

**BILL NO. 50-14**

**ORDINANCE NO. 2181**

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO SIGN A 2015 ATHLETIC COMPLEX USE AGREEMENT BETWEEN THE CITY OF WARRENTON, MISSOURI AND GAMETIME TOURNAMENTS**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON MISSOURI, AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to sign a 2015 athletic complex use agreement on behalf of the City of Warrenton with GameTime Tournaments. A copy of said agreement is attached hereto as Exhibit "A" and made a part hereof by reference.

SECTION II. If any section, subsection, sentence, clause, phrase or portion of this amendment is for any reason held invalid or unconstitutional by a judgment of a court of competent jurisdiction, as to which not further appeal right exists, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity or remaining portions hereof.

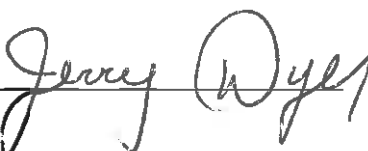
SECTION III. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION IV. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

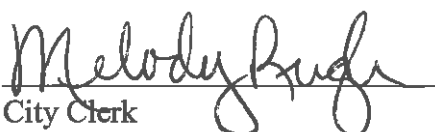
READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 1<sup>st</sup> day of July, 2014.

  
\_\_\_\_\_  
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 1<sup>st</sup> day of July, 2014.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

## ATHLETIC COMPLEX USE AGREEMENT

This ATHLETIC COMPLEX USE AGREEMENT (the "Agreement") is entered into as of this 1st day of July, 2014, by and between the CITY OF WARRENTON, a fourth-class city organized and existing under the laws of the State of Missouri ("City"), and Todd Hamlett, whose address is 117 Bombadill Blvd., Wright City, MO 63390 and Robert Worstenholm, whose address is 16 Hampton Woods Ln., O'Fallon, MO 63368 D/B/A GAMETIME TOURNAMENTS a Missouri registered Fictitious name (hereinafter collectively referred to as "Gametime").

**WHEREAS**, the City possesses parks, grounds and facilities available for use by the public for sporting events; and,

**WHEREAS**, Gametime has a need and an interest in using the Warrenton Athletic Complex (the "Complex") for organized sports tournaments, however, said tournaments require advanced notification, advertising and scheduling; and,

**WHEREAS**, the City and Gametime agree that this Agreement reserving the availability of the Complex for future athletic tournaments is necessary for the success of said tournaments and is in the best interest of the citizens of the City.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Gametime agree as follows;

1. **Recitals**. The foregoing recitals are incorporated herein by reference.
2. **Term**. Subject to the terms and conditions set forth herein, the "Term" of this Agreement shall commence on February 1, 2015 ("Commencement Date") and end on October 31, 2015 ("Termination Date"). During the Term, Gametime shall have the first right for use of

the Complex for fifteen weekends, not to exceed forty-five (45) days, solely for recreational sports tournaments. The dates and times of Gametimes' use of the Complex shall be set forth in a separate addendum to this Agreement, and Gametime agrees and acknowledges that the City's Director of Operations shall have final approval of all tournament scheduling.

3. Usage. Gametime shall comply with all applicable City ordinances, rules regulations and other laws and regulations, Federal and State, and any political subdivision thereof. Gametime shall provide all equipment and supplies except restroom paper goods and cleaning supplies. The City will only be responsible for dragging and setting the athletic fields prior to the start of the first games each day. At the City's discretion, a City employee will be on-site during Gametime events to assist with trash pickup. The City shall not be responsible for any loss or damage to any equipment or supplies owned by Gametime during the Term of the Agreement. The City shall not be responsible for any loss or damage to property or person of anyone participating in an event held by Gametime and Gametime shall have the duty to obtain all necessary waivers and indemnifications as required by law for the same. To the fullest extent permitted by law, Gametime shall indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising out of Gametime's breach of this Agreement or by negligence on behalf of Gametime. Gametime shall carry liability insurance during the Term of the Lease, subject to the satisfaction of the City and attached as Exhibit B. Gametime and those individuals participating in Gametime sponsored events shall conduct

themselves at all times in a safe and courteous manner, before, during and after Gametime sponsored events.

4. Fee. Gametime shall pay the City, as a fee for use of the Complex, FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000). Gametime shall pay the City in eight equal monthly installment payments of \$1,667 beginning on February 1, 2015 with one final installment of \$1,664 ending on October 31, 2015 and in the event Gametime fails to timely remit payment of the fee within the Term, this Agreement, and any other Agreement between Gametime and the City may be immediately terminated by the City. The fee for use of the Complex shall be paid by Gametime regardless of cancellation of any event or tournament or the actual number of tournaments played.

5. Security Deposit. Gametime has deposited with the City the sum of seven hundred fifty dollars (\$750.00) as security for the full and faithful performance of every provision of this Agreement to be performed by Gametime. If Gametime defaults with respect to any provision of this Agreement, including but not limited to the provisions for the payment for the use or repair of the Complex, the City may use, apply or retain all or any part of this security deposit for said default by Gametime. The security deposit held by the City shall not be required to be kept segregated from other City accounts and City shall not be required to keep the security deposit in an interest bearing account. If Gametime fully and faithfully performs every provision of this Agreement, the security deposit or any balance thereof shall be returned to Gametime at the expiration of this Agreement.

6. Condition of Complex. After each Gametime tournament or event, all trash must be cleaned up, the Complex must be secured, and the trash toters must be moved to the dumpster

area. Gametime shall be responsible for all damage to the Complex during their use and all repair work shall be subject to the final acceptance and approval of the City's designee.

7. Independent Contractor. Gametime is, for purposes of this agreement, and at all times is an independent contractor and not an employee, partner, member, owner, officer, director or other agent of the City. Gametime agrees to devote sufficient time, effort, resources, ability, skill and attention as may be necessary for Gametime to perform the services required to be provided to the City under this Agreement, but performing such services subject to the provisions of this Agreement, all applicable laws, rules, regulations governing the business of Gametime and the work to be performed hereunder. Gametime shall not be considered by reason of the provisions of this Agreement or otherwise as being an employee of the City. This Agreement will not be deemed to create a partnership, joint venture, agency or fiduciary relationship between the parties. Gametime shall have no right to bind the City to any agreement with any other person or entity and is not authorized to act for the City in any manner except as expressly set forth in the Agreement.

8. Termination and Notices. This Agreement may be terminated at any time by either Gametime or the City with thirty (30) days prior written notice. All notices hereunder must be sent via certified mail, return receipt requested, addressed as follows:

GAMETIME:            Robert Worstenholm  
                             Gametime Tournaments  
                             16 Hampton Woods Lane  
                             O'Fallon, MO 63383

CITY:                    Terri Thorn  
                             City of Warrenton  
                             200 W. Booneslick  
                             Warrenton, MO 63383

9. Indemnification. To the fullest extent permitted by law, Gametime agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising out of services and operations performed hereunder by Gametime, including the City's reliance on or use of the services or products provided by Gametime under the terms of this Agreement. Gametime shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, Gametime agrees that this indemnification requires Gametime to obtain insurance in amounts specified herein and that Gametime has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement. Notwithstanding to the foregoing, Gametime's indemnity obligations are limited solely to the extent directly caused by Gametime's fault or negligence. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges and immunities as set forth under the Constitution of the State of Missouri or under any other law of the State of Missouri.

10. Right to Recover Attorneys' Fees and Costs. Gametime undertakes and agrees that if Gametime breaches or threatens to breach any provision of this Agreement, Gametime shall be liable for any attorneys' fees and costs incurred by the City in enforcing its rights under this Agreement, whether or not a lawsuit is filed in connection with such efforts to enforce the City's rights under this Agreement including, but not limited to, any of the covenants set forth in this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matters which comprise this agreement.

12. Non-assignability. This Agreement shall not be assignable by either party.



13. Authority. The parties below represent that they are authorized to enter into this Agreement.


14. Jurisdiction, Venue and Missouri Law. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Warren County, Missouri. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effect date of Agreement first above written.

**GAMETIME**

**CITY OF WARRENTON, MISSOURI**

By   
By 

By   
Jerry Dyer  
Mayor

DATED: 7-22-14

ATTEST:  City Clerk