AGENDA
ARKANSAS STATE UNIVERSITY
BOARD OF TRUSTEES
Friday, April 10, 2015
10:30 a.m.
Teleconference

I. Call to Order
   Charles Luter, Chair

*II. Agenda

   • Proposed ASU-Jonesboro Resolution
     • Resolution approving ASU-Jonesboro to enter into a lease agreement with the NEA Sports Club

III. Other Business

*IV. Adjournment

*Action Items
EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1004

ACTION ITEM: Arkansas State University-Jonesboro (ASUJ) requests approval to enter into a lease agreement with the NEA Sports Club.

ISSUE: The Board of Trustees approves lease agreements.

BACKGROUND:

- Arkansas law allows an institution of higher education to enter into lease agreements.

- NEA Sports Club plans to apply for an alcohol permit through the Alcoholic Beverage Control Administration. NEA Sports Club desires to enter into a leasing arrangement with ASUJ to allow NEA Sports Club to dispense alcoholic beverages in the club and suite level areas at Centennial Bank Stadium and other designated ASUJ campus locations.

- The lease term will begin on the effective date and will last for 10 years.

- This agreement will create new revenue opportunities for ASUJ and the Jonesboro area.

RECOMMENDATION/RESOLUTION:

Be it resolved that Arkansas State University-Jonesboro is approved to enter into a lease agreement with the NEA Sports Club, and that the vice chancellor for Finance and Administration of Arkansas State University-Jonesboro is authorized to execute documents to effect this agreement.

Ron Rhodes, Secretary
Charles Luter, Chair
Alcohol Policy at Arkansas State University

Overview

Arkansas State University plans to enter into an agreement with a nonprofit organization that will facilitate limited, responsible dispensing of alcoholic beverages in designated areas on campus. The primary objectives are to dispense alcoholic beverages to patrons who have requested the amenity at sports and entertainment venues on campus; to enhance economic development by attracting more tourism-related activity; and to generate a new revenue stream for the Red Wolves Foundation (RWF). Alcohol may be dispensed in specific, limited-access areas of Centennial Bank Stadium and Tomlinson Stadium; designated concerts or special events, excluding athletics events, at the Convocation Center; and special events at the Fowler Center, the Cooper Alumni Center, and the Pavilion. The proposal is consistent with alcohol-related initiatives by other universities in Arkansas and members of the Sun Belt Conference.

Highlights:

■ NEA Sports Club, an Arkansas nonprofit corporation, will enter into a lease agreement with Arkansas State that will allow NEA Sports Club to dispense alcoholic beverages at certain events and at certain locations on the A-State campus. The lease agreement is subject to approval of the ASU Board of Trustees.
■ NEA Sports Club will apply for a large event facility permit through the Alcoholic Beverage Control Board. Any associated costs related to the application process will be the responsibility of NEA Sports Club and the RWF and not at the expense of Arkansas State.
■ Patrons of athletics events and concerts have requested the opportunity to be served alcoholic beverages, and the service has become common at sports and concert venues throughout the country.
■ The proposal will allow the Convocation Center to recruit performing artists who require alcohol to be served as an amenity for their fans. A-State expects to increase the number of concerts, resulting in additional rental-related revenue for the university and increased tourism-related expenditures in Jonesboro.
■ NEA Sports Club plans to contract with Sodexo, the existing A-State vendor for food and beverage services, to manage all alcohol-related services and assist in enforcement of all permit guidelines required by ABC Board.
■ Net revenue generated by NEA Sports Club from the dispensing of alcohol will be distributed annually to the RWF, and the RWF agrees to assist the A-State Student Government Association in promoting a responsible drinking awareness campaign. No member of the NEA Sports Club board of directors will receive compensation from the nonprofit organization.
■ Alcohol may be served at Centennial Bank Stadium and Tomlinson Stadium in limited, designated club sections and other premium seating areas.
■ Alcohol may be served at the Convocation Center at special events such as concerts and banquets upon mutual agreement with the leasing party.
■ Alcohol may not be dispensed at A-State athletics events in the Convo except in areas with lease-space agreements.
■ Alcohol may be served at the Fowler Center at special events upon mutual agreement with the leasing party.
■ Alcohol is already served in designated areas on campus at certain events in accordance with state law as part of lease space agreements.
■ The alcoholic beverage permit sought will include the right to dispense beer, wine, and liquor.
■ Alcohol will be dispensed in limited areas of the football stadium to enhance the value of the seating options.
■ Additional security will be present where alcohol is served, and all servers and managers will complete appropriate training to comply with ABC regulations and to protect the safety and enjoyment of all patrons.
LEASE AGREEMENT

Lease Agreement ("Lease") by and between Cobblestone Vintage Good Guild, Inc. d/b/a NEA Sports Club, an Arkansas non-profit corporation (hereinafter called "NEA Sports") and Arkansas State University-Jonesboro (hereinafter called "ASUJ").

WITNESSETH;

WHEREAS, NEA Sports possesses a liquor permit with its principal location at ________; and

WHEREAS, NEA Sports is desirous of leasing certain portions of the campus ASUJ for use by NEA Sports where NEA Sports shall dispense liquor at certain times to its members and guests; and

WHEREAS, ASUJ is desirous of entering into such Lease upon the terms and conditions set forth herein; and

WHEREAS, NEA Sports is desirous of leasing such space upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein the parties agree as follows:

1. LEASED PREMISES. ASUJ hereby lets, leases and demises unto NEA Sports subject to the terms and conditions hereinafter set forth, the following described real property situated in Craighead County, Arkansas, to wit:

See attached Exhibit 1 for the entire area comprising the large event facility private club. Also, see Exhibit A for the designated area in the Tomlinson Baseball Stadium, Exhibit B for the designated area in the Red Wolves Football Stadium, Exhibit C for the designated area in the Fowler Center, Exhibit D for the designated area in the Convocation Center, Exhibit E for the designated area in the Cooper Alumni Center and Exhibit F for the Arkansas State University Pavilion ("Premises").

To have and to hold the Premises unto NEA Sports for and during the Term and any Additional Term(s) hereof upon the terms and conditions set forth herein.

2. TERM. NEA Sports shall lease the Premises for a period of ten (10) years beginning on the 1st day of June, 2015 and ending at midnight the 31st day of May, 2025 (the "Term"). However, ASUJ shall have the right to terminate this agreement upon ninety (90) days written notice with or without cause.

3. RENT. NEA Sports shall pay to the ASUJ as monthly rental for the Premises in the amount of One and 00/100 Dollars ($1.00) for each month of the Term. Such payments shall be due the first day of each month throughout the Term except that if NEA Sports takes possession on a day other than the first day of a calendar month then the rent due for the first and the last month of the Term shall be prorated on a daily basis and paid on the date that NEA Sports takes possession and on the first day of the last month of the Term. In addition to the rent payments due, NEA Sports shall pay to ASUJ a five percent (5%) late fee if any rent payment is received more than fifteen (15) days following the due date of each month during the Term of this Lease.

4. USE OF THE PREMISES. NEA Sports agrees that the Premises shall be used for the purpose of a private club. NEA Sports hereby covenants that the Premises, including all buildings and
improvements thereon, shall during the Term of this Lease be used only and exclusively for lawful purposes, and no part of the Premises or improvements thereon shall be used in any manner whatsoever for any purpose in violation of the laws of the United States, the State of Arkansas, or the ordinances or laws of the City of Jonesboro.

5. ALTERATIONS. NEA Sports agrees that it shall not make any changes, alterations, modifications, or additions of a structural nature in or about the Premises without receiving prior written approval from ASUJ, except for minor non-structural alterations or additions not of a permanent nature. If NEA Sports desires to make any structural alterations or additions, then NEA Sports shall give written notice thereof to ASUJ and ASUJ shall approve or give notice of the lack of approval within thirty (30) days following notice thereof. If ASUJ fails to give any notice within such thirty (30) day period, the such alterations shall be considered approved.

6. MAINTENANCE AND REPAIRS. ASUJ shall, at its sole cost and expense, maintain the interior of the Premises in good order, condition, and repair. Further, ASUJ shall at its own cost and expense maintain the electrical, heating, air conditioning, water and plumbing systems of the Premises. Unless set forth in writing to the contrary and signed by the parties, NEA Sports shall not have any obligation of any kind whatsoever in connection with the maintenance or repair of the Premises except for items damaged by NEA Sports, its employees, members or guests. In addition, ASUJ shall be responsible for and shall maintain the exterior walls and roof of the Premises in good repair throughout the term of this Lease.

7. INSURANCE.

(a) Property Damage. During the Term of this Lease, ASUJ shall maintain and keep in full force and effect, at its sole cost and expense, a standard comprehensive policy of property damage insurance with respect to the Premises for NEA Sports property on the Premises. Further, NEA Sports shall be responsible for providing the liquor liability insurance for such private club. ASUJ shall maintain insurance protecting the real property and all appurtenances attached thereto.

(b) Liability. During the Term of this Lease, NEA Sports shall maintain and keep in full force and effect, at its sole cost and expense, a general policy of comprehensive public liability insurance insuring ASUJ and NEA Sports against any liability arising out of the ownership, use, occupancy, or maintenance of the Premises and all areas appurtenant thereto. Such liability insurance shall have, at a minimum, the following coverages, to wit: Two Million and 00/100 Dollars ($2,000,000.00) per person with an aggregate of Five Million and 00/100 Dollars ($5,000,000.00) and Two Million and 00/100 Dollars ($2,000,000.00) per occurrence with an aggregate of Five Million and 00/100 Dollars ($5,000,000.00) and with Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) for damage to property.

(c) Certificate of Insurance. NEA Sports shall furnish to ASUJ upon request, and if not requested at least annually: (i) a certificate of insurance showing such insurance to be in full force and effect; and (ii) proof that the premiums necessary to keep said insurance in full force and effect have been timely paid.

(d) Miscellaneous. Insurance required hereunder shall be with such companies and in such form as is reasonably satisfactory to ASUJ. No such policy shall be cancelable or subject to reduction in coverage or other modification except after ten (10) days prior written notice to the ASUJ.
NEA Sports shall, within thirty (30) days prior to the expiration of such policies, furnish ASUJ with renewals or binders for renewal coverage.

8. TAXES. NEA Sports shall pay all taxes on the property of NEA Sports located on the Premises as well as all taxes, licenses and other similar charges upon the business of NEA Sports. As an agency of the State of Arkansas, ASUJ is normally exempt from any and all ad valorem taxes and assessments. In the event that any taxes are deemed or determined by a proper governmental authority (not based upon the business of NEA Sports), then ASUJ shall pay such taxes and assessments.

9. DAMAGE OR DESTRUCTION OF THE PROPERTY.

(a) Total or Partial Destruction. In the event the improvements upon the Premises are damaged by vandalism, fire, storm, wind, or other casualty so as to render the Premises uninhabitable, and such damage cannot reasonably be expected to be substantially repaired within one hundred fifty (150) days, NEA Sports shall have the option for a period of fifteen (15) days following the date of such damage to terminate this Lease by written notice to ASUJ. In the event such damage does not render the Premises uninhabitable or it is reasonably expected that the Premises will be substantially repaired within one hundred fifty (150) days, NEA Sports shall not have the right to terminate this Lease. In the event this Lease is not terminated by NEA Sports, ASUJ shall, as soon as practicable, institute action to repair and rebuild the damaged portion of the Premises. In no event shall ASUJ be obligated to expend more than the insurance proceeds received by ASUJ by reason of such damage.

(b) Abatement of Rent During Reconstruction. If the Premises are destroyed or damaged and action is undertaken by ASUJ to repair or restore the Premises, the rent payable for the period when such damage, repair, or restoration continues shall be abated in proportion to the degree to which NEA Sports’ use of the Premises is impaired (except as provided by the loss of rents coverage). The aggregate amount of abatement hereunder shall not exceed the full monthly rental provided hereunder. Except for abatement of rent, if any, NEA Sports shall have no claim against ASUJ for any liability, cost, obligation, or expense caused by reason of such damage, destruction, repair or restoration.

10. ASSIGNMENT OR SUBLETTING. NEA Sports shall neither assign nor sublet the Premises nor any part thereof without the written consent of ASUJ. In no event shall the subletting or assignment of this Lease relieve NEA Sports of any of the covenants, agreement and obligations imposed upon NEA Sports in this Lease.

11. EVENTS OF DEFAULT. Any one or more of the following events shall be deemed an event of default by NEA Sports under this Lease:

(a) failure by NEA Sports to timely pay any installment of rent and late fees, if applicable, provided herein as and when due and payable or within thirty (30) days thereof;

(b) failure by NEA Sports to comply with any term, provision, or covenant of this Lease, other than the payment of rent, for a period of thirty (30) days after written notice thereof has been given by ASUJ;

(c) the breach of any representation or warranty of NEA Sports contained herein;

(d) NEA Sports deserting or vacating all or any substantial portion of the Premises for a period of ten (10) days or more;
(e) NEA Sports: (i) suspending or discontinuing its business; (ii) making an assignment for the benefit of creditors; (iii) generally not paying its debts as they become due; (iv) becoming insolvent; (v) filing any petition or answer seeking for itself any reorganization, arrangements, composition, readjustment of its debts or for liquidation, dissolution or other similar relief; (vi) petitioning or applying to any court for any receiver, custodian, or trustee for all or substantially all of its property or assets or by the subject of any such proceeding filed against it; (vii) filing an answer admitting or not contesting the material allegations or any such petition filed against it or any order, judgment or decree approving such petition in any such proceeding; (viii) seeking, approving, consenting to, or acquiescing in any such proceeding for the appointment of any such trustee, receiver, custodian, liquidator or agent for it or any substantial part of its property or if an order is entered appointing any such trustee, receiver, custodian, liquidator or agent; or (ix) taking any formal action for the purpose of effectuating any of the foregoing;

(f) an order for relief being entered under the United States bankruptcy laws, or if any other decree or order is entered by a court having jurisdiction: (i) adjudging NEA Sports as bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization, liquidation, arrangements, adjustment or composition of NEA Sports or its property under the United States bankruptcy laws or any other applicable federal or state law; (iii) appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for NEA Sports or for any substantial part of NEA Sports’ property; or (iv) ordering the winding up or liquidation of NEA Sports’ affairs; or

(g) any judgment or decree against NEA Sports remaining unpaid, unstayed on appeal, undischarged, unbonded, or undischarged for a period of thirty (30) days or more.

12. REMEDIES. Upon the occurrence of any event of default as provided herein, ASUJ shall have the option to pursue any one or more of the following remedies without notice or demand, and without prejudice to any rights or remedies otherwise available at law or in equity:

(a) to re-enter and repossess the Premises and expel and remove NEA Sports and any other person who may be occupying the Premises without being liable for trespass or any damages thereof;

(b) to terminate this Lease by giving written notice thereof to NEA Sports, as of a date to be specified in such notice which shall be at least thirty (30) days after the date on which such notice is given, in which event this Lease and the Term, but not continued liability hereunder, as hereinafter provided, shall expire and terminate upon the date specified in such notice as aforesaid, as fully and as completely as if the date specified in such notice was the date definitely fixed in this Lease for expiration, and NEA Sports shall quit and surrender the Premises to ASUJ on or before the said date, without cost or charge to ASUJ;

(c) to relet any or all of the Premises for NEA Sports’ account for any or all of the remainder of the Term as hereinafore defined, or for a period exceeding such remainder.

(d) to cure such event of default in any other manner (after giving NEA Sports written notice of ASUJ’s intention to do so except in the case of emergency), in which event NEA Sports shall reimburse ASUJ for all expenses incurred by ASUJ in doing so, including attorney’s fees, plus interest on all such expenses at the lesser of the default rate or the highest rate then permitted on account thereof by applicable law, which expenses and interest shall be additional rent and shall be payable by NEA Sports immediately upon demand thereof by NEA Sports; and/or

(e) to exercise any other right or remedy available at law or in equity or otherwise.
13. **ASUJ’S INSPECTION.** ASUJ shall have the right, at all reasonable times and hours to enter upon the Premises for the purpose of making inspections. However, this right shall not be exercised in a manner which unreasonably interferes with the normal conduct of NEA Sports’ business on the Premises.

14. **CONDITION OF THE PREMISES.** NEA Sports hereby accepts the Premises and any equipment therein and will keep and maintain said Premises, fixtures and equipment during every term hereof in good working condition. At the expiration of the Term, NEA Sports shall return the Premises, equipment and fixtures without damage caused by NEA Sports, its employees, members or guests.

15. **SIGNS.** NEA Sports shall not hang or place any sign, attachment or display of any kind to or upon the building and Premises or hang therefrom any such sign, attachment or display without ASUJ prior approval. However, ASUJ shall not unreasonably withhold approval of any sign which is consistent with the architecture of the Premises or is required by Alcoholic Beverage Control Regulations.

16. **WASTE.** NEA Sports shall operate its aforementioned business so as not to endanger, damage or cause or allow waste to the Premises and NEA Sports shall not damage, destroy, or permit the same on or in the Premises except for ordinary wear and tear.

17. **EXCEPTIONS.** ASUJ may determine that it is not in the best interest of ASUJ for a portion(s) of the private club designated in Exhibits A, B, C, D, E or F to conduct operations at or during certain events. If ASUJ makes such determination, ASUJ shall give NEA Sports notice in writing no later than ten (10) days prior to such event that a portion(s) of the private club shall not conduct operations in a building which is part of the large event facility private club. NEA Sports shall be bound by such determination provided proper notice has been given by ASUJ.

18. **MISCELLANEOUS.** NEA Sports shall not conduct any kind of business that will be obnoxious or offensive to ASUJ or property owners and businesses in and around the Premises. NEA Sports will not carry on or conduct any business in violation of any city ordinance, or the laws of the State of Arkansas, or of the United States of America, and will pay taxes, licenses and penalties necessary to be paid, connected with or incident to NEA Sports’ business.

19. **ENTIRE AGREEMENT.** This writing constitutes the entire agreement of the parties and all other writings, statements, agreements or representations whether oral or written are superseded and replaced hereby. No alteration, change or modification of this agreement shall be made except in writing signed by all parties.

20. **GENERAL CONDITIONS**

(A) Athletic events at which alcoholic beverages will be sold will be done so pursuant to all applicable laws and all applicable rules, regulations, policies, and guidelines. In addition for NCAA athletic events, ASUJ shall follow allow rules, regulations, policies and guidelines of the NCAA and the Sun Belt Conference.

(B) Titles and paragraph headings are for convenient reference and are not a part of this Agreement.

(C) In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
(D) Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arkansas, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

(E) Because ASUJ is an agency of the State of Arkansas, any claims that may be asserted against ASUJ must be brought in the Arkansas State Claims Commission.

(F) This Agreement shall be construed and enforced according to the laws of the State of Arkansas.

(G) Both parties shall comply with all applicable laws, ordinances and codes of Federal, State and Local governments.

IN WITNESS WHEREOF, the parties hereto have individually and through their proper officials executed this Agreement the day and year first written.

Arkansas State University-Jonesboro

DATE:__________________  By: ______________________________________
Vice Chancellor for Finance and Administration

Cobblestone Vintage Good Guild, Inc. d/b/a NEA Sports Center, an Arkansas Non-Profit Corporation

DATE:__________________  By:________________________________________