

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF BUNCOMBE

THIS AGREEMENT ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the COUNTY OF BUNCOMBE, a body politic and corporate, hereafter sometimes referred to as "County" and ASHEVILLE BUNCOMBE YOUTH SOCCER ASSOCIATION, a North Carolina non-profit corporation, hereafter sometimes referred to as "ABYSA":

**WHEREAS**, pursuant to N.C. Gen. Stat. § 153A-444, the County may establish recreational programs for its citizens;

**WHEREAS**, pursuant to N.C. Gen. Stat. § 153A-11 and § 153A-449, the County may contract with private entities to carry out any public purpose the County is authorized by law to engage in;

**WHEREAS**, the County owns and operates the Buncombe County Sports Park (the "BC Sports Park") located in the Enka-Candler area of Buncombe County which has seven soccer fields (the "Fields"); and

**WHEREAS**, the County, through its Parks and Recreation Department, provides recreational sport opportunities for the County's youth; and

**WHEREAS**, ABYSA provides recreational and competitive soccer programs for the youth of Buncombe County and surrounding counties and has done so in partnership with Buncombe County since January 1981;

**WHEREAS**, the County and ABYSA wish to enter into an Agreement whereby ABYSA maintains the Fields at the BC Sports Park at a competition level quality in exchange for ABYSA's ability to program the Fields;

NOW, THEREFORE, for and in consideration of the premises and covenants herein contained, the County and ABYSA do mutually covenant and agree as follows:

1. PROPERTY SUBJECT TO THE AGREEMENT. Soccer Fields #1 through #7 at the BC Sports Park (herein "Fields") and space at the Buncombe County Maintenance Facility (herein "Facility").
2. RESPONSIBILITIES OF THE COUNTY.
  - a. Authorize ABYSA the right to use the Fields for the purpose of youth and adult soccer programs. ABYSA shall maintain a master schedule for the Fields and shall provide to the County an annual schedule of the approximate dates and times the Fields will be in use at the BC Sports Park. Said schedule may be amended by

the mutual consent of both parties. ABYSA will place signage at the Fields that notifies the general public how they can schedule usage of the Fields and/or rent the Fields for an event. Scheduled usage of the Fields by the general public will not be unreasonably restricted; however ABYSA shall have the right to limit usage of the Fields in order to maintain the competition level quality of the Fields. In making its determination if it is necessary to limit usage of the Fields, ABYSA will take into consideration the scheduled usage of the Fields, weather conditions, the general condition of the Fields and contractual obligations regarding usage of the Fields.

- b. The County will provide ABYSA: (i) a designated space consisting of one open shed in the Facility (inside a fenced area that can be locked) to store equipment and materials used to maintain and repair the Fields and (ii) in the Concession Stand Building, access to the paint room and the irrigation system controls for the Fields. ABYSA may install at its own expense at the Facility a storage shed that can be locked to secure the equipment stored inside it.
- c. The County will maintain the common areas of the BC Sports Park, including but not limited to the restrooms and shelter areas as well as provide trash pickup for the BC Sports Park. The County will also provide recycle bins and dumpster at a central location, and provide bin and dumpster collection.
- d. The County has the right to program up to 12 special events (the "County Events") a year at the BC Sports Park and will coordinate with ABYSA on the scheduling of the County Events. As stated in Section 3.d, ABYSA shall be responsible for the maintenance and upkeep of the Fields even after a County Event. To the extent that the County Event damages a field above and beyond normal use, Buncombe County shall be responsible for repairing the damage.
- e. The County will allow ABYSA to schedule other events on the Fields, so long as the events do not conflict with the County Events. ABYSA may collect a fee from any third party users of the Fields permitted hereunder.
- f. The County will pay a maximum of \$54,000 towards cost of the water used to water the Fields during the first three years of this Agreement. ABYSA will pay all costs associated with water usage for the Fields after the County's payment of \$54,000 for water or beginning in Nov. 2014 whichever comes first.
- g. The County will lease equipment to ABYSA as set forth in Exhibit A, at a lease payment of \$1.00 per year, to be used by ABYSA for maintaining the Fields. After a five year period, the County will transfer ownership of the equipment to ABYSA at no cost.

3. RESPONSIBILITIES AND RIGHTS OF ABYSA

- a. ABYSA will pay the County a lease payment of one dollar per fiscal year beginning Nov. 1, 2011, for the right to use and program the Fields for a period of five years.
- b. ABYSA will employ staff to maintain the Fields for the duration of this Agreement.
- c. ABYSA shall purchase the necessary supplies to maintain the Fields and prepare the Fields for games for the duration of this Agreement.
- d. ABYSA shall repair and upkeep the Fields including but not limited to the irrigation system. ABYSA will use reasonable commercial efforts to maintain the Fields at competition level quality.
- e. ABYSA is responsible for repairing and replacing any equipment provided by the County that is used for maintaining the Fields and irrigation system. Any equipment purchased by ABYSA for maintaining the Fields, including, but not limited to, any equipment purchased by ABYSA to replace equipment leased by ABYSA from the County, shall be the exclusive property of ABYSA, except for the irrigation system for the Fields. ABYSA will be responsible for any insurance on such purchased equipment.
- f. ABYSA can sell sponsorships and provide space for sponsorship recognition around the Fields to offset the costs of maintaining the Fields. Any signage and the location of the signage shall be approved by the County prior to placement. The County shall not unreasonably withhold its permission.
- g. Upon written request, ABYSA will provide the County with information as to the income and expenses associated with this Agreement.
- h. ABYSA will comply with all federal, state and local laws relating to the use and maintenance of the Fields and this Agreement.
- i. ABYSA shall have the right to sublease usage of the Fields to third parties and retain any fees paid to ABYSA therefor to partially offset the cost of maintaining the Fields. ABYSA will require any subtenant to provide insurance coverage in accordance with the requirements of Section 9 hereof, including naming each of the County and ABYSA as additional insureds. ABYSA will provide rental fee schedule to the County annually.
- j. ABYSA will provide staff to clean up the Fields, parking lot and remove trash after tournaments and special events scheduled by ABYSA.

k. ABYSA will use its reasonable best efforts not to allow or cause any act to be performed at the BC Sports Park with respect to the maintenance and usage of Fields which could cause injury to any person or to the premises, the building or improvements located thereon or any adjoining property. At all times during use of the Fields by ABYSA or its subtenants, the areas of the BC Sports Parks utilized by ABYSA or its subtenants shall be kept in neat and orderly condition. The parties recognize that the soccer programs that occur at Fields involve competitive athletics, which include the inherent risk of injury.

l. All damages to the Fields incidental to the performance of this Agreement by ABYSA or its subtenants shall be repaired or replaced by ABYSA except as set forth in accordance with Section 2.d of this Lease.

4. ADMINISTRATION. The Director of Parks and Recreation or her/his appointed representative shall administer the Agreement, shall have authority to act on behalf of the County and shall be the County's interpreter of the requirements of this Agreement.
5. TERM/TERMINATION. The initial term of this Agreement shall begin on the day and year first above written, and shall continue for five (5) years. This agreement may be terminated by either party upon one hundred eighty (180) days prior written notice. ABYSA shall have the right to one (1) five (5) year extensions of this Agreement, which extensions may be exercised by ABYSA providing at least one hundred eighty (180) days written notice to the County prior to the termination of the then term of this Agreement.
6. HOLD HARMLESS AND INDEMNIFICATION. ABYSA shall indemnify and hold harmless the County and all of its officers, agents, employees from and against any and all liability for personal injury and property damage arising out of or resulting from the negligent acts or omissions of ABYSA, its subcontractors, employees, volunteers, agents, subtenants and assigns, in the performance of this Agreement.
7. NOTICES. In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or requiring to provide such notice shall provide it in writing, by hand delivery or regular United States mail, postage prepaid, to the other party at the address listed below:

The County: Director of Parks and Recreation, 59 Woodfin Place, Asheville, NC 28801

The User: Mike Rottjakob, Executive Director Asheville Buncombe Youth Soccer Association P.O. Box 895 Asheville, NC 28802

8. GOOD REPAIR. ABYSA shall maintain and keep in good repair the Fields; and if ABYSA fails to maintain the Fields in a clean, neat and orderly condition, County may notify ABYSA of

the objectionable or unsightly conditions and ABYSA shall have seven (7) business days, if feasible, following notification to correct or begin the process of correcting, the deficiency. For example, the parties acknowledge that it would take longer than seven (7) business days to grow grass on the Fields, if necessary, however, ABYSA could plant the grass seed within such seven (7) business day period.

- 9. INSURANCE. ABYSA agrees to obtain and maintain liability insurance coverage in the minimum amount of One Million (\$1,000,000.00) Dollars with a Three Million (\$3,000,000) aggregate for any and all property damage or personal injuries at the BC Sports Park that may be caused by the acts or omission of ABYSA, its members, agents, subtenants and employees; ABYSA will name the County as additional insured and will provide to the County, a copy of such insurance policy.
- 10. EMERGENCIES. In the event of a public emergency, the County may use the Fields as is necessary. The County will attempt to provide User as much advanced notice as possible.
- 11. DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non binding mediation prior to filing a lawsuit. If the nonbinding mediation does not take place within sixty (60) days of a request for mediation submitted by one party in writing, either party has the right to file a lawsuit.

IN WITNESS WHEREOF, the parties have here to set their hands and seals, or if corporate, have caused this Agreement to be executed by their duly authorized officer and their seals to be herein affixed the day and year first above written.

County of Buncombe

By: \_\_\_\_\_  
Wanda Greene, County Manager

ATTEST:

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board

Asheville Buncombe Youth Soccer Association

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, Notary Public of the County and State aforesaid certify that Kathy Hughes, Clerk to the Board, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners and that Wanda Greene is the County Manager of Buncombe County and that by authority duly given and as the act of the County of Buncombe the foregoing instrument was signed in its name by its County Manager and attested by herself as its Clerk to the Board.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, Notary Public of the county and State aforesaid certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is the Secretary of Asheville Buncombe Youth Soccer Association, a North Carolina Non-Profit Corporation, and that authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its President and attested by its Secretary.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ 2011

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_