

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 Bethany Lutheran College, a non-profit corporation, hereinafter referred to as the "Tenant". City and Tenant are at times jointly referred to as "Parties".

RECITALS

WHEREAS, the City owns a softball complex 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 100 Thomas Park Ct, Mankato, Minnesota 56001, known as the Thomas Park. Within Thomas Park, Field 1 is located in the southern most portion of the property and is an NCAA regulation turf softball field hereinafter referred to as "Field". Adjacent to said field is a restroom and concession building, housing public restrooms, a concession stand, team rooms and storage hereinafter referred to as "Amenities". Field and Amenities are at times jointly referred to as "Complex". See map on Exhibit A for reference of space.

WHEREAS, the Tenant desire to operate a softball team in the City and for that purpose to lease the Complex owned by the City, and

WHEREAS, it is in the interest of the City to provide the residents of the City an opportunity to attend and view collegiate softball games.

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 Complex for all softball games at the Field 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 Complex. 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 Complex.
- 2.2 Access.

- a. City grants to Tenant, and its personnel, employees, agents, and licensees (collectively, "Representatives"), a non-exclusive right to use the Complex.
- b. City grants to Tenant, and its employees ("Personnel"), responsibility of oversight of the Complex.
- c. City shall provide to Tenant two (2) physical keys and two (2) or more prox access cards to the Complex 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.
 - b) Tenant, at its cost, shall be responsible for the cost of replacement.
 - c) Personnel shall be the only participants by the Tenant to carry, use or access a key or prox card. Personnel are required to be present during the duration of use at Complex in any locked area, including the exterior gate.
- d. Unless under the supervision and control of Tenant, neither Tenant nor its Personnel or Representatives will provide any form of access, whether express, constructive, or implied, to the Complex to any other person.

2.3 Field.

- a. City grants to Tenant access to the turf field and all of its adjacent facilities including two dugouts, two pitching warmup areas, spectator seating and access to the Thomas Park batting cages.

2.4 Amenities. Provided map in Exhibit B.

- a. City grants to Tenant access to the team room during Permitted Use (as defined at Section 4). Tenant may add non-permanent signs or other décor during the Permitted Use. At the end of each season, Tenant is responsible for removing all décor and repair any damage.
- b. City grants to Tenant's opponents access to the 2nd team room during Permitted Use during official games. Tenant is responsible for providing access to the opponent. Any damage caused by the Tenant's opponent is the responsibility of the Tenant to fix or pay for damages.
- c. Tenant will have access to public restroom facilities as part of the Amenities, including the Women's, Men's and Family Restrooms.
 - a) All restrooms at the Complex are seasonal and will not be opened for use until approximately April 15, weather depending.
 - b) Portable restrooms must be used prior to the restroom opening (as defined at Section 7).
- d. City grants to Tenant access to the concessions stand (as defined at Section 6).

2.5 Storage Space. The City agrees that the Tenant, if desired, shall have access to up to a 14 foot by 8-foot area of storage as depicted in Exhibit B as part of the Amenities during the months of Permitted Use. Outside of Permitted Use, Tenant must remove all storage items and return the area to the City for use. Tenant shall pay annual storage rent (as defined at Section 5).

2.6 Parking.

- a. Tenant acknowledges that the Complex does not include any City owned or controlled parking adjacent to the site.
- b. Tenant shall, during the Term of this Lease, in order to secure sufficient off-street parking for patrons of Tenant events held at the Complex, maintain a separate agreement ("Parking Agreement") with a third party for off-site, off-street parking. 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. 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 Complex.
 - a) Tenant shall plan games, tournaments and practices according to the time needs of the third party parking vendor.
 - b) All complaints related to parking by, or because of, tenant participants or guests shall be addressed within a reasonable time frame by Tenant.
- c. Tenant shall make all efforts to reduce parking on the street near the Complex as much as possible.

3. **TERM.**

- 3.1 Initial Term. The initial term of this Lease shall be for a period of three (3) years commencing on January 1, 2026 and terminating on December 31, 2028 ("Initial Term"). The Initial Term, and any Renewal Term are sometimes collectively referred to herein as the "Term".
- 3.2 Surrender. At the expiration or termination of this Lease for any reason, Tenant shall at its expense: (i) peaceably surrender and deliver the Complex in good and clean condition, excepting only reasonable wear and tear,; (ii) deliver all keys, prox cards and combinations to locks, 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 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.
- 3.3 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, the Tenant shall have access to the Complex for up to 30 softball games (23 regular season and 7 play-off) and daily softball practices to occur during the months of March, April, May, and September 7 through October 7, or 4 months, of each year during the terms of this agreement. Tenant acknowledges that the Permitted Use is a use granted exclusively to Tenant, for softball related activities, unless otherwise provided herein.

- a. Additional softball games may be played with written approval by City in advance.
- b. Events not considered a Permitted Use, including any non-softball related activity, 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.
 - a) Parent celebrations connected to games will not require additional paperwork, but Tenant is responsible for communicating these events to City.
 - b) Failure to submit a Special Event Permit for use of Complex that is not directly softball-related may result in a \$500 charge per occurrence.
 - i. Should Tenant fail to submit a Special Event Permit more than once during the Term, the City may take steps to cancel this agreement due to breach of contract.
- c. Use of space outside of the Permitted Use time frame will be charged based on the most current fee schedule as set by the City of Mankato City Council.
- d. Equipment Use. Tenant shall have access to use of the lights.

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 Access Time. During the Term, when Mankato Area Public School is in session at Mankato East, games may not begin earlier than 5:00pm and practices may not begin earlier than 4:15pm, unless Mankato Area Public School provides written consent.

- 4.4 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.
- 4.5 Construction. Should extraordinary construction be required at the Complex which makes the Complex unusable for softball games, City shall work to minimize impacts to the Tenant as much as possible. Should construction impact Tenant's use of facility per this agreement, City shall provide written notice to Tenant as early as possible. In the event the Complex or any portion thereof becomes unavailable or unusable for Tenant's use due to damage, destruction, repair, maintenance, acts of God, or any other cause beyond City's reasonable control, City shall not be liable to Tenant for any damages, losses, or expenses arising from such unavailability or unusability, including but not limited to lost revenues or profits. The City shall have no obligation to provide an alternative facility or to reimburse the Team for any costs incurred as a result of such unavailability.
- 4.6 Restrictions. The Complex 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 Complex 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. Complex 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 Complex, and any circumstances beyond City's control, including the availability of labor and materials.
 - b. Snow Removal. In the spring, when there may be snow on the turf, City grants Tenant the opportunity to move snow around the turf to aid in faster melting of snow. When there is snow on the field and Tenant wishes to remove completely from the turf, Tenant must receive written permission from City.
 - c. Vehicles in Complex. Vehicles are not permitted to enter the Complex without express written permission from the City.

- d. Prohibited Equipment. Due to the high likelihood of damage to the field and facility, the following items are prohibited in the Complex:
 - a) Sunflower Seeds in Complex;
 - b) Glass in Complex;
 - c) Metal Cleats on turf;
 - d) Sharp or heavy objects on turf;
 - e) Food and beverage on turf (not including water);
 - f) Fire, Tobacco Products, and Vapes on turf.
- 4.7 Reservation of Rights. City reserves the right to suspend play, cancel games, or otherwise restrict access to certain areas of the Complex if the City reasonably believes a significant risk exists that may injure, damage or otherwise be harmful to City, or the Complex, or the participants, patrons, Personnel, or staff at the Complex. Notwithstanding the foregoing, Tenant shall exercise discretion to suspend play, cancel games or restrict access to the Complex to prevent injury to persons or property.

5. RENT.

- 5.1 Date When Rent Begins. All Annual Rent, referred to as “**Rent**” shall commence and, and begin to accrue, as of the Effective Date.
- 5.2 Annual Rent.
 - a. Tenant agrees to pay a fee for the use of the Complex during the term of this lease according to the following schedule. Practices are included in the annual rent and games include an additional fee to support the grooming of the field and maintaining the facilities.
 - a) 2026 - \$1,200 per Permitted Use month plus \$150 per game or scrimmage
 - b) 2027 - \$1,200 per Permitted Use month plus \$150 per game or scrimmage
 - c) 2028 - \$1,500 per Permitted Use month plus \$200 per game or scrimmage
 - b. The parties to this Agreement agree for the purposes of determining a payment “date” is official after the first pitch of the game has been thrown.
 - c. City will invoice for rent and games following the end of each month of Permitted Use. Invoices will be sent by the 15th of the following month, and payments will become due 30 days following invoicing.
 - d. Tenant agrees to pay a fee for the team room/locker room occupied by the Tenant as part of the Amenities for the months of the Permitted Use.
 - a) 2026 - \$500 per Permitted Use month up to \$2,000
 - b) 2027 - \$500 per Permitted Use month up to \$2,000
 - c) 2028 - \$750 per Permitted Use month up to \$3,000
 - e. Tenant agrees to pay a fee for the 14’x8’ area of storage space occupied by the Tenant as part of the Amenities for the months of the Permitted Use.
 - a) 2026 - \$500 per Permitted Use month up to \$2,000
 - b) 2027 - \$500 per Permitted Use month up to \$2,000

c) 2028 - \$750 per Permitted Use month up to \$3,000

- 5.3 Place of Payment. Except as otherwise set forth herein, all Rent payable by Tenant hereunder shall be paid in U.S. dollars, 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. Any amount not paid within ten (10) days after its due date shall bear interest at the rate of one and one-half percent (1.5%) per month (18% per annum), or the maximum rate permitted by law, whichever is less, until paid. In addition, Tenant shall pay a one-time late charge equal to five percent (5%) of the overdue amount. 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:
- have the right to the proceeds of all tickets, novelties, and programs sold at the Complex during all Tenant affiliated softball games;
 - have the exclusive right to sell concessions of the type that are usually sold at a softball game and retain the proceeds from all sales thereof;
 - provide City with Department of Health license or Special Event Permit; and
 - abide by and comply with all applicable Laws.
- 6.2 Concessions Access. Tenant shall have access to use the provided concessions stand for sales of items typically sold at softball events.
- Tenant may not sell sunflower seeds.
 - Concessions stand water access is weather dependent. City works to de-winterize restrooms and concessions stands by April 15 each year, weather depending. There must not be a risk of hard freeze in the forecast in order to turn on the plumbing at this site because the building is not adequately heated or insulated.
- 6.3 Branding. Tenant may add temporary branding throughout the Complex during the Permitted Use Term. All branding, locations, materials and attachments must be approved by City in writing prior to installation.
- Tenant is allowed to leave self-promotion signage indicating the 'Home of Bethany Softball' during the duration of this agreement, including conference and NCAA banners. All branding, locations, materials and attachments must be approved by City in writing prior to installation.
- 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.

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 Complex. However, such rights and privileges shall not extend to any City Use event at the Complex. 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. All improvements made to support these media rights must be approved in writing in advance by City and will be owned by the City following the installation of the investment.

7. TENANT RESPONSIBILITIES.

7.1 Tenant Responsibilities. Tenant shall, at its cost, and in a manner suitable for and commensurate with NCAA level of competitive collegiate softball or its equivalent:

- a. Apply for and maintain throughout the Term all licenses, including all required 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;
- b. 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 Complex will be at a reasonably acceptable level that will not adversely affect the neighborhood surrounding the Complex;
- c. Provide all security and staff necessary for Tenant's Permitted Use events at the Complex, including ushers, ticket attendants, score keepers, public address announcers, bat persons, locker room attendants, trainers, umpires, concession attendants, and security staff;
- d. Provide temporary extra amenities required by the Tenant beyond what a community user might need, including but not limited to, practice screens, bat racks, collegiate level lockers, etc.;
- e. Provide portable restrooms for the team and game attendees, when park portables are insufficient for Tenant attendance, beginning on the first day of Complex use until the season restrooms open to be placed in the designated portable restroom area as shown on Exhibit A (typically April 15, weather depending);
- f. Remove trash from Concessions, Restrooms and Field area and place in City provided dumpster;
- g. Regular cleaning of the Storage Space and Concessions;
- h. Provide cleanup and security of the team rooms on days used; and
- i. Provide the routine cleaning of rest rooms and spectator portions of the Complex during each Tenant Permitted Use event with City provided equipment and supplies.
- j. Notify City of maintenance needs and problems that arise in the Complex.

8. CITY RESPONSIBILITIES.

- 8.1 Maintenance. Except as otherwise provided herein, throughout the Term, City shall maintain the Complex 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 Complex 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 Complex, 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 Complex on game days, including field preparation, base placement, in-field readiness, seating for spectators, and other similar items.
- 8.3 Setting Lights. The City will schedule field lights to turn off and on as needed. Tenant shall communicate issues should they arise.
- 8.4 Supplies and Utilities.
 - a. City shall be responsible for all utilities and dumpster removal at the Complex.
 - b. City shall clean public restrooms daily.
 - c. City shall provide cleaning equipment, cleaning chemical, soap and paper products appropriate for Tenant's use in cleaning and maintaining the Facility during Permitted Use events.

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, in the administration of its educational policies, admissions policies, and financial aid programs. As permitted by law, Bethany has the right to exercise discretion in employment to employ persons who share and are committed to the Biblical tenets of the Evangelical Lutheran Synod and the values and mission of the College. Bethany has the right to exercise discretion in regards to education, employment, housing or use of facilities, and other school-administered programs which is consistent with the Biblical tenets of the Evangelical Lutheran Synod and the values and mission of the College.
- 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.

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 that impact Tenant use of the Complex.

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 commercial 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 without thirty (30) days' written notice prior to the termination or ten (10) days for non-payment of premium. Said commercial general liability insurance shall not be less than the \$2,000,000 per occurrence; \$2,000,000 annual aggregate. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. The City must also be named as an additional insured on any umbrella/excess policy. The Tenant's policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to the City.

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. Tenant agrees to fully defend, 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 Complex, including those claims that might arise under the Unemployment Compensation or the Workers Compensation Act of the State of Minnesota, on behalf of Tenant, and its employees, or other persons while so engaged in the performance of any services contemplated under this Agreement; provided, however, that Tenant 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 Tenant 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 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 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 Agreement.

15. DEFAULT/REMEDIES

- 15.1 Default/Remedies. In the event of any default by either party under this Agreement, then the other party, at its option, and after thirty (30) days written notice and opportunity to cure, may, in addition to all other rights and remedies provided in this Agreement, or otherwise at law or in equity, terminate this Agreement.

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: Director of Administrative Services
10 Civic Center Plaza
P.O. Box 3368
Mankato, MN 56002-3368

To College:
Bethany Lutheran College
ATTN: Sr. VPFA
700 Luther Drive
Mankato, MN 56001

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

- 17.2 Notice by Email. Notice may also be sent by email. Notice by email shall be deemed given on the date transmitted, provided that: (i) the notice is sent to the person designated above (or as later designated in writing); (ii) the sender does not receive an automated message indicating delivery failure; and (iii) a copy of the notice is retained by the sender showing the date and time of transmission. If email transmission occurs after 5:00 p.m. local time of the recipient, or on a Saturday, Sunday, or legal holiday, notice shall be deemed given on the next business day.

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, pandemics, epidemics, 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.

[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: _____

BETAHNY LUTHERAN COLLEGE

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

Attested:

By: _____
Sr. VP of Finance & Administration

Date: _____

Exhibit A: Thomas Park Map

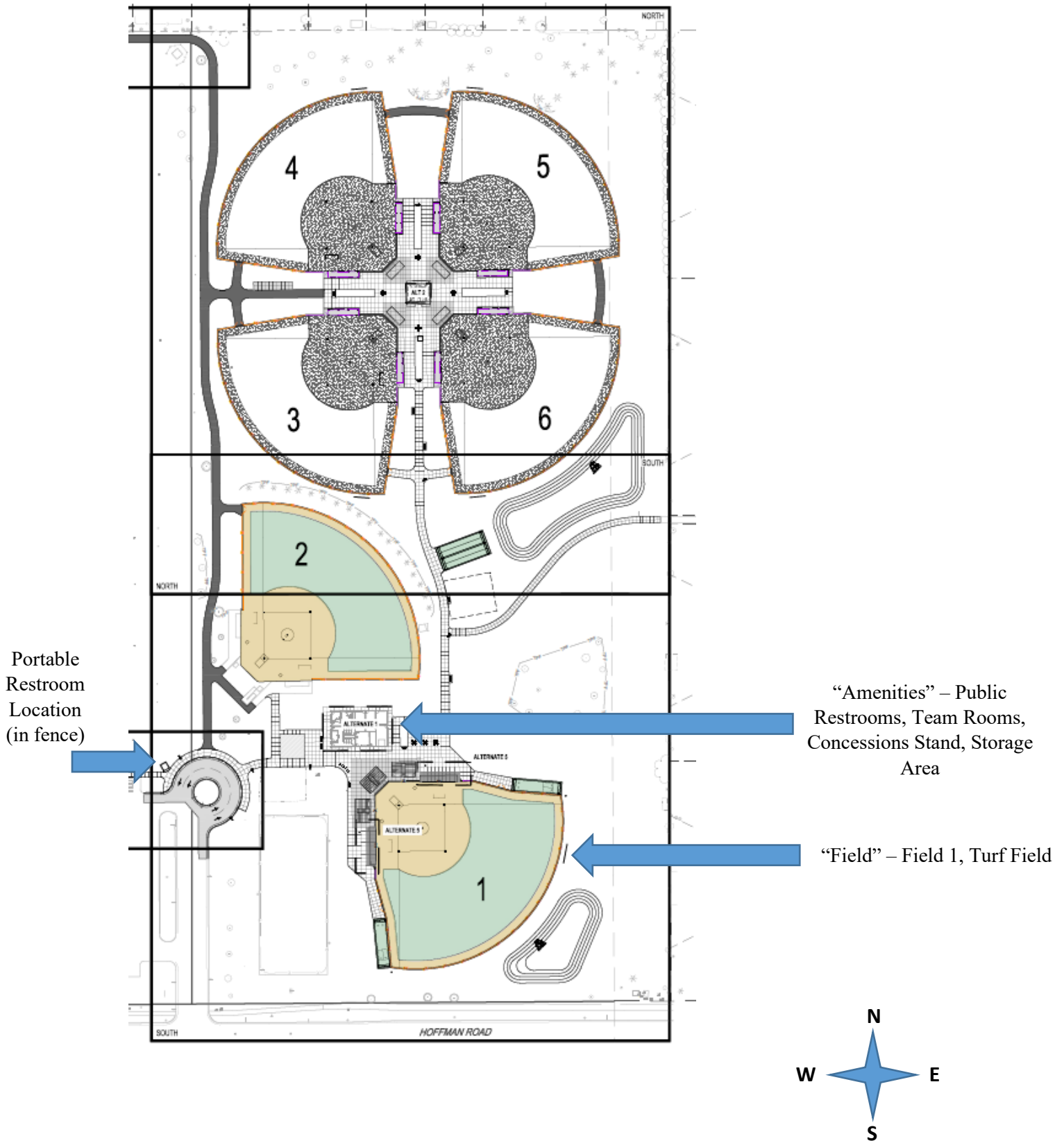


Exhibit B: Amenities

