

RESOLUTION NO. 29632

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FROST STADIUM LICENSE AGREEMENT WITH THE UNIVERSITY OF TENNESSEE ON BEHALF OF THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA, IN SUBSTANTIALLY THE FORM ATTACHED, TO USE THE OUTDOOR SOFTBALL COMPLEX KNOWN AS FROST STADIUM LOCATED AT 1100 MCCALLIE AVENUE, ON A PORTION OF TAX MAP NUMBER 146G-A-001, FOR A TERM OF TWENTY (20) YEARS, COMMENCING ON MARCH 1, 2018 WITH THE OPTION TO RENEW FOR ONE (1) ADDITIONAL TERM OF TWENTY (20) YEARS, FOR A LICENSE FEE OF ONE DOLLAR (\$1.00) PER YEAR.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Frost Stadium License Agreement with the University of Tennessee on behalf of the University of Tennessee at Chattanooga, in substantially the form attached, to use the Outdoor Softball Complex known as Frost Stadium located at 1100 McCallie Avenue, on a portion of Tax Map Number 146G-A-001, for a term of twenty (20) years, commencing on March 1, 2018 with the option to renew for one (1) additional term of twenty (20) years, for a license fee of \$1.00 per year.

ADOPTED: September 25, 2018

/mem

## FROST STADIUM LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between by and between THE UNIVERSITY OF TENNESSEE ON BEHALF OF THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA, a public institution of higher learning and an instrumentality of the State of Tennessee (hereinafter referred to as "Licensee" or "UTC"), and CITY OF CHATTANOOGA, a municipal corporation and a political subdivision of the State of Tennessee (hereinafter referred to as "City" or "City") (hereafter collectively "Parties");

### RECITALS

WHEREAS, the Parties intend to enter into a non-exclusive licensing agreement for access to facilities from City to be used exclusively for the purpose of providing a home stadium for the UTC softball team; and

WHEREAS, City has the appropriate authority to, and hereby agrees to, allow Licensee to use that certain outdoor softball complex on a certain tract of real estate owned by Licensor, known as Frost Stadium (the "Stadium"), situated at 1100 McCallie Avenue, in Chattanooga, Tennessee;

WHEREAS, Licensee and City executed and entered into a "Warner Park Softball Stadium Access Funding Agreement" on March 1, 1999 (the "Funding Agreement"), under the provisions of which City developed and constructed the Stadium and that Licensee would use the Premises as and for its softball team's home field, for a term of twenty (20) years commencing on March 1, 1998 and ending on February 28, 2018; and,

WHEREAS, currently, there are plans to build a hitting facility on an adjacent property; upon completion of the hitting facility, there will be an Amendment to the License Agreement addressing the use of the hitting facility; and,

WHEREAS, Licensee and City now desire to enter into a License Agreement for a period of twenty (20) years.

NOW, THEREFORE, for valuable consideration exchanged among the Parties, including the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged by each party to this Agreement, the Parties do hereby covenant, contract and agree as follows:

SECTION 1. Licensed Premises. City agrees to permit Licensee to use certain areas of the Stadium complex, at 1100 McCallie Avenue, situated in the City of Chattanooga, Hamilton County, Tennessee, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Licensed Premises"). The Licensed Premises shall include the field, dugouts, two (2) locker rooms, press box, stadium seating, restrooms, batting cages, and merchandise room. The Licensed Premises shall not include the two (2) 10' x 30' suites, currently named the Jim Frost Suite and the B&H Suite<sup>1</sup>, located on the second floor of Frost Stadium, the picnic area and the parking facilities. More specifically, the picnic area and the parking facilities shall be considered and defined as "Common Areas."

SECTION 2. Use of the Licensed Premises. It is expressly agreed to and understood by the parties that the Licensed Premises shall be used exclusively for the purpose of providing a home field for its softball team.

2.1 Licensee shall also have the right to sell its merchandise at the Premises, which

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<sup>1</sup> Except as provided in Section 7.2 below.

will include all responsibilities related to the sale of its merchandise. Licensee shall receive all proceeds from the sale of its merchandise.

2.2 Licensee shall not utilize the Licensed Premises for any other purposes without the express written approval of City, which hereby designates its Mayor as City's agent for this purpose.

2.3 The Licensee shall not have the authority to allow any other outside groups or organizations to use the facilities.

2.4 Licensee shall neither engage in nor allow illegal activities on the Licensed Premises nor allow alcoholic beverages to be sold or consumed on the Licensed Premises.

2.5 In the event of inclement weather, including, before, during, and after a weather event, City, thru its Director of Recreation, shall have sole discretion in determining if the field is in playable condition, and/or if games or practices will need to be delayed and/or rescheduled.

### SECTION 3. Term.

3.1 Initial Term. The term of this Agreement shall commence on March 1, 2018 (the "Commencement Date") and shall continue for a period of twenty (20) years, ending on February 28, 2038 ("Initial Term"). The Initial Term may be renewed for an additional twenty (20) year period upon mutual agreement of the parties. Either party may terminate this Agreement at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least ninety (90) days prior to the termination date.

SECTION 4. License Fees. Licensee shall, during the term of this Agreement, pay to City a license fee of One Dollar (\$1.00) per year ("License Fee" or "License Fees"), with the first annual payment due on the Commencement Date of this Agreement and subsequent annual payments due on the anniversary date of the Commencement Date of this Agreement. As

additional consideration, the Licensee agrees to use the property exclusively for the purpose set forth in SECTION 2. All License Fees shall be paid by Licensee to "City of Chattanooga YFD Department of Recreation' at the address herein designated in SECTION 27. The parties agree and acknowledge that the License Fees shall replace any and all "user fees" associated with use of the Licensed Premises, and therefore, any and all "user fees" as required in the Chattanooga City Code, Section 26-28 are hereby waived.

SECTION 5. Parking. The Licensee and its guests and patrons shall have no express or implied priority for the use of any parking facilities located adjacent to the property licensed by this Agreement. Licensee shall keep the area free of garbage, trash and rubbish, and shall immediately notify the City of Chattanooga Police and the Youth and Family Development Recreation Department of any and all vandalism, criminal activity and/or disturbances within the area. Licensee understands and agrees that the City does not guarantee Licensee any parking facilities. Violation of any provision of the above paragraph shall be considered a breach of this Agreement.

SECTION 6. Operation, Maintenance, and Repairs.

6.1 Licensee must keep its equipment and the premises and the area immediately adjacent thereto neat and clean and free of all garbage, trash and rubble. Further, Licensee shall prohibit and maintain the premises in manner such that no trash or articles of any sort shall be thrown into other areas of Warner Park. Violation of any provision of the above paragraphs shall be considered a breach of this Agreement.

6.2 Licensee shall be permitted to maintain branding and permanent signage at the Licensed Premises during the softball seasons, and shall be solely responsible for any costs associated therewith.

6.3 In the event of flood or other natural disaster, Licensee shall have the right (but not the obligation) to make a request for, receive, utilize and apply federal disaster assistance or aid, and in such circumstances City will not unreasonably delay or withhold such consents of approval as may be required.

6.4 Except as otherwise stated herein, the operation, maintenance, and repairs, including concessions, of the Stadium shall be the responsibility of the City of Chattanooga, subject to the City Code of Chattanooga. Final determination of when field maintenance is required will be the responsibility of the City. Licensee must adhere to non-use of the facility during maintenance periods and use other fields at Warner Park as assigned by City. City will provide Licensee with advance notice of extended maintenance and/or repair periods.

SECTION 7. Priority Schedule for Licensee.

7.1 Priority Schedule of Licensed Premises. The City shall cause to be granted to Licensee first priority for the scheduling of Licensee softball games, tournaments, and practices, as long as Licensee provides a copy of its schedule to the Director of Recreation for YFD within two (2) weeks of finalization by the University and NCAA. Otherwise, if the Licensee does not provide the schedule to the City, as per the timeframe stated herein, then the dates and times shall be forfeited to the City.

7.2 B & H Suite. Licensee shall be permitted to have first priority use of the B & H Suite, which is not included in the Licensed Premises, during its softball games, as long as UTC requests use of the suite at least two (2) weeks prior to usage.

SECTION 8. Termination and Holding Over. Upon termination of this Agreement, at the expiration of the term hereof or any extension thereof, Licensee shall surrender the Licensed Premises to City in as good condition as received, ordinary wear and tear and damage by fire or

other casualty excepted. Licensee covenants to City that it shall vacate the Licensed Premises on or before thirty (30) days following the expiration of the term hereof or any extension thereof including removal of all personal property. Any personal property of Licensee which is not removed from the Licensed Premises after termination of this Agreement shall be deemed abandoned and may be disposed of by City in any manner without accounting or being liable to Licensee. Licensee shall surrender all keys to the Licensed Premises at or before the termination of this Agreement.

SECTION 9. Indemnity. Each party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from negligence, actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. Any and all monetary claims against either party, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted pursuant to, and shall be limited to those provided for in the Governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq* and the Tennessee Claims Commission Act, T.C.A. § 9-8-301 *et seq*.

SECTION 10. Insurance. The parties acknowledge and agree that the Licensee is self-insured, and shall provide a copy of its certificate of self-insurance upon execution of this Agreement. If the Licensee is no longer self-insured during the term of this Agreement, the parties shall amend this Agreement to include the City's standard insurance requirements.

SECTION 11. Assignment or Subletting. Licensee shall neither assign nor transfer this Agreement or any interest herein nor sublease the Licensed Premises or any part thereof during the term of this Agreement or any extensions or holdovers.

SECTION 12. Discrimination. Licensee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 13. Licenses and Permits. Licensee shall be responsible for all necessary state and municipal permits and licenses required by law or regulation to operate the Licensed Premises for the purpose set forth in SECTION 2. Licensee shall provide City with copies of all required licenses and permits prior to the Commencement Date.

SECTION 14. No Warranties. Licensee takes and accepts the Licensed Premises from City "AS IS," that is at its condition as of the Commencement Date of this Agreement, upon the terms and conditions herein contained.

SECTION 15. Limitation of City's Liability.

- (a) City shall not be liable to Licensee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Agreement and no such failure or delay shall constitute actual or constructive eviction of Licensee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Licensee.
- (b) City shall not be liable to Licensee, its invitees, agents, employees, or contractors for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Licensed Premises.
- (c) City shall not be liable for any theft or loss of property of Licensee, invitees, agents, employees, or contractors.



(d) This Agreement is a license for access to the Licensed Premises, and the City's liability is limited solely to the negligence of its agents and employees and by the common law and statutes of the State of Tennessee.

SECTION 16. Laws and Ordinances. Licensee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Premises are concerned, and that the Licensee will not by any act of its agents or officers render the City liable therefor.

SECTION 17. Possession. If this Agreement should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Premises, and the City shall be entitled to immediate possession.

SECTION 18. Intentionally Omitted..

SECTION 19. Right to Enter. The City shall have the right to enter into and upon said Licensed Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 20. Damage or Destruction. In the event the Licensed Premises shall be damaged by fire, or other casualty, the Licensee shall give immediate notice thereof to the City. This Agreement shall, unless notice is given as set forth below, continue in full force and effect, and the City shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 26 and delays in making of insurance adjustments by City, repair the Licensed Premises. City need not restore fixtures and improvements owned by Licensee or floor coverings, furnishings, personal property, and other decorative features furnished by Licensee. In the event the Licensed Premises shall, before or after the Commencement Date, be so

damaged that the City shall decide not to repair the same, or if the City shall decide to demolish or rebuild the Licensed Premises for any reason whatsoever, upon notice to Licensee, the term of this Agreement shall cease and terminate effective as of the time of the damage, and the accrued License Fee if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the City.

SECTION 21. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Licensee:

A. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Licensee:

- (i) Abandonment of the Licensed Premises, except for causes of force majeure, as defined in SECTION 26; and
- (ii) Any attempted assignment, transfer, or sublease in violation of SECTION 11 above;

B. Failure to pay License Fees as provided for herein or failure to perform any term, covenant, or condition of this Agreement, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. City shall give written notice to Licensee of such default and if Licensee does not cure any default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Licensee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then City may terminate this Agreement on not less than three (3) days' written notice to Licensee, and on the date specified in said notice the term of this Agreement shall terminate, and Licensee shall

then quit and surrender the Licensed Premises to City. If this Agreement shall have been so terminated by City, City may at any time thereafter resume possession of the Licensed Premises by any lawful means and remove Licensee or other occupants and their effects.

SECTION 22. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 23. Surrender of Licensed Premises on Termination. Licensee shall peaceably deliver possession of the Licensed Premises to City on the date of expiration or termination of this Agreement, whatever the reason for termination. City shall have the right to re-enter and take possession of the Licensed Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings

SECTION 24. Intentionally Omitted.

SECTION 25. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Agreement shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Agreement. No delay, failure, or omission of City to re-enter the Licensed Premises, to insist on strict enforcement of any term, covenant, or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 26. Force Majeure. City shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond City's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage,

governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

SECTION 27. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the parties as follows:

Notices to City:

Office of the City Attorney  
100 E. 11th Street, Suite 200  
Chattanooga, TN 37402

With a copy to:

City of Chattanooga  
Real Property Office of ECD  
101 E. 11th Street, Suite G4  
Chattanooga, TN 37402

City of Chattanooga  
YFD Department of Recreation  
1102 S. Watkins Street  
Chattanooga, TN 37404

Notices to the Licensee:

University of Tennessee  
Office of the Treasurer  
301 Andy Holt Tower  
Knoxville, TN 37996

With a copy to:

University of Tennessee at Chattanooga  
Department of Procurement & Contract Services  
615 McCallie Avenue, Dept. 4104  
Chattanooga, TN 37403

SECTION 28. Modification or Amendment of Agreement. This agreement may be modified only by written agreement of the parties subject to approval, as necessary by appropriate City officials. The City reserves the right to modify or amend this agreement, in the event the City determines that the premises are needed for other municipal purposes upon providing Licensee with forty-five (45) days written notice. Following notice, the City shall be entitled to and relocate Licensee to comparable premises at some other location. In the event of modification, amendment or relocation pursuant to the terms of this Agreement, it is agreed and understood by Licensee that no claim or action for damages or other compensation shall arise or be allowed by reason of such elimination, modification or relocation. If the parties are not able to negotiate mutually acceptable amendments, the Licensee shall have the right to terminate this agreement. If following relocation, the Licensee has either more or less space in the relocated area than it currently occupies, then the amount of payments due to the City shall be adjusted in direct proportion to the change in the areas as shall be determined by the City. City shall not be responsible and/or liable to Licensee for any incidental and consequential damages resulting from relocation and/or loss of permitted capital improvements which Licensee has made to the premises at Licensees' expense.

SECTION 29. Miscellaneous Provisions.

29.1 Applicable Law. This Agreement shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the parties and/or default by Licensee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee or the Tennessee Claims Commission

pursuant to T.C.A. § 9-8-301 *et seq.* Notwithstanding any provision in this Agreement to the contrary, any liability of Lessee to City and third parties for any claims, damages, losses, or costs arising out of or related to acts performed by Licensee under this Agreement will be governed by the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301, *et seq.*

29.2 Entire Agreement. This Agreement represents and constitutes the entire understanding between the parties and supersedes all other Agreements, agreements, and communications between the parties, whether oral or written, concerning the subject matter herein. Any amendment to this Agreement must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

29.3 Binding Effect. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

29.4 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Agreement.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2018, at Chattanooga, Hamilton County, Tennessee.

CITY OF CHATTANOOGA, TENNESSEE

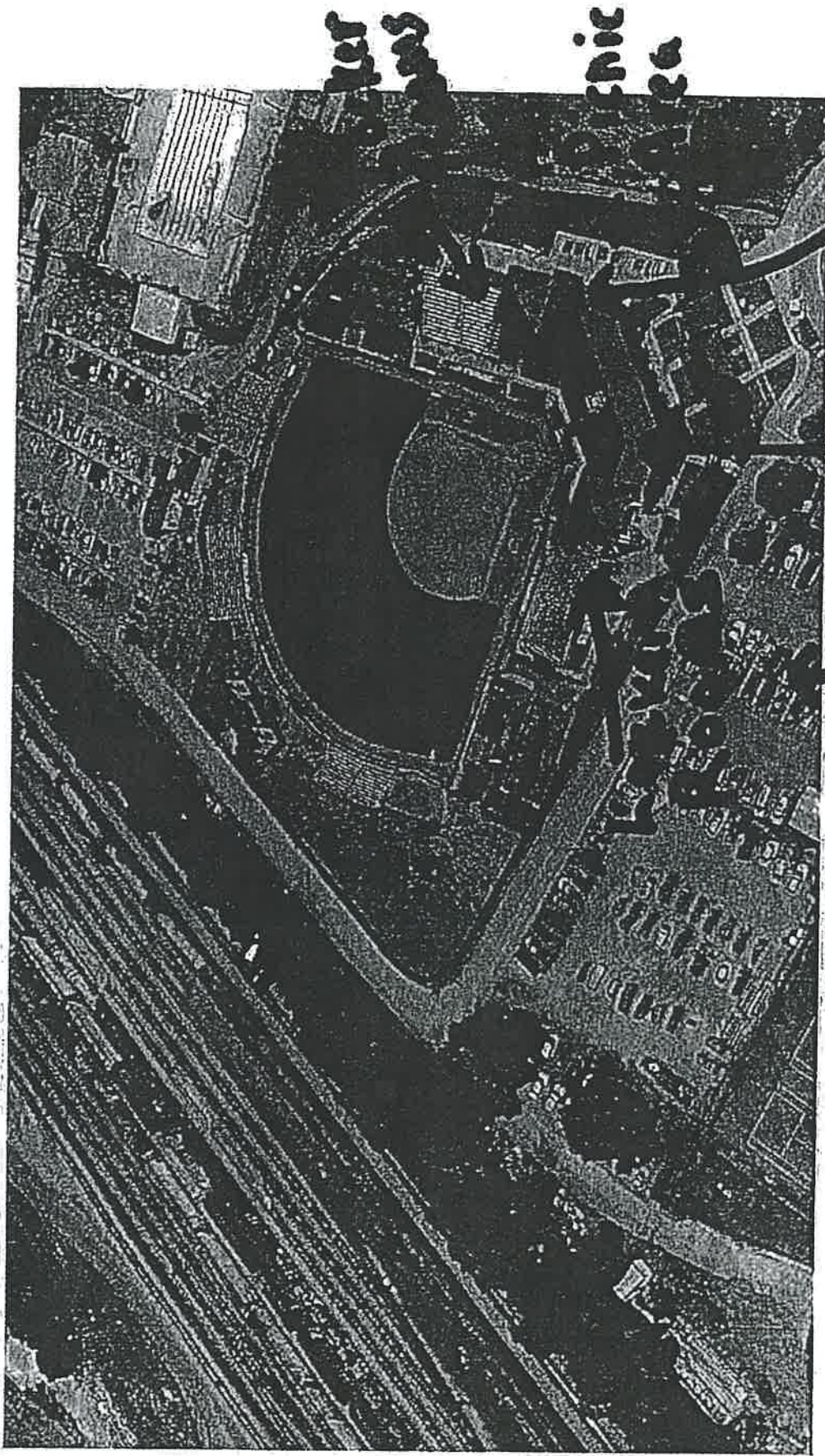
By: \_\_\_\_\_  
ANDY BERKE, Mayor

UNIVERSITY OF TENNESSEE

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1101 McCallie Ave - Google Maps

Google Maps 1101 McCallie Ave



**Parking** Jim Frost B+H Suite(2)  
(2nd) Suite  
Lawn  
Picnic Area  
Net

<https://www.google.com/maps/place/1101+McCallie+Ave,+Chattanooga,+TN+37404/@35.0397505,-85.2857798,216a,35y,39t/data=!3m1!1e3!1m2!1s1101+McCallie+Ave,+Chattanooga,+TN+37404!1s1101+McCallie+Ave,+Chattanooga,+TN+37404> 1/12/2018



1st Floor Frost STADIUM

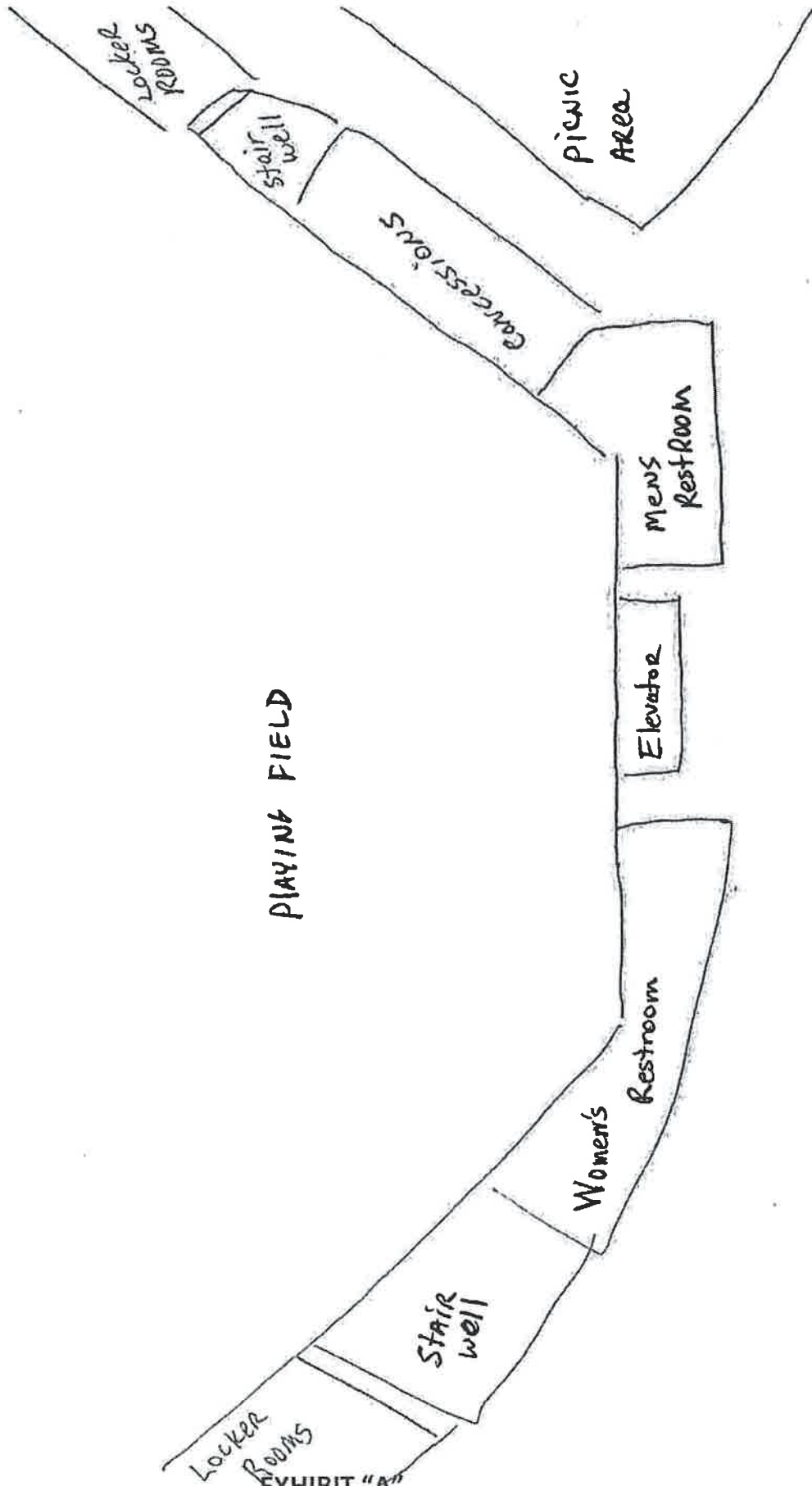


EXHIBIT "A"

2ND Floor Frost Stadium

