



BATAVIA CITY COUNCIL SPECIAL CONFERENCE MEETING

**Monday, January 11, 2021 at 7:00 PM
Council Board Room at City Hall**

AGENDA

- I. Call to Order
- II. Invocation – Councilmember Christian
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
- VII. Council President Report
 - a. Announcement of the next City Council Conference Meeting to be held on Monday, January 25, 2021 at 7:00 p.m. in the City Hall Council Board Room
 - b. Oath of Office – Councilmember Jeremy Karas
- VIII. Batavia Business Improvement District Application for 2020 Main Street Anchor Grant
- IX. Presentation – Robbie Nichols – CAN-USA Sports, LLC
- X. Assignment of Amended and Restated Dwyer Stadium Lease Agreement and Sublease Agreement
- XI. Adjournment



**DOWNTOWN BATAVIA
BUSINESS IMPROVEMENT DISTRICT**

MEMORANDUM

To: Honorable Members of City Council and Rachael Tabelski, Interim City Manager

From: Beth Kemp, Executive Director of Batavia Business Improvement District

Re: Application for the 2020 Winter New York Main Street Anchor Grant

Date: December 21, 2020

The 2020 Winter New York Main Street (NYMS) Grant Program was announced last week. The Batavia Business Improvement District has been successful with grant programs in the past and has rehabilitated multiple downtown buildings, streetscapes, and administered successful facade programs.

- 2004 Senator Rath: \$50,000 grant
- 2004 Assemblyman Nesbitt: \$50,000 grant
- 2013 Rural Area Revitalization Project - \$150,000 grant
- 2016 Empire State Development Feasibility Study - \$25,000 grant

The BID is requesting the City Council of the City of Batavia to support the submission of an application for the Winter 2020 round of the New York Main Street Program for up to \$500K in New York Main Street Anchor funding to benefit the 6 Alva Place Project.

It is my understanding that the property owner will utilize the funding for facade and interior improvements, creating a multi-functioning events space at 6 Alva Place. The matching funds for this project will be funded directly by the property owner. The proposed project addresses the lack of entertainment in our downtown and appeals to 5 major market segments: college students, business professionals, families, adults and seniors.

#-2021

A RESOLUTION TO SUBMIT A NEW YORK MAIN STREET GRANT APPLICATION

Motion of Councilmember

WHEREAS, the New York State Office of Community Renewal (NYSOCR) is offering New York Main Street Grants of up to \$500,000; and

WHEREAS, the New York Main Street Program offers grant funding to assist “Main Street” or downtown businesses and property owners, including anchor buildings, with facade and building improvements; and

WHEREAS, the Downtown Batavia Business Improvement District is an eligible applicant for the New York Main Street program; and

WHEREAS, the Downtown Batavia Business Improvement District would like to apply for a Winter 2020 Downtown Anchor Grant under the New York Main Street Program to renovate a commercial property in the Business Improvement District boundary; and

WHEREAS, municipalities in which New York Main Street projects are located are required to provide a resolution supporting the application for funding.

NOW THEREFORE, BE IT RESOLVED, that the City of Batavia does hereby enthusiastically authorize submission of a New York Main Street grant application of up to \$500,000 in grant funding.

**Seconded by Councilmember
and on the roll call**



City of Batavia

Memorandum

To: Honorable Council Members

From: Rachael J. Tabelski, MPA, Interim City Manager

Date: January 4, 2021

Subject: Dwyer Stadium Lease and Sublease

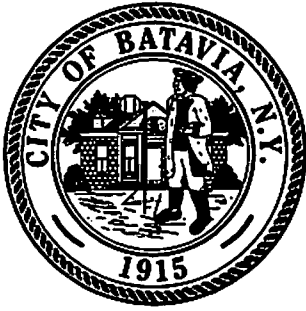
Background: The City has had a long history with the Batavia Muckdogs and teams in the New York Penn League dating back many decades. Based on Major League Baseball's (MLB) decision to move on from the New York Penn League (NYPL), the cessation of the NYPL and the expiration of the Miami Marlins' Player Development agreement the current sublease with the NYPL owned franchise has been canceled. By ending the lease with the NYPL entity, the City of Batavia now has the flexibility to move forward with a new operator at the baseball stadium.

As the 2021 season for Minor League Baseball hung in the balance of the MLB decision making, many different interested baseball enthusiasts reached out to the City with ideas to create a new league, or to manage a club owned by the City.

The NYPL put the City in touch with Robbie Nichols, the owner of CAN-USA Sports, LLC. , CAN-USA wanted to pursue operating a team in Batavia in the Perfect Game Collegiate Baseball League (PGCBL). The PGCBL approved Mr. Nichols' request to add Batavia as a location in the league and also approved him as an operator of the team. Mr. Nichols and CAN-USA Sports, LLC. currently own the Elmira Pioneers and the Elmira Enforcers, a hockey team.

The PGCBL, founded in the fall of 2010 by eight summer baseball teams located across upstate New York in conjunction with Perfect Game USA, baseball's largest scouting service. The eight founding members of the PGCBL were the Albany Dutchmen, Amsterdam Mohawks, Cooperstown Hawkeyes, Elmira Pioneers, Glens Falls Golden Eagles, Mohawk Valley DiamondDawgs, Newark Pilots and Watertown Wizards. The league's first season was completed in the summer of 2011. The PGCBL has many of the former NYPL team locations and wishes to keep baseball in the communities.

Recommended: It is recommended that City Council execute the lease amendment and sublease agreement at the January 11th Business meeting to ensure that CAN-USA Sports, LLC. can move forward to fielding a team and preparing for a 2021 summer season.



City of Batavia

The lease terms are as follows:

1. 5 year lease
2. Rent
 - a. Year 1-3 - \$1
 - b. Year 4 - \$7,500 (placed into Dwyer Stadium Capital Reserve Fund)
 - c. Year 5 - \$10,000 (placed into Dwyer Stadium Capital Reserve Fund)
3. Operator pays the field maintenance and utility costs to operate
4. Operator will allow use of the field, as appropriate, to community groups, little league, high schools, etc.

Supporting Documents:

1. Draft Resolution Authorizing the City Council President to Sign an Amended and Restated Dwyer Stadium Lease and Sublease Agreement
2. Amended and Restated Lease Agreement and Sublease

#-2021

**A RESOLUTION AUTHORIZING THE CITY COUNCIL PRESIDENT TO SIGN AN
AMENDED AND RESTATED DWYER STADIUM LEASE AND SUBLEASE
AGREEMENT**

Motion of Councilmember

WHEREAS, the City of Batavia is the owner of Dwyer Stadium and the Batavia Regional Recreation Corporation (BRRC) operates and manages the Dwyer Stadium facility as outlined in the Dwyer Stadium Lease Agreement; and

WHEREAS, the BRRC has sublet the premises to the Batavia Muckdogs, Inc. minor league franchise so that the Batavia Muckdogs can use the facility to play its home baseball games at Dwyer Stadium; and

WHEREAS, due to changes in Major League Baseball, the New York Penn League has ceased operations and BATAVIA MUCKDOGS, INC. (BMI), no longer has a Player Development Agreement with a professional baseball franchise; and

WHEREAS, based on the Penn League's termination the City of Batavia has terminated the sublease to Batavia Muckdogs, Inc.; and

WHEREAS, the Perfect Game Collegiate Baseball League (PGCBL) has approved adding a team in Batavia, New York to the league; and

WHEREAS, the PGCBL has also approved CAN-USA Sports, LLC to own and operate the PGCBL team in Batavia; and

WHEREAS, CAN-USA Sports desires to operate the team at Dwyer Stadium under a new Sublease; and

WHEREAS, the parties need to amend and restate the Lease and Sublease agreements.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the Council President be and is hereby authorized to sign said Amended and Restated Dwyer Stadium Lease and Sublease Agreement as attached on behalf of the City of Batavia.

**Seconded by Councilmember
and on roll call**

AMENDED AND RESTATED DWYER STADIUM LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT, made the _____ day of _____, 2021 between the CITY OF BATAVIA, hereinafter referred to as "Landlord", and BATAVIA REGIONAL RECREATION CORPORATION, hereinafter referred to as "Tenant."

WITNESSETH:

WHEREAS, Landlord is the owner of certain real property with improvements thereon consisting of a baseball field and grandstand facilities which are known as Dwyer Stadium, and

WHEREAS, Tenant was incorporated as a Not-For-Profit corporation with one of its purposes being to operate and manage the Dwyer Stadium facility, and

WHEREAS, pursuant to Lease Agreement dated December 11, 2018, Landlord and Tenant entered into a Lease Agreement for the Dwyer Stadium facility (the "2018 Lease") and Landlord, Tenant and the Batavia Muckdogs, Inc., as subtenant ("BM") also on December 11, 2018, entered into a Sublease Agreement whereby BM would operate a minor league baseball franchise as a member of the New York-Pennsylvania Professional Baseball League, Inc. a Player Development Contract with the Miami Marlins organization (the "2018 Sublease"), and

WHEREAS, the 2018 Sublease contained a number of amendments to the 2018 Lease, and

WHEREAS, Landlord has terminated the 2018 Sublease due to BM's default thereunder, and

WHEREAS, Landlord and Tenant intend to find a subtenant to continue to use the Premises as an athletic facility for the benefit of the Batavia community ("Subtenant").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant agree to amend and restate the 2018 Lease to incorporate therein many of the amendatory provisions thereto set forth in the 2018 Sublease to read in its entirety as follows:

1. Lease. Subject to each, and all, of the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, as hereinafter defined, for the uses and purposes hereinafter described.

2. Premises. The term “Premises” as used in this Agreement shall include only the athletic field, the improvements thereon, and the surrounding structures, including the surrounding parking areas, known as Dwyer Stadium.

3. Term. The term of this Agreement shall be seven (7) years commencing on April 1, 2019 and continuing through and including March 31, 2026 unless terminated earlier as more particularly provided for herein.

4. Rent. During the first five (5) years of the term, the annual rent shall be \$1.00. Commencing on April 1, 2024, the annual rent shall be \$7,500.00; and on April 1, 2025, the annual rent shall be \$10,000.00. The annual rent shall payable, in advance, on the first day of each lease year during the term. The Landlord agrees that, when paid, the annual rent shall be placed in the Dwyer Stadium capital reserve fund for use in facility improvements as may be agreed upon by Landlord and Tenant.

5. Acceptance of Premises. Tenant accepts the Premises “as is”.

6. Use of the Premises.

(a) Tenant shall cause the Premises to be used primarily by Subtenant for its home baseball games and practices.

(b) Tenant shall have the exclusive right and authority to schedule both baseball and non-baseball events such as concerts, exhibitions, gatherings, etc., for both profit and not-for-profit, groups on all dates that do not conflict with the use of the Premises by Subtenant with the following provisions and limitations:

(1) The Premises may continue to be used for amateur baseball games, all-star games and sectional games, when practicable, with preference to be given to Batavia High School and Notre Dame of Batavia High School. The Premises may also be used for non-baseball events.

(2) The Premises will continue to be used for other not-for-profit baseball events such as the National Junior College Athletic Association World Series, the Genesee Community College and the Men’s Senior League.

(3) The Premises shall not be used for Youth Football games.

(4) The Premises may be used for events that Tenant arranges, such as concerts, exhibitions, gatherings, etc., for both profit and non-profit groups on available dates.

(c) The requirement that Tenant must allow the use of the Premises to continue for not-for-profit organizations and High Schools does not eliminate the right of Tenant to negotiate and establish reasonable user fees for the use of the field and/or the lights for such events.

(d) All concert or other non-baseball events shall end no later than midnight on Fridays and Saturdays, and no later than 11:00 P.M. on all the other nights.

7. Advertising. Tenant shall have the authority to use the interior side of the outfield fence at the Premises, and any other areas it deems appropriate for the purpose of placing advertising thereon. Tenant may fix and charge rates for said advertising as it deems appropriate. Tenant shall not allow any advertising in or around the Premises for tobacco products of any kind or nature, except with regard to any pre-existing legally enforceable contract for the same.

8. Concessions.

(a) Tenant shall have the exclusive right and privilege of operating concessions during any events to be held at the Premises for the sale of any and all merchandise or food and drink, including but not limited to beer/beverage, for human consumption, except articles forbidden to be sold by law, together with the right to circulate around the patrons of the stadium to sell said wares, or to assign this concession privilege to contract to suitable persons or groups.

(b) Notwithstanding the provisions of the immediately preceding paragraph, Tenant, its successors and assigns, covenants and agrees that no alcoholic beverages shall be sold from said concession stand or elsewhere within the Premises unless and until Tenant provides and maintains at its sole cost and expense a liquor legal liability insurance policy which names Landlord as an additional insured party; said policy to be in an amount not less than \$2 Million or such higher amount as may be deemed appropriate by Landlord during the term of this Lease. This insurance policy shall be obtained from an insurance company licensed to do business in the State of New York, and it shall provide for thirty (30) days written notice to Landlord prior to any amendment or cancellation thereof.

9. Revenue From Use of Premises. Tenant shall have the right to retain any and all revenue of any kind and nature for the use and operation of the Premises, including but not limited to admissions, ticket sales, merchandising, promotions, advertising, user fees and other stadium fees.

10. Insurance. Tenant shall, at its sole cost and expense, furnish a comprehensive general liability insurance policy covering the use of the Premises which names Landlord as an additional insured party; said policy to be in an amount not less than \$2 Million or such higher amount as may be deemed appropriate by Landlord during the term of this Lease. This insurance policy shall be obtained from an insurance company licensed to do business in the State of New York, and it shall provide for thirty (30) days written notice to Landlord prior to any cancellation thereof.

11. Indemnification.

(a) During the hours that Tenant operates baseball and non-baseball events at the Premises or allows the use of the Premises for such events by outside organizations, Tenant shall be responsible for any personal injury, including wrongful death, and property damage to others whether caused by the carelessness, negligence or improper conduct on the part of Tenant or its agents, servants, invitees or employees including by way of example, but not by way of limitation, Ball Players, Coaches, Staff, Patrons and Spectators. At any other times when the Premises are not being used by Tenant, Subtenant or any other party whose use of the Premises is permitted under this Lease, Landlord shall have the foregoing responsibility and liability.

(b) Tenant shall indemnify, save and hold Landlord harmless from any and all losses not covered by insurance which Landlord may incur, suffer or be required to pay arising from injury to person, including wrongful death, or property damage upon said Premises for which Tenant is responsible under the terms of this Lease, including but not limited to reasonable attorney's fees and legal costs.

12. Events of Default: Termination.

(a) Occurrence of any of the following shall constitute an event of default under this Lease:

(i) The failure of either party hereto to make any payment of any amounts for which it is liable pursuant to this Lease within ten (10) business days after such payment is due.

(ii) The failure of either party to perform or observe any other agreement or condition to be performed or observed by it pursuant to this Lease for a period of ten (10) business days after receipt by such party of the other party's written notice of default, specifying the exact nature of such default; provided, however, an event of default shall not be deemed to have occurred in the event that the defaulting party shall correct such failure within such ten (10) day period, or within such larger period, if the default so specified (other than a default under subparagraph (i) hereof) shall be of such nature that the same, although correctable, cannot be cured or corrected within such ten (10) day period and the defaulting party has in good faith commenced the curing or correcting of such default within such ten (10) day period and has thereafter continuously and diligently proceeded therewith to completion, provided that if cure is not effected within sixty (60) days after the receipt of such notice, the same may, at the other party's option, be deemed a default.

(iii) The institution by either party of any voluntary bankruptcy or insolvency proceedings.

(iv) The institution against either party of any involuntary bankruptcy or insolvency proceedings, and the failure to obtain a dismissal thereof within sixty (60) days following the date of institution of such proceedings.

(b) Either party may terminate this Lease upon default of the other party hereto by serving written notice of termination on the defaulting party. Said notice of termination shall set forth in reasonable detail the specific default complained of and the effective date of termination.

(c) Upon termination for default, all rights and obligations of the parties pursuant to this Lease shall cease as of the effective date of such termination, except for covenants requiring performance after the effective date of termination, claims arising prior to termination, and any rights of either party resulting from the other party's breach of this Lease.

13. Maintenance; Repairs.

(a) Tenant shall maintain and take good care of the Premises and shall, at the cost and expense of Tenant, make all non-structural repairs, and at the end or other expiration of the term, shall deliver up the Premises in good order or condition, ordinary wear and tear excepted.

(b) Landlord shall, at its expense, make all necessary structural repairs. The determination as to what constitutes a necessary structural repair shall be made by Landlord in its sole discretion, acting reasonably.

(c) Landlord shall be responsible for any fire or hazard damage or loss to the Premises and shall provide for any insurance thereof at its own expense.

14. Inspection and Audit. Landlord shall have the right to receive on an annual basis a profit and loss statement of Tenant or any assignee relating to the operation of the baseball team and Dwyer Stadium facility under this Agreement, and to copy therefrom such information as Landlord may reasonably request.

15. Force Majeure. Neither party shall be obligated to perform under this Lease and neither party shall be deemed to be in default if performance of this Lease is prevented by fire, flood, earthquake, act of God, riot, civil commotion, pandemic or any law, ordinance, rule of regulation or determination of any public or military authority, or any failure of suppliers, including the failure of fuel or energy suppliers to furnish sufficient supplies, or failure of contractors to perform as agreed, or any labor dispute, strike, picket or boycott affecting the Premises, or any part thereof, or services to be provided therein, or any other cause beyond the reasonable control of such party, whether similar or dissimilar to the foregoing. Upon the occurrence of any such event, the party whose performance is impaired shall give written notice with full particulars to the other party as soon as possible. Such performance shall be excused only during the continuance of the inability of such party to perform.

16. Compliance With Laws. Tenant shall comply with any and all ordinances, rules, orders, regulations and requirements whether local, federal or state; include any noise ordinances that are contained in the Batavia Municipal Code.

17. Reservation of Rights. Landlord expressly reserves any and all notice requirements contained in its Charter and State statutes pertaining to limitations of actions against Landlord.

18. Binding Nature. This Lease shall bind and inure to the benefit of Landlord, and its successors and assigns, and Tenant, and its successors and permitted assigns.

19. Sublease: Assignment. Tenant shall not sublease the Premises or otherwise transfer or assign this Agreement without the prior written approval and consent of Landlord; which may be withheld by Landlord in its sole discretion. It is anticipated by Landlord and Tenant that Tenant shall propose to sublease the Premises to CAN-USA Sports, LLC, which sublease shall be subject to the prior approval and consent of Landlord, in its sole discretion.

20. Damaged Premises. Notwithstanding any other provision of this Lease, in the event of fire or other similar damage to the Premises, Landlord, shall have the right but not the obligation to repair the Premises. If Landlord notifies Tenant of Landlord's election not to repair the Premises within thirty (30) days after any such fire or similar damage, such event shall excuse the parties from further performance under this Agreement and this Lease shall be deemed to have terminated as of the date of such notice.

21. Relationship of Parties. The relationship of the parties hereto is that of landlord and tenant. The parties hereto shall not be deemed to be partners or joint venturers.

22. Notices. All notices or other communications required or permitted to be given pursuant to the terms of this Lease shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid. If mailed, they should be sent to the following respective addresses:

To Landlord:

Rachael Tabela, Interim City Manager
One Batavia City Centre
Batavia, New York 14020

To Tenant:

Stephen Maxwell
226 State Street
Batavia, New York 14020

or to such other address as shall be given to the notifying party in accordance with the terms of this Section 22. Notices or other communications shall be effective when they are received by the party for whom they are intended.

23. Entire Agreement. This Lease constitutes the entire agreement between parties hereto with respect to the lease of the Premises and supersedes any and all prior or contemporaneous negotiations, understandings, agreements, inducements and conditions of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Lease shall be effective against any party unless and until it shall have been duly executed by each of the parties hereto.

24. Consents. In the event that, at any time, the consent of either party hereto shall be required to be obtained pursuant to this Lease, each party agrees that such consent shall not be withheld unreasonably.

25. Controlling Law. This Lease shall be governed, construed, interpreted and enforced in accordance with the laws of the State of New York.

26. Indulgence Not Waivers. No indulgences extended by any party hereto to any other party shall be construed as a waiver of any breach on the part of such other party, nor shall any waiver of any breach of any provision of this Lease be construed as a waiver of any rights or remedies with respect to any subsequent breach of the same or any other provision of this Lease.

27. Titles Not to Affect Interpretation. The titles of sections and subsections contained in this Lease are inserted for convenience of reference only, and they neither form a part of this Lease nor are they to be used in the construction or interpretation thereof.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF BATAVIA

City Council President

BATAVIA REGIONAL
RECREATION CORPORATION

President

DRAFT

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared EUGENE JANKOWSKI, JR. , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared STEPHEN S. MAXWELL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SUBLEASE AGREEMENT

THIS AGREEMENT, dated as of _____, 2021 between the **BATAVIA REGIONAL RECREATION CORPORATION**, a New York not-for-profit corporation, having its offices at 1 Batavia City Centre, Batavia, New York 14020 (“Sublandlord”), and **CAN-USA Sports, LLC**, a New York limited liability company, having its offices at _____ (“Subtenant”).

RECITALS

A. The City of Batavia is the owner of certain real property with improvements thereon consisting of an athletic field and grandstand facilities, the improvements thereon, and the surrounding structures, including the surrounding parking areas which are known as Dwyer Stadium (the “Premises”). Sublandlord is a not-for-profit corporation with one of its purposes being to operate and manage the Premises.

B. The City leases the Premises to Sublandlord pursuant to an Amended and Restated Lease Agreement dated _____, 2021 (the “Lease”).

C. Subtenant intends to operate a collegiate league baseball team in the Batavia, New York area and is desirous of using the Premises to play its home baseball games.

D. Upon the terms and conditions set forth in this Agreement, Sublandlord is desirous of subletting the Premises to Subtenant.

E. Pursuant to the Lease, the subletting of the Premises by Sublandlord to Subtenant requires the consent and approval of the City and the City is willing to consent and approve this Sublease subject to the terms and conditions set forth in this Sublease.

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged by the parties and in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. Sublandlord hereby agrees to sublease the Premises to Subtenant and Subtenant hereby agrees to sublease the Premises from Sublandlord on the further terms and conditions of this Sublease.

2. Subject to the further provisions herein, the term of this Sublease shall be five (5) years commencing on April 1, 2021 and continuing through and including March 31, 2026 unless terminated earlier as more particularly provided for herein.

3. During the first three (3) years of the term, the annual rent shall be \$1.00. Commencing on April 1, 2024, the annual rent shall be \$7,500.00; and on April 1, 2025, the annual rent shall be \$10,000.00. The annual rent shall payable, in advance, on the first day of each lease

year during the term. The annual rent, when paid, shall be placed in the Dwyer Stadium capital reserve fund for use on facility improvements as may be agreed upon between the Landlord and Subtenant.

4. Subtenant hereby agrees to assume any and all duties and obligations of Sublandlord in its capacity as Tenant under the Lease, and Subtenant shall be entitled to all of the rights and privileges of Sublandlord in its capacity as Tenant under the Lease.

5. In addition to any and all other terms, conditions or provisions set forth herein, Subtenant hereby agrees to indemnify, defend and hold Sublandlord harmless pursuant to and in accordance with the indemnification provisions set forth in the Lease that are applicable to Sublandlord as Tenant therein and hereby undertakes and assumes such indemnification obligations of Sublandlord as Tenant therein.

Premises 6. (a) This Agreement may be terminated at any time by Sublandlord upon the material breach or material default of the terms and conditions of this Sublease by Subtenant, which breach or default is not corrected or remedied within ten (10) days of written notice to Subtenant. Subtenant may terminate this Sublease following completion of the baseball season by providing Sublandlord with sixty (60) days prior written notice. The party seeking termination shall be responsible for all obligations through the date of termination.

(b) This Sublease shall terminate or expire upon the expiration of the Lease.

7. Subtenant shall provide Sublandlord with copies of its financial statements as they relate to its operations at the Premises at least annually or more frequently as reasonably requested by Sublandlord.

8. Each party hereby consents to the jurisdiction of the Courts of the State of New York in Genesee County in any action or proceeding pursuant to this Sublease. The parties further agree that all matters with respect to the validity, construction or interpretation of this Sublease shall be governed by the laws of the State of New York, without reference to any conflict of laws provision.

9. Each of the parties hereto hereby represents to each of the other parties that this Sublease has been duly authorized and executed and is a valid and binding obligation of such party enforceable against such party in accordance with its terms.

10. This Sublease may not be modified or amended except by the written agreement of the parties hereto.

11. Failure of any party at any time to require performance of any provision of this Sublease shall not limit the rights of that party to enforce such provision thereafter, nor shall any waiver of any breach of any provision of this Sublease constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. Any waiver of any provision of this Sublease shall be effective only if set forth in writing and signed by each of the parties hereto.

12. If any term or provision of this Sublease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Sublease and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

13. All notices, requests and other communications hereunder shall be in writing and shall be delivered personally or deposited in the U.S. Mails, postage prepaid, return receipt requested, for express or "next day" delivery, together with a contemporaneous telefax transmission to the address set forth above:

If to Sublandlord; Attention President

If to Subtenant; Attention _____

or to such other address as may be furnished to the others by written notice in the manner provided in this Section. Any such notice, request, consent or other communication shall be deemed received at such time as it is personally delivered or actually received, as the case may be.

14. This Sublease may not be assigned by Subtenant, nor may Subtenant further sublease the Premises or otherwise transfer its rights to possession of the Premises without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld.

15. This Sublease may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day first written above.

BATAVIA REGIONAL
RECREATION CORPORATION

By: _____
_____, President

CAN-USA SPORTS, LLC

By: _____

For the sole purpose of evidencing consent
to this Sublease:

CITY OF BATAVIA

By: _____

City Council President

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this _____ day of _____ 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

