

**FIELD USAGE AGREEMENT, RICHARD BARRY PARK**

This Agreement ("Agreement") is made this 4<sup>th</sup> day of August, 2008, by and between the TOWN OF HUNTERSVILLE, a North Carolina municipal corporation, (hereafter referred to either as "Town" or "Huntersville"), and NORTH MECK SOCCER CLUB, a North Carolina non-profit corporation (hereafter "NMSC").

**STATEMENT**

1. Town is the Lessee from Mecklenburg County of certain property located on Beatties Ford Road known as Richard Barry Park (hereafter "Barry Park") and formerly known under a working designation as Canipe Park. Said Lease (hereafter the "Lease") is for the purpose of the Town constructing and operating, as a joint use park with Mecklenburg County, an outdoor recreational facility, primarily soccer and similar fields.

2. Barry Park property is adjacent to property belonging to Charlotte-Mecklenburg Board of Education (hereafter "CMBE") and Town and CMBE have heretofore entered into a Joint Use Agreement (hereafter "Joint Use Agreement") for shared usages of the Barry Park property and CMBE property for recreational purposes, pursuant to that Joint Use Agreement entered into by Mecklenburg County, CMBE, and the Town, dated January 19, 2005, as subsequently amended from time to time.

3. NMSC is a non-profit corporation which operates soccer leagues in the North Mecklenburg area, primarily youth leagues, and currently enjoys co-sponsor status with the Huntersville Parks and Recreation Department relative to usage of soccer and other park and recreational facilities operated by the Town.

4. The Town has or is in the process of constructing various soccer and other athletic fields at Richard Barry Park. Preliminary plans for the development of fields by the Town did not include lighting of the fields for night play.

5. NMSC, as a user of Richard Barry Park, desired to have the athletic fields, or certain of them, lighted in order to extend usable hours of play, and is willing to make a one time contribution to the Town in order for the Town to install lighting on these fields.

6. Another co-sponsor group, the Lake Norman Giants, may elect to participate in such improvements, but is not part of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing statements and the mutual agreements contained herein, the parties agree as follows:

1. **Contribution.** NMSC will make a one time contribution to the Town in the amount of \$160,000.00, payable no later than Thirty (30) days after the Agreement has been executed by both parties. In the event this Agreement is terminated because Town is found to be in default of the Agreement as provided in paragraph 9 of the Agreement, then Town will refund to NMSC a proportionate share of the one time cash contribution of \$160,000. The proportionate share of the one time cash contribution that Town is required to refund to NMSC in the event Town is found to be in default of this Agreement shall be calculated by multiplying the \$160,000 initial one time cash contribution by a fraction calculated by dividing the remaining number of months in the term of the Agreement by the 120 months initial term of this Agreement.

2. **Improvements.** Town will be responsible for and will cause to be installed lighting on the designated fields shown on Schedule A, attached hereto, in a manner consistent with acceptable first class lighting, subject to such reasonable approvals as may be necessary from the County under the Lease. Town is not obligated to, but may, install lighting which would cost an amount exceeding the NMSC contribution and similar contribution from other sources.

3. **Field Use Rights.** Town grants to NMSC a right of first refusal to reserve field space on the athletic fields prior to reservation of those spaces by the general public or other facility user groups, subject, however, to such rights of the County and CMBE under the Lease and the Joint Use Agreement. Right of first refusal will include fields numbered 2, 3, 4, 5 and 6 on a year round basis, and on field 1 for the period beginning January 1 of each year and ending June 30 of that year. This right of first refusal will include usage of the fields for practice time, games, soccer camps and tournaments sponsored or co-sponsored by NMSC. The request from third parties for reserved field space will only be entertained after provision has been made, on an annual basis, for Town activities, NMSC, and Lake Norman Giants, if participating. NMSC will initially serve as scheduler for the field usage at Barry Park, but must complete its schedule of reserved space by June 15<sup>th</sup> for the fall season and December 15<sup>th</sup> for the spring season, after determination of any prior or superior field right usage under the Lease or the Joint Use Agreement.

4. **Other Users.** It is understood that, notwithstanding its right of first refusal, other co-sponsors and general public users of the field space must be accommodated and NMSC shall not exercise its right of first refusal for the purpose of excluding or substantially excluding other co-sponsors or the general public. NMSC shall use all reasonable efforts to accommodate other users of the fields, but in the event of any dispute between NMSC, and/or Lake Norman Giants and any other co-sponsor or potential user, the Town reserves the right to make a final decision as to the usage. In no event shall the Town's decision as to usage reduce NMSC's total number of allocated

hours pursuant to its Co-Sponsor Agreement. NMSC must at all times be in compliance with this Agreement and with the Lease and Joint Use Agreement in scheduling usage.

5. **Co-Sponsor Allocation and Rates.** All field times allocated at Barry Park to NMSC, or any other co-sponsor group will count toward a co-sponsor group overall allocation based on the Town's field allocation policy, which shall control at all times. Further, the co-sponsor rates for reserved fields would still apply and it is not the intent of this Agreement to give preferential rates to NMSC or any other participating group.

6. **Concessions.** Town grants NMSC a right of first refusal to operate concessions at Barry Park at any event in which NMSC is the sponsor or host, including, but not limited to normal game activities, tournaments, camps or similar activities. If NMSC wishes to exercise this right, it shall notify Town no later than 30 days after the inception of this Agreement, so that Town can permit others to provide concessions if NMSC chooses not to do so, provided that NMSC and Town may mutually extend the time for making the decision. If NMSC elects to provide such concessions, it shall enter into a standard concessionaire agreement with Town, which shall provide, among other things, that NMSC shall (1) obtain and maintain all necessary permits and licenses (including, but not limited to, those required by any Health Department or other governmental agency); (2) furnish Town with a list and prices of all products to be sold by them, subject to the reasonable approval of Town; (3) be responsible for the maintenance, cleaning and sanitation of any concession stand or facility; (4) be responsible for cleanup of the area resulting from the sale of concessions; (5) be responsible for obtaining all products, goods and supplies used or sold by them and paying all vendors and suppliers; (6) reimburse Town for any direct expenses incurred by it in operation of the concession stands (which may be in the form of a stipulated per diem charge); (7) be entitled to retain all of the net proceeds from the operation of the concessions; (8) file all necessary tax and similar returns and reports arising from the operation of concessions and pay any amounts due; (9) obtain and maintain public liability insurance in an amount reasonably satisfactory to Town and designate Town as an additional insured; (10) agree to indemnify and hold Town harmless from any loss or claim arising from the operation of concessions; and (11) agree to such other provisions as Town shall reasonably require. NMSC shall be considered an independent contractor and not an agent of the Town. Failure of NMSC to operate concessions in accordance with said concessionaire agreement may, at Town's option, result in the termination of this right. If NMSC voluntarily withdraws from paragraph 6 of this Agreement, Town shall be free to offer such concession rights to any other firm, group or organization. Nothing herein precludes Town from granting concession rights to NMSC for events at Barry Park not sponsored by NMSC, but Town is not obligated to do so.

7. **Future Improvements.** If NMSC proposes to make any future capital investment in the facility at Barry Park, at its expense, such improvements or investments may only be made with the consent of the Town, through the Town Board, and is further subject to any rights or approvals required by Mecklenburg County under the Lease. The

Town Board, in granting the right of such improvements, may (but is not obligated to) extend this Agreement for additional years.

8. **Term.** This Agreement shall be effective as of August 4, 2008, and shall continue for a period of 120 months, unless extended as above provided, or unless terminated by mutual agreement or because of default or termination by NMSC or Town. If for any reason two (2) or more of the specified BARRY PARK fields are simultaneously and continuously unavailable for play for more than Thirty (30) days (except where such unavailability resulted from the negligent and willful acts of NMSC), then this Agreement shall be automatically extended by one month for each such Thirty (30) day period of unavailability.

9. **Default.** In the event that either Town or NMSC, as the case may be, asserts the existence of a violation of this Agreement, such party shall give written notice to the Party asserted to be in violation. Such written notice shall state that it is being given pursuant to this paragraph 9 and specify the nature of the violation asserted. The Party asserted to be in violation of this Agreement shall have Thirty (30) days to (a) cure any asserted violation, (b) begin a good faith, continuous effort to cure any asserted violation if it cannot reasonably be accomplished within the 30 day period, or (c) give notice of its intent to contest such assertion of a violation. In the event, however, that the Party asserted to be in violation of the Agreement contests the assertion of a violation by giving such written notice to the other Party within said period, then the parties shall act in good faith to reach agreement regarding such violation. In the event that litigation shall arise with respect to any such claim, the sole venue for any litigation hereunder shall be in a state or federal court sitting in Mecklenburg County, North Carolina.

If the Town is determined to be in default of this Agreement and does not cure said violation within the cure period provided above, then NMSC may terminate this Agreement and NMSC shall be entitled to a proportionate refund of its initial one time payment of \$160,000 as calculated in paragraph 1 as its sole remedy.

If it is determined that NMSC is in violation of the Agreement and NMSC fails to cure said violation within the cure period provided above, then the Town may terminate the Agreement and the same shall be of no further force and effect. Any improvements made to Barry Park as a result of the initial contribution or any other investments shall be and remain the property of the Town and shall not be removed by NMSC. Notwithstanding the foregoing any soccer related improvements made by NMSC such as soccer goals, kicking nets, kicking walls, etc., shall remain the property of NMSC.

10. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given to a party when (a) delivered by hand or by a nationally recognized overnight courier service (costs prepaid), or (b) received or rejected by the addressee, if sent by certified mail, postage prepaid and return receipt requested, in each case to the following:

If to NMSC, to:

North Meck Soccer Club  
11138 Treynorth Dr, Suite B  
Cornelius, NC 28078  
Attention: Executive Director

If to Town, to:

The Town of Huntersville  
PO BOX 664  
101 Huntersville-Concord Road  
Huntersville, NC 28070  
Attention: Director, Parks and Recreation

Either party hereto may change its contact information for notices and other communications hereunder by notice given to the other party hereto, in accordance with the terms of this paragraph 10.

11. **Prior Rights.** The rights granted NMSC hereunder are at all times subject to the requirements of the Lease and the Joint Use Agreement, and NMSC shall at all times in its scheduling of events and operation of concessions be and remain in compliance with them, to the extent applicable.

The parties have executed this Agreement as of the day and year set forth above.

NORTH MECK SOCCER CLUB

By: \_\_\_\_\_  


TOWN OF HUNTERSVILLE

By: \_\_\_\_\_  
  
Manager