

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Priority Use and Lease Agreement with the Seminole Softball Club, Inc.

DEPARTMENT: Leisure Services

DIVISION: Parks and Recreation

AUTHORIZED BY: Joe Abel

CONTACT: Julia Thompson

EXT: 2170

MOTION/RECOMMENDATION:

Approve the Chairman to execute the Priority Use and Lease Agreement with the Seminole Softball Club, Inc.

District 1 Bob Dallari

Julia Thompson

BACKGROUND:

The Seminole Softball Club, Inc. is a non-profit youth softball organization and currently has two separate agreements with Seminole County; one for use of Soldiers Creek Park for games, practices and tournaments and a separate lease for the Concession Stand use. This new agreement combines the two and provides for a consistent date of execution, renewal and termination. The terms of the new agreement are consistent with the existing two and provide for a revenue sharing between the Club who receives 80% of the gross revenue from program registration with the Leisure Services Department receiving 20% of the gross revenue ; a field rental fee option for tournaments; and the use of a facility on site for meeting space and a concession operation.

STAFF RECOMMENDATION:

Staff recommends the Board approve and execute the agreement with the Seminole Softball Club, Inc.

ATTACHMENTS:

- 1. Agreement

<p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (Ann Colby)</p> <p><input checked="" type="checkbox"/> Revenue Review (Cecilia Monti, Lisa Spriggs)</p>

**PRIORITY USE AND LEASE AGREEMENT
SEMINOLE SOFTBALL CLUB, INC.**

THIS PRIORITY USE AND LEASE AGREEMENT is made and entered into this ____ day of _____, 20____ between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY", and **SEMINOLE SOFTBALL CLUB, INC.**, a Florida non-profit organization, whose mailing address is Post Office Box 196475, Winter Springs, Florida 32719-6475, hereinafter referred to as "SOFTBALL CLUB".

W I T N E S S E T H:

WHEREAS, the COUNTY is the owner of the sports facility known as Soldier's Creek Park and is also the owner of buildings located within that facility; and

WHEREAS, the Board of County Commissioners has the authority to lease property to a not-for-profit corporation organized for purposes of promoting community interest and welfare in accordance with Section 125.35, Florida Statutes; and

WHEREAS, the Board of County Commissioners has determined the granting of such rights and privileges constitutes a COUNTY purpose; and

WHEREAS, it has been further determined that granting SOFTBALL CLUB a priority use at Soldier's Creek Park for the purpose of providing softball activities to the public constitutes a COUNTY purpose,

NOW, THEREFORE, in further consideration of the mutual covenants and promises stated herein between the COUNTY and SOFTBALL CLUB, the

parties hereby agree as follows:

SECTION 1. PRIORITY USE. COUNTY does hereby grant a priority use to SOFTBALL CLUB for COUNTY owned premises known as the softball fields at Soldier's Creek Park. Said priority use shall allow SOFTBALL CLUB to reserve the use of said premises prior to said use being offered to any other party. Provided, however, that SOFTBALL CLUB shall exercise said reservation only during the reservation period to be established by the COUNTY. SOFTBALL CLUB shall have the right to reserve said premises for any date during each year pursuant to this document, provided the right is exercised during said reservation period. In the event SOFTBALL CLUB fails to exercise said right during said period, COUNTY shall have the right to reserve said premises for the use of parties other than SOFTBALL CLUB.

SECTION 2. SERVICES TO BE PROVIDED BY SOFTBALL CLUB.

(a) SOFTBALL CLUB, upon consent and approval of the Leisure Services Director or his designee, shall be on the site at all times reasonably necessary for the performance of the job responsibilities specified by this Agreement.

(b) SOFTBALL CLUB, at its sole cost, will administer criminal background checks for SOFTBALL CLUB's coaches and volunteers. Background checks must be completed prior to the first day of working with participants.

(c) SOFTBALL CLUB will provide additional equipment as necessary to ensure safe and proper play, including uniforms, first aid, ice and water.

(d) SOFTBALL CLUB is responsible for all promotional and registration materials necessary for its program and events taking place at Soldier's Creek Park.

(e) SOFTBALL CLUB shall provide a quality program at Soldier's Creek Park which must be acceptable to and approved in advance by COUNTY's Leisure Services Director, whose determination of acceptance shall be final. If performance is not acceptable, the league may be canceled.

(f) SOFTBALL CLUB will make all necessary pre-league arrangements such as preparing and assembling needed materials and equipment, coaches' training, communication with parents and practice/game schedules.

(g) SOFTBALL CLUB will keep an accurate record of participant registrations, session dates, gross/net receipts total, and percentage total and report same to COUNTY as requested by COUNTY's Leisure Services Director.

(h) SOFTBALL CLUB will secure release forms provided by Seminole County and provide COUNTY's Leisure Services Department with copies of registration and release forms signed on forms approved by COUNTY.

(i) SOFTBALL CLUB will provide COUNTY's Leisure Services Department with preliminary schedules at least fourteen (14) days prior to start of program. Any schedule changes, and final schedules, must be submitted with seven (7) days advance notice. All scheduling must be approved by COUNTY prior to starting of programs.

(j) SOFTBALL CLUB is responsible for coordinating with COUNTY's Leisure Services Department to ensure program does not interfere with events of the COUNTY or the public. Program must yield to events/needs of the COUNTY, notwithstanding the provisions of this Agreement.

(k) SOFTBALL CLUB will be responsible for hiring of all staff or recruiting of volunteers needed to have proper ratios.

(l) Any sponsorships will be obtained by SOFTBALL CLUB and must be approved by COUNTY.

(m) SOFTBALL CLUB agrees to make all required tax and insurance payments arising from this Agreement, including, but not limited to, FICA, FIT and unemployment compensation insurance.

(n) Any tax obligation arising from additional employees will be the responsibility of SOFTBALL CLUB.

(o) SOFTBALL CLUB further agrees to conduct itself in such a manner as to advance good relations for COUNTY and its citizens and ensuring that its officers, employees, contractors, agents and volunteers shall do likewise.

(p) SOFTBALL CLUB further agrees to control and conduct demeanor and appearance of employees, agents, representatives, customers and patrons. Upon objection by COUNTY's Leisure Services Director concerning the conduct, demeanor or appearance of any such person, SOFTBALL CLUB shall immediately take all necessary steps to correct the course of such objection.

(q) SOFTBALL CLUB shall not conduct any business or activity at Soldier's Creek Park not specifically authorized by this Agreement,

unless approved by COUNTY.

(r) SOFTBALL CLUB shall contract exclusively with COUNTY for its program services and no other club or organization without the written approval of COUNTY.

(s) SOFTBALL CLUB will be responsible for the registration and collection of fees from each participant in all of SOFTBALL CLUB's classes/programs at Soldier's Creek Park unless otherwise agreed upon or specified.

SECTION 3. SERVICES TO BE PROVIDED BY COUNTY.

(a) COUNTY will provide the use of softball fields owned by the COUNTY for SOFTBALL CLUB's practice, leagues and tournament purposes.

(b) COUNTY will maintain its softball fields and equipment in good working condition and any maintenance or repairs will be corrected in a timely manner by the COUNTY.

(c) COUNTY will provide promotion/advertising for SOFTBALL CLUB's classes/programs at Soldier's Creek Park through the COUNTY's web site and COUNTY's leisure service guide.

SECTION 4. REVENUE SHARING. COUNTY and SOFTBALL CLUB shall share all SOFTBALL CLUB's league fee registration revenues generated at Soldier's Creek Park with the COUNTY to receive twenty percent (20%) of the gross revenue and SOFTBALL CLUB to receive eighty percent (80%) of the gross revenue. SOFTBALL CLUB shall be responsible for the collection and accounting for such revenue and shall submit to COUNTY its twenty percent (20%) on a monthly basis no later than the 15th day of each month. For tournaments only, SOFTBALL CLUB will have the option of paying either field rental user fees as set forth by the

Seminole County Board of County Commissioners or twenty percent (20%) of the gross registration fees. For each tournament, SOFTBALL CLUB shall state its fee election in writing to COUNTY no later than seven (7) days prior to the tournament start date. In the event no election is received by COUNTY from SOFTBALL CLUB, the fee shall be twenty percent (20%) of the gross registration fees.

SECTION 5. LEASE OF CONCESSION BUILDING. COUNTY agrees, as part of this Agreement, to lease to SOFTBALL CLUB a portion of that building containing the concession stand and meeting room located adjacent to the softball fields at Soldier's Creek Park pursuant to the terms and conditions as indicated below.

(a) SOFTBALL CLUB shall permit COUNTY and its agents to enter into and upon the lease premises at all times for the purpose of inspecting or exhibiting the same or for the purpose of making repairs or alterations to the building.

(b) The purpose of this Agreement is to permit SOFTBALL CLUB to utilize the concession stand area for the provision of concession services during SOFTBALL CLUB organized and sanctioned events at Soldier's Creek Park as well as the meeting room for SOFTBALL CLUB meetings.

(c) SOFTBALL CLUB shall have the exclusive use of the demised premises for such lawful use as it may desire to make thereof in connection with, incidental to and consistent with the purpose section of this Agreement. SOFTBALL CLUB covenants that it will not use or permit the premises to be used for any purpose prohibited by any regulation, ordinance, law or statute; it shall not use or keep any

substance or material in or about the demised premises which may vitiate or endanger the validity of the insurance on the said building or increase the hazard of risk; and it shall not permit any nuisance on the demised premises.

(d) COUNTY shall warrant and defend SOFTBALL CLUB in the enjoyment and peaceful possession of the concession area and meeting room of the premises during the term of this Agreement.

(e) SOFTBALL CLUB shall not assign or sublet the leased premises or any part thereof without first obtaining the written consent of COUNTY.

(f) The taking of possession of the leased premises by SOFTBALL CLUB shall be conclusive evidence that said premises were in good and satisfactory condition when possession of the same was taken, latent hidden defects excepted.

(g) SOFTBALL CLUB agrees to keep the leased premises clean and the pavements and appurtenances free of debris and trash and expressly agrees to assume sole liability for accidents alleged to have been caused by their defective condition. SOFTBALL CLUB agrees to use reasonable care to avoid improper use of the concession stand sewer system or the introduction of inappropriate objects or materials into said system. SOFTBALL CLUB shall provide adequate extermination services to leased premises during the term of this Agreement and provide evidence of same to COUNTY upon demand.

(h) The concession and storage areas, meeting room, their contents, and other improvements or portions of the leased premises must be made secure by devices such as locks, electronic devices,

safety devices or lighting by SOFTBALL CLUB subject to approval by the COUNTY. So long as the approved security is maintained by SOFTBALL CLUB, the risk of loss to contents shall fall upon SOFTBALL CLUB and the risk of loss to the building shall fall upon the COUNTY.

(i) No alterations may be made to the leased premises without the permission of the COUNTY.

SECTION 6. TERM. This Agreement shall be effective as of August 1, 2009, notwithstanding the date it is executed by the parties, and shall terminate on July 31, 2010. At the option of the parties, this Agreement may be extended for two (2) additional one (1) year terms.

SECTION 7. HOLD HARMLESS. SOFTBALL CLUB agrees to hold harmless, indemnify and defend the COUNTY and its commissioners, officers, employees and agents against any and all claims, losses, damages or lawsuits for damages arising from, allegedly arising from or related to SOFTBALL CLUB's use of Soldier's Creek Park or the leased premises or exercise of SOFTBALL CLUB's rights under this Agreement.

SECTION 8. INSURANCE.

(a) General. SOFTBALL CLUB shall, at SOFTBALL CLUB's own cost, procure the insurance required under this Section.

(1) SOFTBALL CLUB shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Workers' Compensation/Employer's Liability and Commercial General Liability). The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The

Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by SOFTBALL CLUB, SOFTBALL CLUB shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. In lieu of the statement on the Certificate, SOFTBALL CLUB shall, at the option of the COUNTY, submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. The Certificate shall have this Agreement number clearly marked on its face.

(3) In addition to providing the Certificate of Insurance, if required by the COUNTY, SOFTBALL CLUB shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by the COUNTY nor failure to disapprove the insurance furnished by SOFTBALL CLUB shall relieve SOFTBALL CLUB of SOFTBALL CLUB's full responsibility for performance of any obligation including SOFTBALL CLUB's indemnification of the COUNTY

under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 624.4621, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 624.4621, Florida Statutes shall have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority, (ii) no longer comply with Section 624.4621, Florida Statutes, or (iii) fail to maintain the requisite Best's Rating and Financial Size Category, SOFTBALL CLUB shall, as soon as SOFTBALL CLUB has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as SOFTBALL CLUB has replaced the unacceptable insurer with an insurer acceptable to the COUNTY, SOFTBALL CLUB shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability of SOFTBALL CLUB, SOFTBALL CLUB shall, at SOFTBALL CLUB's sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in this Agreement, the insurance shall become effective prior to the commencement of work by SOFTBALL CLUB and shall be maintained in force until this Agreement's completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) SOFTBALL CLUB's insurance shall cover SOFTBALL CLUB for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance without restrictive endorsements. SOFTBALL CLUB will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SOFTBALL CLUB and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable Federal or State laws.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida

Workers' Compensation Act, the United States Longshoremen and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) SOFTBALL CLUB's insurance shall cover SOFTBALL CLUB for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by SOFTBALL CLUB (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

	<u>LIMITS</u>
General Aggregate	Three (3) Times the Each Occurrence Limit
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

(d) Coverage. The insurance provided by SOFTBALL CLUB pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY's officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of SOFTBALL CLUB.

(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve SOFTBALL CLUB, its employees, or agents of liability from any obligation under this Section or any other portions of this Agreement.

SECTION 9. THIRD PARTY USE OF PREMISES. Nothing herein shall prevent the reservation or use of the Soldier's Creek Park by parties other than SOFTBALL CLUB.

SECTION 10. CANCELLATION AND TERMINATION. This Agreement may be cancelled or terminated by either party at any time, with or without cause, upon not less than thirty (30) days' written notice delivered to the other party or, at the option of the COUNTY, immediately in the event any of the terms, covenants or agreements of this Agreement have been violated.

SECTION 11. SURRENDER OF POSSESSION. SOFTBALL CLUB agrees to deliver up and surrender to the COUNTY possession of the leased premises at the expiration or termination of this Agreement in as good condition as when SOFTBALL CLUB takes possession except for ordinary wear and tear, alterations permitted under this Agreement, or loss by fire or other casualty, act of God, insurrection, nuclear weapon, bomb, riot, invasion or commotion, military or usurped power.

SECTION 12. REMOVAL OF PROPERTY. SOFTBALL CLUB shall, without demand therefore and its own cost and expense, prior to expiration or sooner termination of the term hereof or of any extended term hereof,

remove all property belonging to SOFTBALL CLUB and all alterations, additions or improvements, and fixtures which, by the terms hereof, it is permitted to remove; repair all damage to the leased premises caused by such removal; and restore the leased premises to the condition they were in prior to the installation of the property so removed. Any property not so removed shall be deemed to have been abandoned by SOFTBALL CLUB and may retained or disposed of by COUNTY.

SECTION 13. WAIVER. No waiver of any breach of any one or more of the conditions or covenants of this Agreement by the COUNTY or by SOFTBALL CLUB shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

SECTION 14. AMENDMENT OR MODIFICATION. Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of this Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Agreement.

SECTION 15. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by United States mail, to:

For COUNTY:

Director of Leisure Services Department
845 Lake Markham Road
Sanford, FL 32771

For SOFTBALL CLUB:

Seminole Softball Club, Inc.
P.O. Box 196475
Winter Springs, FL 32719-6475

SECTION 16. DEFAULT. Either party to this Agreement, in the event of an act of default by the other, shall have all remedies available to it under the laws of the State of Florida including but not limited to injunction to prevent default or specific performance to enforce this Agreement.

SECTION 17. APPLICABLE LAW. This Agreement shall be construed under and in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST: SEMINOLE SOFTBALL CLUB, INC.

RENEE WALTERS, Treasurer
[Corporate Seal] By: _____
KIMBERLY S. FENICHEL, President
Date: _____

ATTEST: BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA
By: _____
BOB DALLARI, Chairman
Date: _____

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

For the use and reliance of Seminole County only. As authorized for execution by the Board of County Commissioners at their _____, 20____, regular meeting.
Approved as to form and legal sufficiency.

County Attorney

AEC/lpk/sjs
3/13/09, 3/27/09
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