

## NON-EXCLUSIVE REVOCABLE LICENSE AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is between the CITY OF BOULDER PARKS AND RECREATION DEPARTMENT (the “City”), and **DIAMOND BASEBALL OF BOULDER, INC.**, a Colorado nonprofit corporation, (“Licensee”) and is entered into effective as of \_\_\_\_\_, 2014 (“Effective Date”).

### RECITALS

A. The City owns real property including and limited to a baseball field and baseball-related facilities including bleachers, press box, restrooms, dugouts and lights, referred to collectively as the Scott Carpenter Park Ball Field in Scott Carpenter Park located at 1500 30<sup>th</sup> Street, Boulder Colorado, which is depicted in **Exhibit A** attached hereto and incorporated by reference (the “Property”). The City is authorized by law to organize, promote, and conduct community recreation programs; to establish park areas, playgrounds, and recreational facilities; and to acquire, improve, maintain, and operate such park areas, playgrounds, and recreation facilities.

B. Founded in 1994, Licensee is a nonprofit committed to supporting youth baseball at Boulder High School and its feeder programs and to operating, maintaining and improving the fields and facilities utilized by the Boulder High School baseball program, said nonprofit having and maintaining valid nonprofit exemption status pursuant to the IRS as evidenced by the designation letter attached hereto and incorporated by reference as **Exhibit B**.

C. Subject to the terms and conditions of prior agreements entered into by the City, the Boulder Valley School District and Licensee, Licensee was authorized and did previously have the authority to fundraise toward, improve, develop, use, and maintain the Property for the purposes of baseball programming and for the benefit of the Boulder community since 2004.

D. That said agreements reached a successful completion on or about June 23, 2014, to wit:

I. Licensee has, through its fundraising, coordinated volunteerism and construction efforts, implemented Property enhancements and maintenance worth approximately \$350,000 in capital improvements (and approximately \$150,000 in labor maintenance) to the Park since 2004 including, but not limited to an improved irrigation system, new outfield fencing, a new playing surface, a new scoreboard, batting cages, new foul poles, light pole relocation, new sidewalk, a hitting shell and new dugouts.

II. Licensee has, during that same period, worked in good faith with the City to operate, maintain and program inclusive youth baseball programming that benefits the Community and desires to continue doing the same.

E. That said prior agreements, having expired, are no longer in force and effect and that both the City and Licensee desire continued operation for the improvement, development and common use and maintenance of the Property during the summer months.

F. Pursuant to this Agreement, the City has the right to grant to Licensee a non-exclusive revocable license to use the Property, fund and implement additional capital improvements described herein, all pursuant to terms and conditions consistent with this Agreement.

G. In compliance with Charter 164 and section 8-3-2 of the Boulder Revised Code, the Parks and Recreation Advisory Board shall approve any interest in or on park lands whose term does not exceed three years, as may be recommended to it by the city manager. Longer lease term periods require city council approval.

### Agreement

NOW, THEREFORE, in consideration of the foregoing background recitals and the mutual promises of the parties set forth in this Agreement, the parties agree as follows:

1. Purpose. The City and Licensee enter into this Agreement to provide for the use, improvement, development, and maintenance of the Property as a City of Boulder public baseball amenity.

2. Term. Subject to terms herein, the term of this Agreement shall commence on December 16, 2014 and shall end on November 15, 2017, (“Initial Term”) unless sooner terminated as hereinafter provided. The City may, at its option, elect to extend the term of this Agreement for two (2) additional one (1) year periods (each and “Extension Period”) to commence upon the expiration of the Initial Term or the Extension Period then in effect. The City shall provide written notice of its decision regarding extension to Licensee not less than ninety (90) days prior to expiration of the Initial Term. Licensee shall thereafter provide written notice to the City within thirty (30) days, if it similarly desires to extend. The Extended Term, if any, shall be governed by the same provisions and conditions as the initial term, unless revisions are mutually agreed to by the parties in writing.

3. City Ownership. Unless otherwise set forth in this Agreement, the Parties agree that the Property, including any capital features, infrastructure, buildings or amenities existing at the time of execution of this Agreement or improved or amended as a result of this Agreement, shall remain with the land on which the improvements are located and shall be considered the property of the City. The parties agree that there will be no presumption of property interest on the part of Licensee as a result of this Agreement.

4. Construction of Capital Improvements. Licensee has identified certain capital improvements it seeks to implement on the Property which, in the City’s opinion, would improve the safety, sustainability and public visiting experience at the Property and which are more fully described in Exhibit C attached hereto (the “Improvements”).

4.1 The Parties agree to coordinate the design and completion of the Improvements. All Improvements shall be reviewed and approved by the City in writing, within forty-five (45) days after submission thereof to the City. Upon receipt of all approvals, Licensee may fundraise for and seek required permits toward completion of said Improvements. The parties further agree that no construction of the Improvements will commence until funding for

their completion has been secured and that no changes will be made to the Property beyond the listed Improvements unless specifically agreed by the Parties in writing.

4.2 Following completion of the plans and specifications for implementation of the Improvements and receipt of related permits and the City's approval in writing, Licensee may implement the Improvements at the Property. The Improvements shall be (a) completed in conformity with specifications and construction documents developed by Licensee in cooperation with and subject to approval of the City; (b) performed by persons or entities selected by Licensee in accordance with City standard construction practices; (c) completed under the supervision of the Licensee with the City's project manager; and shall (d) be paid for with funds raised or donated by Licensee.

4.3 The construction contract shall provide that the Licensee's contractor perform the Improvements according to the Plans and Specifications related thereto. The City shall be designated as a third-Party beneficiary of the construction contract entitled to enforce all terms and provisions related to the Improvements. The City shall also be named an additional insured on all insurance policies required by the construction contract to the value and extent of the Improvements and shall be entitled to enforce all warranties related to the Improvements. Warranties shall be for a term of not less than two (2) year from final acceptance. The Licensee's contractor shall be required to indemnify the City to the same extent it indemnifies the Licensee for all the Improvements under the construction contract. City shall have the right to proceed directly against the Licensee's contractor.

4.4 The parties shall mutually determine the construction schedule and proposed completion dates for the Improvements.

4.5 Neither Licensee nor its contractor shall commence the work associated with the Improvements under this Agreement until obtaining all required City licenses and permits.

4.6 Prior to final payment of the contractor and any subcontractors working on the Property, Licensee will advertise a notice of final settlement at least twice in a newspaper of general circulation in Boulder County at least ten days prior to the date of its final payment to its contractor, as applicable and in accordance with Section 38-26-107, C.R.S.

4.7 Licensee acknowledges and agrees that the City may, in its sole discretion, make other capital improvements in order to ensure that the Property's safety, sustainability and operation as a public baseball facility is in good condition; provided, however, any such repairs and improvements, unless otherwise agreed to in advance by Licensee, shall be at the City's expense.

4.8 Upon termination of this Agreement, Licensee will leave the permanent improvements in their current condition, ordinary wear and tear excepted.

## 5. Licensee Use and Maintenance.

5.1 Licensee Maintenance. The parties agree that Licensee shall perform regular maintenance of the Property each summer season during the term of this Agreement as

set forth in Exhibit D (the “Required Maintenance”). To the extent that the City, in its sole discretion, is satisfied that Licensee properly and regularly performs the Required Maintenance, Licensee will be afforded priority scheduling of the Property for the purposes of youth baseball programming during the season as further described below.

5.2 Licensee Use. Licensee’s Use shall be defined for purposes of this Agreement as the right to use the Property during (a) the Summer Baseball Season, commencing after the conclusion of the CHSAA season and continuing through the third week in August of each year; (the “Season”); and (b) selected dates to be mutually determined by the City each year during the Term of this Agreement for tournaments, clinics, camps, try-outs, and showcases.

5.3 Scheduling. The parties agree to work together in good faith to avoid scheduling conflicts associated with public use, Licensee use and construction of the Improvements. A sample Season schedule is attached hereto as Exhibit E. In the event of a scheduling conflict, the parties will meet to discuss and consider impact on all interests. That notwithstanding, it is agreed by the parties that the City shall have final decision-making authority regarding scheduling of the Property.

5.4 Advertising. During the term of this Agreement, Licensee shall have the right to solicit sponsorships for their programming and towards funding construction of the Improvements. In advance of each Season during the Term, Licensee will submit information for the City’s written approval related to the intent to display secured sponsor advertising on the Property. This information shall include, but not be limited to, the design, material, size (which shall not exceed four foot by eight foot (4’ x 8’) panels), content, and proposed location of such advertising. The Parties agree that, generally, the Licensee may place said temporary advertising on interior facing temporary infrastructure at the Property including the scrim on fences and other impermanent infrastructure. All proposed advertising shall be consistent with City Codes and Licensee understands that it has no authority to rename or dedicate any portion of the Property. If requested by City written notice, all or portions of Licensee’s secured advertising shall be removed from the Property by Licensee. Licensee shall be entitled to retain any revenues that it derives from advertising at the Property so long as it uses the majority of said revenues in association with the cost of care, maintenance and construction projects described herein or performance of tax-exempt purposes to promote baseball by 19 and under age groups at the Property.

5.5 Concessions. Subject to Licensee’s compliance with applicable laws, City ordinances and/or Parks and Recreation Department rules related to the operation thereof, Licensee may place and operate a small temporary concession stand for the sole purpose of offering food and nonalcoholic beverages to visitors during game play associated with its programming on the Property. Placement of any concession location shall be subject to the City’s approval of reasonable design and mitigation measures including, but not limited to, size, location outside the designated floodway area, aesthetics, and capability of being moved (i.e. non-permanent). The final location of the floodway boundary shall be subject to the verification and approval of the City to ensure compliance with the City’s flood plain maps and regulations. A sample of the general type of concession facility contemplated by this paragraph is depicted in Exhibit C.

5.6 Storage and Equipment. Licensee agrees to abide by the City's requirements concerning storage and equipment at the Property attached hereto as **Exhibit E** ("Storage and Equipment").

6. **Maintenance and Utility Costs.**

6.1 Maintenance Expense. Licensee, at its own expense, agrees to maintain the Property each Season during the term of this Agreement as said Season is defined in Section 5.2 above and in accordance with the Required Maintenance set forth in **Exhibit D**. The parties agree that Licensee's per diem prorated expenses associated with the Property's care may be charged to third-party entities utilizing the Property during the Season and that said charges must be preapproved by the City in writing and may not be amended unless mutually agreed by the parties in writing.

6.2 Electricity. The cost of operation of the lights at the Property during each Season during the term of this Agreement will be billed directly to and be the responsibility of Licensee.

6.3 Water. The parties understand that water for the Property shall be provided to the Property at no cost by the City; provided, however, water usage shall be subject to all City-imposed allocations and drought restrictions and other limitations set by the City for water usage on property in the City ("Water Restrictions") to the extent uniformly and consistently applied to baseball fields that can be subjected to City-imposed Water Restrictions. Any additional charges for water shall be the responsibility of the party requesting or arranging additional water use from the City.

7. **Annual Review.** The parties shall meet not less than twice annually during the Term of this Agreement (once during the month of September and once during the month of May) to review Property condition at a time and place mutually agreed to by the Parties (the "Annual Review"). Either party may request an Annual review meeting by the delivery of written request to the other party which proposes a date and time for such meeting. The purpose of the Annual Review will be to assess the quality of Licensee's performed maintenance, to identify and agree upon additional planned capital improvements, to explore mutually acceptable means of financing those improvements, and assess any other compliance issues pursuant to the terms of this Agreement. That notwithstanding, the City retains the right to access the Property at any time, to monitor Licensee's activities and performance under this Agreement and to utilize or reserve the Property when not scheduled for Licensee's use and maintenance performance described herein.

8. **Restrictions and Regulations.** This License does not authorize Licensee to engage in any activity or use not expressly authorized under the terms of this License. The Licensee agrees to comply with City of Boulder Park Rules and all applicable Federal, State and Local laws.

9. **Default and Termination.** In the event that Licensee materially defaults in its obligations hereunder and such material default is not cured to the City's satisfaction within ninety (90) days of notice of default, the City may terminate this Agreement by the delivery of

written notice to Licensee. In such instance, the City shall provide written notice specifying the date upon which such termination is to be effective. Notwithstanding the foregoing, the Parties agree that the City may at any time and in its sole discretion, terminate this Agreement, in whole or in part, should a safety-related event outside of either Party's control (regardless of whether such event is related or unrelated to use of the Property), including, without limitation, fire, weather, unsafe conditions, water quality, volcano, explosion, flood, landslide, epidemic, acts of nature, war, terrorism, or other hostilities, strike, civil commotion, domestic or foreign governmental acts, orders, or regulations arises making the Property unsafe for use or operation. The parties further agree that Licensee may opt to terminate this Agreement on ninety (90) days written notice to the City in an effort mitigate Licensee's scheduling conflict risks as described herein.

10. **Liability.**

10.1 **Supervision.** The parties agree that neither assumes any responsibility hereunder for providing supervision for participants, employees, or volunteers of any activities under the control of, sponsored by, or conducted by the other party on the Property. During any portion of the Term when the Property is occupied or in use by Licensee in the performance of any activities described herein or any sponsored activity or program, Licensee in each instance shall be responsible for all necessary supervisory or instructional personnel required for such programs.

10.2 **Recreational Exemption.** It is the intention of the parties to make the Property available to the public for recreational purposes and to limit the parties' liability toward persons entering thereon for such purposes pursuant to Colorado Revised Statutes §§ 33-41-101 et seq. in the event that either or both of the parties would otherwise be liable. Both parties shall require all persons or entities, who are granted the use of the Property, to provide General Public Liability and Property Damage Insurance with coverage and policy limits consistent with those required by section 11 "Insurance" below.

10.3 **Notice of Defects.** Each party agrees to notify the other, within a reasonable time frame, of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage. Within fifteen (15) days after any litigation is commenced against either party that contains allegations against the other, the Parties will meet to explore efficiencies and determine the course of action in providing a defense, including, but not limited to, the potential for a joint defense.

11. **Insurance.** Licensee agrees to procure and maintain in force during the term of this Agreement at its own cost, the following minimum coverages:

A. General Liability

- |  |             |
|--|-------------|
| i. General Aggregate Limit:                                  | \$2,000,000 |
| ii. Bodily Injury & Property Damage<br>Each Occurrence Limit | \$2,000,000 |

The policy shall be on an Occurrence Form. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

B. Insurance shall:

- i. Provide primary coverage.
- ii. Include the City of Boulder and its elected officials and employees as additional insureds as their interests may appear. Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability.
- iii. Issue from a company licensed to do business in Colorado having an AM Best rating of at least A-VI.
- iv. Be procured and maintained in full force and effect for duration of work.

C. Certificates of Insurance shall be forwarded to Parks and Recreation. Certificate Holder shall be the City of Boulder at 1777 Broadway, P.O. Box 791, Boulder, CO 80306.

D. Within 7 days after receiving insurer's notice of cancellation or reduction in coverage, Licensee or its insurance broker, shall notify City. In either such case, Licensee shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

12. **Indemnification**. The Licensee agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Agreement, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of the Licensee's operations in connection with this Agreement, including operations of sub-contractors and acts or admissions of employees or agents of the Licensee or its sub-contractor.

13. **Governmental Immunity**. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

14. **No Third Party Beneficiaries.** The covenants and agreements contained in this Agreement are for the benefit of the Licensee and the City only, and do not create any obligations or duties to persons not parties hereto.

15. **Notices.** Any notice required by this Agreement shall be in writing, made by hand-delivery or certified mail, return receipt requested, and addressed to the following:

CITY:

City of Boulder Parks and Recreation  
c/o Jeff Dillon, Director – Parks and Recreation and  
Jeff Haley, Planning Manager – Parks and Recreation  
P.O. Box 791  
Boulder, Colorado 80306  
303-441-7242

LICENSEE:

Diamond Baseball of Boulder, Inc.  
c/o Kent Dinkel, President  
3550 16<sup>th</sup> Street  
Boulder, Colorado 80304

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Licensee or the City Manager as aforesaid.

13. **Assignment.** Licensee covenants and agrees not to assign, pledge or transfer its rights in this License, nor grant a license hereunder, except to any affiliate corporation or successor-in-interest.

14. **Colorado Law and Venue.** This License shall be deemed to have been granted in and shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce the provisions of this License shall be in the District Court in and for the County of Boulder, Colorado.

15. **No Multiple Fiscal Year Obligations.** Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Licensee of any failure to appropriate such adequate monies.

16. **Review of Records.** Subject to a requirement of confidentiality in the treatment of all confidential financial data and the Licensee's internal memoranda, and privileged

documents, the Licensee shall permit the City to audit or inspect its records during the term of this Agreement, for a period of three (3) years following the term of this Agreement, and for such further periods as may be necessary to resolve any matters which may be pending at that time. Any audit conducted shall be at the sole expense of the City.

17. **Severability**. Should any paragraph or any subparagraph of this License be held invalid as a matter of law none of the remaining paragraphs or subparagraphs shall be affected thereby.

18. **Authority**. The parties represent that the individuals signing this Agreement on their behalf possess full power and authority to sign this Agreement in compliance with Colorado law.

19. **Approvals**. This License shall not be effective until approved by the City Manager.

This agreement is signed this \_\_\_\_\_ day of December 2014.

*[signature page to follow]*

LICENSEE

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

Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

SUBSCRIBED AND SWORN to before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ (Licensee name) as \_\_\_\_\_ (Licensee title).

Witness my hand and official seal.  
My Commission Expires:

\_\_\_\_\_  
Notary Public

(SEAL)

CITY OF BOULDER

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

## **EXHIBITS**

**A**

**PROPERTY MAP, DESCRIPTION AND EXISTING CONDITIONS**

**B**

**DBOB NONPROFIT DESIGNATION LETTER**

**C**

**THE IMPROVEMENTS**

**D**

**REQUIRED MAINTENANCE**

**E**

**STORAGE AND EQUIPMENT**

**F**

**SAMPLE SEASON SCHEDULE (2015)**

**EXHIBIT A**

Scott Carpenter Ballfield Approximate value 1.2 to 1.5 Mil.

Points							
ASSETID	PARKID	Type	SubType	ASSET_MATERIAL	CONDITION	OWNERSHIP	NOTES
6298	73	Drinking Fountain	Drinking Fountain	Stone	3 - Standard	Recreation Department	Drinking Fountain (Not Working)
6299	73	Sign	Sign	Metal	3 - Standard	Recreation Department	Electronic Scoreboard
ASSETID	PARKID	Type	SubType	ASSET_MATERIAL	CONDITION	OWNERSHIP	NOTES
6300	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	West Dugout Ballfield Lighting
6301	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	West Fence Ballfield Lighting
6302	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	Right Field Ballfield Lighting
6303	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	Left Center Field Ballfield Lighting
6304	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	Left Field Corner Ballfield Lighting
6305	73	Light Pole	Light Pole	Metal	3 - Standard	Recreation Department	Left Field Fence Line Ballfield Lighting

Areas								
ASSETID	PARKID	TYPE	SUBTYPE	ASSET_MATERIAL	CONDITION	NOTES	ITEM_COST	SHAPE AREA
563	73	Building	Score Box	Concrete Block	3 - Standard	Scott - Score keeper and storage building	\$86,582.00	750.598967
660	73	Outdoor Recreation F	Dugout	Concrete Block	3 - Standard	Scott Carpenter North Dugout	\$33,000.00	507.574788
661	73	Outdoor Recreation F	Dugout	Concrete Block	3 - Standard	Scott Carpenter West Dugout	\$33,000.00	422.280544
662	73	Outdoor Recreation F	Scott Carpenter Ball Field	Metal	3 - Standard	West Bleachers	\$3,000.00	407.071539
663	73	Outdoor Recreation F	Scott Carpenter Ball Field	Metal	3 - Standard	Center Bleachers	\$4,500.00	658.009896
664	73	Outdoor Recreation F	Scott Carpenter Ball Field	Metal	3 - Standard	Scott Carpenter North Bleachers	\$3,000.00	386.82709
1962	73	Hardicape	Asphalt	Asphalt	2 - Below Standard	Scott Carpenter Ballfield Spectator area.	\$109,230.00	10923.79197
							<u>\$272,312.00</u>	

Turf		
Infield	5,792.00	
Infield	1,006.00	
Outfield	<u>80,750.00</u>	
Total	87,548.00 sq.ft.	\$131,322.00

Surfacing	
11,500.00 Sq. Ft. Skinned Infield	
5,060.00	
600.00	
3,900.00	
7,700.00	
17,260.00 Sq. Ft. Runout track	(Poor Condition)

Linear							
ASSETID	PARKID	TYPE	SUBTYPE	ITEM_COST	CONDITION	LENGTH	NOTES
672	73	Fence	Chain Link	\$66,645.00	3 - Standard		1481 Ballfield Fence
673	73	Fence	Chain Link	\$23,240.00	3 - Standard		332 Out of the park hits - Steel posts and mesh
732	73	Fence	Chain Link	\$30,000.00	3 - Standard		162 Backstop
				<u>\$119,885.00</u>			



**EXHIBIT B**

 **IRS** Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati OH 45201

In reply refer to: 0240651232  
May 15, 2012 LTR 4160C E0  
84-1253794 000000 00  
00018298  
BODC: TF

  
DIAMOND BASEBALL OF BOULDER INC  
% JIM GREGORICH  
1111 J ST  
BOULDER CO 80302

031741

Employer Identification Number: 84-1253794  
Person to Contact: Mr. Kelley  
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayers:

This is in response to your May 04, 2012, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in June 1995.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website [www.irs.gov/eo](http://www.irs.gov/eo) for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248651732  
May 15, 2017 LTR 4168C FD  
B4-1253794 000000 00  
00010299

DIAMOND BASEBALL OF BOULDER INC  
% JIM GREGORICH  
1111 J ST  
BOULDER CO 80302

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

*Doris Kenwright*

Doris Kenwright, Operation Mgr.  
Accounts Management Operations 1

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
1100 COMMERCE STREET  
DALLAS, TX 75242-0060

DEPARTMENT OF THE TREASURY

Date: JUN 20 1985

DIAMOND BASEBALL OF BOULDER INC  
C/O KAREN A PORRECA  
465 OAKWOOD PLACE  
SCHLEIER, CO 80304

Employer Identification Number:  
84-1253794  
Case Number:  
755122060  
Contact Person:  
ANNETTE SMITH  
Contact Telephone Number:  
(214) 767-6023  
Accounting Period Ending:  
December 31  
Form 990 Required:  
Yes  
Addendum Applies:  
Yes

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status and foundation status. In the case of an amendment to your organizational document or bylaws, please send us a copy of the amended document or bylaws. Also, you should inform us of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes. If you have any questions about excise, employment, or other Federal taxes, please let us know.

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

Donors may deduct contributions to you as provided in section 170 of the

Letter 947 (DO/OG)

**DIAMOND BASEBALL OF BOULDER, INC.**

Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Contribution deductions are allowable to donors only to the extent that their contributions are gifts, with no consideration received. Ticket purchases and similar payments in conjunction with fundraising events may not necessarily qualify as deductible contributions, depending on the circumstances. See Revenue Ruling 67-246, published in Cumulative Bulletin 1967-2, on page 104, which sets forth guidelines regarding the deductibility, as charitable contributions, of payments made by taxpayers for admission to or other participation in fundraising activities for charity.

In the heading of this letter we have indicated whether you must file Form 990, Return of Organization Exempt From Income Tax. If Yes is indicated, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. However, if you receive a Form 990 package in the mail, please file the return even if you do not exceed the gross receipts test. If you are not required to file, simply attach the label provided, check the box in the heading to indicate that your annual gross receipts are normally \$25,000 or less, and sign the return.

If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$10 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$5,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-B, Return of Organization Business Income Tax Return. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

This determination is based on evidence that your funds are dedicated to the purposes listed in section 501(c)(3) of the Code. To assure your continued exemption, you should maintain records to show that funds are expended only for those purposes. If you distribute funds to other organizations, your records should show whether they are exempt under section 501(c)(3). In cases where the recipient organization is not exempt under section 501(c)(3), there should be evidence that the funds will remain

Letter 947 (D0/CS)

STANLEY BASERALL OF BOULDER INC

dedicated to the required purposes and that they will be used for those purposes by the recipient.

If distributions are made to individuals, case histories regarding the recipients should be kept showing names, addresses, purposes of awards, manner of selection, relationship (if any) to members, officers, trustees or donors of funds to you, so that any and all distributions made to individuals can be substantiated upon request by the Internal Revenue Service. (Revenue Ruling 56-304, I.R.B. 1956-2, page 206.)

If we have indicated in the heading of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Bobby E. Scott  
District Director

Enclosure(s):  
Addendum

Letter 947 (DG/CG)

-2-

DIAMOND BASEBALL OF BOULDER INC

In this letter, we have not determined the effect on your tax-exempt status of financing your activities with the proceeds of tax-exempt bonds since you have not indicated that you intend to use such methods now or in the future.

Letter 947 (DC/CG)

 **IRS** Department of the Treasury  
Internal Revenue Service  
P.O. Box 7508  
Cincinnati OH 45201

In reply refer to: 0240651232  
May 15, 2012 LTR 4168C E0  
84-1253794 000000 00

00018298  
BODC: TF

 **DIAMOND BASEBALL OF BOULDER INC**  
\* JIM GREGORICH  
1111 J ST  
BOULDER CO 80302

031741

Employer Identification Number: 84-1253794  
Person to Contact: Mr. Kelley  
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your May 04, 2012, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in June 1995.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website [www.irs.gov/eo](http://www.irs.gov/eo) for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248651232  
May 15, 2012 LTR 4168C FO  
B4-1253794 000000 00  
00010299

DIAMOND BASEBALL OF BOULDER INC  
% JIM GREGORICH  
1111 J ST  
BOULDER CO 80302

If you have any questions, please call us at the telephone number  
shown in the heading of this letter.

Sincerely yours,

*Doris Kenwright*

Doris Kenwright, Operation Mgr.  
Accounts Management Operations 1

**EXHIBIT C**

## EXHIBIT C

### Proposed Improvements to Scott Carpenter Ballfield

Following is a list of park improvements needed to a) improve safety b) reduce waste c) better accommodate baseball:

- Improve or replace bleacher stands for safety and capacity
- Increase storage
  - Provides protection for field supplies from weather.
  - Provides additional storage to support baseball and concession supplies
- Repair warning track to increase safety
- Enhance sprinkler system to conserve water
- Repair outfield lights
- Expand press box for additional uses
- Repair or replace water fountain
- Resurface spectator area to improve drainage

## EXHIBIT D

### REQUIRED MAINTENANCE

1. **Turf Care.**
  - a. Outfield turf will be mowed and trimmed twice each week during the optimal growing season.
  - b. Maintenance to replace outfield turf or to reseed in worn areas will be done on an as-needed basis by the Licensee. Holes in outfield turf will be filled within 24 hours of notification.
  - c. Weeds in outfield playing areas will be treated by Licensee by mechanical or spot spray control methods only, consistent with applicable City Integrated Pesticide Management (“IPM”) Guidelines.
  - d. Outfield turf will be treated for diseases by Licensee as needed to prevent the spread of turf disease to other healthy turf areas, consistent with applicable City IPM Guidelines.
2. **Irrigation.** Irrigation systems will be operated and maintained by the City or its designee.
3. **Trash Removal.** Trash barrels will be emptied a minimum of once each day during in-season use of the Property, and once each week during the off-season by the party using the Property. Licensee shall comply with any recycling plan developed by the City for the Property.
4. **Infield Maintenance.**
  - a. During Licensee Use, Licensee shall perform infield turf maintenance in the same manner as described above for outfield turf maintenance. After each day’s play during Licensee Use, Licensee shall drag the infield, provide hand-raking as needed, and line the field.
  - b. Licensee shall mow the infield at least twice each week during Licensee Use.
  - c. Licensee shall maintain a flush surface between the infield/outfield boundary and around the infield boundary on an as needed basis or at least once each year.
5. **Clean-Up.** In the event of any flooding, wind damage, vandalism or other property damage to the Property, and the City shall be jointly responsible (in proportion to their respective use) for the uninsured costs incurred in removing debris and restoring the Property. Reasonable apportionment shall be determined in consultation with representatives of each party. Any damage that is caused by a party during that party’s use, shall be repaired or restored by that party.





# ADDITIONAL INTEREST SCHEDULE

DATE (MM/DD/YYYY)  
01/10/2014

AGENCY		CARRIER United States Fire Insurance Company		NAIC CODE 21113
POLICY NUMBER SRPGP-101-0413/USP137422	EFFECTIVE DATE 01/13/2014	NAMED INSURED(S) Diamond Baseball of Boulder, Inc.		

## ADDITIONAL INTEREST (Not all fields apply to all scenarios – provide only the necessary data)

<b>INTEREST</b> <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> BEACH OF WARRANTY <input type="checkbox"/> CO-OWNER <input type="checkbox"/> EMPLOYEE AS LESSOR <input type="checkbox"/> LEASEBACK OWNER <input type="checkbox"/> LIENHOLDER  <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> OWNER <input type="checkbox"/> REGISTRANT <input type="checkbox"/> TRUSTEE	NAME AND ADDRESS RANK: _____ EVIDENCE: _____ CERTIFICATE _____ POLICY _____ SEND BILL _____ City of Boulder P. O. Box 791 Boulder, CO 80306	INTEREST IN ITEM NUMBER LOCATION: _____ BUILDING: _____ VEHICLE: _____ BOAT: _____ AIRPORT: _____ AIRCRAFT: _____ ITEM CLASS: _____ ITEM: _____ ITEM DESCRIPTION _____
	REFERENCE / LOAN #: _____ INTEREST END DATE: _____ LIEN AMOUNT: _____ PHONE (A/C, No, Ex): _____ FAX (A/C, No): _____	REASON FOR INTEREST: _____ E-MAIL ADDRESS: _____

<b>INTEREST</b> <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> BEACH OF WARRANTY <input type="checkbox"/> CO-OWNER <input type="checkbox"/> EMPLOYEE AS LESSOR <input type="checkbox"/> LEASEBACK OWNER <input type="checkbox"/> LIENHOLDER  <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> OWNER <input type="checkbox"/> REGISTRANT <input type="checkbox"/> TRUSTEE	NAME AND ADDRESS RANK: _____ EVIDENCE: _____ CERTIFICATE _____ POLICY _____ SEND BILL _____ Boulder County, Risk Management Division P. O. Box 471 Boulder, CO 80306	INTEREST IN ITEM NUMBER LOCATION: _____ BUILDING: _____ VEHICLE: _____ BOAT: _____ AIRPORT: _____ AIRCRAFT: _____ ITEM CLASS: _____ ITEM: _____ ITEM DESCRIPTION _____
	REFERENCE / LOAN #: _____ INTEREST END DATE: _____ LIEN AMOUNT: _____ PHONE (A/C, No, Ex): _____ FAX (A/C, No): _____	REASON FOR INTEREST: _____ E-MAIL ADDRESS: _____

<b>INTEREST</b> <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> BEACH OF WARRANTY <input type="checkbox"/> CO-OWNER <input type="checkbox"/> EMPLOYEE AS LESSOR <input type="checkbox"/> LEASEBACK OWNER <input type="checkbox"/> LIENHOLDER  <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> OWNER <input type="checkbox"/> REGISTRANT <input type="checkbox"/> TRUSTEE	NAME AND ADDRESS RANK: _____ EVIDENCE: _____ CERTIFICATE _____ POLICY _____ SEND BILL _____ Boulder Valley School District P. O. Box 9011 Boulder, CO	INTEREST IN ITEM NUMBER LOCATION: _____ BUILDING: _____ VEHICLE: _____ BOAT: _____ AIRPORT: _____ AIRCRAFT: _____ ITEM CLASS: _____ ITEM: _____ ITEM DESCRIPTION _____
	REFERENCE / LOAN #: _____ INTEREST END DATE: _____ LIEN AMOUNT: _____ PHONE (A/C, No, Ex): _____ FAX (A/C, No): _____	REASON FOR INTEREST: _____ E-MAIL ADDRESS: _____

<b>INTEREST</b> <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> BEACH OF WARRANTY <input type="checkbox"/> CO-OWNER <input type="checkbox"/> EMPLOYEE AS LESSOR <input type="checkbox"/> LEASEBACK OWNER <input type="checkbox"/> LIENHOLDER  <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> OWNER <input type="checkbox"/> REGISTRANT <input type="checkbox"/> TRUSTEE	NAME AND ADDRESS RANK: _____ EVIDENCE: _____ CERTIFICATE _____ POLICY _____ SEND BILL _____ 5735 Arapahoe LLC 621 17th Street, Suite1777 Denver, CO 80293	INTEREST IN ITEM NUMBER LOCATION: _____ BUILDING: _____ VEHICLE: _____ BOAT: _____ AIRPORT: _____ AIRCRAFT: _____ ITEM CLASS: _____ ITEM: _____ ITEM DESCRIPTION _____
	REFERENCE / LOAN #: _____ INTEREST END DATE: _____ LIEN AMOUNT: _____ PHONE (A/C, No, Ex): _____ FAX (A/C, No): _____	REASON FOR INTEREST: _____ E-MAIL ADDRESS: _____

<b>INTEREST</b> <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> BEACH OF WARRANTY <input type="checkbox"/> CO-OWNER <input type="checkbox"/> EMPLOYEE AS LESSOR <input type="checkbox"/> LEASEBACK OWNER <input type="checkbox"/> LIENHOLDER  <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> OWNER <input type="checkbox"/> REGISTRANT <input type="checkbox"/> TRUSTEE	NAME AND ADDRESS RANK: _____ EVIDENCE: _____ CERTIFICATE _____ POLICY _____ SEND BILL _____   	INTEREST IN ITEM NUMBER LOCATION: _____ BUILDING: _____ VEHICLE: _____ BOAT: _____ AIRPORT: _____ AIRCRAFT: _____ ITEM CLASS: _____ ITEM: _____ ITEM DESCRIPTION _____
	REFERENCE / LOAN #: _____ INTEREST END DATE: _____ LIEN AMOUNT: _____ PHONE (A/C, No, Ex): _____ FAX (A/C, No): _____	REASON FOR INTEREST: _____ E-MAIL ADDRESS: _____

The above are added as additional insured but only with respect to liability arising out of operations of the named insured during the policy period.