

RENTAL AGREEMENT

This Agreement, is made this _____ day of October, 2018, by and between the **CITY OF AUBURN**, a municipal corporation of the State of New York, having its principal offices at Memorial City Hall, 24 South Street, Auburn, New York 13021 (hereinafter called the “City”), and **CAYUGA COUNTY COMMUNITY COLLEGE**, an educational institution chartered by the State University of New York, having its principal offices located at 197 Franklin Street, Auburn, New York 13021 (hereinafter called “CCC”).

WITNESSETH:

WHEREAS, the City owns a multipurpose facility located at 130 N. Division Street, Auburn NY 13021 used for athletic and other functions named “Falcon Park”; and,

WHEREAS, the City also owns a limited liability company known as Auburn Community Baseball, LLC (“ACB”) which owns a professional minor league baseball franchise, known as the Auburn Doubledays (the “Doubledays”), which is a member of the New York-Penn Baseball League and its home field is Falcon Park; and,

WHEREAS, the Doubledays have exclusive occupancy and use of Falcon Park during its baseball season which commences annually in mid-June and ends the first week of September; and,

WHEREAS, CCC is desirous of using Falcon Park for its intercollegiate sports teams during the periods of time when the Doubledays is not operating in its baseball season; and,

WHEREAS, the City would like to install artificial turf at Falcon Park in order to accommodate CCC’s use thereof, and CCC is willing to pay rent to the City in order to cover the cost of this project (the “Project”); and,

WHEREAS, the City has obtained all of the consents necessary, final approvals and permissions required to enter into this Rental Agreement from ACB, the Doubleday’s, and the New York-Penn Baseball League; and

WHEREAS, the parties shall, pursuant to the terms of this agreement, set forth their respective rights and obligations pertaining to the utilization of Falcon Park; and

WHEREAS, the City intends to finance, develop, construct and rent the multipurpose facility to CCC under the terms and conditions set forth herein, and the CCC desires to rent the multipurpose facility from the City as set forth herein.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Granting Clause: The City hereby agrees and authorizes CCC, upon the terms and conditions of this agreement, use of the premises located at Falcon Park, including the use of adjacent City-owned parking lots, batting tunnel, broadcasting facilities, club houses and ancillary facilities (collectively referred to as the “Park” or “the Stadium”).

2. Term.

A. Initial Term. The term of this Agreement shall be for a period of twenty (20) years, commencing January 1, 2019 and terminating December 31, 2038.

B. Renewals: Subject to the consent of both the parties in writing, the parties may renew this Agreement upon its termination for additional five (5) year intervals, not to exceed twenty (20) years. Notice of the parties’ intent to renew shall be provided in writing to the other party at least one hundred and eighty (180) days prior to the expiration of the Agreement.

3. Rent. CCC shall pay annual rent to the City as follows:

A. During the first five (5) years of the Term, for the years of 2019 through 2023, CCC agrees to pay the City an annual rent amount of \$335,000.

B. During the next ten (10) years of the Term, for the years of 2024 through 2033, CCC agrees to pay the City an annual rent amount of \$350,000.

C. During the last five (5) years of the Term, for the years of 2034 through 2038, CCC agrees to pay the City an annual rent amount of \$190,000 plus any additional debt service based upon applicable mutually agreed upon capital improvement plans.

D. All rent payments are to be paid to the City as follows: Annual payments due on May 1st with the first payment commencing on May 1, 2019.

E. The City and CCC agree and understand that as of the date of this Agreement, all of the Project costs and totals are based upon projected estimates. Accordingly, the parties agree and understand that the foregoing terms of rent will be subject to adjustment based upon actual numbers as they are received and upon agreement of the parties. Any agreements to adjust rent payments shall be made by written amendment to this Agreement, subscribed and approved by the parties, in accordance with paragraph 16 herein.

4 **Termination** Either party may terminate this agreement by providing one-hundred eighty (180) days written notice to the other party of said termination. In the event that CCC provides notice of termination prior to the expiration of the Term, then CCC agrees to immediately pay to the City all rent due and owing to the City through the end of the Term of the Agreement. In the event that the City provides notice of termination prior to the expiration of the Term, then the City agrees that CCC shall be relieved of rental payments due after said termination.

5 **Scheduling.**

A. The parties recognize that ACB (the Auburn Doubledays) has the sole and exclusive use and occupancy of the Park during its season which shall include pre-season practice and any post-season playoff games. The dates of the commencement of the season and ending games shall be provided to CCC on or about February 1, each year.

B. The parties agree that CCC will sponsor inter collegiate sports teams including, but not limited to, baseball, softball, soccer, men's and women's lacrosse teams which will play games at the Park during those sport's respective seasons. All scheduling will be coordinated by a representative of the City who shall receive prospective schedules from CCC, who shall notify the City if its respective team's schedule at least ninety (90) days prior to the commencement of each of its sports team utilizing the Park for its games.

C. The City shall have the right to reserve and hold amateur and professional sporting and community events at the Park, which will include, but not be limited to, high school, college and all-star sporting events and other entertainment, recreational and promotional events. The City's sporting and community events will not conflict with CCC's team practices and games. The City will provide CCC with reasonable notice of these stated events in order to coordinate scheduling.

6 **The City Shall:**

A. Provide CCC with access to and use of the following areas:

- i. Home team Clubhouse located on the north side of the Park, excluding the following areas: training room; laundry room; offices used by the hitting and pitching coaches together with private bathroom; and storage and boiler rooms. Excluding the foregoing areas, CCC shall have access to the locker rooms, team showers and bathrooms.
- ii. Batting Tunnel located immediately north of the Home team Clubhouse, however, use of any fitness machines or equipment located inside of the Batting tunnel will be prohibited at all times.

- iii. Visiting team Clubhouse located on the southwest side of the Park. This Clubhouse includes a manager's office, laundry room with ice machine, locker rooms, showers and bathrooms that will be completely accessible for use by CCC.
- iv. Umpires room located on the west side of the visiting team Clubhouse.
- v. The Press Box upon providing a written request, at least forty-eight hours in advance, to the City of a request for the same and upon the condition that City staff be present during such use.

B. Provide the following utilities: electric, gas, water and sewer. The City will assume all costs for said utilities.

C. Provide all regular maintenance and repairs of the fields and/or buildings in the Park. Maintenance shall not include the provision of toilet paper, paper products, towels or toiletries in the areas set forth in subparagraph "A" herein.

D. Maintain all public portions of the Park so as to provide for ingress and egress to the facilities.

E. Provide access to and maintenance of the public restrooms within the Park.

F. Provide general housekeeping of the offices and shared spaces of the Park on at least a weekly schedule. This housekeeping shall include general cleaning and the removal of trash and refuse. This housekeeping shall not include cleaning or the removal of trash or refuse immediately preceding, during or after CCC athletic practices or events.

G. Provide a facility that is secure and locked during the hours when it is not in use. However, the City shall not assume any responsibility for any personal items or property not belonging to the City, which is brought into the Park. The City will not assume any liability for said personal property in the event that it is damaged, lost or stolen.

H. Choose or have the option to provide concessions during CCC athletic practices and/or events. CCC shall not have access to concessions areas at the Park.

7. Capital Improvements and/or Renovations.

A. The City may undertake capital improvement projects to the Park at its sole expense.

B. CCC shall not make any Capital Improvements to the Park without receiving express, written permission from the City.

C. The City shall establish a capital improvement account in connection with the Park in order to provide for the replacement and/or repairs to the artificial playing surface. This capital improvement account will be funded with the rents received from CCC that exceed the amount of the annual debt service payment due for the Project and operational costs that the City incurs in managing the Park.

8 CCC Shall:

A. Provide all personnel, staff, services and support necessary to conduct athletic practices and events at the Park. CCC shall provide personnel necessary to supervise admission to its practices and events at the part and to collect any charges related thereto.

B. Conduct regular housekeeping of the Park immediately prior to, during and after athletic practices and events during the Term. This housekeeping includes general cleaning, and trash and refuse removal, as well as the removal of personal property or items brought into the Park.

C. Comply with all security procedures for the Park. CCC will be provided with keys to the Park and shall not duplicate and distribute said keys or access codes provided by the City. All keys will be returned to the City at the end of the Term. There will be a key deposit paid by CCC to the City in the amount of \$25.00 per key.

D. Conduct a joint inspection with the City of the Park, at the beginning and end of each athletic season, in order to document damage, deterioration, safety issues and other areas of concern.

E. Not make any claim of ownership interest in the Park, or equipment or fixtures located at the Park.

F. Reimburse the City for actual costs of field and building repair and maintenance, when such costs arise as a result of a misuse, neglect or damage of the Park caused by CCC, its students, athletes, employees, agents, or representatives.

G. Provide its own security during athletic practices and events held at the Park.

9. Revenues Generated. The City shall be entitled to all revenues directly generated at the Park during the Term. Said revenues shall include monies derived from advertising, sponsorship, concession operation and game day charges. However, CCC shall have the right to retain any admissions charged for its teams' games.

10. Naming Rights. The City shall have the exclusive right to retain any revenue generated from the sale of naming rights agreements for the Park.

11. Sales Tax. It is recognized that the parties to this agreement are tax-exempt entities, however, any sales tax generated from the sale of the City's or CCC's sponsored merchandise shall be the responsibility of the party authorizing the sale of said merchandise and each shall file the necessary sales reports and pay the tax liability to the State of New York.

12. Insurance and Indemnification:

A. Regarding the operations and responsibilities concerning this Agreement, CCC covenants and agrees to indemnify, defend and hold harmless the City and its respective officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature, and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of any omission of duty, negligence or wrongful act on the part of it or its employees or agents.

B. Regarding the operations and responsibilities concerning this Agreement, City covenants and agrees to indemnify, defend and hold harmless the CCC and its respective officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature, and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of any omission of duty, negligence or wrongful act on the part of it or its employees or agents.

C. CCC agrees to comply with the City's "Facility Use Insurance Requirements," which are attached hereto as Exhibit A.

D. In addition to satisfying the Facility Use Insurance requirements, CCC agrees to provide the City with the following:

- i. CCC agrees to obtain and provide the City with proof of medical coverage or participant accident coverage for its athletes and players in the amount of \$50,000.
- ii. CCC agrees to obtain and provide the City with proof of workers compensation insurance.
- iii. CCC agrees to obtain and provide the City with Proof of commercial Auto Insurance coverage including hired and non-owned auto coverage.
- iv. CCC agrees to obtain and provide the City with proof of insurance for personal property and/or equipment owned by CCC, which will be used or stored at the Park during its use thereof.

- v. CCC agrees to obtain and provide the City with proof of excess liability coverage in the amount of \$5,000,000 per occurrence.

13 **Notices.** All notices or advices required or permitted to be given by or pursuant to this Agreement shall be given in writing and (i) delivered by U.S. Registered or Certified Mail, Return Receipt Requested mail or (ii) delivered for overnight delivery by a nationally recognized overnight courier service. Such notices and advices shall be deemed to have been given on the third business day following the date of mailing if delivered by U.S. Registered or Certified Mail, Return Receipt Requested, or on the date of receipt if delivered for overnight delivery by a nationally recognized overnight courier service. Unless otherwise notified in advance, all such notices and advices and all other communications related to this or (iii) Personal service on the Auburn City Manager or on CCC President. Agreement shall be given as follows or to such other address as the party may have furnished to the other party in accordance herewith:

If to City:
Auburn City Manager
Memorial City Hall, 24 South Street
Auburn, New York 13021

With a copy to:
Corporation Counsel
Memorial City Hall, 24 South Street
Auburn, New York 13021

If to CCC:
Cayuga Community College President
197 Franklin St.
Auburn, New York 13021

With a copy to:
Cayuga County Attorney
160 Genesee Street
Auburn, New York 13021.

14 **Default:** In the event that either party defaults in observing all of the terms and conditions of this agreement, the other party shall provide seven (7) days' notice to the defaulting party, in writing, to correct the default within thirty (30) days. In the event of a default, and a failure by the defaulting party to cure the same within the stated time, the other party may immediately terminate the contract in addition to enforcement of any and all rights which the other party may have.

15 **Assignment or Transfer** This agreement shall not be assigned or transferred by the parties hereto.

16. Amendments or Modifications: This Agreement shall not be modified or amended, except in writing and subscribed by the appropriate parties.

17. Entire Agreement: This Agreement constitutes the entire agreement between the parties and any modifications or amendments hereto must be in writing and signed by the parties hereto.

18. Choice of Law: This Agreement shall be governed by the laws of the State of New York.

19. Execution of Counterparts: This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute by one and the same instrument.

20. Operations: The City Manager, or their designee, together with the President of CCC, or their designee, shall meet regularly, and in no event less than quarterly, to review ongoing operations at the Park, which are the subject of this Agreement.

21. Statutory Compliance: (a) CCC agrees to comply in all respects with all federal, state, city and county laws, which pertain hereto regarding services for municipal corporations including, but not limited to, Workers' Compensation and Employer Liability Insurance, hours of employment, wages and human rights. In addition, CCC shall adhere to all necessary and required laws, statutes, and regulations required by local, state and federal authorities. (b) City agrees to comply in all respects with all federal, state, city and county laws, which pertain hereto regarding services for municipal corporations including, but not limited to, Workers' Compensation and Employer Liability Insurance, hours of employment, wages and human rights. In addition, City shall adhere to all necessary and required laws, statutes, and regulations required by local, state and federal authorities.

22. Taxes: The City, as the owner of the Park, shall be solely responsible for taxes, if any, such as Property Taxes, ad valorem taxes, or taxes which are assessed or based on the value of the Park or its contents.

23. Miscellaneous:

A. Relationship of Parties. Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize either Party hereto to act as agent for or representative of the other Party hereto. Each Party hereto shall be deemed independent and neither shall act as, or hold itself out as acting as, agent for the other Party hereto.

B. No Waiver. No failure of either party to insist upon exact compliance with the terms and provisions of this Agreement shall be deemed or construed as a waiver of any subsequent breach of this Agreement.

C. League Approval. This Agreement shall be subject to the prior and ongoing approval of the League and Minor League Baseball and in all respects shall be subject to the then current rules and regulations of Major League Baseball. Lessee shall be responsible for using best efforts to obtain all necessary approvals. The Parties hereby acknowledge and agree that all rights granted under this Agreement are expressly subject to, and must conform with, all baseball rules and regulations, including, without limitation: (1) all rules, regulations, constitutions and bylaws of the League of which the Lessee is a member; (2) all rules and regulations of The National Association of Professional Baseball Leagues, Inc. d/b/a Minor League Baseball, including the National Association Agreement; (3) the Professional Baseball Agreement; (4) the Major League Rules; and (5) any rule, regulation, restriction, guideline, resolution or other requirement issued from time to time by any baseball authority (e.g., the League President, the NAPBL President, the NAPBL Board of Trustees or the Commissioner of Baseball) including the NAPBL Gambling Guidelines.

D. Authority. The City and CCC, respectively, each represent that it has the authority to be bound by the terms of this Agreement. Once executed by both Parties, this Agreement will constitute a valid and binding agreement, enforceable in accordance with its terms.

24. Clauses Required by Law: The parties hereto understand and agree that each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to have been inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been inserted and shall have the full force and effect of the law.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

CAYUGA COUNTY COMMUNITY COLLEGE

By: _____
Dr. Brian M. Durant, President

CITY OF NEW YORK

By: _____
Michael D. Quill, Mayor

STATE OF NEW YORK)
COUNTY OF CAYUGA) SS.:

On this _____ day of _____, 2018, before me appeared _____ to me known, who, being by me duly sworn, did depose and say that deponent is _____ of the Board of Directors of Cayuga County Community College described herein and which executed the foregoing instrument and that the signed deponent signed his/her name thereto.

Notary Public

STATE OF NEW YORK)
COUNTY OF CAYUGA) SS.:

On this _____ day of _____, 2018, before me appeared Michael D. Quill, to me known, who, being by me duly sworn, did depose and say that deponent is Mayor of the City of Auburn, the municipal corporation described in and which executed the foregoing instrument and that he signed his name thereto by authorization of the City Council.

Notary Public

EXHIBIT A

FACILITY USE INSURANCE REQUIREMENTS

City Insurance Requirements

- A. The user hereby agrees to effectuate the naming of the municipality as an unrestricted additional insured on the user's policy.
- B. The policy naming the municipality as an additional insured shall:
- be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer;
 - contain a 30-day notice of cancellation;
 - state that the organization's coverage shall be primary coverage for the Municipality, its Board, employees and volunteers; and
 - Additional insured status shall be provided with ISO endorsement CG 2026 or its equivalent.
- C. The user agrees to indemnify the municipality for any applicable deductibles.
- D. Enclose a copy of the endorsement providing additional insured status.
- E. Required Insurance:
- **For Commercial Users: Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate
 - **For Individual Users: Homeowners Insurance**
Section Two – Liability: \$100,000 limit of liability. Policy shall not exclude the off-premises activities of the insured
- F. User acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the municipality. The user is to provide the municipality with a certificate of insurance, evidencing the above requirements have been met. The failure of the municipality to object to the contents of the certificate or the absence of it shall not be deemed a waiver of any and all rights held by the municipality.