

**GROUND LEASE AND SUBLEASE, AND OPERATING AGREEMENT
BETWEEN THE SPRINGFIELD-GREENE COUNTY PARK BOARD AND THE
SKATEPARK ASSOCIATION, A NOT-FOR-PROFIT CORPORATION**

THIS GROUND LEASE, GROUND SUBLEASE AND OPERATING AGREEMENT (“Agreement” hereafter), made and entered into on the ___ day of _____, 2007, by and between THE CITY OF SPRINGFIELD, MISSOURI, by and through THE SPRINGFIELD-GREENE COUNTY PARK BOARD, a Municipal Corporation, hereinafter “PARK BOARD” and SKATEPARK ASSOCIATION., a Missouri Not-For-Profit Corporation, hereinafter “SKATEPARK”,

WITNESSETH:

WHEREAS, SKATEPARK has constructed an indoor skate park facility which is open to the public and has been operated by SKATEPARK on land owned or controlled by the PARK BOARD, as described in “Exhibit A” attached hereto; and

WHEREAS, PARK BOARD is willing to enter into this Agreement with the SKATEPARK for such purposes, upon the terms and conditions, and for the considerations set forth herein;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN SET FORTH, PARK BOARD AND SKATEPARK AGREE:

1. PREMISES

PARK BOARD, in consideration of the rents, promises and covenants contained herein, does hereby lease and sublease to SKATEPARK, and SKATEPARK does hereby lease and sublease from PARK BOARD, solely for the purposes of the operation and maintenance of a public skate park facility, and ancillary operations approved by PARK BOARD, that property shown on “Exhibit A”, which is attached hereto and incorporated herein by reference (“premises” hereafter).

2. TERM

The term of the lease and sublease shall be for a period commencing on November 1, 2007 and ending on October 31, 2008, but may be extended beyond this term if agreed to by the parties in writing. It is the intent of the parties to foster an ongoing relationship and, as such, consent to extend the lease and sublease term shall not be unreasonably withheld by either party.

PARK BOARD may revoke this Agreement at any time upon five (5) days’ written notice to SKATEPARK, and may amend this Agreement as needed, if PARK BOARD finds any activity or inactivity of the SKATEPARK is in violation of the Park Rules and/or Regulations and/or any other applicable law or if the PARK BOARD finds that these activities or inactivity are of doubtful reputation, intent or do not reflect positively on the City, County or PARK BOARD.

This contract shall be immediately voidable, at Park Board's option, if Annette Weatherman ceases acting as the President of the Skatepark or if she becomes incapacitated for more than 30 days.

This Agreement shall terminate in any event thirty (30) days after the SKATEPARK ceases to be a not-for-profit corporation in good standing under the Laws of Missouri and in possession of an exemption letter in full force and effect from the Internal Revenue Service, and the SKATEPARK shall provide annual proof of this status to the Director of Parks.

3. RENT

SKATEPARK shall pay to PARK BOARD annual rent of One Dollar (\$1.00), payable upon the execution of this Agreement.

4. MANAGEMENT AND OPERATION OF SKATE PARK

During the term of the lease and sublease, the SKATEPARK shall have the ultimate right and full responsibility for the safety, operation and management of the skate park facility and activities, in accordance with general written policies of SKATEPARK, subject to the approval of the Director of Parks, or their designee, and in accordance and compliance with policies approved by PARK BOARD and all applicable Parks, City, State and Federal rules, laws and regulations.

SKATEPARK policies, rules and guidelines shall be jointly approved by the SKATEPARK and the Director of Parks, or their designee, on an annual basis.

PARK BOARD will provide at least one PARK BOARD employee at the SKATEPARK for supervisory purposes, who shall work under the management of the SKATEPARK Founder but shall remain under the full supervision of and obligation to the PARK BOARD and shall be a City Employee subject to all rules, regulations and general guidelines as all other Park Board and City employees. This PARK BOARD employee may have additional Park's responsibilities at other locations throughout the Park System.

PARKBOARD may, at its option, periodically add additional PARK BOARD employees at the SKATEPARK.

SKATEPARK is granted the right to charge and collect and retain fees and charges for the use of the Premises, according to a fee and/or charge schedule jointly approved by the SKATEPARK and the Director of Parks, or their designee.

SKATEPARK shall collect all fees, pay all operating expenses, employ all necessary staff personnel, and operate or supervise any concessions located in the facility.

PARK BOARD shall have the right to approve any concession or vendor located in the facility, including any concession or vendor not operated by SKATEPARK.

SKATEPARK shall have the exclusive right, subject to the prior approval of the advertiser and/or advertisement by the Director of Parks or their designee, to sell the right to display advertising signs on fencing and throughout the Premises, and may retain the proceeds from advertising sales, paying all costs of sales, including any commissions, installation costs and maintenance expense of advertising signs. The Director of Parks, or their designee, retains the right to cause the removal of any unapproved advertising.

5. ASSUMPTION OF RISK, WAIVER AND RELEASE OF LIABILITY

SKATEPARK agrees to obtain from all participants in its activities, signed written forms of parental/individual assumption of risk, waiver and release of any claims against PARK BOARD, the City of Springfield, Missouri, Greene County, the School District of Springfield R-12, and their respective officers, agents and employees, for personal injury or property damage arising out of use of the skate park facility.

6. COMPLIANCE WITH ALL LAWS AND REGULATIONS

SKATEPARK shall comply with and follow all applicable Federal, State and local laws and regulations with respect to the operation of the SKATEPARK, and shall comply with and follow all applicable Park Board Ordinances, Rules Regulations and Guidelines, including any prohibitions on sale of alcoholic beverages, cigarettes or similar products, and related advertising and/or vendors.

7. REPAIRS AND MAINTENANCE

SKATEPARK shall maintain the Premises in good condition and working order, and shall be solely and fully responsible for the safe condition of all equipment, devices, facilities and the Premises in general.

SKATEPARK shall provide for all necessary labor, equipment and materials for repair and maintenance of the Premises, at its cost, and shall be responsible for all necessary repairs required for the Premises, including but not limited to the repairs and maintenance of the skating and skateboard areas, but shall consult with the PARK BOARD on all major maintenance issues prior to implementing any major maintenance actions or repairs unless an emergency exists that poses an immediate threat of harm or danger to any individual at or in the SKATEPARK.

SKATEPARK shall provide for routine maintenance and janitorial services for the indoor facility.

PARK BOARD shall have the right to make periodic maintenance checks on the facilities and grounds at the SKATEPARK at any time or day.

PARK BOARD agrees to provide exterior maintenance for the grounds and parking lots only, to include mowing, snow removal, and trash removal.

PARK BOARD shall have the right to require the facility to be closed because of an ice and snow event until such time as it has had the opportunity to clear and/or salt the parking lot and sidewalks.

8. UTILITIES

SKATEPARK shall pay all utility services, which include but are not limited to water, sewer, underground utility lines, and telephone services.

9. OWNERSHIP OF IMPROVEMENTS AND FACILITIES

The building, structure, all permanent fixtures and improvements, and the premises in general which are located upon the leased or subleased premises, excluding personal property, are and shall immediately become the property of PARK BOARD.

SKATEPARK shall deliver possession of the premises to PARK BOARD upon termination of this lease and/or sublease in good condition, ordinary wear and tear and providential destruction excepted.

10. INDEMNITY AND INSURANCE

SKATEPARK agrees to defend, indemnify and hold PARK BOARD, the City of Springfield, Missouri, Greene County, the School District of Springfield R-12, and their respective officers, agents and employees, harmless from and against any and all claims, liabilities, damages, losses or costs, including, but not limited to, those in the nature of mechanic's liens, or for prevailing wages, personal injury, wrongful death or property damage, arising from any breach of this agreement, or the use and occupancy of the Premises by SKATEPARK, or from the negligent, or intentionally wrongful acts or omissions of SKATEPARK, its officers, employees, contractors, sub-contractors, agents or invitees. This indemnity obligation shall survive expiration or early termination of this lease and/or sublease.

SKATEPARK shall maintain at all times during this lease and sublease general public liability insurance covering personal injury and property damage claims with a financially sound and reputable public insurance company qualified to transact insurance business in the State of Missouri, the policy to contain independent contractor's coverage and contractual liability endorsements, with initial policy limits of not less than \$1,000,000 for any single claim and \$2,303,326 aggregate coverage, listing the PARK BOARD, the City, the County and School District of Springfield R-12 as additional insureds. SKATEPARK shall increase the policy limits at the request of PARK BOARD as necessary to provide adequate coverage up to limits of the sovereign immunity waiver caps under Section 537.600 RS Mo et seq. SKATEPARK shall maintain worker's compensation insurance covering its employees and volunteers to the extent may be required by law. SKATEPARK shall further carry at all times fire and extended coverage insurance on the building, listing the PARK BOARD, the City and School District of Springfield R-12 as additional insureds. In the event of fire or other casualty loss, the proceeds of insurance shall be used to repair or rebuild the facilities unless SKATEPARK and PARK BOARD mutually agree otherwise. SKATEPARK shall furnish PARK BOARD with a current certificate of insurance containing a requirement that PARK BOARD receive 30 days notice of

any cancellation or non-renewal. At PARK BOARD'S request SKATEPARK shall furnish for examination the actual insuring policies, including all endorsements.

11. ENVIRONMENTAL COMPLIANCE

SKATEPARK shall comply with all applicable federal, state, and local laws, regulations, or ordinances pertaining to air and water quality, hazardous materials, waste disposal, air emissions, and other environmental matters.

12. NONDISCRIMINATION

SKATEPARK shall not cause or permit any person or group to be denied access to any event or facility because of said person's or group's race, creed, color, national origin or ancestry, sex, religion, disability, or political opinion or affiliation, and any admission prices charged for any event shall be fairly and uniformly imposed.

13. SHARED PARKING

Parking facilities shown on the subleased premises are subject to a joint parking agreement between PARK BOARD and School District of Springfield R-12, which has the privilege of using up to eighty per cent (80%) of the parking areas for its patrons and students for school athletic events at the soccer fields. SKATEPARK agrees to abide by this agreement and to cooperate with the School District with respect to shared parking.

14. SECURITY

SKATEPARK shall be responsible for the safety and security of the premises for its activities. PARK BOARD may furnish some security patrols during evening hour programs, but this shall not relieve SKATEPARK from its primary responsibility with respect to the security of its property and the security of person and property of patrons.

15. USE OF PREMISES

The grounds and premises herein set forth shall be used by SKATEPARK solely for the operation of a skate park facility and related activities for the benefit of the general public, and all organized activities or events shall be pre-approved by the Director of Parks, or their designee. The premises shall be used at all times in compliance with the Rules and Regulations of the Springfield-Green County Park Department, the City Code of Springfield, Missouri, and the laws of the State of Missouri and the United States of America.

No use of tobacco, alcoholic beverages or illegal drugs, or acts of vandalism, abuse, or harassment of patrons, shall be permitted on the premises, nor shall SKATEPARK tolerate or allow such acts to occur. SKATEPARK may permit smoking in a designated area outside of the building only, as approved by the Director of Parks or their designee. No smoking shall be permitted within the building.

16. BREACH

If any covenant or clause in this Agreement is violated by SKATEPARK, and not corrected within thirty (30) days after SKATEPARK receives written notification from PARK BOARD of the specific violation to be corrected, this lease and/or sublease shall be subject to

termination. Upon termination, SKATEPARK shall immediately cease all use of the leased and/or subleased premises, vacate and surrender possession said premises to PARK BOARD, and the balance of the term of the Sublease shall be canceled.

17. NON-ASSIGNABILITY

This lease and sublease is not assignable by SKATEPARK to any person or party, without the written consent of PARK BOARD, nor shall SKATEPARK mortgage or grant a security interest in this Agreement without such consent. Any such assignment or transference shall render this sublease immediately voidable at PARK BOARD’s option, with five days notice to SKATEPARK.

18. GOVERNING LAW AND VENUE

This agreement and any dispute arising hereunder shall be governed by the laws of the State of Missouri. In any litigation arising under this lease and/or sublease, venue shall be proper only in the Circuit Court of Greene County, Missouri. Before commencing any litigation arising under this agreement, PARK BOARD and SKATEPARK agree that for a period of not less than thirty (30) days the parties will attempt to resolve their dispute through non-binding mediation which shall be conducted with a third party mediator mutually selected by the parties who shall equally share the cost of the mediation. After thirty (30) days, either party shall have the right to terminate the mediation and resort to judicial remedies should they determine the mediation is not likely to resolve the dispute.

IN WITNESS WHEREOF, the PARK BOARD and SKATEPARK have caused this agreement to be executed by their proper officers, duly authorized by their respective Boards, in triplicate

SKATEPARK ASSOCIATION

**THE CITY OF SPRINGFIELD,
MISSOURI, A Municipal Corporation,
by and through THE SPRINGFIELD-
GREENE COUNTY PARK BOARD**

BY _____
Annette Weatherman, President

BY: _____
Robert Horton, Chair

BY: _____
Jodie Adams, Director of Parks

Approved at to Form: _____, Assistant City Attorney