditions precedent, MANAGER proposes to operate, manage, and maintain the VENUE and supporting grounds and buildings and to arrange for, promote, and manage performances at the VENUE.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby specifically acknowledged, and subject to the terms and the conditions hereinafter stated, the parties agree as follows:

1. Conditions Precedent. It is a condition to CITY'S obligation to engage MANAGER for facility management services for the VENUE that the title to the PROPERTY be conveyed to the CITY by OWNER, free and clear of all liens, encumbrances and restrictions, except for the following (the "Permitted Encumbrances"): easements, rights-of-way, covenants, agreements, restrictions, the provisions of the Brownsfield Agreement with the North Carolina Department of Environment and Natural Resources (hereinafter referred to as "Brownsfield Agreement") and other matters which are of record in New Hanover County, North Carolina, including, without limitation, zoning and building laws, ordinances, resolutions, regulations, and ad valorem real estate taxes and assessments for public improvements not due and payable as of the Closing Date. It is a condition to the conveyance of the PROPERTY by OWNER to the CITY that the CITY enter into this Agreement. In the event that the PROPERTY is not conveyed to the CITY as stated above, then the CITY may terminate this Agreement and neither party shall have any

claim against the other party for costs, damages, compensation or otherwise on account thereof. In the event that this Agreement is not entered into by the CITY, then OWNER will not convey the PROPERTY to the CITY and neither party shall have any claim against the other party for costs, damages, compensation or otherwise on account thereof.

2. Lease.

- a. Term. Commencing with the date of the conveyance of the PROPERTY by OWNER to the CITY and continuing for the duration of the design and development of the UNDEVELOPED PORTION of the PROPERTY, CITY shall lease the DEVELOPED PORTION of the PROPERTY to MANAGER. The lease shall terminate five (5) years from the date of transfer if it has not terminated sooner by completion of the development of the UNDEVELOPED PORTION of the PROPERTY.
- b. Fee. In consideration of the value of the PROPERTY conveyed to the CITY, the lease fee shall be one dollar (\$1.00) per year of the lease term.

3. Management Term.

- a. Predevelopment Commencement Date. The Predevelopment Commencement Date shall be defined as the date six (6) months prior to the date the improvements set forth in Section 4 are substantially completed and the VENUE may be utilized for its intended use (the “ Completion Date”) as established at the first pre-construction meeting. From time to time, the Completion Date (and subsequently the Predevelopment Commencement Date) may be modified by mutual agreement of the parties when required by changes to the construction schedule.
- b. Postdevelopment Commencement Date. The Postdevelopment Commencement Date shall be the same as the Completion Date.
- c. Initial term. The initial term of CITY’S engagement of MANAGER to operate, manage, and maintain the VENUE shall be for seventeen (17) years beginning on the Postdevelopment Commencement Date, unless earlier terminated as provided herein.
- d. Extensions. At the end of the initial term, either party may, upon written approval from the other party, extend the Agreement for MANAGER to operate, manage, and maintain the VENUE under the same terms and conditions for three (3) additional renewal terms of five (5) years each. In order to facilitate such extension, a party desiring to extend the Agreement shall provide the other party with written notice of its desire at least ninety (90) days prior to the end of the initial term or any renewal term. The other party shall have thirty (30) days from receipt of such notice to either approve or disapprove the extension.

4. Design and Construction of Improvements. The CITY shall, at its sole cost and expense, invest an amount which approximates but does not exceed ten million dollars (\$10,000,000) in improvements to the PROPERTY, including the construction of new multisport fields on the UNDEVELOPED PORTION of the PROPERTY with at least one (1) artificial turf field, the placement of permanent lighting throughout the PROPERTY, construction of permanent restroom facilities for the PROPERTY, and construction of a maintenance building which services the PROPERTY, subject to the availability in the project budget. In no case shall lighting engineering, purchasing, and installation take priority over the number of fields constructed. The portion of the project budget spent on field lighting installation shall be capped at eighteen percent (18%). In the event the project budget does not allow for field lighting on all fields, the lighting expenditures will be divided equally between the DEVELOPED PORTION of the PROPERTY and the UNDEVELOPED PORTION. Subject to the availability of funds, the City will construct paved access roads and paved parking on the PROPERTY. The above work shall be designed, improved, permitted, and construction substantially completed within two (2) years of the execution of this Agreement. The CITY will endeavor to stage the work so as to avoid, to the extent reasonably possible, interference with MANAGER's use of the DEVELOPED PORTION of the PROPERTY. MANAGER shall be allowed input on the design of the improvements; however, the CITY reserves decision authority on the design.
5. Authority and Duties of MANAGER.
 - a. CITY hereby engages MANAGER, as an independent contractor and not as an agent of or for the CITY, to provide the pre-development services set forth in Exhibit B commencing with the Predevelopment Commencement Date and to operate, manage, and maintain the VENUE commencing with the Postdevelopment Commencement Date. MANAGER hereby undertakes and agrees to act in such capacity in accordance with the provisions of this Agreement.
 - b. MANAGER shall manage, oversee, operate, promote, and schedule all activities for the VENUE. MANAGER recognizes the CITY'S obligation to maximize the public benefit and play for the public at this new facility. To that end, the MANAGER acknowledges and supports working with the City Manager or designee to resolve conflicts between different users.
 - c. A Sports Complex User Group Advisory Committee (hereinafter referred to as "the Committee") shall be established.
 - i. Role: The Committee's role will be to make policy recommendations, capital improvement recommendations, to promote recruitment of travel amateur sporting events, and to identify avenues to ensure diverse and equitable groups have the opportunity to be served.
 - ii. Members: The Committee shall be appointed by City Council and consist of one (1) member of the Wilmington Hammerheads Youth Football

- Club, a member with documented association with a local lacrosse program, a member with documented association with a local Pop Warner Football program, a member with documented association with a local ultimate Frisbee club, a member with documented association with a local rugby club, a member of the Wilmington Parks and Recreation Advisory Board, and a member from the Wilmington Convention and Visitor Bureau's Sport Tourism Advisory Committee.
- iii. City Staff liason: The CITY'S Community Services Director or designee shall serve as a liason and provide meeting minutes.
 - iv. Appointments: The members of the Committee shall be appointed by City Council for three (3) year terms following the initial term. The initial appointment term for the members shall be determined by lottery to be either one (1), two (2), or three (3) years to stagger the membership terms.
 - v. Rules of Procedure: The Committee shall elect a Chairperson and established rules of procedure.
 - vi. Meeting Frequency: The Committee shall have quarterly meetings, in January, April, July, and October of each year.
- d. The CITY will keep MANAGER informed as to the projected Completion Date of the improvements to the PROPERTY and the grand opening of the VENUE.
 - e. In recognition of the value of the land donation and the positive impact of the MANAGER'S development programming, the CITY grants MANAGER priority of field reservation for seven (7) fields of the PROPERTY for the duration of the Agreement Monday through Friday, January through June and August through November and scheduling priority on Saturdays and Sundays for the same periods and same number of fields.
 - f. In the event the CITY terminates the Agreement pursuant to Sections 17 and 35 for reasons other than a material breach of the Agreement, the MANAGER shall have the additional usage rights set forth in Section 17.
 - g. MANAGER shall not be responsible for operation of any concession stand, but, if CITY requests, shall assist with the procurement of a third party vendor to operate the concession stand and coordinate with the CITY regarding scheduling the concession stand for events. The MANAGER shall restrict outside food and beverages during tournaments at the VENUE when concessions are being sold.
 - h. Subject to the provisions of this Agreement, MANAGER shall have the responsibility and authority to take all actions necessary or appropriate for the operation, management, promotion, scheduling, and maintenance of the VENUE, including but not limited to the following:

- i. Procure and pay for such materials, services, public utility services, supplies, and equipment as are reasonably necessary or appropriate in the management, maintenance, and operation of the VENUE, consistent with the terms of this Agreement;
 - ii. Procure and maintain in force and effect the policies of insurance required of MANAGER by this Agreement;
 - iii. Use or permit the use of all or any part of the VENUE, by any person or entity, for events consistent with the terms of this Agreement and the use of the VENUE as a public facility; and
 - iv. Administer all business operations and activities related to the VENUE, except as otherwise specifically provided herein.
 - i. MANAGER shall submit to the CITY an annual operations budget (hereinafter “Annual Budget”) which shall set forth all projected operating expenses associated with the operations of the VENUE and all projected gross receipts for the upcoming operating year. The obligation to produce an Annual Budget shall commence with the Initial Projected Annual Budget (hereinafter “Initial Projected Budget”) to be submitted at the time of the Predevelopment Commencement Date. This Initial Projected Budget shall be researched and formulated based on MANAGER’s previous experience and the current available industry data. The subsequent Annual Budgets shall be due on or before February 1 for each subsequent year of the Agreement.
 - j. MANAGER shall maintain professional accounting records in accordance with Generally Accepted Accounting Principles (GAAP) and shall provide an annual financial report to CITY with respect to the VENUE. The MANAGER shall give the CITY’s authorized representatives access to such accounting records for the VENUE at any time during business hours and at other times with reasonable advance notice. On or before ninety (90) days following the close of each Fiscal Year for which the MANAGER is managing the VENUE, MANAGER shall furnish to the CITY a report consisting of a balance sheet, statement of profit or loss, and statement of cash flows for the VENUE for such Fiscal Year, prepared in accordance with GAAP.
6. Repair and Maintenance.
- a. MANAGER shall provide upkeep and maintenance of the VENUE and keep same in good repair, order, and condition, free from any unsanitary conditions and any conditions posing a threat to health and safety except as provided herein. In furtherance of the foregoing, MANAGER shall promptly make all necessary repairs to keep the VENUE in safe, clean, and sanitary condition; provided, however, that MANAGER shall not be required to remove or otherwise remedy, in

accordance with Applicable Law, any hazardous materials or substances existing at the VENUE during the term of this Agreement, nor shall MANAGER be required to perform any environmental monitoring or take any other remediation actions necessary to comply with the terms of the Brownsfield Agreement (and any successor to the Brownsfield Agreement). MANAGER shall be responsible for providing an adequate number of trash receptacles and ensuring that all waste and litter generated at the VENUE is gathered and disposed of in the appropriate container(s).

- b. MANAGER shall not be obligated to, and shall not, without CITY's written consent (which consent shall not be unreasonably withheld, conditioned, or delayed), perform any work that would constitute a capital improvement according to GAAP. The MANAGER shall perform regular inspections of the building envelopes, building operation systems, and grounds and shall promptly notify the CITY of the need for any work that would constitute a capital repair, replacement, or improvement. For the term of this Agreement, the MANAGER shall maintain reasonable records of both the regular inspections of building envelopes, operating systems, and grounds as well as the routine and ordinary maintenance it performs and provide those records to the CITY upon termination of this Agreement or when reasonably requested.
- c. Annually before September 1 of each year of this Agreement, MANAGER shall submit to the CITY a five (5) year capital improvements program for the VENUE setting forth recommendations for physical improvements and the financing thereof. Such recommendations shall be considered by the City Manager in preparing a capital improvements budget for submission to City Council. This obligation shall begin on the first day of September following the Postdevelopment Commencement Date.
- d. MANAGER shall be responsible for maintaining pedestrian areas and the fields, including fertilizing, mowing, irrigation, lining and marking. MANAGER shall also be responsible for fence and equipment maintenance, wayfinding and informational sign maintenance. Field maintenance shall be performed at least to the minimum standards contained in "Exhibit A," attached hereto and incorporated herein by this reference. Failure to perform routine and ordinary maintenance in accordance with this Agreement shall result in MANAGER being held financially responsible for the repair or replacement of sod or turf or any damages to the extent caused by MANAGER's failure to perform such routine and ordinary maintenance. Failure to perform routine and ordinary maintenance may also result in the termination of this Agreement.
- e. CITY shall be responsible for maintaining structures and attached building operation systems, including but not limited to walls, roof, plumbing, electrical,

and climate control, and maintaining the access roads, interior roads, parking and pedestrian areas. CITY shall be responsible for all environmental monitoring or other remediation actions necessary to comply with the Brownsfield Agreement and any successor thereto. CITY shall be responsible for all work that would constitute a capital repair, replacement, or improvement according to GAAP unless MANAGER agrees, in its sole discretion, to be responsible for such costs, and such capital repair, replacement, or improvement is consented to by CITY in writing (which consent shall not be unreasonably withheld, conditioned or delayed). CITY shall be solely responsible for janitorial services at the VENUE, to include cleaning and removing garbage from restrooms. CITY shall also be responsible for final collection and disposal of the waste and litter once it has been gathered and disposed of in appropriate containers by MANAGER as provided in Section 6.a.

- f. In the event MANAGER requires occasional use of specialized equipment owned by the CITY to maintain and repair the VENUE, the CITY will consider lending such equipment to MANAGER, on such terms as the CITY deems appropriate.
 - g. The obligations set forth in this Section (6) shall commence upon the conveyance of the PROPERTY to the CITY, it being understood that, prior to the Completion Date, MANAGER's repair and maintenance responsibilities shall be only with respect to the DEVELOPED PORTION of the PROPERTY, and, following the Completion Date, the entire PROPERTY.
7. Operating Costs. MANAGER shall be solely responsible for all expenses that MANAGER incurs in connection with carrying out its duties under this Agreement, including, but not limited to, the following:
- a. Wages and salaries (including management fees) of all of MANAGER's employees engaged in the operation, maintenance, and security of the VENUE, including taxes, insurance, and benefits paid to such employees;
 - b. All supplies and material used in the day to day operation, maintenance, repair, and security of the VENUE;
 - c. Insurance expenses;
 - d. Utility costs, including, but not limited to, those associated with telephone service, electricity, gas, sewer, water, garbage removal, and cable data transmission;
 - e. Minor repairs and general maintenance of the VENUE; and
 - f. Service or maintenance contracts with independent contractors for the operation, maintenance, repair, replacement, or security of the VENUE.

8. Compensation.

- a. Predevelopment Phase. The CITY hereby agrees to pay MANAGER the amount of two thousand dollars (\$2,000) per month for predevelopment services detailed in “Exhibit B.” The amount paid for predevelopment services shall not exceed twelve thousand dollars (\$12,000).
 - b. Postdevelopment Phase. The CITY hereby agrees to pay MANAGER the amount of two hundred and twenty-five thousand dollars (\$225,000) per year for the first five (5) years of the Agreement beginning on the Postdevelopment Commencement Date, paid in four (4) equal installments. After the first five (5) years of the Agreement, the above compensation shall be increased in five (5) year increments for the remainder of the Term and any extensions by either five percent (5%) or increases in the Consumer Price Index applicable to New Hanover County, whichever is least. In the event the date for the increased compensation does not fall on the first day of a quarter, the payments will be pro-rated accordingly.
9. Revenues. Prior to the Postdevelopment Commencement Date, MANAGER will be responsible for collecting revenues for sponsorship, naming rights of fields, and event reservations and shall retain all such revenue, with the exception of revenues from sponsorships, naming rights and event reservations which are attributable to the operations of the VENUE after the Postdevelopment Commencement Date, such as a deposit on an event reservation scheduled to occur after the Postdevelopment Commencement Date, or the naming rights for a field or for the VENUE which extends beyond the Postdevelopment Commencement Date. After the Postdevelopment Commencement Date, MANAGER shall be responsible for collecting revenues for sponsorship, naming rights of fields, event reservations, and, if the CITY requests, revenues from concessions. MANAGER recognizes that all naming rights proposals shall be conditioned upon approval of CITY in accordance with the City of Wilmington Naming Rights Policy.

Unless otherwise noted in this section, all such revenues shall be split with the CITY receiving fifty percent (50%) of the revenues and MANAGER receiving fifty percent (50%) of the revenues, including concession sales. During the first two (2) years of the Agreement beginning on the Postdevelopment Commencement Date, CITY shall keep one hundred percent (100%) of any revenue collected by MANAGER or CITY for sponsorship of the VENUE or naming of fields as committed revenue that shall only be invested into the development of the complex. In the event that in the future MANAGER collects gate or parking fees, those revenues shall be split with the CITY receiving fifty percent (50%) of the revenues and the MANAGER receiving fifty percent (50%) of the revenues.

10. Access by CITY Personnel. Officers, employees, agents, and other authorized persons of CITY in the performance of their official duties shall have access to the VENUE at all reasonable times.
11. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the

MANAGER shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by MANAGER in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to MANAGER, the MANAGER shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

12. Compliance with Laws. MANAGER will comply with any and all applicable federal, state, and local standards, regulations, laws, statutes, and ordinances, including those regarding toxic, hazardous, or solid wastes, and any pollutants; public and private nuisances; health or safety; and zoning, subdivision, or other land use controls. MANAGER will take all reasonably necessary, proper, or required safety, preventative, and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state, or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder; provided that, as set forth above, MANAGER shall not have any responsibility for any environmental monitoring or other actions required by the Brownsfield Agreement or any successor thereto. MANAGER specifically acknowledges and agrees that MANAGER and any subcontractors it uses has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. MANAGER shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.
13. Waiver of Liability. CITY assumes no responsibility for any damage or loss of MANAGER's personal property except to the extent caused by the gross negligence or willful misconduct of CITY or its employees, agents, or officers. MANAGER agrees to hold CITY harmless from any damage or loss of MANAGER's personal property located within the VENUE property except to the extent caused by the gross negligence or willful misconduct of CITY or its employees, agents, or officers.
14. Insurance Requirements. The amount of insurance to be provided for all coverages listed under this section shall be not less than one million dollars (\$1,000,000), unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from MANAGER's performance of its obligations under this Agreement. MANAGER shall be responsible for any liability directly or indirectly arising out of professional services performed under this

Agreement by a subcontractor which liability is not covered by the subcontractor's insurance.

a. MANAGER shall maintain during the life of this Agreement WORKERS' COMPENSATION insurance covering all of MANAGER'S employees to be engaged in the work under this Agreement, which coverages shall provide the required statutory benefits under North Carolina Workers' Compensation Law. Whenever work under this Agreement includes exposure to claims under the U. S. Longshoremen's and Harbor Worker's Act, such coverage shall be provided by appropriate endorsement to this policy. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents, and employees for losses arising from work performed by the MANAGER for the City of Wilmington.

b. MANAGER shall take out and maintain during the life of this Agreement COMMERCIAL GENERAL LIABILITY INSURANCE, including coverage for INDEPENDENT CONTRACTOR OPERATIONS, CONTRACTUAL LIABILITY assumed under the provisions of this Agreement , PRODUCTS/COMPLETED OPERATIONS LIABILITY and BROAD FORM PROPERTY DAMAGE LIABILITY insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work to be performed involves these exposures. The CITY shall be named as an additional insured under this policy. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents, and employees for losses arising from work performed by the MANAGER for the City of Wilmington. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of one million dollars (\$1,000,000), Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence.

c. MANAGER shall take out and maintain during the life of this Agreement AUTOMOBILE LIABILITY INSURANCE with a limit of not less than one million dollars (\$1,000,000) each accident with respect to automobiles owned or leased by MANAGER which are used in connection with the services provided under this Agreement. Such coverage shall be written on a comprehensive form covering owned and leased vehicles.

d. MANAGER shall furnish the schedule of insurance carried under this Agreement in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date, and expiration date of all policies. This Certificate shall be in six (6) counterparts and when the Agreement is signed by MANAGER, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents. MANAGER

will notify the CITY by registered mail at least twenty (20) days prior to any cancellation or non-renewal of these coverages.

e. The MANAGER shall take out and maintain ABUSE/MOLESTATION COVERAGE during the life of this Agreement in the amount of one million dollars (\$1,000,000) for each occurrence. The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insured under this policy. This requirement will be considered met if included in the Commercial General Liability policy.

15. Non-Discrimination. MANAGER will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this Agreement because of race, creed, color, sex, age, disability, or national origin. To the extent applicable, MANAGER will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state, and local laws, ordinances, rules, regulations, orders, instructions, designations, and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this Agreement and may result, at CITY's option, in a termination or suspension of this Agreement in whole or in part.

16. Release and Indemnity.

A. Indemnity for Claims Arising from the Provision of Professional Services

To the fullest extent permitted by law, as it applies to Claims arising from the provision of the MANAGER's professional services, MANAGER shall release, indemnify, keep and save harmless the CITY and its agents, officials, and employees from any claims, damages, losses, litigation, expenses, reasonable counsel fees and personal injuries and/or property losses sustained by any person or entity, whether agents, officials, or employees of the CITY, or third persons, ("Claims"), to the extent such Claims are caused by the willful misconduct or negligent acts, errors, or omissions of the MANAGER, its employees, or subcontractors in connection with the VENUE under this Agreement. MANAGER expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the MANAGER, shall in no way limit MANAGER's responsibility to release, indemnify, keep and save harmless the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

B. Indemnity for Claims Unrelated to the Provision of Professional Services

To the fullest extent permitted by law, as it applies to Claims unrelated to the provision of the MANAGER's services, MANAGER shall release, indemnify, keep and save harmless the CITY, its agents, officials, and employees, from any and all

responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials, or employees of the CITY, or third persons, and to all property proximately caused by, directly or indirectly, MANAGER, its agents, officials, and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs, and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials, and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials, or employees. MANAGER expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the MANAGER, shall in no way limit MANAGER's responsibility to release, indemnify, keep and save harmless the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

17. Termination. This Agreement may only be terminated for the following reasons.
- a. Termination For Material Breach. Either party shall have the right to terminate this Agreement upon a material breach of the Agreement by the other party, which breach is not corrected within thirty (30) days of written notice to the other party describing in writing the breach.
 - b. Termination Because of Unavailability of Funds. In the event the CITY terminates the Agreement pursuant to Section 35 because of the unavailability of funds at any time during the initial term, MANAGER shall continue to have exclusive usage rights to seven (7) fields for the entire balance of the seventeen (17) years initial term, provided MANAGER, at its own expense, maintains these seven fields and the associated facilities, The terms of such maintenance shall be set forth in a supplemental agreement to be entered into by the parties. In addition, in recognition of the value of the PROPERTY conveyed to the CITY, the CITY agrees to pay the MANAGER an early termination fee in the amount equal to ten percent (10%) of the appraisal report value of the property, three hundred forty-six thousand dollars (\$346,000).
18. Consequential or Special Damages; Lost Profits. The CITY shall not be liable to the MANAGER, its agents or representatives, or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Agreement. MANAGER shall not be liable to the CITY, its agents or representatives, or any

subcontractor for or on account of any stoppages or delay in the performance of any obligations of MANAGER, or any other consequential, indirect, or special damages or lost profits related to this Agreement.

19. Assignment. This Agreement may not be assigned, in whole or in part, by either party without the written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed. To be a valid assignment under this Agreement, any assignee must succeed to all of the rights and interests and assume all of the liabilities and obligations (including, without limitation, all operating losses) of the assignor under this Agreement, and the assignee must agree to cure any prior default of this Agreement committed by the assignor, all in writing to the reasonable satisfaction of the non-assigning party.
20. Amendment. Except as otherwise expressly stated or referenced herein, this Agreement is the entire integrated agreement of the parties. No other agreement, oral or written, prior or contemporaneous, except the Agreement, shall be deemed to exist between the parties. No subsequent agreement or any amendment of this Agreement shall be binding upon the parties unless it is contained in a written document executed by properly authorized representatives of each party.
21. Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other party shall be in writing and shall be delivered by personal delivery, including messenger service or overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt or refusal to accept delivery at the address specified in this paragraph, but each party may change its address by written notice given in accordance with this paragraph.

To MANAGER:

Cape Fear Youth Soccer Association, Inc.
Attn: Executive Director
Address: 3132 Kitty Hawk Rd.
Wilmington, N.C. 28405

To CITY:

Sterling Cheatham, City Manager
City of Wilmington

P.O. Box 1810
Wilmington, NC 28402

and to:

Amy Beatty
Community Services Director
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402

22. Time of the Essence. Time is of the essence of this Agreement.
23. Additional Documents. Each of the parties to this Agreement, without further consideration, shall execute and deliver such additional documents and shall take other actions as may be reasonably required in order to fully effectuate all of the terms and provisions of this Agreement.
24. Construction of Agreement. This Agreement is the result of the joint efforts and negotiations of the parties hereto, and no single party is the author or drafter hereof. All of the parties assume joint responsibility for the form and position of each and all of the contents of this Agreement and they agree that this Agreement shall be interpreted as though each of the parties participated in the composition of this Agreement and each and every part thereof.
25. No Joint Venture. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by CITY and MANAGER and that MANAGER is an independent contractor and not an agent of the CITY. CITY and MANAGER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making CITY, on one hand, and MANAGER, its Owners or Affiliates, on the other hand, as joint venturers or partners. MANAGER is an independent contractor with the rights and obligations provided in this Agreement. The parties acknowledge that CITY negotiated and executed this Contract for MANAGER'S management skills. No member or official of MANAGER or employee hired by MANAGER shall be entitled to any employment benefits of the CITY, such as, but not limited to, vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits.
26. PROPERTY Not To Be Used As Security. Following conveyance, the ownership of buildings and real estate located at the PROPERTY shall remain with the CITY. MANAGER shall not pledge or permit the PROPERTY to be used as security for any loan or obligation of MANAGER and shall not permit the filing of any lien against the PROPERTY on account of any work performed by or for MANAGER or any contract to

which MANAGER is a party. In the event a lien is filed against the PROPERTY or any part thereof relating to any agreement made by MANAGER, MANAGER shall promptly cause such lien to be removed by filing an appropriate bond.

27. Choice of Law, Jurisdiction, and Venue. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation, or enforcement of this Agreement be determined.
28. Conflict of Interest. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
29. Non-Waiver of Rights. It is agreed that the either party's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
30. Binding Effect. The Agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.
31. Reference. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.
32. Savings Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
33. IDA Certification. The undersigned certifies that MANAGER is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, MANAGER shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

34. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. No Party intends to waive its sovereign immunity by reason of this Agreement.
35. Non-Appropriation. In the event there are no City funds available for any payment due under this Agreement, then the CITY will immediately notify MANAGER of such occurrence and this Agreement shall terminate and the termination clause in Section 17 herein shall be activated.
36. Minority/Disadvantaged Business Enterprises. It is the policy of the CITY that MBE/DBE enterprises as defined in G.S. 143-128(g) shall have the maximum opportunity to participate in the performance of contracts relating to the Venue. MANAGER shall take all necessary and reasonable steps to ensure that MBE/DBE firms have the maximum opportunity to compete and perform contracts relating to the Venue.
37. Public Records. MANAGER acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If MANAGER believes documents related to the Agreement contain trade secrets or other proprietary data, MANAGER must notify the CITY and include with the notification a statement that explains and supports MANAGER'S claim. MANAGER also must specifically identify the trade secrets or other proprietary data that MANAGER believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information MANAGER deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide MANAGER with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so MANAGER may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for MANAGER to seek court ordered protection or other legal remedies as deemed appropriate by MANAGER. If MANAGER does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to MANAGER.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the CITY has caused this Agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed and attested to.

CITY OF WILMINGTON, NORTH CAROLINA

BY: _____
Sterling B. Cheatham, City Manager

ATTEST:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Melissa I. Huffman, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 2019.

Jennifer R. Maready, Director of Finance

Project No. _____

Account No. _____

Amount of Contract \$_____

PO# _____

Federal ID Number: 56-6000239

CAPE FEAR YOUTH SOCCER ASSOCIATION, INC.

BY: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that _____ personally came before me this day and acknowledged that he (she) is the _____ of CAPE FEAR YOUTH SOCCER ASSOCIATION, INC., a corporation, and that by authority duly given and as the act of the company, the foregoing Contract was signed in its name by its _____.

WITNESS my hand and official seal this the _____ day of _____, 2019.

Notary Public

My Commission expires: _____

(NOTARY SEAL)