



TOWN OF WEST SENECA

LAUREN J. MASSET
RECREATION SUPERVISOR

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY

TO: Honorable Town Board / Town of West Seneca

FROM: Lauren J. Masset, Recreation Supervisor

DATE: April 16, 2019

RE: 2019 Non-Exclusive Facilities Use Permit & Agreement (Southtowns Shock)

Please allow the Supervisor to execute the necessary documents to enter into an agreement with D/B/A Sportsplex Operators and Developers Association, Southtowns Shock for use of Town of West Seneca Baseball and Softball Diamonds.

NON-EXCLUSIVE FACILITIES
USAGE PERMIT & LICENSE AGREEMENT
TOWN OF WEST SENECA RECREATION DEPARTMENT

This Non-Exclusive Facilities Usage Permit & License Agreement (the "Agreement") is by and between the Town of West Seneca, located at 1250 Union Road, West Seneca, New York (the "Town"), and Brad Hudak located at 1590 Southwestern Blvd, # 41, West Seneca, NY, 14224 the insured D/B/A/ SPORTSPLEX OPERATIONS AND DEVELOPERS ASSOCIATION Southtowns Shock located at 1590 Southwestern Blvd #41, West Seneca, NY, 14224 (CLUB#: 48562) the "Licensee") (collectively, the "Parties"), and is effective the date it was executed on behalf of the Town (the "Effective Date").

Recitals

WHEREAS, the Town owns and operates certain recreation facilities, including but not limited to: baseball diamonds, softball diamonds, soccer fields, community center gym and an ice rink; and

WHEREAS, the Licensee desires to use a Town owned and operated recreation facility for the purpose of conducting games, practices or any other permitted use as set forth in this Agreement; and

WHEREAS, the Town is willing to permit the Licensee, and its employees, volunteers, agents, representatives and invitees to use the Facilities upon the terms, and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Subject to the conditions, obligations and terms of this Agreement, including the Facilities Usage Rules and Regulations, set forth and attached hereto as EXHIBIT A, the Town grants the Licensee and the Licensee's Permitted Users a non-exclusive license (the "License") to use the facilities set forth and described within the hereto attached EXHIBIT B (the "Facilities"). By executing this Agreement, Licensee acknowledges and affirms it has reviewed and understands it shall be obligated to follow the Facilities Usage Rules and Regulations. Such use shall be solely for the Permitted Use as set forth below.

2. The License shall be the Permitted Use and the Permitted Use Dates as set forth and attached hereto as EXHIBIT C. Any changes to any provisions set forth in this section must be agreed to in writing by the Town, acting in its sole discretion.

3. The term of this Agreement shall commence on **May 1, 2019**, and end on **October 1, 2019**, unless terminate earlier in writing as provided by the Agreement.

4. The Licensee designates the individual named below (the “Licensee Representative”) as the Licensee’s authorized representative with whom the Town will work to facilitate the Permitted Use of the Facilities. The Town shall have the absolute right to rely upon representations and warranties made by the Licensee Representative purportedly on behalf of the Licensee:

Licensee Representative

Name and Title: Brad Hudak - President
Address: 1590 Southwestern Blvd, #41, West Seneca, NY, 14224
Phone: 716-200-2400
Email: bradkhudak@gmail.com

5. On or before October 1, 2019, the Licensee shall pay \$40.00 per each single diamond use and \$30.00 per each single lights use to the Town, for the right to use the Facilities during the term. After the Licensee’s use of the Facilities, the Town shall provide an invoice setting forth any additional buildings and grounds maintenance costs resulting from the use. The invoice shall be paid within fifteen (15) days of Licensee’s receipt. See Exhibit A #1.

These fees include the cost to prepare and use the diamonds on weekdays. The diamonds will not be prepared on weekends or holidays. If diamonds are requested to be prepared on the weekends and the request is approved, the licensee may be charged an additional buildings and grounds fee. Any weekend requests must be made in writing to the Recreation Department and Highway Superintendent a minimum of two weeks in advance.

This document serves as an invoice for the facility use fee.

Checks should be made out to the Town of West Seneca. There is an additional fee for each credit card transaction, which will be applied to your “amount due” at time of payment. Payments can be made in person at West Seneca Youth & Recreation located at 1300 Union Road, West Seneca, NY, 14224. Payments can be submitted via mail to West Seneca Youth & Recreation, 1250 Union Road, West Seneca, NY 14224. No currency should be sent in the mail. Checks are the preferred method of payment. Please do not mail anything to the previous Mill Road address.

Single use is defined as one game, practice, scrimmage, etc.

6. Other Licensee obligations:

- The Town of West Seneca will not provide any sound, P.A., announcement system or any other equipment. The Licensee must provide all of their own equipment.

- Baseball Diamond Rental Licensee must call the Rainout Line (716-677-4754) on each weekday usage date after 4:00 PM to ensure the diamond is not closed due to weather related conditions. Diamonds will not be prepared on weekend or holiday dates.
- Baseball Diamond/ Soccer Field Rental/ Ice Rink– Licensee understands that they are not able to reserve any time slots for Baseball Diamonds or Soccer Fields until after April 10 of each year and Ice Rink slots until after September 10 of each year regardless of the time this agreement was filed. This is to allow West Seneca Youth Sports, West Seneca Central School District & West Seneca Youth & Recreation time to book their required time slots. Licensee understands that regardless of when (date) this agreement was filed no usage is guaranteed. Time slots are on a first come, first serve basis. Licensee understands that they may receive zero timeslots regardless of when this agreement was filed.
- Diamond Rental – The fee is for weekday diamond use (prepared) and weekend diamond use (unprepared). Diamonds will not be prepared on the weekends or holidays. Licensee can request they be done for an additional fee. Licensee must contact the Highway Superintendents a minim of two weeks before the use to request this and if approved receive the cost and due date for the preparation.
- Races/Tournaments/Community Events/Special Events/Other Events: Licensee must attach a race map and schedule to this agreement. Licensee must contact Highway Superintendent Matthew D. English (716-674-4850) and Police Chief Dan Denz (716-674-2943) to discuss this event during the permit process.
- Tournaments/Community Events/Special Events/Other: A schedule must be provided to both Lauren J. Masset (lmasset@twswny.org) and Matthew D. English (menglish@twswny.org) no later than 10 days before the event.
- All Use Types – Licensee understands that the Town of West Seneca reserves the right to cancel this agreement at anytime without notice or warning.

7. Other Town obligations:

8. Failure of the Parties to agree upon any changes to, or extension of, the Permitted Use Dates will result in expiration of the Term; if that occurs, the Town will have no liability for damages of any kind whatsoever to the Licensee. The Town, in its sole discretion, may terminate this Agreement on the basis of any termination right set forth anywhere in this Agreement, including but not limited to any violation of the Facilities Usage Rules and Regulations.

9. The Licensee will only engage in Permitted Uses, all other uses are prohibited. The Licensee will engage in Permitted Uses in a manner that will protect and not damage the Facilities, and will immediately notify the Town in writing of any prohibited uses by the Licensee or its invitees.

10. The Licensee will cooperate and will cause the Licensee’s Representative and its invitees to cooperate with the Town’s personnel at all times.

11. Neither the Licensee nor its invitees will make any alterations, improvements or changes of any kind to any of the Facilities or other Town property. If any alterations take place, the Licensee will immediately notify the Town in writing of such prohibited alterations. If any damage is sustained by the Facilities during the Licensee’s use, then the Licensee shall pay the Town for such damages.

12. The Licensee agrees to indemnify and hold harmless the Town from any and all liability, damages, expenses, causes of action, suits, judgments and claims of any nature arising out of or in any manner connected with injury to persons or property which results from the Town’s use and access of the Facilities, only to the extent that such liability, damages, expenses, causes of action, suits, judgments and claims do not arise out of the Town’s negligence. The Licensee will maintain, or cause to be maintained, in full force and effect, at the Licensee’s expense, one or more policies of general comprehensive liability insurance (the “Licensee’s Liability Insurance”) with combined single limit coverage of at least one million dollars (\$1,000,000.00) per occurrence, and at least three million dollars (\$3,000,000.00) in the aggregate, naming the Town as an additional insured. If the Certificates of Insurance, demonstrating insurance coverage required by this Section, are not received by the Town prior to the Permitted Use Dates, then the Town in its sole discretion may terminate this Agreement and/or prohibit the Licensee use of the Facilities. Certificates of Insurance upon their approval by the Town shall become part of this Agreement and shall be attached hereto as EXHIBIT D. An approved insurance certificate must be filed at least ten (10) days prior to Licensee’s use of the Facilities. Failure to provide a Certificate ten (10) days prior to use may result in termination of this Agreement.

13. Each of the Parties acknowledges that it is not an agent for the other, and the Parties will not make any such assertions. This Agreement may be executed on behalf of the Town by any authorized Recreation Personnel, as designated by the Town Board. In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall remain in force as if such provision were not a part. This Agreement sets forth the entire understanding between the Parties and may be amended solely upon the written mutual agreement of the Parties.

TOWN OF WEST SENECA

Signature: _____
Printed Name: Sheila M. Meegan, West Seneca Town Supervisor
Dated: _____

(LICENSEE)

Signature: _____
Printed Name: Brad Hudak

Dated: _____

EXHIBIT A - Facilities Usage Rules and Regulations

1. a. If the Town cancels events, games, gatherings or other scheduled activities due to weather or any other conditions, Licensee is prohibited from using the facilities. If Licensee cancels any scheduled use or will not be using the scheduled facility use, the Recreation Department must be notified in advance. The Town will, at the request of the Licensee, make a good faith effort to reschedule any uses canceled by the Town due to weather. If the town is unable to reschedule any canceled game, Licensee will not be entitled to any refund from the Town.
b. Fees will not be refunded or adjusted should the Licensee fail to use the date they reserved. Fees will not be refunded or adjusted if usage is canceled due to weather related issues. Usage dates are not required to be rescheduled if they are canceled for weather related issues.
c. The Town of West Seneca reserves the right to deny a refund of fees should the Licensee wish to withdraw from usage prior to it's scheduled start date.
2. Licensee agrees to pay the Town the total rental fee for use of the Town facility specified upon execution of this agreement. (Payment in full is required) Unless otherwise listed in section 5 of this agreement.
3. Licensee agrees to follow all local laws and any rules posted at the facility or park they are using.
4. Licensee is responsible for keeping vicinity free and clear of debris and garbage.
5. No alcoholic beverages or rowdiness will be allowed on the premises or in the immediate vicinity of any Town facilities or property.
6. There is no smoking of any kind permitted at any town facility.
7. When using the Ice Rink all "Rink Rules" must be followed. These are posted in the main lobby of the ice rink.
8. Failure of Licensee to abide by the terms of this agreement may result in cancellation of this License by the Town.
9. Licensee acknowledges that its players have made themselves familiar with the terms of the Agreement and finds such terms acceptable.
10. Players and spectators WILL stay OFF the berm, if using the West Seneca Soccer Park.
11. Parking spots cannot be reserved for any Town facility.
12. West Seneca Youth & Recreation reserves the right to cancel any scheduled use at any time, with no notice.
13. If using the West Seneca Ice Rink no "outside" food or drink should be brought in. Food should be purchased from the concession area within the rink.
14. If using the West Seneca Soccer Park no grills are allowed.
15. The Town of West Seneca reserves the right to cancel this agreement at anytime, with no reason, cause or notice.
16. Failure to abide by this agreement and work in harmony with the Town of West Seneca could result in termination of this agreement. No refunds will be given. All fees will still be owed for future reserved field uses.

EXHIBIT B - (the "Facilities") – Use

Parks, Soccer Complex (Fields) and Diamonds - In addition to the facility used, licenses and participants shall receive us of bathroom facilities, and walking path (if available).

EXHIBIT C - Permitted Use and the Permitted Use Dates

Permitted Use: Town of West Seneca Baseball & Softball Diamonds

Dates/Times to be determined at a later date by the Recreation Office.

Licensee understands that they are not able to reserve any time slots for Baseball Diamonds until after April 10 of each year regardless of the time this agreement was filed. This is to allow West Seneca Youth Sports, West Seneca Central School District & West Seneca Youth & Recreation time to book their required time slots. Licensee understands that regardless of when (date) this agreement was filed no usage is guaranteed. Time slots are on a first come, first serve basis. Licensee understands that they may receive zero timeslots regardless of when this agreement was filed.

Other Information / Notes:

TOWN OF WEST SENECA

Signature: _____
Printed Name: Sheila M. Meegan, West Seneca Town Supervisor
Dated: _____

(LICENSEE)

Signature: _____
Printed Name: Brad Hudak
Dated: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/13/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SADLER & COMPANY, INC. P.O. BOX 5866 COLUMBIA, SOUTH CAROLINA 29250-5866	CONTACT NAME: Sports Dept		
	PHONE (A/C, No. Ext): 800-622-7370 FAX (A/C, No): 803-256-4017		
	E-MAIL ADDRESS: soda@sadlersports.com		
	PRODUCER CUSTOMER ID#:		
INSURED D/ B/ A SPORTSPLEX OPERATORS AND DEVELOPERS ASSOCIATION Southtowns Shock 1590 Southwestern Blvd. APT 41 WEST SENECA, NY 14224 Club #: 48562	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: NATIONAL CASUALTY COMPANY		
	INSURER B: NATIONWIDE LIFE INSURANCE COMPANY		
	INSURER C:		
	INSURER D:		

COVERAGES CERTIFICATE NUMBER REVISION NUMBER

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSD LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/ DD/ YYYY)	POLICY EXP (MM/ DD/ YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X		6L KRO 71901-00	05:24AM ET 07/06/2018	12:01AM ET 07/06/2019	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MEDICAL EXPENSES (other than participants)	\$5,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	NONE
							PRODUCTS- COMP/ OP AGG	\$2,000,000
							LEGAL LIAB TO PARTICIPANTS	\$2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON- OWNED AUTOS			n/ a	n/ a	n/ a	COMBINED SINGLE LIMIT (Ea Accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
A	<input type="checkbox"/> SEXUAL ABUSE / MOLESTATION			n/ a	n/ a	n/ a	EACH OCCURRENCE	\$1,000,000
							AGGREGATE	\$2,000,000
C	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS- MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION			n/ a	n/ a	n/ a	EACH OCCURRENCE	n/ a
							AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER Y/ N EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/ A			<input type="checkbox"/> PER STATUE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
B	PARTICIPANT ACCIDENT			6A JXS 285735-00- Y	05:24AM ET 07/06/2018	12:01AM ET 07/06/2019	EXCESS MEDICAL	\$100,000
							AD&D	\$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The General Liability policy, if included above, is part of the ERS Risk Purchasing Group Association, Inc.
RE: COVERED Team(s) - Youth - Accident & General Liability
 Baseball - 1 Team(s) - [Maximum 18 players per team]
 Team Names: Southtowns Shock
 (Accident Package Youth Team: \$100,000 Excess Medical; \$5,000 Accidental Death or Dismemberment; \$250 per claim deductible)
 (General Liability Package Youth Team: \$2,000,000 Each Occurrence; \$2,000,000 Legal Liability to Participants. Waiver/ Release Recommended)
 NOTE: The Participant Accident policy, if included above, is not a part of the ERS Risk Purchasing Group Association, Inc.
 The certificate holder is added as an additional insured, but only with respect to the liability arising out of the operations of the insured above.

CERTIFICATE HOLDER RELATIONSHIP: Property Owner/ Lessor Town Of West Seneca 1250 Union Rd West Seneca, NY 14224	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE (company A) AUTHORIZED REPRESENTATIVE (company B)
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Coverage is only extended to U.S. events and activities

** NOTICE TO TEXAS INSUREDS: The Insurer for the purchasing group may not be subject to all the insurance laws and regulations of the State of Texas.

ACORD 25 (2014/01)

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