

# EXHIBIT A

## FACILITY USAGE AGREEMENT FOR ASSOCIATION USE OF JOE MACK CAMPBELL PARK

### JONESBORO BASEBALL BOOSTERS

This Agreement is made by and between JONESBORO BASEBALL BOOSTERS, Inc., an Arkansas not for profit corporation, ("JBB") and the CITY OF JONESBORO PARKS AND RECREATION ("CITY"), on this 21<sup>st</sup> Day of February 2013 (the "Effective Date").

WHEREAS, JBB is an Arkansas not for profit organization organized to promote youth sports activities through the operation of its youth baseball program; and

WHEREAS, the CITY is the owner of that certain public park amenities known as the "Joe Mack Campbell Park", and hereafter referred to as the "Facilities"; and

WHEREAS, JBB and the CITY desire to enter this agreement for the purpose of evidencing the agreement of the parties with regard to use of the Facilities by JBB and the respective obligations of the parties regarding the use and maintenance of the Facilities;

NOW, THEREFORE in consideration of the promises and the reciprocated covenants and obligations contained herein, the parties agree as follows:

#### I. Term

- (a) The term of this Agreement is for a period of three (3) years commencing on the Effective Date and ending at midnight on the third (3rd) anniversary thereof. The agreement shall be automatically renewed for an additional three years at the end of the first year and each subsequent year unless otherwise terminated pursuant to the terms hereof.

#### II. Use of Facilities by JBB

- 1) During the period of March 1<sup>st</sup> to October 31<sup>st</sup> of each year during the Term of this Agreement, JBB shall have the primary right to use the CITY'S baseball Facilities and concession stands for JBB's regular spring and fall season, league playoffs, hosting Invitational Tournaments, hosting USSSA sanctioned tournaments, hosting District, State, Regional, World Series Tournaments in sanctioned leagues such as Cal Ripkin and USSSA, for make-up games, for Spring Training league games and for practice. This period shall be referred to as the "Primary Usage Period." The parties agree that the CITY's Wolf Cub Tackle Football Program's use of three fields is excluded from this Primary Usage Period from September 1<sup>st</sup> to October 31<sup>st</sup> each year.
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- 2) JBB understands and agrees that CITY will maintain a master schedule for the Facilities and JBB will provide schedules of games one week prior to the start of each baseball season during the Term of this Agreement. JBB understands that except for the Primary Usage Period the Facilities are available on a first-come first-serve basis.
- 3) JBB has the "primary right" to use concession stands for any and all games, tournaments, or events that take place at the Baseball Facilities during the "Primary Usage Period." If JBB elects not to provide concessions during any such event during the Primary Usage Period, then the organization holding the event may provide concessions outside of the concession stand. JBB understands and agrees that CITY will maintain a master schedule for the Facilities concession stands. JBB understands that except for the Primary Usage Period, CITY reserves the right to operate the concession stands (excluding the operation of the gas operated cookers).
- 4) JBB understands and agrees that at times weather and/or field conditions may result in CITY denying the use of certain fields during the Primary Usage Period. JBB understands that the Park Supervisor for the Facilities has the authority to deny use of the fields, but CITY agrees that use will not be unreasonably denied.
- 5) Make determinations on field closures due to weather. Determination will be made by 4:00 pm on weekdays and by 7:00 am on Saturdays, if possible. If necessary, weather will be monitored beyond the determination times.
- 6) CITY shall at all times have the right to inspect the Facilities being used by JBB and all JBB sponsored activities related to the use of the Facilities.
- 7) CITY shall issue key(s) to JBB for use of the Facilities. The keys may not be reproduced or duplicated by JBB. JBB agrees to return "seasonal use keys" to the CITY within two weeks after the conclusion of the term of the season. One key shall be issued to the President of JBB for year round use. Upon failure to return any of said keys a fee will be charged for the replacement of keys and locks. JBB will be charged a fee of \$25 for each lock that has to be changed as a result of a key that is not returned to the CITY at the end of the season.
- 8) JBB understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by JBB to conduct games, tournaments, camps or other events. JBB will provide the equipment necessary to administer its own activities and events, and in doing so will keep equipment in the spaces designated by the CITY.
- 9) If JBB should desire to use the CITY'S baseball Facilities for additional

tournaments, special events or programs outside the Primary Usage Period, JBB shall complete an Application for Use of Facilities at the beginning of the season. Any and all additions, tournaments or special programs outside the Primary Usage Period shall not be included in this Agreement, but shall require a separate written agreement between the parties. All dates and conditions of the additional tournaments or special programs shall be finalized and furnished to CITY by the beginning of the fall season in which the additional tournament or special program is to be held.

### **III. Obligations of CITY**

CITY agrees to:

- 1) Provide the following maintenance and repairs, to the best of its ability given staff and budget, in a manner generally equal to normal CITY maintenance and repair of similar CITY recreational facilities:
  - a) Maintain all fences and gates.
  - b) Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
  - c) Perform all pre-season infield and turf maintenance to include spreading infield mix purchased by JBB and cutting infield arcs
  - d) Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
  - e) Provide utilities for lighting fields, parking and walking track.
  - f) Provide and maintain parking lots
  - g) Provide secured storage for JBB equipment.
  - h) Drag infields, shape mounds, stripe outfield lines (in white paint or chalk only) and shape and chalk home plate daily, Monday through Friday.
  - i) Maintain all bleachers, benches and dugouts.
  - j) Haul off trash that has been deposited in trash receptacles as needed and de-litter the grounds as needed.
  - k) Maintain structural integrity of concession stands, restrooms and storage buildings, dugouts, and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
  - l) Maintain all area and field lighting systems. Repair or replace lights, poles, wiring fuses, transformers and other equipment related to the lighting of each field to be used by JBB.
  - m) Maintain field irrigation system and watering schedules of turf areas.
  - n) Maintain adjacent park irrigation systems and the scheduling of watering turf areas.
  - o) Maintain restroom facilities, including cleaning and stocking with toilet tissue.
  - p) Maintain, repair or replace parking areas.
  - q) Provide a minimum of 4 (four) city employees to work with the JBB tournament director during tournament weekends to drag infields, shape

mounds, stripe outfield lines (in white paint or chalk only), shape and chalk home plate, water fields, and fill water coolers in the dugouts. These activities will be at the direction of the JBB tournament director.

- r) Provide us of CITY equipment for use by CITY employees only to work on the playing fields daily, Monday through Friday and during the weekends tournaments are scheduled.
- 2) Promote JBB's baseball program in the CITY'S brochure. Provide a meeting place for JBB Board meetings at no cost based upon availability and provided JBB makes reservations in advance. Take calls for information and refer interested parties to JBB when necessary.

It is understood and agreed the CITY's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If CITY is unable to fulfill its obligation due to budget constraints, JBB may, but shall not be obligated to perform CITY's duties and shall be entitled to deduct the cost from the payments required to be made by JBB to CITY under Article IV. In no event shall CITY be obligated to JBB for any monetary damages.

#### **IV. Obligations of JBB**

JBB shall:

- 1) Pay a usage fee to the CITY. The usage fee shall be used to offset the cost of materials for seeding, fertilizing, and weed control for the baseball complex for the calendar year according to the following schedule:
  - a. 2013: \$10,966
  - b. 2014: \$11,514
  - c. 2015: \$12,090
  - d. The annual fee shall increase at a rate of 5% per year for subsequent years the contract is in effect.
  - e. The annual fee for each period shall be paid in full to the City of Jonesboro by the end of the calendar year.
- 2) The annual cost of infield mix material shall be provided from a combination of sources including, but not limited to JBB, the CITY and the Advertising and Promotions Commission, if available. The exact contribution of JBB and the CITY will be determined annually by separate written agreement. City of Jonesboro shall be responsible for ordering and applying said infield mix.
- 3) JBB shall be prohibited from performing any maintenance to any turf or field areas without written permission from the City.
- 4) JBB shall not make any permanent additions to the Facilities without written

permission from the City. This includes but is not limited to signs, structures, concrete, seating, goals, and fields.

- 5) Furnish to CITY a complete game schedule for the season. The complete game schedule shall be submitted at least one week prior to the first regular season game. JBB through its tournament director will furnish to CITY a schedule of games for tournament weekends within a reasonable amount of time prior to the tournament weekend. The schedule may be adjusted as the season progresses and will serve as a guide for maintenance of the Facilities and scheduling of employees. The CITY understands weather is outside the control of JBB and schedules may be modified due to weather, sometimes at the last minute. JBB agrees to notify CITY of modified schedules and CITY agrees to cooperate and coordinate accordingly.
- 6) Schedule and meet with CITY Supervisor prior to the season to discuss schedule, field playability and department guidelines.
- 7) Operate its own concession stand at Facilities, and all revenues generated from such use shall belong to and be for the sole and exclusive use of the JBB. JBB agrees to abide by any and all health code requirements for food services. Storage of flammable, hazardous, or toxic substances at the Facilities is prohibited.
- 8) JBB is responsible for any of their items stolen or damaged, during the course of the year.
- 9) Pay for utilities (i.e. electricity, water and telephone) for the concession stand during the Primary Usage Period in the event that the CITY is charged for said usage. In the event the CITY is charged for usage for the concession stand, JBB shall reimburse the CITY for the exact charge as long as it is a normal and customary charge.
- 10) Request approval by the CITY for placement of any and all additional concession stands and/or trailers and follow City, County and State Health Codes.
- 11) Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- 12) Establish procedures to ensure individuals with criminal histories that include drug charges, assault charges and sexual assault charges are not permitted to coach in the JBB league.
- 13) Not engage in any business on the Facility or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. CITY reserves the right to exclude any individual or group from the Facility based on conduct, which it determines in its discretion to be objectionable or contrary to City interests. JBB hereby consents to the exercise of such authority by City over its members, officials and agents.

- 14) Agree that all Facilities are to be used for regular season games, make-up games, tournament games and practices during the Primary Usage Period. JBB agrees to provide CITY with a schedule of games and practice times on April 1 and June 1 of the term herein.
- 15) JBB agrees to be solely responsible for any and all damages related to and arising out of JBB's use of the Facilities during the term of the Agreement when the Facilities are being used by JBB. This includes, but is not limited to, any and all persons associated with JBB who use the Facilities during the terms of the Agreement. JBB agrees to be solely responsible for all repairs and costs of repairs to the Facilities for any and all damages. Repair of damage to concessions stand shall conform to City of Jonesboro Building Codes and require approval of the City Inspector. Nothing contained herein shall be construed to defeat or diminish JBB's right to seek recourse against those persons causing the damage.
- 16) Agree to provide sufficient notice of all scheduled make-up game times. (12) Hours
- 17) Follow rules that have been established by the CITY Parks and Recreation Board and City Staff concerning conduct at CITY fields. Examples of rules may include but are not limited to:
  - a. No unauthorized Vehicles may be driven up and parked at fields during activities; to include sidewalks.
  - b. No metal cleats may be worn on the walkways.
  - c. No rollerblading, scooters, etc. are allowed inside the Concession Stand area.
  - d. No tobacco use (smoking or smokeless) on the fields or in bleacher areas.
  - e. Only authorized vehicles may be driven on sidewalks.
  - f. Participant and spectator parking only in parking lots.
  - g. No dogs
- 18) Request in writing permission to hold any/all non-game activities which are league baseball related outside of the primary use period. Activities may include, but not be limited to camps, clinics, and registration.
- 19) Activity initiated by JBB Coach or director that occurs on fields that have been closed will result in a \$100.00 fee to JBB. This includes removing or tampering with "Field Closed" signs.
- 20) Prior to the commencement of each baseball season during the Term of this Agreement, JBB will provide to the CITY:
  - Current by-laws of JBB
  - Proof of insurance and indemnification
  - Financial review of expenditures and revenues with CITY parks director and Mayor from previous year report
  - List of current officers and board members of JBB with addresses, phone

numbers and e-mail (if applicable). JBB agrees to notify CITY of any changes in board members.

## **V. Default of JBB**

a) If JBB defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, JBB fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may, at its option (but shall not be required to do so), perform the same for the account of JBB and any amount paid or expenses incurred by the Landlord in the performance thereof shall be deemed additional rent and payable when the next installment of rent shall become due.

b) Additionally, if JBB defaults in performance of this Agreement, and after written notice from CITY, JBB fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may terminate this Agreement.

c) If the Facilities are abandoned by JBB, the CITY may terminate this Agreement. "Abandonment" shall mean no competitive play taking place on allocated field(s) during the entire Term of the agreement.

## **VI. Default of CITY**

a) If CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from JBB, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then JBB may, at its option (but shall not be required to do so), perform the same for the account of CITY and any amount paid or expenses incurred by the JBB in the performance thereof shall be deducted from the amounts required to be paid by JBB to CITY under Article IV.

b) Additionally, if CITY defaults in performance of this Agreement, and after written notice from JBB, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then JBB may terminate this Agreement.

## **VII. Escape Clause**

1. Either party seeking to terminate this agreement may do so with a written letter of termination to the other party. Upon receipt of the letter of termination the contract shall be good for one (1) full year before becoming null and void.

## **IX. Assignability and Exclusivity**

This Agreement is a privilege for the benefit of JBB only and may not be assigned in whole or in

part by JBB to any other person or entity. Both parties understand that JBB use of the Facilities is nonexclusive, except during the Primary Usage Period.

**X. Notices**

Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery with a signed receipt, in writing or by registered or e-mail, or certified mail, postage prepaid, return receipt requested. Notice shall be effective upon signing the date of the signing of the receipt.

JBB

By: 

Name: GARY HOYT

Title: PRESIDENT

CITY:

Wixson Huffstetler; Director

CITY OF JONESBORO

Parks and Recreation

3009 Dan Avenue

Jonesboro, AR 72401

Any such notice shall be effective upon receipt if delivered in person or upon actual deposit in an official receptacle of the United States Postal Service, if mailed as aforesaid.

**X. Miscellaneous Provisions.**

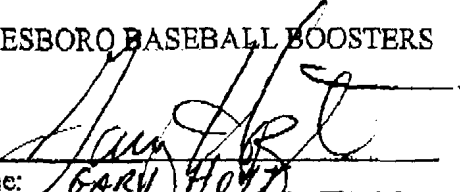
- 1) No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representative's of the parties hereto.
- 2) This Agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning this Agreement shall be in Craighead County, Jonesboro, AR.
- 3) Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
- 4) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 5) Each party represents to the other that the individual signing this Agreement



below has been duly authorized to do so by its respective governing body and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

JONESBORO BASEBALL BOOSTERS

By:   
Name: GARY HOYT  
Title: PRESIDENT  
Date: 2/12/13

CITY OF JONESBORO

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