

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding by and between the City of Grand Island, Nebraska ("City") and Grand Island Riverdogs, Inc. ("Riverdogs"), dated Dec. 5, 2016.

On or about June 21, 2012, City, as Lessor, and Riverdogs, as Lessee, entered into a Lease Agreement (the "Lease") concerning City's lease of the Ashton Street Baseball Field (the "Field") to Riverdogs, a copy of which lease is attached hereto.

The purpose of this Memorandum of Understanding is to clarify the Lease, memorialize the parties' understanding of its terms, and to authorize and permit use of the Field by school and youth baseball teams for practices and games during such times as the Field is not in use for practices and games by Riverdogs, so that the Field, which is a part of City's public parks system, can be utilized for age appropriate organized school and youth baseball recreation and competition in addition to its use by Riverdogs.

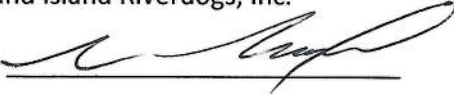
The parties acknowledge that the lease provides that either party may terminate the lease upon 90 days written notice. The parties desire to enter into this Memorandum of Understanding for the purposes set forth herein and to avoid the uncertainty of negotiations resulting from termination of the lease.

The parties hereby express their understandings of their mutual rights and obligations under the Lease as clarified, described and as set forth below.

1. During the term of the lease, Riverdogs shall authorize and permit use of the Field by school and youth baseball teams for practices and games during such times as the Field is not in use for practices and games by Riverdogs such that the Field, which is part of City's public parks system, can be utilized for age appropriate school and youth baseball recreation and competition, and City does hereby authorize such shared use;
2. Riverdogs acknowledges its duty of good faith and fair dealing in the undertakings expressed herein and does consent and agree that it shall permit and authorize use of the Field by school and youth baseball teams for practices and games during such times as the Field is not in use for practices and games by Riverdogs. Riverdogs represents that it will schedule its own use of the Field only as reasonably necessary for its practices and games and not for the purpose of obstructing the use of the Field by others; and
3. If the Field requires chalking and grooming in order to prepare it for use by a third party, Riverdogs will notify the third party that the third party must arrange for such field preparation service through City's Park and Recreation Department, which shall charge the third-party for such work according to the current City fee schedule. Upon receiving authorization and notification from City that the field preparation fee has been received from such third party, Riverdogs shall prepare the Field by chalking and grooming. Riverdogs shall bill City and City

shall pay Riverdogs for City-authorized chalking and grooming at such rate established from time to time by City's fee schedule.

Grand Island Riverdogs, Inc.

BY: 

Name: Greg Sextro

Title: President Riverdogs

Date: 11/30/16, 2016.

CITY OF GRAND ISLAND

BY: 

Jeremy L. Jensen, Mayor

Date: December 5, 2016.

Attest:



RaNae Edwards, City Clerk

## LEASE AGREEMENT

This Lease Agreement made by and between the City of Grand Island, Nebraska, a Municipal Corporation, hereinafter referred to as "Lessor" and the Grand Island Riverdogs, Inc., a Nebraska Non-Profit Corporation duly licensed and authorized under the Laws of the State of Nebraska, hereinafter referred to as "Lessee".

WITNESSETH:

### I.

Lessor hereby warrants that it is lawfully seized of the property that is the subject of this Lease Agreement and that it maintains title in fee and that it has full legal authority to enter into this Lease Agreement with Lessee and subject the real estate described herein to the terms and conditions of this Lease Agreement. Lessee hereby warrants that it is a Nebraska Non-Profit Corporation, in good standing with the Laws of the State of Nebraska, and that it has full legal authority to enter into the terms and conditions of this Lease Agreement.

### II.

In consideration of the mutual covenants and conditions contained herein and to be observed and performed by the parties, the Lessor does hereby demise and lease unto the Lessee all that tract and parcel of land and improvements described as the Ashton Street Baseball Field bordered by Ashton, Oak, and Vine Streets in Grand Island, Hall County, Nebraska legally described as follows:

Lot A of Ross & Ashton park sub east of Oak Street, Grand Island, Hall County, Nebraska

To have and to hold said premises unto Lessee for a term of five (5) years beginning May 1, 2012 with a renewal option for an additional five (5) year lease at the conclusion of the first lease term. Renewal shall be at the option of Lessee and shall be exercised through the continued compliance with the covenants and conditions of Lessee beyond the initial five (5) year term of the Lease. No written notice of Lessee's intent to exercise its option to extend this lease beyond the initial five (5) year term shall be required by Lessee. Lessee shall maintain a right-of-first-refusal to the re-negotiation of a lease of the subject real property upon expiration of Lessee's exercise of its option set forth herein. Lessee acknowledges that said real property is utilized by the Grand Island Senior High School (GISH) and Lessee hereby agrees to make all reasonable efforts with GISH to provide GISH's baseball team access to the field as a practice facility. It is expressly understood and agreed by and between the Lessor and Lessee that either party shall have the absolute right to provide to the other party with ninety (90) days written notice to terminate this Lease Agreement without cause, at any time during the initial or subsequent five (5) year lease term contemplated herein.

### III.

Lessee shall pay as rent to Lessor the sum of One Dollar (\$1.00) per month with the annual payment of rent of Twelve Dollars (\$12.00) per year being due and payable on the first day of May, 2012, or upon execution of this Lease Agreement whichever is later, and on the first day of May for each year thereafter for the term of this Lease Agreement inclusive of extensions.

#### IV.

The Lessee covenants with Lessor as follows:

- a. Lessee will pay rent as obligated herein at the times and in the manner aforesaid, except only in the case of fire or other unavoidable casualty as hereinafter provided.
- b. Lessee will not allow any liens or encumbrances to be placed upon the subject property or improvements of the Lessor.
- c. Lessee shall provide a comprehensive general public liability insurance policy in the amount of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) for one (1) person and Three Hundred Thousand and No/100 Dollars (\$300,000.00) for any one (1) accident involving injury to more than one (1) person, and property damage loss coverage of not less than Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Lessee shall list the Lessor as an additional insured on its general public liability insurance policy.
- d. Lessee will keep any structures and premises, including the plumbing and heating and air conditioning in good repair, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted.
- e. Lessee will not injure, overload or deface the premises or any part thereof.
- f. Lessee will not make or suffer any unlawful, improper, or offensive use of the premises, or any use or occupancy thereof contrary to any law of this State or any ordinance of the City now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or effect any insurance on any structures or the premises except as such as Lessor shall in writing approve.
- g. Lessee shall not assign, sublet or part with the possession of the whole or any part of the leased premises without first obtaining the written consent of the Lessor.
- h. Lessor, at any reasonable time, may enter to view the premises and to make repairs which the Lessor may see fit to make, or show the premises to persons who may wish to lease or buy the premises as Lessor may see fit.
- i. That at the expiration of said lease term, or any extension thereof, the Lessee will peaceably yield up to the Lessor the premises and all improvements made upon the same,

in good repair in all respects, reasonable use and wear and damage by fire or unavoidable casualties excepted, as the same now are and may be put in by the parties.

- j. No consent, express or implied by the Lessor to any breach of any of the Lessee's covenants shall be deemed to be a waiver of any succeeding breach of the same or any other covenant.

#### V.

It is also agreed by and between the Lessor and Lessee that in case the leased premises or any part thereof shall at any time during the said term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the premises cannot be rebuilt or restored by the Lessor within one hundred twenty (120) days thereafter, then and in that case this Lease Agreement shall end and become null and void.

#### VI.

Lessee agrees that it will not discriminate against any employee or applicant for employment to be employed in the performance of this Lease Agreement, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of his or her race, color, religion, national origin or ancestry. The Lessee further agrees to exercise its best efforts in the maintenance of a drug free environment at all times on the leased premises. Breach of this covenant may be regarded as a material breach of the Lease Agreement.

#### VII.

Lessee agrees that the sport of baseball shall remain the main focus of the Ashton Street Baseball Field.

Lessee agrees, at Lessee's expense, that during the first five (5) year term of this Lease Agreement, it shall make all reasonable efforts, after the acquisition of adequate funding, to make the following improvements to the real estate which is the subject of this Lease Agreement:

- Provide additional gates to the perimeter fence and to close open gaps in the existing fence;
- Add an age appropriate backstop behind home plate of the subject premises with the intention that said backstop be more suited to the containment of foul balls;
- Provide and install ground infield surface conditioner such as Agriline or Turf Ace as those terms are generally accepted in baseball industry standards;
- Re-grade and re-sod the infield of the subject property to standards generally accepted in like baseball fields for the intended use of the subject property;
- Retrofit the irrigation system in the infield to accommodate the intended eighty (80) and adaptable ninety (90) feet base distance contemplated for use by age appropriate baseball players of the subject property;

Lessee agrees, at Lessee's expense, that should Lessee exercise its option to extend the term of this Lease Agreement beyond the initial five (5) year term, it shall make all reasonable efforts, after the acquisition of adequate funding, to make the following additional improvements to the real estate which is the subject of this Lease Agreement:

- The acquisition and use of an appropriate portable pitcher's mound which will accommodate a fifty-four (54) and/or a sixty (60) foot pitching distance measured from home plate to said mound.
- Improve, as Lessee determines necessary, through the extension thereof or out-right replacement of the left field fencing with the intention of the parties being that balls hit to left field reasonably remain within the baseball field of play.
- Improve and/or replace the dugout coverings on both the first-base and third-base sides of the playing facility.
- To construct a maintenance building for the containment of equipment necessary for the maintenance of said real property and/or baseball related equipment.

Reasonable efforts at the acquisition of adequate funding as contemplated herein shall be defined as Lessee's efforts at obtaining funding through Foundation Grants; player fees; tournament fees; Grand Island Riverdog fundraisers; personal donations and/or devises to the Grand Island Riverdogs; and business donations to the Grand Island Riverdogs. Lessee agrees to make all reasonable efforts at the acquisition of adequate funding for the improvements contemplated herein. Lessee's inability to raise adequate funding for the improvements contemplated herein, for either the initial term of this Lease or for the exercise of its option, shall not be deemed as a material breach of this Lease Agreement and shall not be grounds for the termination of this Lease Agreement.

#### VIII.

Lessee agrees that it shall be responsible for all landscape maintenance, including all mowing, fertilizer, maintenance and repair of sprinklers, general maintenance and repair of lighting of the facility, the dumping of individual barrels of trash into the main dumpster and general upkeep of the subject premises. Lessor shall be responsible for providing electricity, lighting supplies including light bulbs, appropriate placement of directional lighting for playing baseball in low light conditions, water, garbage removal and snow removal to the subject premises at the expense of Lessor. Any and all landscaping modifications may be performed by Lessee upon obtaining written consent from the Director of the Parks and Recreation Department for the City of Grand Island, Nebraska.

#### IX.

All terms, notices of default, termination, and insurance coverage requirements outlined in any other portion of this lease shall be binding for any renewal or extension of the lease unless specifically waived in writing by the parties.

#### X.

Lessee agrees to indemnify the Lessor for any claim made by the Lessee's employees or by any other person, for personal injury or property damage arising out of the Lessee's use of the equipment on the premises or equipment brought onto the premises after the commencement of this Lease Agreement, which Lessee agrees to accept at all times during the term of this Lease Agreement as is, where is, and the Lessor has no responsibility for its condition or state of repair. Lessee agrees to not remove from the Lessor's premises any equipment or property located on the subject premises at the commencement of this Lease, except as authorized in writing by the Lessor.

XI.


Before exercising any remedies for breach, default or failure to perform under this Lease Agreement, the defaulting party shall be given thirty (30) days written notice of such default or failure to perform. If the act is such that it cannot be cured within a thirty (30) day period, this period may be extended upon written agreement of the parties, providing that the defaulting party commences to cure such default within said thirty (30) day period and proceeds with due diligence thereafter to effect such cure.

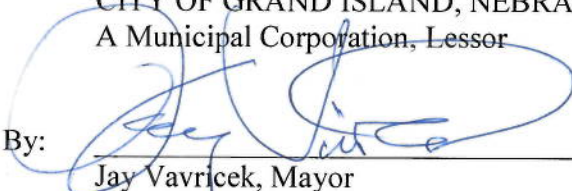
XII.

In the event either party institutes legal proceedings against the other for breach of this Lease Agreement, the party against whom a judgment is entered shall pay all reasonable costs and expenses relative thereto, inclusive of reasonable attorney fees.

IN WITNESS WHEREOF, the parties hereby have executed this Lease Agreement with full legal authority in the party signing on behalf of Lessor and Lessee.

Attest:

  
RaNae Edwards, City Clerk

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation, Lessor  
By:   
Jay Vavricek, Mayor

6/21/2012

GRAND ISLAND RIVERDOGS, INC.,  
A Non-Profit Nebraska Corporation,  
Lessee

By:   
Authorized Representative