

**RESOLUTION APPROVING THE OPERATING AGREEMENT FOR THE KINSER
PARK BASEBALL COMPLEX BETWEEN THE KINSER PARK COMMISSION AND
THE GREENEVILLE MARLINS ASSOCIATION, INC.**

WHEREAS, Greene County, Tennessee and the Town of Greeneville, Tennessee jointly have an easement for public recreation over certain property (herein "Kinser Park") in Greene County, Tennessee owned by the United States of America acting by and through the Tennessee Valley Authority; and

WHEREAS, Greene County and the Town of Greeneville manage and utilize said public recreation easement through the Kinser Park Commission; and

WHEREAS, the Kinser Park Commission previously had entered into an agreement to lease a certain portion of Kinser Park to the Greeneville Marlins, a baseball association, upon which the said Greeneville Marlins had constructed a baseball complex, and

WHEREAS, The Kinser Park Commission now desires to enter into an Operating Agreement with the Greeneville Marlins Association, Inc. for the continued operation of the baseball complex by that Association, subject to the approval of the governing bodies of Greene County and the Town of Greeneville; and

WHEREAS, after lengthy negotiations by representatives of the Kinser Park Commission and the Greeneville Marlins Association, Inc., a proposed Operating Agreement has been drafted that provides for the continued operation of the

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baseball complex by the Greeneville Marlins Association, Inc.
as well as for the maintenance of the baseball complex; and

WHEREAS, after careful consideration of said Operating Agreement, it would appear that the Operating Agreement will facilitate the continued operation of the baseball complex, would best utilize the baseball complex, and would be in the best interests of the citizens of Greene County and the Town of Greeneville.

NOW THEREFORE BE IT RESOLVED, by the Greene County Legislative Body meeting in regular session on the 19th day of February, 2013, a quorum being present and a majority voting in the affirmative, that the County Mayor is authorized to approve the proposed Operating Agreement attached as Exhibit "A" to this Resolution on behalf of Greene County which would provide for the continued operation and maintenance of the baseball complex at Kinser Park.

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Lloyd "Hoot" Bowers
Sponsor

County Mayor

County Court Clerk

Roger A. Woolsey
County Attorney

EXHIBIT "A"

OPERATING AGREEMENT

THIS AGREEMENT entered into as of the _____ day of _____, 2013, by and between the KINSER PARK COMMISSION, a duly authorized agency of the Town of Greeneville, Tennessee, and Greene County, Tennessee (hereinafter referred to as "KPC"); GREENEVILLE MARLINS ASSOCIATION, INC. (hereinafter referred to as "OPERATOR"); KENNY RICKER, JOHN BOWMAN, DENNY WILLS and RICKY CAMPBELL, formerly d/b/a Greeneville Marlins, a baseball association. The Tennessee Valley Authority has separately provided its approval of this Agreement.

WITNESSETH:

WHEREAS, Greene County and the Town of Greeneville have an easement for public recreation over certain property (herein "Kinser Park") owned by the United States of America acting by and through the Tennessee Valley Authority;

WHEREAS, Greene County and the Town of Greeneville manage and utilize said public recreation easement through the KPC;

WHEREAS, the KPC has heretofore leased to Kenny Ricker, John Bowman, Denny Wills and Ricky Campbell, d/b/a Greeneville Marlins, a baseball association, certain premises as more particularly set forth in that certain Lease Agreement dated as of May 28, 1999;

WHEREAS, questions have been raised over whether the aforesaid lease was validly entered into or extended for another term and whether or not the interests of Kenny Ricker, John Bowman, Denny Wills and Ricky Campbell, d/b/a Greeneville Marlins, a baseball association, have been properly assigned to Greeneville Marlins Association, Inc;

WHEREAS, the parties wish to settle these questions by entering into this present Operating Agreement in order to provide for the operation of the Baseball Complex for the benefit and enjoyment of the general public without distinction or discrimination in compliance with the provisions of the grant of easement from the Tennessee Valley Authority;

NOW, THEREFORE, in consideration of the covenants contained herein and to be performed by the parties hereto, the KPC does hereby covenant and agree with OPERATOR as follows:

1. Premises. The premises subject to this Agreement are the baseball fields and related facilities located in Kinser Park and as more particularly described on Exhibit A hereto. The premises are referred to hereinafter as the "Baseball Complex."

2. Term. The term of this Agreement shall be for a period of ending May 28, 2019 and beginning on the date of this Agreement set forth above.

3. Payments. OPERATOR shall pay KPC on the 15th day of each month equal to fifteen

percent (15%) of all gate receipts collected by OPERATOR during the preceding month from persons attending ball games conducted by OPERATOR.

In addition and in like manner, the OPERATOR shall pay KPC further payments equal to fifteen percent (15%) of the gross receipts of any nature, including sales of goods, services, rentals and advertising at the Baseball Complex, but excluding any receipts from the operation of the indoor batting facilities, received by OPERATOR or authorized third parties.

OPERATOR shall keep, or cause to be kept, full, complete and proper books, records, and accounts of its gates receipts and gross receipts from all vending sales, sales of goods and services, rentals and advertising made at the Baseball Complex whether the receipts were received directly by the OPERATOR or by an authorized third party; said books, records and accounts, including all sales tax reports of OPERATOR and all third party vendors, shall at all reasonable times be open to the inspection of KPC, KPC's auditor or other authorized representative or agent.

OPERATOR shall take reasonable steps to insure that no unauthorized sales of goods or services are made at the Baseball Complex.

4. Maintenance and Utilities. OPERATOR shall prepare and maintain the Baseball Complex in a good and ready-to-use condition regardless of the use made by others, with the exception of mowing and weed-eating, which shall be the KPC's responsibility.

OPERATOR shall be responsible for all utilities consumed at the Baseball Complex, with the exception of water, which shall be the KPC's responsibility. OPERATOR shall irrigate the playing turfs and any other vegetation only with the prior approval of KPC. Should field lighting be installed during the term of this Agreement, the parties agree to equitably allocate the resulting charges and reflect the same in a separate writing.

5. Insurance. OPERATOR agrees to provide to KPC a certificate of insurance annually for public liability insurance for a beneficial sum of not less than One Million Dollars (\$1,000,000.00; which sum shall be increased as necessary so that at all times said insurance shall be at least equal to the exposure of KPC, the Town of Greeneville, Tennessee and Greene County, Tennessee under the Government Tort Liability Act) with a reliable insurance company acceptable to KPC naming the KPC, the Town of Greeneville, Tennessee and Greene County, Tennessee as additional named insureds.

6. Use. KPC designates OPERATOR as its agent to schedule the use of the baseball fields in the Baseball Complex, including scheduling games and practices for teams affiliated with the Greeneville Marlins. OPERATOR agrees to operate the Baseball Complex for the benefit and enjoyment of the general public without distinction or discrimination. OPERATOR shall maintain a schedule for the use of each ballfield within the Baseball Complex. Requests to use any field in the Baseball Complex may be made either to OPERATOR or to the Manager of Kinser Park. No request shall be approved until OPERATOR and the Manager of Kinser Park have conferred to

insure that there is no conflicting use. The date and time of each request shall be noted on the written request form, and where there is a conflict, the earlier request will be granted, but the later request shall be advised and given an opportunity to schedule another field or another date. Any individual or organization requesting to use the field must provide proof of insurance in amounts and with a carrier reasonably acceptable to OPERATOR and KPC. KPC acknowledges that it has received satisfactory proof of insurance from OPERATOR for all of the teams playing in the Marlins Association for the first year of this Agreement, but OPERATOR shall continue to provide such proof of insurance in all subsequent years of this agreement. The parties agree that a tournament provides maximum use of the Baseball Complex for the general public, and accordingly if a tournament is scheduled for a weekend, no other party shall be entitled to schedule the use of a field within the Baseball Complex for that weekend.

The indoor batting facility in the Baseball Complex shall be scheduled using the same procedures as set forth above for the fields. All funds collected for the use of the indoor batting facility shall be paid to OPERATOR and shall be used by OPERATOR to defray the cost of insurance, utilities, and general upkeep for the facility. Any organization using the indoor batting facility must provide proof of insurance in amounts and with a carrier reasonably acceptable to KPC and OPERATOR. KPC acknowledges that it has received satisfactory proof of insurance from OPERATOR for all of the teams playing in the Marlins Association for the first year of this agreement, but OPERATOR shall continue to provide such proof of insurance in all subsequent years of this agreement. .

OPERATOR shall be solely responsible for maintaining the security of the batting practice facility and the storage facilities and KPC shall have no liability to OPERATOR for any injury or loss attributable to the use of such facilities by OPERATOR or other users irrespective of whether such use was authorized by OPERATOR.

OPERATOR shall be under no duty to schedule use of the storage or pavilion areas. However, if either party does schedule use of said facilities, then the parties shall divide the gross proceeds from said schedule use equally between them.

7. Operation. OPERATOR shall operate the Baseball Complex in a good, safe, and lawful manner and in compliance with all general or statutory law, rules, and regulations applicable thereto, and such safety rules and programs as shall be prescribed and recommended by government agencies of the local, state and federal governments as well as KPC. Without limiting the foregoing, OPERATOR specifically agrees that it will conduct its activities on the premises without distinction or discrimination, including discrimination on account of race, color, creed, sex, or national origin, and that all games at the Baseball Complex shall be open for attendance by all members of the general public on a non-discriminatory basis.

In addition, OPERATOR shall secure from all users of the Baseball Complex pursuant to OPERATOR's right of use under paragraph 6 hereof a properly executed release and hold harmless agreement substantially identical in terms as the release and hold harmless agreement set forth on

Exhibit B hereto.

The Baseball Complex shall be operated no earlier than daylight and no later than 11:00 p.m.

8. Assignment. OPERATOR shall not, at any time, during the term of this Agreement, or in any manner, either directly or indirectly, assign, hypothecate, or transfer the OPERATOR's interest in said Agreement, or any part thereof, without prior written consent and approval of KPC.

9. Right of Entry. KPC reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem necessary for the proper enforcement of any of the covenants or conditions of this agreement.

10. Further Development. KPC reserves the right to further develop or improve the Park, regardless of the desires or view of the OPERATOR, and without interference or hindrance by the OPERATOR; further, KPC reserves the right to take any action it considers necessary to protect the Park against obstruction, together with the right to prevent OPERATOR from erecting or permitting to be erected, any building or other structure on the Park which, in the opinion of the KPC, would limit the usefulness of the Park or constitute a hazard to the Park or to the general public at large.

11. Indemnification. OPERATOR agrees to indemnify and hold harmless KPC, the Town of Greeneville, Tennessee, and Greene County, Tennessee from any and all damages, including cost of defense and attorney's fees, arising out of any act or omission of OPERATOR, its employees, agents, representatives, members or invitees, or arising out of any lien or other claim against KPC, the Town of Greeneville, Tennessee and Greene County, Tennessee or any of them for unpaid supplies, material or labor attributable to OPERATOR's activities or obligations hereunder.

12. Relationships. Nothing herein shall be interpreted to create any relationship between the parties other than that of independent contractor. KPC, the Town of Greeneville, Tennessee and Greene County, Tennessee are neither partners nor co-venturers with OPERATOR.

13. Contingencies. This Agreement is expressly contingent upon approval of the Greene County Commission, the Board of Mayor and Aldermen of the Town of Greeneville and final approval by the Tennessee Valley Authority.

In issuing its approval, the Tennessee Valley Authority assumes no liability and undertakes no obligation or duty (in tort, contract, strict liability, or otherwise) to any party to this Agreement or to any third party for any damages to property (real or personal) for personal injuries (including death) arising out of or in any way connected with OPERATOR's operation, or maintenance of the baseball park complex. TVA's approval means only that TVA has determined that this agreement, if fairly administered by the Operator to provide reasonable opportunities for use by teams playing in the Greeneville Marlin's Association and by other members of the general public, is consistent with the public recreation purpose of the January 26, 1976, grant of easement to Greene County and

the Town of Greeneville TN.

In addition, any other modification to this Agreement shall be in writing and subject to the approval of the Greene County Commission and Board of Mayor and Aldermen of the Town of Greeneville, Tennessee.

14. Cancellation of Prior Lease and Release. Upon receipt of the approvals specified in paragraph 13 above, the prior lease agreement between KPC and Kenny Ricker, John Bowman, Denny Wills and Ricky Campbell dated May 28, 1999 shall be canceled and of no further effect. KPC and Kenny Ricker, John Bowman, Denny Wills and Ricky Campbell hereby mutually release the other from any and all claims related to said lease or arising out of the prior use by the OPERATOR of the Baseball Complex. Kenny Ricker, John Bowman, Denny Wills and Ricky Campbell are not otherwise parties to this Agreement and shall have no contractual responsibility or liability for OPERATOR's undertakings herein.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names by their duly authorized representatives as of the date first above written

KINSER PARK COMMISSION

By: _____
Lloyd "Hoot" Bowers, Chairman
"KPC"

GREENEVILLE MARLINS ASSOCIATION, INC.

By Mike Finchum, President
"OPERATOR"

KENNY RICKER

JOHN BOWMAN

DENNY WILLS

RICKY CAMPBELL
collectively formerly d/b/a The Greeneville Marlins

APPROVED:

Town of Greeneville, Tennessee

By _____
W. T. Daniels, Mayor

Greene County, Tennessee

By _____
Alan Broyles, County Mayor

STATE OF TENNESSEE)

COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named LLOYD "HOOTS" BOWERS, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he is Chairman of the Kinser Park Commission, an agency of the Town of Greeneville, Tennessee and Greene County, Tennessee, and that he, as such Chairman, being authorized to do so, executed the foregoing instrument on behalf of Kinser Park Commission for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named Mike Finchum, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he is President of GREENEVILLE MARLINS ASSOCIATION, INC., and that he, as such President, being authorized to do so, executed the foregoing instrument on behalf of Greenville Marlins Association, Inc. for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named bargainor, KENNY RICKER, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named bargainor, JOHN BOWMAN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named bargainor, DENNY WILLS, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named bargainor, RICKY CAMPBELL, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named W. T. DANIELS, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he is the Mayor of the Town of Greeneville, Tennessee, and that he, as Mayor, being authorized to do so, executed the foregoing instrument on behalf of the Town of Greeneville, Tennessee for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF GREENE)

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, the within named ALAN BROYLES, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he is the County Mayor of Greene County, Tennessee, and that he, as the County Mayor, being authorized to do so, executed the foregoing instrument on behalf of Greene County, Tennessee for the purposes therein contained.

WITNESS my hand and official seal of office in Greeneville, Tennessee, on this the _____ day of _____, 2012.

Notary Public

My Commission Expires: _____

EXHIBIT A

DESCRIPTION OF PREMISES

The premises referred to as the “Baseball Complex” shall consist of the five baseball/softball fields, the adjacent pavilion and restrooms, the adjacent concession facility with bathrooms, the batting practice building and related storage areas, the related spectator areas and pedestrian passageways, including all related fencing, improvements and tangible personal property.