

## NAMING RIGHTS AGREEMENT

THIS NAMING RIGHTS AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CLINTON RECREATIONAL AUTHORITY ("Owner") and \_\_\_\_\_ (Walt Schumacher). The following recitals form the basis for this Agreement and are made a material part hereof.

A. Owner owns and operates a sports complex which consists of several athletic fields ("Fields"), which Fields are depicted in Exhibit A hereto.

B. The Fields are located in Clinton, Oklahoma and it is currently known as Acme Brick Park.

C. Owner is in the process of constructing the Fields.

D. The City has established a schedule of prices for the Naming Rights of certain items within the ball fields at Acme Brick Park, attached hereto as Exhibit C.

E. Walt Schumacher and Owner are desirous of entering into an agreement whereby, in exchange for Walt Schumacher's agreement to contribute the Rights Fee (as hereinafter defined) to "*Clinton Recreational Authority*," as described in this Agreement, Owner shall be required to use the designation "Schumacher Fields at Acme Brick Park" exclusively as the name of the Entrance to Playing Field Area, as defined in Resolution No. 770 as approved by the Clinton City Council, in accordance with the terms and conditions set forth herein, and solely for that purpose will Walt Schumacher grant to Owner certain rights in Walt Schumacher's intellectual property.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and considerations in the Agreement and below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Walt Schumacher agree as follows:

1. Term.

The initial term of this Agreement ("Initial Term") shall commence on the date hereof and shall end on the twenty fifth (25th) anniversary of the date of this Agreement. Upon at least sixty (60) days written notice to Owner prior to the expiration of Initial Term, Walt Schumacher shall have the right to renew this Agreement for an additional twenty five (25) years ("Renewal Term") for a payment of 10% of the original amount of the agreement (\$30,000). For purposes of this Agreement, the "Term" shall mean the Initial Term or Renewal Term, as applicable.

## 2. Placement and Use of Name.

During the Term, Owner hereby agrees to display the Intellectual Property in accordance with the graphics and color guidelines established by Walt Schumacher and provided to Owner, as identified in Exhibit B, provided that such guidelines shall be subject to the reasonable consultation with Owner. Owner further agrees, without limitation, as follows:

(a) To cause the Logo to be mentioned and displayed in connection with all public service announcements originated by Owner; and

(b) To use its best efforts to cause the Logo to appear on all Printed Materials to the extent that the preparation or purchase of such Printed Materials are originated by Owner.

With regard to the foregoing requirements, the parties agree to act in good faith to agree upon the exact size, location and/or depiction of the Logo to be employed by Owner, it being agreed that Owner shall be responsible for all of the costs and expenses for installation and maintenance of the foregoing signage. All signage provided hereunder shall be maintained in first-class condition and, as reasonably necessary, replaced at Owner's cost. The parties acknowledge and agree that Owner has the right to use "Schumacher Fields at Acme Brick Park" as the name of the Complex, provided, however, that (i) the name of the Complex shall not be changed without Walt Schumacher's prior written approval. Subject to the terms of this Agreement, Walt Schumacher hereby approves Owner's use of "Schumacher Fields at Acme Brick Park" to identify the Fields.

## 3. Rights Fee.

In consideration for the rights granted under this Agreement, Walt Schumacher hereby agrees to contribute to *Clinton Recreational Authority* a Rights Fee in the aggregate amount of \$300,000. A first installment of such Rights Fee in the amount of \$100,000 shall be due and payable upon execution hereof, a second installment of \$100,000 shall be due and payable one year from the date of the execution of this agreement, and the third and final installment of \$100,000 shall be due and payable on the second anniversary of the execution of this agreement. Schumacher may choose to pay the full fee at the time of execution or at any point before the second anniversary without penalty and will have no effect on any other part, section, or term of this agreement. It is the intent of the parties hereto that the contributions by Walt Schumacher hereunder shall be deductible from federal, state and local income taxes to the fullest extent allowed by law. **Any findings or rulings regarding the deductibility of the contributions by Walt Schumacher shall not affect the validity of this agreement.**

## 4. Default and Remedies.

(a) In the event that Walt Schumacher fails to pay any installment of the Rights Fee when due, and such failure continues for a period of fifteen (15) days after written notice to Walt Schumacher, or in the event Walt Schumacher fails to comply with any obligation of Walt Schumacher herein contained and such failure continues for a period of thirty (30) days after written notice to Walt Schumacher, Owner shall be entitled to exercise any or all of the following remedies:

(i) If and only if such failure is material (for this purpose nonpayment of all or part of the Rights Fee for said fifteen (15) days shall be deemed material), to cause the Term to end on a date designated in such notice, which date may not be less than ninety (90) days after the date of such notice; or

(ii) To seek an appropriate legal or equitable remedy from a court of competent jurisdiction.

(b) The following shall constitute "Owner Defaults" hereunder:

(i) If Owner shall fail to comply with any of its material obligations under this Agreement, which failure shall continue for a period of thirty (30) days after notice thereof to Owner from Walt Schumacher; provided, however, if such failure is not reasonably curable within thirty (30) days, Owner shall be afforded a reasonable period of time to cure or remedy such failure so long as Owner in good faith is attempting, at all reasonable times during such period, to cure such failure; or

(ii) If Owner shall utilize as the name of the Fields any name other than the Logo.

Upon the occurrence of an Owner Default, Walt Schumacher shall have the right to any one or more of the following remedies: (1) to terminate this Agreement, (2) to receive a retroactive adjustment of the Rights Fee in accordance with the number of days from and after the date of this Agreement through and including the date on which the Owner Default occurred, and (3) to seek an appropriate legal or equitable remedy from a court of competent jurisdiction.

#### 5. Assignment.

Neither party shall transfer or assign its rights or obligations under this Agreement without the other party's prior written consent.

#### 6. Equitable Relief.

Owner acknowledges that the rights and privileges granted to Walt Schumacher hereunder are special, unique, extraordinary and impossible of replacement, which gives them a peculiar value, the loss of which could not be reasonably or adequately compensated in damages in an action at law, and that Owner's failure or refusal to perform its obligations hereunder would cause Walt Schumacher irreparable loss and



construed, taken, or held to be a waiver of any other default, or waiver, acquiescence in, or consent to any further or succeeding default of the same nature.

(d) Attorneys' Fees. In the event that either party is required to commence any legal proceedings to enforce the provisions hereof or to seek any other legal redress, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred in connection herewith.

(e) Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully expressed in the Agreement.

(f) Reasonableness. Wherever either party to this Agreement is required to approve or consent to or be satisfied as to any matter, such party agrees that such approval, consent or satisfaction shall not unreasonably be withheld or delayed.

(g) Choice of Laws. This Agreement shall be interpreted under the laws of the State of Oklahoma. Any actions concerning interpretation or enforcement of this Agreement shall be brought in the District Court of Custer County, Oklahoma.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Apex, Inc.

CITY OF CLINTON

\_\_\_\_\_  
Walt Schumacher, President

\_\_\_\_\_  
Lynn E. Norman, Mayor

Attest:

Attest:

\_\_\_\_\_  
, Secretary

\_\_\_\_\_  
Lisa Anders, City Clerk

\_\_\_\_\_  
Walt Schumacher, Personally

\_\_\_\_\_  
Carolyn Schumacher, Personally