

MERCHANTS PARK LEASE

Carroll Community School District

THIS AGREEMENT made and entered into this _____ day of _____, 2023, by and between the City of Carroll, Iowa (Landlord) and Carroll Community School District (Tenant).

The parties agree as follows:

1. PREMISES AND TERM. Landlord leases to Tenant, Merchants Park in Carroll, Iowa, together with all improvements thereon, and all rights, easements and appurtenances thereto, upon the condition the Tenant performs as provided in this Lease for the 2024 baseball season (May 1st through July 17th). However, if tenant fails to utilize the Stadium and field for a period greater than 30 days during the lease term, the lease shall terminate.

After the 2024 baseball season the Tenant shall notify the Landlord if he wishes to lease for the following year. The Parties may then renegotiate a new Lease.

2. RENT. Tenant agrees to pay Landlord as rent: Paying 25% of the overall salary of the field maintenance laborer.

3. POSSESSION. Tenant shall be entitled to possession for their scheduled games and practices on May 1, 2024, and shall yield all possession to Landlord on the last day of this Lease, which is September 1, 2024.

4. USE. Tenant shall use the premises only for Carroll Community School District High School baseball, games and practices. Associated promotional baseball events must be specifically authorized by the Landlord and proof of additional insurance must be provided as required by the Landlord.

Priority use of the field shall be as follows:

a) Scheduling of varsity and junior varsity baseball games for both Kuemper High School and Carroll High School shall have priority until November 1, 2023. After November 1, 2023 Landlord may schedule games for the Carroll Merchants baseball team on any available dates with the Director of Parks and Recreation in Carroll. Once game schedules are submitted and approved by the Carroll Director of Parks and Recreation for the Carroll Merchants baseball team, Kuemper High School and Carroll High School cannot preempt the approved scheduled games for the Carroll Merchants baseball team. During the season, if a game needs to be rescheduled due to a rainout or other situation, a game may be rescheduled on any other available date on a first come first served basis with the Carroll Director of Parks and Recreation. Once a game date for a postponed game has been approved by the Carroll Director of Parks and Recreation, another group cannot preempt that date.

b) Carroll Merchants, Kuemper High School, and Carroll High School shall meet with the Director of Parks and Recreation to develop a practice schedule that is mutually acceptable to all parties. If a mutually acceptable practice schedule cannot be established, then the Director of Parks and Recreation will establish a practice schedule taking into account the desires of each team equally. The practice schedule approved by the Director of Parks and Recreation shall be final. Practices can be preempted by the need to reschedule a game. Due to the anticipated high use of Merchants Park and to protect and maintain a high-quality playing surface, a minimum of 30% of all team practices shall occur off of the playing surface of the field, or in non-cleated shoes.

5. CARE AND MAINTENANCE.

- a) The Tenant takes the premises as is.
- b) The Landlord shall maintain the premises.
- c) The Tenant may assist in the maintenance of the premises under the direction and supervision of the Landlord. Tenant shall make no structural changes or alterations without prior consultation and written consent of Landlord.
- d) Tenants shall not permit nor allow the premises to be damaged or depreciated in value by any act, omission to act or negligence of itself, its agents or employees.
- e) Assisted maintenance will be requested of the Tennant. This shall include repair of batter's boxes, pitching mounds, and basepaths after each practice and game.

6. **UTILITIES.** The Landlord shall pay for all utilities which may be used on the premises. Landlord shall not be liable for damages for failure to perform as herein provided, or for any stoppage for needed repairs or for improvements or arising from causes beyond the control of Landlord, provided Landlord uses reasonable diligence to resume such services.

The Landlord may contract for all non-alcohol drinks and food concessions during games and will retain profits pursuant to its concessions contract with the concession vendor

The Landlord is under no obligation to provide staffing or supervision at Merchants Park at any time including but not limited to tenant games or practices.

The Tenant shall provide staff at the entrance for collection of any admission fee and Tenant's staff shall be available throughout the game for assistance to the public in case of need or emergency.

The Tenant will attend to the field under the supervision of Landlord during its use, which may include dragging, lining and chalking before the games. After each game, the Tenant shall also attend to the field, by picking up trash and generally policing the area.

No custodial fees will be charged when custodial staff is scheduled to be on duty for event or game. When custodial work is not done following an event, estimated

supervision and cleanup fees will be determined by the Director of Parks and Recreation and the Parks Superintendent. If additional fees are required after the conclusion of the event, the entity will be billed for those costs.

The Tenants will make no unlawful use of the premises and agree to comply with all Federal, State and local laws.

7. **SURRENDER.** Upon the termination of this lease, Tenant shall surrender the premises to Landlord in good and clean condition, except for ordinary wear and tear or damage without fault or liability of Tenant.

8. **ASSIGNMENT AND SUBLETTING.** No assignment or subletting, shall be effective without the prior written consent of Landlord.

9. **INSURANCE.**

a) **PROPERTY INSURANCE.** Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the Insurance Services Office Broad Form Causes of Loss. To the extent permitted by their policies the Landlord and Tenants waive all rights of recovery against each other.

b) **LIABILITY INSURANCE,** Tenant shall obtain commercial general liability insurance in the amounts of \$1,000,000 liability insurance for each occurrence and \$3,000,000 liability insurance as aggregate. This policy shall be endorsed to include the Landlord as an additional insured and proof provided to Landlord 30 days prior to lease beginning.

10. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees).

11. **INDEMNITY.** Except for any negligence of Landlord, Tenant will protect, defend, and indemnify Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises or due directly or indirectly to the tenancy, use or occupancy there, or any part thereof by Tenant or any person claiming through or under Tenant.

12. **DAMAGES.** In the event of damage to the premises, so that Tenant is unable to conduct activities on the premises, this lease may be terminated at the option of either party. Such termination shall be affected by notice of one party to the other within twenty days after such notice; and both parties shall thereafter be released from all future obligations hereunder.

13. **MECHANICS' LIENS.** Neither Tenant, nor anyone claiming by, through, or under Tenant, shall have the right to file any mechanic's lien against the premises. Tenant shall give notice in advance to all contractors and subcontractors who may furnish, or agree to furnish, any material, service or labor for any improvement on the premises.

The tenant shall not incur any expense on behalf of the Landlord nor is the Tenant authorized in any fashion to contract with third parties on behalf of the Landlord. Any expenditure made by the Tenant on the premises must be approved by the Landlord along with proof of ability to pay for the expenditures or improvements.

14. DEFAULT, NOTICE OF DEFAULT AND REMEDIES.

EVENTS OF DEFAULT

Each of the following shall constitute an event of default by Tenant; 1) Failure to pay rent when due; 2) failure to observe or perform any duties, obligations, agreements, or conditions, imposed on Tenant pursuant to the terms of the lease; 3) abandonment of the premises.

NOTICE OF DEFAULT

Landlord shall give Tenant a written notice specifying the default and giving the Tenants ten (10) days in which to correct the default. If there is a default (other than for nonpayment of a monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant may propose an additional period of time in which to remedy the default. Consent to additional time must be granted by Landlord.

REMEDIES

In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including but not limited to the following: 1) Termination. Landlord may declare this lease to be terminated and shall give Tenant a written notice of such termination. In the event of termination of this lease, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of Landlord in regaining possession of the premises and the reletting thereof, including attorney's fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting; 2) Forfeiture. If a default is not remedied in a timely manner, Landlord may then declare this lease to be forfeited and shall give Tenant a written notice of such forfeiture, and may, at the time, give Tenant the notice to quit provided for in Chapter 648 of the Code of Iowa.

15. **ADVERTISING.** Temporary advertising, such as signs, banners, tarps,

flags, front fence signs and covers are allowed for game day activities and shall be removed at the conclusion of the contest. Permanent advertising, such as signs, banners, tarps, flags, fence coverings or any other display of advertising is prohibited.

16. NOTICES AND DEMANDS. All notices shall be given to the parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered or certified, properly addressed, return receipt requested and postage prepaid.

17. PROVISIONS BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

18. CERTIFICATION. Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitation this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

CITY OF CARROLL, IOWA –
LANDLORD

Carroll Community School District
– TENANT

By: _____
Mark Beardmore, Mayor
City Hall
627 N. Adams St.
Carroll, IA 51401

By: _____
Carroll Community School District
1026 N Adams St,
Carroll, IA 51401

ATTEST:

By: _____
Laura Schaefer, Clerk

