

RESOLUTION NO. 2022-41

**RESOLUTION APPROVING A LEASE AGREEMENT
WITH TRANSYLVANIA YOUTH SOCCER ASSOCIATION**

WHEREAS, upon consideration of a proposal by the Transylvania Youth Soccer Association (TYSA) to make improvements to the Ecusta Field, a City-owned facility at 324 Ecusta Road, the City of Brevard negotiated a lease agreement with TYSA, the details of which are recorded in the Lease Agreement;

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BREVARD that the Lease Agreement with TYSA, a copy of which is attached hereto, be and is hereby approved and the City Manager is authorized to execute the Lease Agreement.

Approved and adopted this 5th day of December, 2022.



Maureen Copelof
Maureen Copelof
Mayor

Denise Hodsdon
Denise Hodsdon, CMC
City Clerk

STATE OF NORTH CAROLINA)
)
COUNTY OF TRANSYLVANIA)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into this the ____ day of _____, 2023, by and between **City of Brevard**, a North Carolina municipal corporation (hereinafter the "City of Brevard"), and **Transylvania Youth Soccer Association, Inc.**, a North Carolina Non-Profit Corporation (hereinafter "TYSA").

1. PREMISES. City of Brevard agrees to lease to TYSA and TYSA agrees to lease from the City of Brevard certain land and premises located in the County of Transylvania and State of North Carolina, being more specifically described as follows:

All that certain tract of land commonly referred to and known as Ecusta Field, a soccer field and surrounding area containing _____ acres, more or less, as shown and described on that plat recorded at Plat File _____, Slide _____, records of the Register of Deeds Office for Transylvania County, North Carolina.

Being also described as:

Beginning at the southeast corner of the above-described lease property, which beginning point is the northern corner of the driveway ingress and egress access to the City of Brevard Recreation Fields lying off of Ecusta Road, running in a northerly direction along the eastern boundary of the lease property along the western boundary of Ecusta Road and following the western boundary of Ecusta Road until its intersection with Morris Road. Then, from Morris road, continuing in a westerly direction along the southern boundary of Morris Road until the intersection of the lease property and adjacent lot now or formerly of Andrew Rigdon and spouse, then, from said Rigdon property intersection, heading south along the western boundary of the lease property until the intersection with the parking lot for the Transylvania County Recreation Fields (or, more precisely, a point along the western boundary of the lease property that intersects with a line extending directly west from the extreme northwestern point of said parking lot), and then, from said point, heading in a generally easterly direction along the northern boundary of said parking lot until its intersection with the point of beginning.

Less However and not including, that portion of land otherwise contained in the land described above which is part of the Brevard Skate Park, including that area which now exists therein and the planned future extensions thereof (the "Skate Park"). The parties hereto agree that this lease does not include the Skate Park.

This being a portion of that land conveyed to the City of Brevard by deed recorded at Deed Book 395, Page 378 and a portion of the property shown at Plat Book 6, Page 240, records of the Register of Deeds Office for Transylvania County, North Carolina.

The lease property as described above shall be hereinafter referred to as the "Soccer Complex".

Parcel: P/O 8597-30-8043-000

2. TERM AND RENEWAL.

(a) Term. The **twenty (20) year** term of this Lease shall commence on **January 1st, 2023** and shall end on **January 1st, 2043** (the "Term").

(b) Notice of Termination. The parties understand that the termination of the lease even at the end of the Term will require TYSA to rebuild and reconstruct a new soccer complex at an alternate location which will require at least twenty-four (24) months to complete. Accordingly, the City of Brevard and TYSA each agree to provide at least twenty four (24) months advance notice to the other party if the City of Brevard or TYSA desire to terminate the lease at the end of the lease Term, meaning that the notice of termination shall be provided to the other party no later than **January 1st, 2041** for the lease to terminate at the end of the lease Term, and if such notice of termination is provided later than such date, but before the end of the Term, the parties agree that the lease shall continue for a period of twenty four (24) months from the date that the other party receives such notice and shall then terminate.

(c) Renewal Periods. If neither party has received notice of termination from the other party by the end of the Lease Term on **January 1st, 2043**, then the lease shall automatically continue for an additional five (5) year period, with the same terms applicable to the original lease otherwise then applying and with the same advanced notice of termination (e.g., 24 months) required prior to the end of the additional renewal period. Additional successive five (5) year periods shall be provided and apply under the same rules at the end of the prior successive five (5) year renewal period under the same terms described above, including the advanced notice of termination required to terminate at the end of any five (5) year period.

3. RENTAL: Rent for the Soccer Complex, in lieu of rental payments due to the City of Brevard, shall instead be the following investment and improvements to the Soccer Complex, together with the commitment to make the Soccer Complex open to public use, subject to the terms of this Lease. The investment and improvements to the Soccer Complex are estimated to be in the following form and of the approximate values listed below, it being agreed that the amounts described herein are estimates only and not material terms of this Lease:

(a) TYSA agrees to build and construct one full sized turf or artificial surface soccer field (the "Soccer Surface") at the Soccer Complex.

(b) TYSA agrees build and construct bleachers for spectators to appropriately view and observe sports (the "Soccer Bleachers") at the Soccer Complex.

(c) TYSA agrees to build and construct lighting poles and fixtures sufficient and appropriate to provide light for users and spectators at the Soccer Complex (the "Soccer Lights") with such lighting poles and fixtures being designed to additionally provide lighting for the adjacent Skate Park owned and operated by the City of Brevard.

(d) TYSA agrees to build and construct fencing or related ancillary items necessary, in TYSA's discretion, for the appropriate, safe and reasonable use of the Soccer Complex by it's intended end users, including members of the public subject to the terms of this Lease.

(e) The total estimated value of the improvements to the Soccer Complex described above is one million five hundred thousand dollars (\$1,500,000 US).

(f) In addition, TYSA agrees to maintain Soccer Surface and Soccer Bleachers in good and working condition throughout the Lease, with the total estimated cost of such maintenance averaging approximately fifteen thousand dollars (\$15,000 US) per year.

4. SUB LEASING AND ASSIGNMENT ONLY WITH CITY OF BREVARD CONSENT. The City of Brevard and TYSA agree that the TYSA shall only be permitted to sub lease any portion of the Leased Premises or assign any of its rights under this Lease with the advance written consent of the City of Brevard.

5. REAL ESTATE TAXES. The City of Brevard agrees to pay all real estate property taxes for the Leased Premises throughout the Term of this Lease, but the TYSA shall pay any property taxes related to the TYSA's personal or business property levied by a taxing authority, if any taxes shall be due.

6. INSURANCE:

(a) In respect of TYSA's commitment to allow certain public uses of the Soccer Complex, subject to the terms of this Lease, The City of Brevard agrees to, at all times, at its own expense, have and maintain adequate fire, vandalism, malicious mischief, all-risk and extended casualty coverage insurance on the Soccer Complex and on the improvements thereon, which protect the Soccer Complex and the City of Brevard from the claims of any third parties related to any party's injury on the property or the damage to the property of any party being used or stored on the Soccer Complex.

(b) In addition to the City of Brevard's insurance described above, TYSA agrees to likewise, at all times, at its own expense, have and maintain adequate fire, vandalism, malicious mischief, all-risk and extended casualty coverage insurance on the Soccer Complex and on the improvements thereon, which protect the Soccer Complex and TYSA from the claims of any third parties related to any party's injury on the property or the damage to the property of any party being used or stored on the Soccer Complex.

(c) Only if agreed to by the parties subsequent to the execution of this Lease, if the City of Brevard and TYSA are able to secure complete and adequate coverage acceptable to both parties under one shared policy, or a policy naming both parties as insured parties, then such shared or combined policy may be pursued and the cost of such policy shared between the parties as so agreed.

7. UTILITIES. The City of Brevard agrees to provide electrical and water utility service to the Soccer Complex and further agrees as follows:

(a) In consideration of the public benefit being provided by TYSA, the City of Brevard shall not charge TYSA for the use of the Soccer Lights or for any other use of electricity, water, sewer or other infrastructure at the Soccer Complex.

(b) The City of Brevard agrees to purchase and replace light bulbs associated with the Soccer Lights as required to keep the Soccer Lights on continuing working condition.

(c) Other than cost free use of the Soccer Lights by TYSA and TYSA's members, teams and affiliates, the City of Brevard reserves the right to charge reasonable rates to other users of the Soccer Complex and Soccer Lights as the City of Brevard shall deem fit and prudent.

8. ACCEPTANCE AND RULES OF USE. TYSA agrees that they have examined and are familiar with the condition of the Soccer Complex and will accept the premises as is. Notwithstanding anything to the contrary herein, the parties have additionally agreed that the following terms shall govern the use of the Soccer Complex and this Lease generally:

(a) Improvements. TYSA shall be permitted to make improvements to the Soccer Complex as described in this Lease without further approval from the City of Brevard, provided that all construction work and improvements are completed by contractors duly licensed in the State of North Carolina to perform they work required and such contractors provide proof of adequate liability insurance in advance of any such work. Any improvements to the Soccer Complex different from those described in this Lease shall only be permitted with the advanced written consent of the City of Brevard. TYSA agrees to commence construction of the improvements to the Soccer Complex described in this Lease within one (1) year from the signing hereof and further agree that the Soccer Surface to be installed shall be installed under manufacturer's specifications and shall be covered by a manufacturer's warranty.

(b) Public Use of Soccer Complex and Prior of Use. TYSA agrees to keep and maintain the Soccer Complex open for a variety of user groups, including the public for the benefit of the local community, under the following guidelines and priority of use structure:

(i) First priority of use shall be given to TYSA and TYSA's members, teams and affiliates (the "TYSA Group").

(ii) If no user among the TYSA Group seek use within any available time slot during regular operating hours for the Soccer Complex, the second priority of use shall be given to members of the public who seek to play, train or pursue the sport of Soccer (the "Public Soccer Groups") given the Soccer Complex's primary purpose as a soccer specific facility.

(iii) If no user among the TYSA Group or Public Soccer Groups seek use within any available time slot during regular operating hours for the Soccer Complex, the third priority of use shall be given to members of the public (the "Other Public Groups") who seek to participate in any other activities at the Soccer Complex, provided however, that the any of the following activities and user groups shall be prohibited from using the Soccer Complex:

(1) Any use or user group which seeks to place heavy machinery or equipment on any part of the Soccer Complex or Soccer Surface.

(2) Any use or user group which seeks to allow users of a type or capacity beyond the rating of the Soccer Surface or beyond that which is safe for all users.

(3) Any use or user group involving any sort of fire, inflammatory devices, chemicals or corrosive substances.

(4) Any other use or user group the participation thereof jeopardizes the long term use and good working condition of the Soccer Complex and Soccer Surface.

(c) Management of Field Calendar by TYSA. TYSA agrees to develop, maintain and manage a calendar and sign-up system (the "Field Calendar") for users of the Soccer Complex under the priorities of use described in **paragraph (b)** immediately above. TYSA

agrees to provide public notice of such Field Calendar in an online format to provide reasonable notice to user groups on how any qualified user group sign up for use of the Soccer Complex. It is agreed, however, that TYSA shall have first priority to "black out" dates on the Field Calendar for those dates required for use of the Soccer Complex by the TYSA Group. Otherwise, the Field Calendar shall be available to all user groups on a first come, first served basis, with any competing applications for use being resolved based on the priorities of use described in **paragraph (b)** immediately above.

(d) Declining Use and Prohibiting Users; Notice to City. As manager of the Soccer Complex and the Field Calendar, TYSA, in its sole discretion, shall have the right to decline a user or user group for access to or use of the Soccer Complex if TYSA determines a proposed use of the Soccer Complex violates any of the terms described above in **paragraph (b)** immediately above, and its subsections. In the event, however, that TYSA declines the application of a user or user group for use of the Soccer Complex, TYSA agrees to provide notice of such declined user or user group to the City of Brevard's Park and Recreation Department on a timely basis. In addition, upon agreement of TYSA and the City of Brevard, a user or user group may be permanently prohibited, or prohibited for a time period, from using the Soccer Complex when such user or user group has demonstrated a careless disregard for the Soccer Complex or its condition.

(e) Parking Area and Bathrooms City Responsibility. The Soccer Complex does not include, but does rely upon, the adjacent parking lot and portable toilets ("Parking Area and Bathroom Facilities") which will serve the Soccer Complex, and currently serves the adjacent baseball fields, skate park and additional city amenities. The City of Brevard agrees to maintain the Parking Area and Bathroom Facilities to at least their current standard throughout the Term of the Lease, including any renewals thereof. While the City of Brevard does not agree herein to make any specific improvement to the Parking Area and Bathroom Facilities, it is agreed that the Parking Area and Bathroom Facilities require improvements for the beneficial use of the Soccer Complex, baseball fields, skate park and other adjacent city amenities by the public and other user groups.

(f) The City of Brevard agrees to mow and maintain the natural grass and landscaped areas in and around the Soccer Complex at no cost to TYSA. This obligation shall not pertain to the Soccer Surface, however, which shall be maintained by TYSA.

(g) The City of Brevard agrees to take and dispose of ordinary trash from trash receptacles in and around the Soccer Complex at no cost to TYSA. TYSA agrees, however, to use its best reasonable efforts to encourage sanitary use and practices within the Soccer Complex.

9. MAINTENANCE. During the Term of the Lease, as otherwise noted herein, TYSA shall be responsible for the maintenance of the Soccer Surface and Soccer Bleachers, while the City of Brevard shall be responsible to maintain the Soccer Lights (including but not limited to the changing and replacing of any bulbs), mowing, standard landscaping and for the regular removal and disposal of trash from trash receptacles. TYSA shall otherwise be responsible to keep the Soccer Complex in a reasonably clean condition and shall not store hazardous waste, refuse or debris of any kind on the Soccer Complex, except for the reasonable storage of TYSA's personal property and soccer equipment at the Soccer Complex as TYSA shall deem fit and prudent.

10. PERSONAL PROPERTY. All personal property moved into the Soccer Complex by TYSA shall be at the risk of the TYSA or the owners of the personal property. TYSA agrees that the City of Brevard shall not be liable for any damage, loss, or theft of personal property from any cause.

11. CLEAN PREMISES. The TYSA agrees to keep the entire Soccer Complex reasonably clean at all times. Notwithstanding the foregoing, however, the City of Brevard agrees to share the responsibility for the clean-up of the Soccer Complex with TYSA for any unusual or unreasonable amount of waste or damage caused by a member of the public or any other user, user group or trespasser which is not part of a TYSA Group.

12. DEFAULT BY TYSA. It is mutually agreed that any one or more of the following events shall constitute and be referred to as a "Default" by TYSA:

(a) If TYSA fails to perform any of the terms or provisions of this Lease and fails to cure such default, or provide evidence of reasonable efforts towards curing such default, within sixty (60) days after receiving written notice of default from the City of Brevard or the City of Brevard's agent; or

(b) If TYSA files voluntary bankruptcy or petitions for appointment of a receiver.

13. CITY OF BREVARD'S RIGHTS UPON DEFAULT. Should TYSA default as set out in **Section 12**, City of Brevard may elect to re-enter the Soccer Complex and to terminate this Lease Agreement after notice to TYSA and TYSA's failure to cure as described in **Section 12** hereof. In such event, this Lease shall be regarded as cancelled as of the date the City of Brevard serves notice of City of Brevard's election to terminate to TYSA, but the same shall only occur after the notice and failure to cure required under **Section 12** hereof.

14. DEFAULT BY CITY OF BREVARD: City of Brevard's breach of any material term of this Lease, including but not limited to the City of Brevard's responsibility to allow the TYSA's use of the Soccer Complex for the purposes described herein in accordance with the terms of this Lease, shall be considered Default by the City of Brevard and in such event, TYSA shall have all rights at law available in North Carolina to recover losses from such Default and to be placed in a position to pursue any activities contemplated by this Lease on the Soccer Complex.

15. FIRE OR OTHER CASUALTY. TYSA and the City of Brevard agreed to mutually and immediately notify the other party if either party or its agent become aware of any fire or other casualty to the Soccer Complex. Unless otherwise agreed in writing by the parties, TYSA and City of Brevard agree that both parties shall file with their insurance carrier for any such fire or other casualty incident which shall occur at the Soccer Complex and shall cooperate to the fullest extent possible to allow the timely re-construction and re-opening of the Soccer Complex and the facilities contained therein.

16. COMPLIANCE WITH LAWS. TYSA, at its sole expense, agrees to observe and comply with all laws, ordinances, rules and regulations of the Federal, State, County and Municipal authorities as may apply to the activities conducted by TYSA on the Soccer Complex. City of Brevard shall comply with all such laws, ordinances, rules and regulations as may apply to the Soccer Complex.

17. RIGHT OF ENTRY. The City of Brevard may enter the Soccer Complex at reasonable hours to inspect the Soccer Complex and for any reason required under the terms described in this Lease, but shall not interfere with any of the uses of the Soccer Complex as contemplated under this Lease.

18. TIME OF ESSENCE. Time is of the essence in this Lease.

19. NOTICES. It is agreed that all notices regarding this Lease shall be sent by regular, certified or registered mail, facsimile or email (any of which shall constitute written notice under this Lease) to:

(a) Notice to City of Brevard:

Address: _____

Facsimile: _____

Email: _____

(b) Notice to TYSA:

Address: _____

Facsimile: _____

Email: _____

20. PEACEABLE POSSESSION. Subject to the conditions of this Lease, the City of Brevard agrees that the TYSA may peaceably have, hold and enjoy the Soccer Complex for the purposes described herein, without hindrance by City of Brevard or City of Brevard's agent, subject to the terms of this Lease.

21. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties. It may be modified only by an agreement in writing signed by City of Brevard and TYSA.

22. BINDING EFFECT. This Lease shall bind and have affect to the benefit of the parties named and their respective heirs, executors, administrators, successors and assigns.

23. REMAINING TERMS VALID. In the event any provision of this Lease is declared or determined to be invalid under the laws governing this Lease, the remaining terms and conditions shall remain in full force and effect and shall be binding on the parties hereto.

24. GOVERNING LAW. This agreement is intended as an understanding between the parties regarding the Lease of the Soccer Complex described herein and shall be interpreted in accordance with the laws of the State of North Carolina, the situs of the property.

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IN WITNESS WHEREOF, the parties named herein have set their hands and seals the year and day first above written.

City of Brevard

_____ Date: _____
By: _____
Its: _____

Transylvania Youth Soccer Association, Inc.

_____ Date: _____
By: _____
Its: _____