

LEASE AGREEMENT

This Lease Agreement, herein referred to as the “Agreement,” is made on this ____ day of _____, _____, by and between the City of Mankato, a municipal corporation, hereinafter referred to as the “City”, and Diamond Dreams, LLC, a Minnesota limited liability company “Diamond Dreams”, hereinafter referred to as the “Tenant”, and Northwoods Softball, LLC, a Michigan Limited Liability Company, hereinafter referred to as “NWL”. City and Tenant are at times jointly referred to as “Parties”.

RECITALS

WHEREAS, the City owns a baseball stadium and related facilities, including all fixtures, furnishings, and improvements there, and all rights privileges, and appurtenances thereto, located on or about the real property located at 601 Reed Street, Mankato, Minnesota 56001, known as the Franklin Rogers Park or ISG Field hereinafter referred to as “Field”. Adjacent to said field is a locker room, public restrooms, grandstand and concessions stand hereinafter referred to as “Amenities”. Field and Amenities are at times jointly referred to as “Stadium”. See map on Exhibit A for reference of space.

WHEREAS, Tenant owns and operates a summer collegiate softball league;

WHEREAS, Tenant owns and operates a summer collegiate softball team that competes in the Northwoods League, and desires to lease, use and occupy the Stadium for the Tenant operation in accordance with the terms and conditions set forth in this Lease; and NWL desires to have the option to assume the lease should Tenant default in its obligations under the terms and conditions of this Agreement; and

WHEREAS, this agreement between City and Tenant is independent of the agreement covering Mankato MoonDogs events and is expressly for the softball activities related to this summer collegiate softball team but with the understanding that some Mankato MoonDogs improvements and amenities covered in that independent agreement will be shared under this Agreement, and

WHEREAS, City deems it to be in the public interest to provide City’s residents with an opportunity to attend and view summer collegiate softball games in a premier stadium setting, and desires to lease the Stadium to Tenant in accordance with the terms of this Lease.

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties hereto, it is agreed that the Tenant is granted access to the Stadium under the following terms and conditions:

AGREEMENT

1. RECITALS INCORPORATED; EFFECT OF LEASE.

- 1.1 The Recitals set forth above are true and correct and are fully incorporated into this Lease as if set forth herein.
- 1.2 This Lease supersedes all prior leases, agreements, and amendments, whether oral or written, between the Parties hereto concerning the subject matter contemplated herein.

2. PREMISES.

2.1 Lease of Stadium. Subject to the terms of this Lease, City hereby leases to Tenant and Tenant hereby leases from City for the Term (as defined at Section 3) the Stadium.

2.2 Access.

- a. City grants to Tenant, and its personnel, employees, agents, and licensees (collectively, "Personnel"), a non-exclusive right to use the Stadium, the parking areas, ingress and egress over the driveways, roads and alleys and other portions of the Stadium as described herein.
- b. City shall provide to Tenant two (2) physical keys and two (2) or more prox access cards to the Stadium for the sole use by Tenant, and its Personnel, to access and use the Complex.
 - a) Tenant shall be responsible for the management and oversight of these access keys. Should any keys or prox cards go missing, Tenant is responsible for notifying the City immediately.
- c. Unless under the supervision and control of Tenant, neither Tenant nor its Personnel will provide any form of access, whether express, constructive, or implied, to the Complex to any other person.

2.3 Parking.

- a. Subject to Section 3.1 below, During the Term, Tenant shall have non-exclusive access to, and use of the surface parking areas and stalls located on or about the Stadium, which parking stalls are to be shared with other customers, guests, invitees, employees, agents, and licensees of the Parties.
- b. Notwithstanding the foregoing, Tenant acknowledges that the Stadium's area designated for onsite parking as of the Effective Date may not be adequate for Tenant's use of the Stadium from time to time. Therefore, Tenant shall during the Term of this Lease, in order to secure sufficient off-street parking for patrons of Tenant events held at the Stadium at other off-site locations as necessary, make best efforts to enter into and maintain a separate agreement ("Parking Agreement") with a third party for additional off-site, off-street parking in order to accommodate the number of cars attending a Tenant event at the Stadium as may be required from time to

time. It is expressly agreed between the Parties to this Lease that (i) any such Parking Agreement is a separate agreement between Tenant and the third party and is not, nor shall be, incorporated into this Lease in any way, (ii) the proposed Parking Agreement shall not be construed as a condition precedent to this Lease, (iii) any breach or termination of such Parking Agreement shall not constitute a breach or default of this Lease, and (iv) such Parking Agreement shall have no bearing whatsoever on the terms and conditions of this Lease as between the Parties herein. Should Tenant be unable to obtain or maintain such Parking Agreement during the Term of this Lease, City and Tenant shall collaboratively make best efforts to locate and obtain the use of the additional parking space necessary to accommodate those patrons of Tenant events at the Stadium.

3. TERM.

- 3.1 Initial Term. The initial term of this Lease shall be for a period of one (1) year commencing on January 1, 2025, and terminating on December 31, 2025 ("Term").
- 3.2 Renewal Term. Provided Tenant is not in default of any material Term, condition or covenant under this Lease, and subject to NWL's option to assume this Lease as set forth elsewhere herein, upon expiration of the Initial Term and any Renewal Term, this Lease shall automatically renew for up to two (2) additional and successive terms of one (1) year each on the same terms and conditions as provided in this Lease (a "Renewal Term"), unless and until a Party hereto provides written notice of nonrenewal to the other Parties no later than ninety (90) days, prior to the end of the then-current Term, or until earlier terminated in accordance with this Lease.
- 3.3 Surrender. At the expiration or termination of this Lease for any reason, supposing that the Mankato MoonDogs agreement is still in effect, Tenant shall at its expense: (i) peaceably surrender and deliver the softball related improvements, storage and spaces in good and clean condition, excepting only reasonable wear and tear; (ii) deliver all keys, prox cards and combinations to locks provided expressly for softball use, to City; (iii) if directed by City, remove any leasehold improvements, alterations or additions installed by Tenant, and repair any damage caused thereby; and (iv) remove all of its softball related personal property, trade fixtures, signs, and decorations, and repair any damage caused thereby. If Tenant fails to remove its property upon the expiration of this Lease, said property shall be deemed abandoned and shall either become City's property or be disposed of by City at Tenant's expense.
- 3.4 Holding Over. If Tenant does not vacate, and cease use of, the Complex upon the expiration or termination of this Lease, Tenant shall be a tenant at will for the holdover period and all of the terms and provisions of this Lease shall be applicable during the holdover period, except Tenant shall pay City as Rent for the period of such holdover an amount equal to one hundred fifty percent (150%) of the Rent paid

by Tenant during the immediately preceding Term. Tenant shall indemnify, defend, and hold harmless City and Tenant for any claim, damage, loss, or expense arising in connection with Tenant's failure to vacate the Complex. Thereafter, Tenant agrees to immediately vacate and deliver the Complex to City upon Tenant's receipt of notice from City to vacate. The Rent payable during the holdover period shall be payable to City on demand. No holding over by Tenant, whether with or without City's consent, shall operate to extend the Term.

4. USE OF PREMISES.

- 4.1 Permitted Use. During the Term, Tenant shall only use the Stadium to play no more than twenty (20) softball games per calendar year and only during the months of June, July and August of each calendar year, unless otherwise agreed to by the City ("Permitted Use"). Tenant acknowledges that the Permitted Use is a use granted exclusively to Tenant, unless otherwise provided herein. Events not considered a Permitted Use require submittal of a Special Event Permit Application by Tenant that must meet the related regulations and guidelines in order to be accepted by the City.
- 4.2 Advanced Scheduling Notice. Tenant shall provide to City, on or before January 1, of each calendar year of the Term, the schedule of all games and practices to the City.
- 4.3 City Use. During the Term, City or City licensees jointly hereinafter ("City's Use") may use the Complex at City's discretion as long as City's Use of Complex does not unreasonably interfere with Tenant's Permitted Use. Tenant acknowledges that a City designee is responsible for, and will exercise the greatest degree of parity in, the scheduling of events at the Complex. Tenant shall not have any right to share in the revenue City collects, if any, from the City's Use of the Complex by any other team or organization. However, City (i) shall grant scheduling priority to Tenant exclusively for the playing of Northwoods League softball and (ii) shall not permit another summer collegiate or professional softball team any scheduled dates at the Stadium during the Term(s) of this Lease.
 - a. City requests that Tenant and Mankato MoonDogs together not use more than 75% of available dates on a monthly basis. City shall have 25% of dates, or reasonable time slots, for community booking, making every effort to ensure that Mankato community youth and adult athletics have the opportunity to use the Stadium.
- 4.4 Restrictions. The Stadium shall not at any time be used: (i) in violation of any applicable federal, state, or local law ordinance, rule, or regulation ("Laws"); (ii) for any business not consisting principally of the Permitted Use; (iii) for the sale or off sale or consumption of liquor without proper licensing as required by applicable Laws. No part of the Stadium shall be occupied or used by any person for any purposes or in a manner which, in order to meet any requirement of Laws, requires that City make any addition or alteration on or to the Complex.

- a. Stadium Maintenance. City shall be the exclusive provider of turf and facility maintenance at its discretion. Tenant should request needed changes and adjustments to City for consideration and completion. If the City decides to make the changes requested by Tenant, City, in its discretion, shall make a good faith effort to commence and complete any necessary changes within a reasonable time after receiving written notice of the need for such changes. The determination of a reasonable time shall take into account the nature of the repair, its impact on the Tenant's use of the Stadium, and any circumstances beyond City's control, including the availability of labor and materials.
- 4.5 Reservation of Rights. City reserves the right to suspend play, cancel games, or otherwise restrict access to certain areas of the Stadium if the City reasonably believes a significant risk exists that may injure, damage or otherwise be harmful to City, or the Stadium, or the participants, patrons, Personnel, or staff at the Stadium. Notwithstanding the foregoing, Tenant shall exercise discretion to suspend play, cancel games or restrict access to the Stadium to prevent injury to persons or property.

5. RENT.

- 5.1 Date When Rent Begins. All Annual Rent ~~and Storage Space Rent (sometimes collectively referred to herein as "Rent")~~ shall commence, and begin to accrue, as of the Effective Date.
- 5.2 Annual Rent.
 - a. Tenant shall pay to City for the general use and occupancy of the Stadium the annual rent in an amount equal to the product of the aggregate number of softball games played by Tenant at the Stadium during the applicable calendar year times the applicable amount per game, as more specifically set forth in Section 5.2 (b) ("Annual Rent").
 - b. The Annual Rent as calculated in accordance with this Section 5 states a cost of \$450 per game with an assumed number of games of twenty (20). In the event Tenant plays less than or more than thirty (30) softball games during any year, the Parties agree that City, in good faith, adjust accordingly the amount of the final payment due and payable in accordance with Section 5.2 (a). For purposes of this Lease, a "Complete Softball Game" shall consist of five (5) complete innings, or four and one-half (4½) complete innings if the Tenant has the lead. The Annual Rent throughout the Term shall be as follows:

<u>Term</u>	<u>Cost Per Complete Softball Game</u>
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2025	\$450.00
2026	\$450.00
2027	\$450.00

5.3 Place of Payment. Except as otherwise set forth herein, all Rent payable by Tenant hereunder shall be paid in U.S. dollars, in advance and without notice, demand, or invoice, from City, and without deduction or offset, on or before the applicable date of payment during the Term. All payments of Rent and any other sums shall be paid or mailed to the following address, or to such other payee or address as City may designate in writing to Tenant: City of Mankato, Attn: Accounts Payable, 10 Civic Center Plaza, P.O. Box 3368, Mankato, MN 56002-3368.

5.4 Late Payment Charge. Notwithstanding any other remedies for nonpayment of Rent, if any Rent payment is not received by City on or before the fifth (5th) day after such payment is due, Tenant shall pay a late payment charge of one and one-half percent (1.5%) per month of the unpaid balance. The obligation to make late payments shall not require prior written notice. In addition, if Tenant shall fail to pay Rent after the same becomes due and payable, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of 5% per annum. If any payment made by check and such check is returned by Tenant's bank, Tenant agrees to pay City a returned check fee equal to \$75 per check returned, and Rent shall not be deemed received until City has received good funds.

6. CONCESSIONS AND ADVERTISING.

6.1 Sale of Concessions. During the Permitted Use time period, Tenant shall:

- a. have the right to the proceeds of all tickets, novelties, and programs sold at the Stadium during all Tenant affiliated softball games and other Tenant events;
- b. have the exclusive right, except as set forth in Section 6.2, to sell concessions of the type that are usually sold at a softball game and retain the proceeds from all sales thereof;
- c. upon obtaining all required licenses and insurance, and compliance with all applicable Laws, have the right to sell liquor and related products;
- d. list City as an additional insured on liquor liability policies with a minimum limit of \$1,000,000 per occurrence (if beer or other alcohol is sold); and
- e. abide by and comply with all applicable Laws.

6.2 Concessions by Others. If Tenant elects in its sole discretion not to conduct sales of concessions, merchandise, or other materials to the public at any event held at the Stadium during the Permitted Use time period, other than a Permitted Use, City or the team, group, or organization using the Stadium may furnish the concession services and retain all revenues derived thereby. Any use of the Concessions building by any team, group, or organization shall be approved in writing in advance by Tenant and all required licenses, insurance and certification must be provided

to the City.

- 6.3 Outside Fence. Tenant's concession privileges shall not include any right in or to the areas beyond the premises of the Stadium, nor any rights to use or permit others to use areas beyond the premises of the Stadium for advertising or any other purpose unless otherwise approved in writing, in advance by City.
- 6.4 Advertising. Upon the confirmation of an advertising and/or sponsorship policy, created by the Mankato City Council, advertising is not considered an opportunity under this agreement. Future opportunities may become available and would be addendum to this agreement.
- 6.5 Radio and Television Rights. Tenant shall have exclusive television, radio, computer and technology rights and intellectual property ownership rights and privileges for all Permitted Use events at the Stadium. However, such rights and privileges shall not extend to any City Use event at the Stadium. Tenant shall be liable for all costs arising out of the installation of, or recurring costs associated with the use or utilization of, any business telephone lines.

7. TENANT RESPONSIBILITIES.

- 7.1 Tenant Responsibilities. Tenant shall, at its cost, and in a manner suitable for and commensurate with the Northwoods League level of competitive collegiate softball or its equivalent:
 - a. Manage the financial, maintenance and setup responsibility for all field improvements required to transition the Stadium from a baseball field to a safe, playable softball field. All permanent and portable improvements that impact the intended use of the field (baseball field) are at the sole expense of the Tenant and must be submitted to City in writing, including the owner's manuals with safety guidelines, and be approved by the City Manager or designee.
 - b. Apply for and maintain throughout the Term all licenses, including all required liquor licenses, permits, and approvals, and diligently pursue such applications, and take all reasonable actions within Tenant's control to obtain such licenses, permits, and approvals, including those required for the Permitted Use.
 - c. Conduct all Permitted Use events in compliance with the sound and noise plan agreed upon among the Parties and take such other steps to ensure that sounds and noises caused by Tenant's activities at the Stadium will be at a reasonably acceptable level that will not adversely affect the neighborhood surrounding the Stadium.
 - d. Regular maintenance and cleaning of the Storage Space, and Concessions.
 - e. Provide for telephone installation and payment of telephone bills and any cable television services reflecting usage by Tenant.
 - f. Provide daily cleanup and security of the locker rooms.
 - g. Provide the routine cleaning and regular daily maintenance of rest rooms and spectator portions of the Stadium during each Tenant event.

- h. Provide all security and staff necessary for Tenant's Permitted Use events at the Stadium, including ushers, ticket attendants, score keepers, public address announcers, bat persons, locker room attendants, trainers, umpires, concession attendants, and security staff.
- i. Provide portable toilets for needs beyond which the permanent restrooms can support.
- j. Community Contribution. Tenant shall donate a block of seats, or a ticketing package as determined in its sole discretion to a qualified Mankato area youth group on an annual basis for use in a raffle or auction to assist in generating funds for said youth group. The block of seats or ticketing package may also be utilized by the youth group for attending MoonDogs games free of charge. All such donated tickets shall be treated and accounted for in accordance with Tenant's regular accounting procedures and subject to royalties as set forth in the Northwoods League Affiliation Agreement unless otherwise agreed between Tenant and NWL.

8. CITY RESPONSIBILITIES.

- 8.1 Maintenance. Except as otherwise provided herein, throughout the Term, City shall maintain the Stadium field at its current level with no additional charge to Tenant, including the repair of any work on artificial turf area and the replacement of the artificial turf following its useful life. If the Stadium requires an extraordinary amount of maintenance because of the acts or omissions of or on behalf of Tenant or its Personnel, then Tenant shall pay to City such amounts as may be required to prepare, maintain, or repair the Stadium, which amounts Tenant shall pay to City (i) at a rate equal to one and one-half (1.5) times the cost of City's fully loaded staff, (ii) by the hour or by the mile rate established by the City of Mankato Central Garage for equipment usage, and (iii) for the actual cost of any reasonably required materials used or to be used in such preparation, maintenance, or repair.
- 8.2 Field Preparation. The City will prepare the playing field and the Stadium on game days, including turf management, seating for spectators, cleaning the restrooms in advance, trash removal in advance and other similar items.
- 8.3 Supplies and Utilities.
 - a. City shall be responsible for all utilities and dumpster removal at the Complex.
 - b. City shall provide cleaning equipment, cleaning chemical, soap and paper products appropriate for Tenant's use in cleaning and maintaining the restrooms, team room and concessions stand.
 - c. City shall clean public restrooms for general park use when Tenant is not present.
 - d. City shall maintain the fire suppression system in the concessions stand to a safe standard.
 - e. City shall monitor and clean the grandstand on a regular basis.

9. EQUAL OPPORTUNITY.

- 9.1 Non-Discrimination. Throughout the Term, Tenant shall not discriminate on the basis of sex, color, age, national origin, marital status, familial status, pregnancy, citizenship, creed, genetic information, disability, veteran status, status with regard to public assistance, membership in a local human rights commission, or other categories protected by law.
- 9.2 Failure to Comply by Tenant. If Tenant is found to have discriminated as determined by a court of competent jurisdiction or other appropriate public forum as agreed by Tenant and City, this Agreement may be terminated, in whole or in part, by City. Tenant shall, upon reasonable notice, provide City with access to all records pertaining to hiring and employment and all other pertinent data and records for enabling City and its representatives to ascertain compliance with the provisions of this Agreement.

10. ALTERATIONS AND IMPROVEMENTS.

- 10.1 Alterations. Tenant shall not make any exterior or structural alterations in any portion of the Premises, nor any alterations in the interior or the exterior of any of the facilities located on the Premises without, in each instance, first obtaining the advance written consent of City Manager or designee.
- 10.2 Improvement Requests. Tenant shall send all improvement requests to City contact in writing. Improvements will be considered in conjunction with annual City Improvements and long-term benefits to the entire community.
- 10.3 Any alterations and/or improvements made to the Complex by the Tenant shall become the property of the City and the Tenant shall have no further rights to said improvements except as provided within this Agreement. The City agrees to notify the Tenant of any contemplated improvements to the Complex and shall consult with the Tenant prior to performing any capital improvements.

11. TENANT INSURANCE.

- 11.1 Tenant Liability Insurance. The Tenant agrees to maintain, in full force and effect during their use and/or occupancy of the Complex, insurance based upon an occurrence basis from a licensed carrier in the State of Minnesota in the minimum amounts set forth below covering property damage and comprehensive general liability risks including, but not limited to, premises and operations; product and completed operations; contractual; broad form property damage; and independent contractors and personal injury coverage. The Tenant shall furnish the City, prior to their use and occupancy of the Complex, with a certificate of insurance naming the City and its officers, employees, and agents as additional insureds and providing that the insurance evidenced thereby will not be cancelled prior to the termination of this Agreement or until the City receives thirty (30) days advance written notice of such

termination or ten (10) days for non-payment of premium. Said insurance shall not be less than the following limits of liability:

Bodily Injury

Each Occurrence:	Not less than \$1,000,000
Annual Aggregate:	Not less than \$2,000,000

Property Loss or Damage

Each Occurrence:	Not less than \$1,000,000
Annual Aggregate:	\$2,000,000

Umbrella Policy	Not less than \$1,000,000
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12. PROPERTY CASUALTY INSURANCE.

12.1 Property Insurance. Tenant agrees to carry, maintain and pay during the Term, insurance for at least 100% of the full replacement value of all Tenant's property located on the Premises. Tenant on behalf of itself and its insurer, waives all claims it may have against the City for damage to Tenant's property regardless of cause. This waiver does not waive liability for damage caused by willful, wanton or intentional misconduct of the City or any person acting on behalf of the City.

13. CITY INSURANCE REQUIREMENTS

13.1 Property Insurance. City agrees to carry, maintain and pay during the Term all risk property insurance covering, fire and extended coverage, vandalism and malicious mischief, and all other perils of direct physical loss or damage on the Premises.

14. INDEMNIFICATION

14.1 Indemnity. Lessee agrees to fully indemnify and hold harmless the City, its agents and employees, from and against all claims, actions, judgments, cost and expenses arising out of the damage or injuries to third persons or other property, caused by the negligence or a wrongful act or omission, including breach of contract of this Agreement, by the Lessee, its agents, and employees in the use, occupancy or maintenance of the Leased Premises, including those claims that might arise under the Unemployment Compensation or the Workers Compensation Act of the State of Minnesota, on behalf of Lessee, employees, or other persons while so engaged in the performance of any services contemplated under this Lease Agreement; provided, however, that Lessee shall not be liable for any injury or damage or loss occasioned by the negligence or willful misconduct of the City, its agents, or employees; and provided further that the Lessee shall give to City prompt and reasonable notice of any such claims or actions and City shall have the right to investigate, comprise and defend the same. Nothing herein shall constitute a waiver by either party of any exclusions or limitations on liability provided by Minnesota Statutes, Chapter 466, or such other law as may apply. Such statutory limited immunity shall apply whether an action, claim,

demand, or lawsuit is initiated by Tenant or by any third party. In no event, shall Tenant assert or rely upon such statutory limited liability of Landlord to avoid liability for any act for which Tenant would otherwise be legally responsible. The obligations of this Section shall survive the expiration or other termination of this Lease.

15. DEFAULT/REMEDIES

15.1 Events of Default. The occurrence of any of the following shall constitute a default by Tenant and a breach of this Lease:

- a. If Tenant defaults in paying any amount of Rent when due in accordance with the provisions of this Lease.
- b. If Tenant defaults in performing any material covenant, condition, term or provision of this Lease to be performed by Tenant, and fails to cure such default within (i) five(5) days after written notice by the City to Tenant or (ii) fifteen (15) days after written notice thereof by the City to Tenant if Tenant defaults in the performance of, or otherwise complying with, any material obligation set forth in this Lease.
- c. Anything done by Tenant upon or in connection with the Stadium or the construction of any improvements to be placed upon the Stadium in accordance with this Lease, which directly or indirectly interferes in any way with, or results in a work stoppage in connection with, construction of any improvements of the Stadium and which is not cured by Tenant within two (2) days unless otherwise agreed upon by all parties.
- d. The bankruptcy or insolvency of Tenant or the filing by or against Tenant of a petition in bankruptcy or for reorganization or arrangement or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or Tenant's assignment for the benefit of creditors.
- e. If Tenant abandons or vacates or does not conduct the Permitted Use in the Stadium; This Lease or Tenant's interest herein or in the Stadium or any improvements thereof or any property of Tenant are executed upon or attached.
- f. The Stadium comes into the hands of any person other than expressly permitted under this Lease.
- g. Any claim or lien is asserted or recorded against the interest of City in the Stadium, or any portion thereof, on the account of, or extending from any improvement or work done by or at the instance, or for the benefit of Tenant, or any person claiming by, through or under Tenant or from any improvement or work the cost of which is the responsibility of Tenant and which the Tenant does not cure or substitute a bond for such claim or lien

15.2 City's Rights and Remedies. Notwithstanding anything to the contrary in this Lease, before exercising any other right against Tenant and/or NWL permitted to City under this Section 15.2 for Tenant's failure to cure the any default or the occurrence of any condition described in Section 15.1 above which constitutes a breach of this Lease, NWL shall in its sole discretion have the right but not the

obligation to elect to cure the noticed default or other such breach, and assume this Lease as Tenant. City shall give NWL an additional five (5) business days after Tenant's failure to cure any default in payment of rent when due, and an additional fifteen (15) days after Tenant's failure to cure any default of a material obligation, to cure or commence good faith efforts to cure any material default or other breach specified in Section 15.1. Reasonably good faith efforts on the part of NWL to cure the default or breach shall be deemed to toll the period for the exercise of any remedies by City described below. If NWL elects to cure the noticed default or breach, then NWL shall assume Tenant's rights and obligations under this Lease by written notice of such election to the City, and City shall assign all rights and obligations to NWL as if NWL was the Tenant hereunder. If, after the expiration of the default cure periods described herein, NWL has neither cured, nor commenced good faith efforts to cure, any noticed default or breach as specified in Section 15.1 and the required notice of such default or breach to be provided to NWL by the City, then the City may terminate this Lease as set forth below. In the event Tenant defaults under this Lease, and subject to (i) City's having provided required written notice to NWL of any default or breach described in Section 15.1(c) above, and (ii) NWL's right to exercise its option to cure such Tenant default or breach as set forth in Section (a) below, City may:

- a. At once, or at any time thereafter, terminate this Lease by written notice to Tenant and NWL, whereupon this Lease shall end. City shall have the right, either before or after such termination, to reenter the Stadium, take possession thereof and remove all persons and property therefrom, without notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.
- b. Without terminating this Lease, enter upon and take possession of the Stadium and expel or remove Tenant and any other person who may be occupying the Stadium or any part thereof, without being liable for prosecution or any claim for damages therefor, and, if City so elects, make such alterations and repairs as, in City's judgment, may be necessary to relet the Stadium, and relet the Stadium or any part thereof for such Rent and for such period for time and subject to such terms and conditions as City may deem advisable and receive the Rent therefor. Upon each such reletting, the Rent received by City in respect of such reletting shall be applied first to the payment of any indebtedness other than Rent due hereunder from Tenant to City, including interest thereon; second, to the payment of any loss and expenses of such reletting, including brokerage fees, attorneys' fees and the cost of such alterations and repair; third, to the payment of Rent due and unpaid hereunder, together with interest thereon as herein provided; and fourth, the residue, if any, shall be held by City and applied in payment of future Rent as the same may become due and payable hereunder. Tenant agrees to pay to City, on demand, any deficiency that may arise by reason of such reletting. Notwithstanding any

such reletting without termination, City may at any time thereafter elect to terminate this Lease for such prior default.

- c. To accelerate the balance of all Improvement Rent so that it is immediately due and payable.
- d. Any other rights and/or remedies available under applicable state law or in equity.

15.3 City's Damages. If City terminates this Lease for any breach, or otherwise takes any action on account of Tenant's breach or default hereunder, in addition to any other remedies City may have, it may recover from all damages incurred by reason of such breach or default, including all the following, all of which shall be immediately due and payable:

- a. The worth at the time of award, including interest thereon at the rate of 5% per annum, of any unpaid Rent that was due and payable for periods prior to and at the time of such termination.
- b. The worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves could have been reasonably avoided.
- c. The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.
- d. Any other amount necessary to compensate City for Tenant's failure to perform its obligations under this Lease, including, any costs or expense incurred by City in: (i) retaking possession of the Stadium, including reasonable attorneys' fees therefor; (ii) maintaining or preserving the Stadium after such default; (iii) preparing the Stadium for reletting to a new tenant, including repairs or alterations to the Stadium for such reletting; (iv) leasing commissions; and (v) any other costs necessary or appropriate to relet the Stadium.
- e. At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the state of Minnesota.

16. ASSIGNMENT

16.1 Assignment. Tenant shall not assign or transfer this Agreement in whole or in part or sublet all or any part of the Premises without the prior written consent of City.

17. NOTICES

17.1 Notices. All notices and demands required or permitted hereunder shall be sent by certified mail, return receipt requested, postage prepaid, by facsimile transmission or by Federal Express or other reputable overnight courier service and shall be deemed given upon the postmarked date, if sent by certified mail, or the date deposited with

Federal Express or such other reputable overnight courier service, or the date of the facsimile transmission, but shall not be deemed received until one (1) business day following deposit with Federal Express or other reputable overnight courier service, or three (3) days following deposit in the United States Mail, if sent by certified mail, and addressed to:

To City:
City of Mankato
ATTN: City Manager
10 Civic Center Plaza
P.O. Box 3368
Mankato, MN 56002-3368

To Team:
Diamond Dreams, LLC
ATTN: Chad Suprenant, President
1221 Caledonia Street
Mankato, MN 56001

or at such other address requested in writing by a party upon thirty (30) days' notice to the other parties.

18. RECORDING.

- 18.1 Recording. Tenant shall not record this Agreement, but may with the prior written consent of City, record at Tenant's cost, a memorandum of this Agreement in a form acceptable to City with the Blue Earth County Recorder's office.

19. FORCE MAJEURE AND PERMITTED DELAYS

- 19.1 Force Majeure/Permitted Delays. Except for the obligation to pay Fees, or other sums due under this Agreement, either party hereto is delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts ("Permitted Delay" or "Permitted Delays"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay, so long as the party affected diligently pursues performance as soon as reasonably possible with due diligence. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within five (5) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act due to a Permitted Delay is be sixty (60) days.

20. GENERAL TERMS

- 20.1 Severability. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the Parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of

which would render the provision valid, then the provision shall have the meaning that renders it valid.

- 20.2 Applicable Law. This Agreement shall be governed by the laws of the State Minnesota, without regard to any conflict of law's provisions. All legal proceedings shall be venued in the County of Blue Earth.
- 20.3 Time of the Essence. Time shall be of the essence in interpreting the provisions of this Agreement.
- 20.4 Entire Agreement and Amendments. This Agreement contains all of the agreements of the Parties hereto with respect to matters covered or mentioned in this Agreement and no prior agreement, letters, representations, warranties, promises, or understandings pertaining to any such matters shall be effective for any such purpose. This Agreement may be amended or added to only by an agreement in writing signed by the Parties hereto or their respective successors in interest.
- 20.5 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, principal agent, or employer-employee relationship between or among the Parties.
- 20.6 Cumulative Remedies and Nonwaiver. The various rights and remedies contained in this Agreement shall not be considered as exclusive of any other right or remedy but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of the right to exercise any power any either Party shall impair any such right or power or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by a Party shall not be construed by any other Party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by the Parties to or of any act by any other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to approval of any subsequent similar act. No surrender of the Premises by Tenant shall be affected by City's acceptance of Fees or by other means whatsoever unless the same is evidenced by City's written acceptance of the surrender.
- 20.7 Headings. The headings of the sections contained herein are for convenience only and do not define, limit or construe the contents of such sections.
- 20.8 Successors and Assigns. Except as set forth in the Agreement, this Agreement shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.
- 20.9 Interpretation. The parties agree that it is their intention to create only the relationship of City and Tenant, and no provision hereof or act of either party, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties.
- 20.10 Counterparts. Subject to Section 17, this Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which,

when taken together shall constitute one and the same instrument. Facsimile or PDF counterpart signatures to this Agreement shall constitute an original signature.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties to this agreement have affixed their signatures as follows:

CITY OF MANKATO

The undersigned certify that they have lawfully executed this Memorandum on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

Approved:

By: _____
City Manager

Date: _____

DIAMOND DREAMS, LLC

The undersigned certify that they have lawfully executed this contract on behalf of Diamond Dreams, LLC as required by applicable charter provisions, resolutions or ordinances.

Attested:

By: _____
President

Date: _____

NORTHWOODS LEAGUE SOFTBALL, LLC.

The undersigned certify that they have lawfully executed this contract on behalf of Northwoods League, Inc. as required by applicable charter provisions, resolutions or ordinances.

Attested:

By: _____
President

Date: _____