

**USE AGREEMENT
BETWEEN
CITY OF JACKSON, TENNESSEE,**

and

IN THE BIG INNING, LLC, a Tennessee Limited Liability Company

IN WITNESS WHEREOF, "IN THE BIG INNING, LLC," (Hereinafter referred to as "**ITBI, LLC**"), a Tennessee Limited Liability Company, and the **CITY OF JACKSON, TENNESSEE, ("CITY")**, (collectively referred to herein as the "Parties"), have agreed to this Use Agreement ("Agreement") as of the day and year indicated below.

WHEREAS, ITBI, LLC has developed expertise in operating and managing sports teams and desires to enter into a binding Agreement for use of the Jackson Baseball Stadium, ("Stadium"); and

WHEREAS, ITBI, LLC and the **CITY** are entering into this Agreement for the purpose of placing a Prospect League, ("League"), summer college baseball team in the Stadium for the 2023 season and beyond; and

WHEREAS, the Stadium will be available to **ITBI, LLC** for other recreational, entertainment and civic uses, as set forth herein, beginning January 2022, and **ITBI, LLC** will be responsible for arranging and executing various events, activities and sporting events in the Jackson Stadium and adjoining parking areas, ("the Premises").

NOW THEREFORE, the undersigned Parties hereby agree to the following binding terms:

Stadium Term. **ITBI, LLC** shall have the right to use the Stadium including all areas within the fenced-in area commonly known as Jackson Baseball Stadium during the entirety of the following periods, (the "Initial Term"):

January 1st to December 31st annually for the (10) ten-year period beginning January 1, 2022 and thru December 31, 2031.

Should **ITBI, LLC** not be in default of the Use Agreement as of December 31, 2031, **ITBI, LLC** and the **CITY** hereby agree that **ITBI, LLC** may extend this Use Agreement for an additional (5) five year period, (the "Additional Term") beginning January 1, 2032 and concluding December 31, 2036.

Priority. **ITBI, LLC** shall have priority over all events on the Premises during the Term then in effect. **ITBI, LLC** shall provide the **CITY** with a schedule of home games and potential playoff games a minimum of four (4) months prior to the first scheduled home game of the upcoming season.

Team. **ITBI, LLC** agrees to provide by January 2023 a team in good standing as a member of the

Prospect League during the Initial Term of this Agreement and any Additional Terms. With approval of the CITY, ITBI, LLC may provide a team in another League, ("New Team"). It is expressly understood that a New Team must be of an equivalent League or higher League of play for the approval of the CITY to be granted. Should the League cease to exist due to merger with another entity, or the League reorganizes to the benefit of League members, this action by the League will not require approval of the CITY for this Agreement to continue in effect, as long as ITBI, LLC remains in a League equivalent to the Prospect League or a League with a higher level of play.

1) Stadium Use Fee. During the Initial Term and First Additional Term, ITBI, LLC shall pay the CITY a use fee of One Dollar (\$1.00) per year for 2022; and Seventy Thousand Dollars (\$70,000.00) annually for the years 2023 to 2031, ("Use Fee"):

Terms of Use Fee: \$35,000 due and payable on or before March 15th (of any lease year); and \$35,000 due and payable on or before August 15th (of any lease year) ITBI, LLC reserves the right to accelerate payments.

Stadium Use Fee shall include the cost of utilities (electricity, water, sewer, disposal service).

2) Field Equipment & Maintenance. The CITY shall supply sufficient field equipment for the Stadium, as such equipment is identified in Exhibit A to this Agreement ("Field Equipment"). If any of the Field Equipment listed in Exhibit A requires maintenance or replacement, the CITY shall provide appropriate maintenance or the CITY shall supply suitable replacement Field Equipment for the Stadium.

The CITY shall be solely responsible for maintenance and upkeep of the Stadium playing surface and grounds including but not limited to turf maintenance as well as care and preparation of the field for games. All costs, including materials and labor to upkeep and maintain the Stadium playing surface in proper playing condition, shall be the responsibility of the CITY.

Absent negligence by ITBI, LLC, the CITY shall be responsible for major repairs to the turf during the Initial Term.

3) Stadium Cleaning. The CITY shall provide cleaning and janitorial services for the Stadium, which includes the seating areas, concourse, rest rooms and clubhouses for general cleaning and after all stadium events. Cleaning shall include items such as garbage removal, sweeping of concourse and patrons' walkways, and pressure washing, as needed.

4) Office Space. CITY shall provide ITBI, LLC with the existing office space at the Stadium on January 1, 2022. The CITY is responsible for providing telephone and internet infrastructure to the office location. The monthly cost for telephone and internet service is the responsibility of ITBI, LLC. The CITY is responsible for the monthly cost of office utilities (electricity, water). Any furniture, fixture and equipment necessary for ITBI, LLC office operations are the responsibility of ITBI, LLC. Cleaning and janitorial services for the office space are the responsibility of ITBI, LLC.

5) Stadium Internet. CITY shall provide sufficient wireless bandwidth to the Stadium for the establishment of a private network for the operation of **ITBI, LLC**'s credit card terminals and point of sale system. CITY shall provide a minimum of four wired Ethernet drops, one each to the following locations: third base concession stand, first base concession stand, ticket office, and home plate press box.

6) Ticketing. CITY shall provide an enclosed structure at the main Stadium entrance with four (4) ticket windows from which **ITBI, LLC** can sell tickets to **ITBI, LLC** events. **ITBI, LLC** shall be responsible for all costs of the ticketing system including licensing fees, per ticket printing fees, sales taxes, payroll, and payroll taxes for events in which **ITBI, LLC** operates the Stadium box office.

7) Concessions. **ITBI, LLC** shall have the exclusive right to use and occupy the concession areas at the Stadium during the Initial Term and any Additional Term for storage, preparation and sale of food, beverages, souvenirs, and other concessions, ("Concessions"); and no other tenant, sub-tenant, licensees of the CITY, or other person shall have the right to use the Concessions area or to sell food or beverages at the Stadium without the express written consent of **ITBI, LLC**. The CITY agrees that no food products and beverages may be brought into the Stadium, other than by **ITBI, LLC**, during any Term of this Agreement then in effect.

During its operation of Stadium Concessions, **ITBI, LLC** shall be responsible for all costs of the Concession operations, to include, but not be limited to, costs of goods sold, sales taxes, payroll, payroll taxes, and insurance. All permitting and insurance required (including liquor and beer permits and liability) for the Stadium food and beverage operation will be the responsibility of **ITBI, LLC**. **ITBI, LLC** may utilize third parties to provide Concession services as is appropriate for the conduct of **ITBI, LLC**'s business at the Stadium.

ITBI, LLC agrees with the CITY that all Concessions and Concession services shall be of high quality commensurate with industry standards prevailing in facilities similar to the Stadium. All items offered for sale by **ITBI, LLC**, or any third party at the Stadium, shall be sold at reasonable prices, which are established by **ITBI, LLC** and which prices are plainly displayed.

The CITY shall supply equipment for the Stadium Concession operations as identified in Exhibit B to this Agreement. It shall be the responsibility of **ITBI, LLC** to purchase all additional equipment that **ITBI, LLC** deems necessary for the operation and sale of Concessions at the Stadium which is not listed in Exhibit B. Any equipment listed in Exhibit B, shall be the responsibility of the CITY to maintain. If any of the equipment listed in Exhibit B requires replacement, the CITY shall supply suitable replacement Concession equipment for the Stadium. Any Concession equipment provided by **ITBI, LLC**, shall be maintained by **ITBI, LLC** at its sole expense, including the replacement thereof, if necessary. **ITBI, LLC** agrees that throughout the Term, and any extension thereof, it shall possess and maintain in good standing a license to sell alcoholic beverages from the CITY of Jackson and/or Tennessee Alcohol Beverage Commission.

8) Sponsorship. With the exception of Stadium Naming Rights, **ITBI, LLC** receives exclusive rights to all Stadium sponsorship and advertising ("the Sponsorship Elements") to include, but not be limited to, outfield wall signs, banners, ticket booths, stadium entrances, parking areas, field level signs, dugout

tops, interior dugout walls, fixed scoreboard panels, concession menu boards, concession stands, program stands, retail store, concourse wall signs and displays, table tops, beer garden, picnic areas and group areas. The exclusive right **ITBI, LLC** holds to the Sponsorship Elements, as listed herein, shall be in effect for the period of January 1, 2022 through December 31, 2031. If an Additional Term is enacted, **ITBI, LLC** will hold exclusive right to the Sponsorship Elements as listed herein for the period of January 1, 2032 through December 31, 2036.

9) All costs to produce, install and remove the Sponsorship Elements shall be the sole responsibility of **ITBI, LLC**.

ITBI, LLC agrees that the kind, type, size, and location of all Sponsorship Elements shall be in keeping with the character of the Stadium and shall not be offensive to the CITY, which shall have the authority to prohibit advertising it deems offensive, which right will not be unreasonably implemented.

10) Videoboard. The City will provide access and equipment to operate the videoboard. All upgrades will be provided by **ITBI, LLC**.

11) Broadcasting. **ITBI, LLC** shall retain all revenue or benefits from **ITBI, LLC's** broadcasting, cable casting, internet transmission, or telecasting for any **ITBI, LLC's** games played at the Stadium. Any production expenses associated with the broadcasting, cable casting, internet transmission or telecasting of **ITBI, LLC's** games shall be the sole responsibility of **ITBI, LLC**. However, it is expressly understood that the **CITY** shall charge no special fees, permits, or hook-up expenses to **ITBI, LLC** or its broadcasters, cable casters, or telecasters.

12) Pouring Rights. **ITBI, LLC** shall be responsible for negotiating pouring rights agreements for alcoholic and non-alcoholic beverages at the Stadium and retain all fees generated, if any, during the Stadium Terms outlined in this Agreement.

13) Public Address & Sound System. The **CITY** shall supply a sufficient public address and sound system for the Stadium that allows **ITBI, LLC** to readily communicate with patrons throughout the Stadium. Maintenance of the public address and sound system shall be the sole responsibility of the **CITY**.

14) Parking. The **CITY** shall provide free of charge handicap parking around the Stadium complying with applicable Federal, State, and local codes for all events during the Term.

15) Traffic Control. The **CITY** shall be responsible for establishing appropriate levels of service for traffic control on public streets and shall be responsible for any and all costs of providing this service for **ITBI, LLC's** games.

16) Security. **ITBI, LLC** shall be responsible for all safety and security, including, but not limited to, providing at least one security police officer during all home games. Compensation for officers will be the responsibility of **ITBI, LLC** and processed through the **ITBI, LLC's** payroll service

provider.

17) Stadium Operations. For all **ITBI, LLC** games, **ITBI, LLC** shall be responsible for the scheduling and training of personnel, ("Stadium Employees"), necessary to effectively and safely operate the Stadium including, but not limited to, ticket sellers, ticket takers, and ushers. All wages, payroll taxes, and worker's compensation insurance for Stadium Employees are the sole responsibility of **ITBI, LLC**.

18) Field Tarps. On game days (Monday through Friday) the **CITY** will be responsible for the placement and removal of field tarps prior to 4:00 pm. On game days (Monday through Friday) **ITBI, LLC** will be responsible for the placement and removal of field tarps after 4:00 pm. **ITBI, LLC** will be responsible for the placement of field tarps following the conclusion of each game. On weekend game days, **ITBI, LLC** is solely responsible for the placement and removal of field tarps.

19) Capital Repairs, Maintenance & Replacement. The **CITY** shall be responsible for all capital repairs, maintenance, or replacements of permanent Stadium fixtures including, but not limited to, scoreboard, videoboard, plumbing, electrical, HVAC, painting, mechanical, stadium lighting, audio system, buildings and structures, pedestrian traffic surfaces, seating, playing field, and back stop netting. It shall also be the **CITY's** responsibility to make any required alterations and improvements to the Premises, which are necessary to comply with applicable statues, ordinances, governmental rules, regulations and codes and to protect the safety of **ITBI, LLC's** employees and guests. **ITBI, LLC** shall be responsible for any maintenance, repairs, or replacement caused by the willful misconduct or negligence of **ITBI, LLC** including, but not limited to, its players and employees.

ITBI, LLC and the **CITY** will mutually determine the schedule for capital repairs, maintenance, or replacement.

ITBI, LLC and the **CITY** shall jointly inspect the Stadium by February 15th of each Use Period and once again prior to the end of each Use Period to determine repair responsibilities in accordance with the terms above.

20) Capital Improvements. **ITBI, LLC** shall provide the **CITY** with written proposals and recommendations for Stadium improvements and modifications with appropriate advance time to allow for proper review and preparation of necessary plans and cost estimates. All Capital Improvement projects, which request **CITY** funding, must be agreed upon by the Parties by September 15th of the year prior to the year in which the project is proposed to occur. This paragraph does not obligate the **CITY** to fund Stadium improvements in whole or in part, with the exception of Office Space as identified in Section 8.

21) Alterations and Improvements. With approval by the **CITY**, **ITBI, LLC** may make alterations, additions, and improvements to the Stadium. Any alterations and improvement provided by **ITBI, LLC** that do not become fixtures of the stadium shall remain the property of **ITBI, LLC**. Alterations, additions, and improvements by either Party becoming fixtures shall become property of the **CITY** unless otherwise noted herein.

22) Warranties of Possession. The CITY warrants and covenants that it has the full right to make and enter into this Agreement. ITBI, LLC warrants and covenants that it has the full right to make and enter into this Agreement.

23) Delivery of Premises. The CITY agrees to deliver the Stadium in clean and operable condition at the beginning of the Term as listed in Section 1.

24) Codes. The CITY will provide a Stadium which meets all applicable electrical, fire, safety, and health codes to support the programmatic needs of ITBI, LLC.

25) Taxes. Other than sales tax, ITBI, LLC shall not be responsible for the payment of use taxes, property taxes, property assessments, or levies of any kind assessed against the Premises. Should any such amount be assessed by any governmental agency, the CITY will credit such payments against the rent and/or reimburse ITBI, LLC in full, as necessary. The CITY shall reimburse any new local taxes assessed against ITBI, LLC during the Term, such as an Amusement Tax.

26) Naming Rights. ITBI, LLC and the CITY agree that ITBI, LLC will attempt to procure a naming rights sponsor for the Stadium and its properties. Should ITBI, LLC procure said naming rights, the net annual total is to be split with 90% being retained by ITBI, LLC and 10% being paid to the CITY within (10) ten days of sponsor payment. The term "net" means that any costs to change, manufacture, or install new structures or fixtures attributed to a new name shall be deducted from sponsors' gross payment. CITY shall have approval rights for any name and potential naming rights sponsor/buyer.

27) Other Events. ITBI, LLC retains the right to schedule Non-League events at the Stadium on a year-round basis that do not conflict with previously schedule events at the Stadium. The CITY retains the right to approve all such events, but such right will not be unreasonably withheld.

28) Insurance. ITBI, LLC shall, at its own expense, maintain in effect during the term of this Agreement the following insurance with limits as shown or greater:

General Liability (including automobile) and Liquor Liability in minimum limits of (\$1,000,000.00) a million dollars each occurrence and (\$2,000,000.00) two million dollars in general aggregate, combined single limit of (\$1,000,000.00) a million dollars in bodily injury and (\$1,000,000.00) a million dollars in property damage and (\$2,000,000.00) two million dollars in general aggregate. The CITY shall be named as an Additional Insured and be given a (30) thirty-day notice of cancellations, non-renewal, or significant change of coverage. ITBI, LLC's insurance shall be written on a "primary" basis and the CITY's insurance program shall be in excess of all of ITBI, LLC's available coverage.

29) Status of Parties. By executing this Agreement, the Parties agree that each is acting as an independent contractor and not as the agent or employee of the other. Each Party agrees to pay, as they become due, all federal and state withholding and income taxes, as well as other payroll taxes, including Social Security taxes due and payable on the compensation earned by their respective employees and to hold each other harmless from any and all taxes, penalties or interest which might arise by the failure to do so.

30) Indemnification. **ITBI, LLC** agrees that it will indemnify and hold harmless the **CITY** of Jackson, its officers, agents, and employees, including staff, from any loss, cost, damage, expense, attorney's fees, and liability by reason of bodily injury, property damage, or both, of whatsoever nature or kind, arising out of or as a result of the negligent act or negligent failure to act of **ITBI, LLC** or any of its agents for employees. The **CITY** agrees that it will indemnify and hold harmless **ITBI, LLC**, its officers, agents, and employees from any loss, cost, damage, expense, attorney's fees, and liability by reason of the negligent act or failure to act by the **CITY** or any of its agents or employees, including staff. In the event of loss, cost, damage or expense caused by the joint or concurrent negligence of **ITBI, LLC** and the **CITY**, they shall be borne by each Party in proportion to its negligence.

31) Default. If either Party shall default in the performance of any obligations of said Party to be performed under this Agreement and such a default shall continue for a period of thirty (30) days after written notice of such default shall be given to the defaulting party by the non-defaulting party, the non-defaulting party shall be entitled to terminate this Agreement and to all other remedies at equity and law.

The occurrence of any of the following events on the part of **ITBI, LLC** shall constitute a default under this Agreement:

- a. Non-Payment of User Fee if such non-payment continues for a period of fifteen (15) days following notice of such failure;
- b. Breach of Covenant: If **ITBI, LLC** fails to comply with any covenant, provision, or condition set forth in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof;
- c. Bankruptcy or Insolvency: If **ITBI, LLC** files bankruptcy or claims relief under any insolvency statute, or if there shall be filed against it any involuntary petition in bankruptcy, or if a petition is filed for the appointment of a receiver and the same is not dismissed within (120) one-hundred twenty days of such filing; or
- d. Vacation of Stadium Premises: If **ITBI, LLC** vacates the Stadium Premises except as otherwise permitted in this Agreement.

Remedies in the event of a default by **ITBI, LLC**:

- a. The **CITY** shall have all rights and remedies permitted to it under this Agreement and applicable law. The **CITY** shall specifically have the right to terminate this Agreement and all rights of **ITBI, LLC** hereunder by giving notice to Club of its intention to terminate this Agreement and upon the effective date of such termination (specified in a written notice from the **CITY** which shall be not less than thirty (30) days after the giving of such notice), the Term of this Agreement shall end as fully and completely as if that were the date herein fixed for the expiration of the term of this Agreement and **ITBI, LLC** shall surrender all of its licenses and occupancy of the Stadium Premises. The **CITY** shall have the exclusive possession of the Stadium with or without legal process and may remove all persons and property therefrom.
- b. The **CITY** shall, in its sole and absolute discretion, relet or relicense the Stadium or any part or parts thereof, to any other person or entity as the **CITY** deems advisable, all without in any

way releasing **ITBI, LLC** from liability hereunder.

32) In addition to the remedies set forth above, in the event of default by **ITBI, LLC** and after the expiration of the 30-day period to cure, in addition to any other remedies at equity and law that the **CITY** may have, the **CITY** shall have the immediate right of re-entry and to remove all persons and property from the Premises.

33) Force Majeure. The Parties shall not be liable for failure of performance under this Use Agreement if occasioned by declared or undeclared war, flood, fire, embargo, governmental orders, regulations, governmental expropriation, interruptions of transportation facilities, labor strikes, public health emergency, terrorist event and disputes, or any other causes beyond the control of the Parties.

34) Assignment. **ITBI, LLC** shall not sell or assign its right to the Agreement without the consent of the City, and this consent will not be unreasonably withheld.

35) Entire Agreement. This Agreement supersedes all previous contracts or agreements between the Parties with respect to the same subject matter and does constitute the entire Agreement between the Parties hereto. Neither **ITBI, LLC** and the **CITY** shall be entitled to other benefits than those herein specifically enumerated.

36) Waiver of Breach. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as nor be construed to be a waiver of any subsequent breach hereof.

37) Governing Law. This Agreement shall be construed and governed by the laws of the State of Tennessee.

38) Severability. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

39) Interpretation. The Parties hereto acknowledge and agree (i) that each Party has reviewed the terms and provision of the Agreement; (ii) that the rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of this Agreement; and (iii) that the terms and provisions of this Agreement shall be construed fairly as to all Parties hereto and not in favor or against any party, regardless of which Party was generally responsible for the preparation of this Agreement.

40) Amendments. This Agreement may be amended only by an instrument in writing signed by the Parties hereto.

41) Execution. This Agreement and any amendments thereto shall be executed in duplicate copies on behalf of **ITBI, LLC** and the **CITY**. Each duplicate copy shall be deemed an original, but both duplicate originals together constitute one and the same instrument.

42) Notices. Notices or communications herein required or permitted shall be given the respective Parties by registered mail (said notices being deemed given as of the date of mailing) or by hand delivery at the following addresses unless otherwise designate it new address by written notice.

CITY OF JACKSON
Scott Conger, Mayor
101 East Main Street
Jackson, Tennessee 38301

And

LEWIS L. COBB, CITY ATTORNEY
312 East Lafayette Street
Jackson, TN 38301

IN THE BIG INNING, LLC

IN THE BIG INNING, LLC

CITY OF JACKSON

DENNIS BASTIEN,
President

SCOTT CONGER, MAYOR