PARK USE AGREEMENT BETWEEN

CITY OF CLE ELUM AND UPPER KITTITAS COUNTY YOUTH BASEBALL ASSOCIATION

An agreement between the City of Cle Elum, a Washington municipal corporation of the second class and the Upper Kittitas County Youth Baseball Association, a non-profit organization and an affiliate of Babe Ruth Baseball, also a non-profit organization, for the use of an area of land in Memorial Park also known as Memorial Park East Complex so the Upper Kittitas County Youth Baseball Association can carry out its baseball/softball program for the youth in the community.

ARTICLE I - BACKGROUND

1. The City of Cle Elum (the City) owns Memorial Park, a park approximately 25 acres in area with 4 acres in use as ball fields, located between Grant Street and the Yakima River, and east of South Cle Elum Way. In addition to providing for general community park uses and areas for adult sports activities, the park also provides the home baseball/softball fields (Ball Fields) for the Upper Kittitas County Youth Baseball Association (UKCYBA).

2. UKCYBA has a long tradition of positively serving children in Cle Elum by providing recreational opportunities through youth baseball and softball activities. These activities are provided entirely by volunteers including coaches, managers, umpires, league officers, and concession operators. Except for normal park maintenance services, there is little cost to the City in providing these recreational activities to the community.

3. The City has had a long standing informal agreement with UKCYBA to provide Ball Fields at Memorial Park for the youth baseball/softball program. Based on this informal agreement, UKCYBA has constructed fencing, backstops, irrigation systems, field leveling, and turf improvements, and has shared with the City in maintenance costs and activities. The general public has enjoyed use of these Ball Fields when they have not been in use for UKCYBA programs.

4. The City and UKCYBA have now determined that it is in their mutual best interests to formalize their relationship in regard to the use and maintenance of Memorial Park through the preparation and execution of a written use agreement.

ARTICLE II - PURPOSE OF AGREEMENT

The purpose of this Agreement is to:

1. Provide the terms and conditions under which UKCYBA can continue to use the Ball Fields for practice, league activities and tournament play.
2. Define operational and maintenance responsibilities.

3. Identify responsibility for costs.
4. Identify a process to provide for improvements and upgrades.

ARTICLE III - DURATION OF AGREEMENT

1. This Agreement shall extend for a term of twenty (20) years from the date the Agreement is executed by the Parties and shall allow for two (2) ten (10) year extensions with the approval of both Parties.

ARTICLE IV - EFFECTIVE DATE OF AGREEMENT

1. This Agreement shall become effective on the date first appearing below.

ARTICLE V - PERMITTED USES

UKCYBA use of the Ball Fields is allowed under the following conditions:

1. The Ball Fields shall be used and occupied by UKCYBA only for the purpose of Babe Ruth sanctioned youth baseball and softball activities for children between the ages of five (5) and twelve (12). UKCYBA shall not use or permit the Ball Fields to be used for any other purpose without the prior written approval of the Cle Elum City Administrator. UKCYBA is authorized to establish and collect reasonable fees from league and tournament teams to offset their maintenance costs.

2. In April of each year, UKCYBA will provide the number of teams and participants in its league, along with the planned schedule of play, to the City Administrator. The City Administrator retains the right to make adjustments in field use based upon those numbers, in order to facilitate Ball Field watering and maintenance.

ARTICLE VI - PERIOD OF USE

1. Use of the Ball Fields is limited to the scheduled Spring and early Summer practice and league season and reasonable additional times for tournament play. All UKCYBA uses must be concluded by July 31 and any UKCYBA use beyond that date must be requested and approved in writing by the City Administrator. Approval of such requests will not be unreasonably withheld. UKCYBA shall not be responsible for maintenance and repair of the Ball Fields following the conclusion of the Period of Use.

ARTICLE VII - USE BY OTHERS

1. The City shall retain the right to allow and approve Ball Field use by others during those times when UKCYBA is not scheduled to use the Ball Fields as

noted above, provided the Ball Fields are returned to UKCYBA in good, playable condition. A special use agreement, including insurance and hold harmless provisions, will be required for such use by others.

ARTICLE VIII - PROPERTY

1. UKCYBA shall retain ownership of the following: backstops, field fencing, bleachers, scoreboards, and dugouts, as well as subsequently installed facilities, including the proposed restroom/concession building. These facilities shall remain in UKCYBA ownership until the expiration or termination of this Agreement. At the termination or expiration of this Agreement UKCYBA shall have ninety (90) days to notify the City of its intent to remove its property. UKCYBA shall have one (1) year following the expiration or termination of this Agreement to remove its property, as provided for in Section XVII.2. Property not removed shall become the property of the City.

2. Installation of new or expanded irrigation systems and equipment shall be done by UKCYBA, however, once the installation has been completed and accepted by the City, the irrigation improvements will become the property of the City, and will be maintained by the City.

ARTICLE IX - IMPROVEMENTS

1. Ball Field improvements, proposed by UKCYBA for installation or modification after the date of this Agreement, must be requested and approved by the City Administrator. No improvements will be installed or provided by UKCYBA without the written permission of the City Administrator. This permission will be granted provided it can be shown the improvement will provide a benefit to league participants or spectators and will not detract from the appearance and function of the park.

2. UKCYBA shall obtain any and all local, state or federal permits associated with Ball Field improvements prior to installation.

3. UKCYBA shall assume the costs of maintaining new improvements unless otherwise agreed, in writing, by the City Administrator. Should an improvement be made without the permission of the City, the City has the right to direct UKCYBA to remove the improvement within thirty (30) days at UKCYBA cost. If the improvement is not removed within 30 days, the City may remove the improvement and bill UKCYBA for all related costs and will be entitled to full payment for those removal costs.

4. ARTICLE X - MAINTENANCE

1. Maintenance by UKCYBA:
   a) UKCYBA shall maintain all dirt cut out surfaces in such a manner as to

keep the Ball Fields in a safe, playable condition. This maintenance shall include, but not be limited to, weeding, grass removal, raking, grading, removal of rocks, placement of chalk lines, control of mud, and replacement of unsuitable dirt.

b) UKCYBA shall make all improvements related to extension or enhancement of the irrigation system. After extensions or enhancements to the irrigation system have been installed and accepted by the City, they shall be thereafter owned and maintained by the City.

c) UKCYBA shall provide regular maintenance of flush toilet restroom facilities, at such time as they are constructed and made available for public use, during the period of use as specified in Article VI above.

d) UKCYBA shall manage and maintain the concession facilities, at such time as they are constructed.

e) UKCYBA shall provide litter control to the Ball Field area daily or as needed during the practice, league play and tournament season, and shall keep the area free of litter. If the City determines litter control is not being done effectively, the City will notify UKCYBA. If the problem is not promptly dealt with, the City will provide the service and bill UKCYBA for the cost of the service, and UKCYBAA will pay all costs related to this service.

f) UKCYBA shall pay the electric bill for all power requirements of the restroom/concession building and Ball Field lighting, if and when such improvements are installed, during the period of use as defined in Article VI.

g) If the City determines there are maintenance needs in addition to those identified in March of each year, the City Administrator will inform the UKCYBA president in writing of the needs. Response times to correct these needs shall be as follows:

- Needs that do not present a safety concern - 30 days
- Needs that present a minimal or remote liability/safety concern - sign and isolate the public from the area within 24 hours and correct within 7 days
- Needs that present a significant liability/safety concern - sign and isolate the public from the area immediately and correct within 24 hours.
- Graffiti shall be painted out within 48 hours (weather permitting) of notification

h) If UKCYBA does not correct any maintenance/vandalism needs within the time allowed, the City will have them corrected and will bill UKCYBA for the cost of the repairs and the City will be entitled to full payment for those repairs.

2. Maintenance by the City:

a) Mowing: Irrigated turf areas will be mowed once per week or as needed between the months of April through September.

b) Irrigation: Turf areas will be irrigated as needed to maintain viable grass by the City. Unless previously agreed to by the City, access to the irrigation controller shall be controlled by the City. The City will maintain the irrigation system as required, including the replacement of worn out or malfunctioning sprinkler heads.

c) Turf care: All turf areas will be aerated, fertilized, and overseeded as needed and as budget permits, by the City.

d) Toilets: Until permanent restroom facilities are constructed, the City will provide sanican facilities as needed at the Ball Fields. After permanent restrooms are constructed, the City will assume restroom maintenance responsibilities following the conclusion of the UKCYBA period of use. The City may opt to provide sanicans after permanent restrooms have been constructed, to enable the restrooms to be locked up when organized activities are not occurring at the park. The City will also purchase and provide all needed restroom supplies for the entire season of use.

e) Parking lot: The graveled parking lot will be graded each year, prior to the start of League play.

f) Garbage removal: The City shall be responsible for emptying of garbage containers at the Ball Fields as needed.

g) Spraying and weeding: The City shall spray for pests and weed the Ball Fields as needed and as allowed by budget.

h) Winterization: The City shall winterize the irrigation and concession/restroom facilities.

3. Maintenance by UKCYBA to a higher standard than identified in Article X(2) will be authorized, provided that UKCYBA assumes all related costs resulting from the higher standard and complies with any present or future federal, state, or City laws and policies with regard to pesticide/herbicide use, chemical applications, and energy and water consumption.

ARTICLE XI - RESPONSIBILITY FOR COSTS

1. UKCYBA will assume the costs for the maintenance and operational services as noted in Article X(2) and (3) above, including the costs of electricity related to UKCYBA uses; the costs of approved improvements determined to solely serve UKCYBA needs; and the capital repairs to those facilities noted in Article VIII Property.

2. The City will assume the costs for services noted in Article X Maintenance, Paragraph 2; the costs of repairing or replacing facilities owned by the City, unless damaged by UKCYBA; and the costs of improvements determined to solely meet the general community's interests.

3. The City and UKCYBA will share in the costs of improvements that are determined to have a shared benefit between UKCYBA participants and the general community. The amount of the shared cost will be negotiated, based on the benefit.

ARTICLE XII - PARKING AND TRAFFIC CONTROL

1. During league and tournament season, UKCYBA will assign as many members of their organization as necessary to manage and control parking, and to keep fire lanes and access for emergency vehicles clear.

ARTICLE XIII - RULES, LAWS, AND ORDINANCES

1. UKCYBA agrees to abide by and uphold the policies and ordinances of the City of Cle Elum and the laws and regulations of the State of Washington, including those which regulate the operation of food and beverage serving facilities.

ARTICLE XIV - RIGHT TO ENTER

1. The City shall have the right to enter UKCYBA facilities for any reasonable purpose to include, but not limited to, safety inspections and ensuring code compliance.

ARTICLE XV - EXTENSIONS

1. Prior to expiration of this Agreement, UKCYBA may apply to the City for two (2) ten (10) year extensions. These extensions will be granted only upon the written consent of the Parties, which extension agreements must be executed prior to the expiration of the previous period.

ARTICLE XVI - TERMINATION

1. This Agreement may be terminated by either of the Parties following the giving of one (1) year's written notice of the Party's intent to terminate.

2. After the termination of this Agreement, for any reason, UKCYBA may apply to the City within one (1) year of said termination date to remove any permanent structure(s) which had been built solely with UKCYBA funds. UKCYBA may within said year remove all furnishings from said structures. Any such removal as is authorized by the City shall be accomplished without damage to City property and UKCYBA shall bear all expenses in removing them including expenses associated with restoring the Ball Fields to their original condition, as nearly as can be.

3. Upon termination, for any reason, any property in the possession of the other Party, which was provided by the City or UKCYBA, shall be returned to said Party.

4. Failure to fulfill the terms, conditions, and obligations of this Agreement by either Party may be determined to constitute a breach of the Agreement, giving rise to termination of the Agreement.

ARTICLE XVII - SCHEDULED MEETINGS

1. By April 1 of each year, the UKCYBA President shall schedule and meet with the City Administrator for purposes of reviewing and planning; identification of UKCYBA numbers of participants; maintenance needs; planned improvements; concerns expressed by abutting neighborhoods; and policies and practices to be followed.

ARTICLE XVIII - NON-DISCRIMINATION

1. UKCYBA agrees to comply with all local, state, federal, and all other applicable laws against discrimination.

ARTICLE XIX - LIABILITY

1. UKCYBA shall secure and maintain commercial general liability insurance for the entire term of this agreement to cover all UKCYBA uses of the Ball Fields and related uses. Said insurance shall be in the amount of not less than $1 million per occurrence. The City shall be named additional insured for said policy or policies, and a certificate of insurance so naming the City, along with a copy of the policy binder, shall be provided to the City within fifteen (15) days of the effective date of the policy.

2. The City shall be provided with at least 30 days notice in the event of cancellation of UKCYBA's liability insurance coverage.

3. Each time this Agreement is extended, the City reserves the right to review and adjust the minimum amount of insurance coverage required of UKCYBA.

ARTICLE XX - INTERPRETATION

1. This Agreement has been and shall be construed as having been made and delivered in the State of Washington, and it is mutually agreed and understood by both Parties that this Agreement shall be governed by the laws of the State of Washington. Venue shall be Kittitas County, Washington.

2. In the event that a dispute requires interpretation or enforcement of this Agreement, the prevailing party shall be entitled to receive payment for attorney's fees.

ARTICLE XXI - AMENDMENTS/MODIFICATION

1. The provisions of this Agreement may be amended only upon the mutual consent
2. of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.

ARTICLE XXII - INDEMNIFICATION

1. UKCYBA and the City shall indemnify and hold harmless the other Party, its officers, agents, and employees from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omissions by the other Party, its officers, agents, and employees, in performing its obligations under this Agreement .

2. In the event that any suit based upon such a claim, action, loss, or damages, resulting from the actions of UKCYBA, is brought against the City, UKCYBA shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principle of governmental or public law is involved; and a final judgement is rendered against the City, its officers, agents, and employees or jointly against the City and UKCYBA and their respective officers, agents, and employees, UKCYBA shall satisfy the same, except in those cases which are solely due to City negligence.

3. In the event that any suit based upon such a claim, action, loss, or damages, resulting from the actions of the City, is brought against UKCYBA, the City shall defend the same at its sole cost and expense; provided that UKCYBA retains the right to participate in said suit if any principle of governmental or public law is involved; and a final judgement is rendered against UKCYBA, its officers, agents and employees or jointly against UKCYBA and their respective officers, agents, and employees, the City shall satisfy the same.

ARTICLE XXIII - ENTIRE AGREEMENT

This Agreement contains all of the agreements of the Parties with respect to the subject

matter covered or mentioned therein, and no prior Agreement shall be effective to the contrary.

ARTICLE XXIV- RATIFICATION

1. Acts taken in conformity with this Agreement prior to their effective date(s) are hereby ratified and affirmed.

ARTICLE XXV - SEVERABILITY

1. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS THEREOF, The City and UKCYBA have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the 25 day of November, 2008.

CITY OF CLE ELUM

By: Jay McHowan
~~Gary Berndt~~, Mayor Pro Tem

Attest: Toni Fields
Toni Fields, City Clerk

UPPER KITTITAS COUNTY YOUTH BASEBALL ASSOCIATION

By: Gary Fudacz
Gary Fudacz, President of the Board

By: Bill Couey
Bill Couey, First Vice President

By: Greg Maras
Greg Maras, Second Vice President

By: Larry H Spear
Larry Spear, Fire Department Rep.

Approved as to form: Erin Anderson
Erin Anderson, City Attorney

Attest: Brandy Bogart
Brandy Bogart, Secretary