

LEASE

This Lease is made and entered into this _____ day of _____, 2005, by and between CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City", and THE AMERICAN LEGION, LINCOLN POST NO. 3, a Nebraska nonprofit corporation, hereinafter referred to as the "Lessee".

WITNESSETH:

WHEREAS, City is the owner of Lot 71, Irregular Tract, Southwest Quarter (SW 1/4) of Section 35, Township 10 North, Range 6 East of the Sixth Principal Meridian, Lancaster County, Nebraska, known as Sherman Field, which was donated to the City in 1924 as part of the Sawyer and Snell Park; and

WHEREAS, the City Parks and Recreation Department, due to budget cutbacks and staff reduction, has considered leasing the operation and maintenance of Sherman Field, but retaining its control over the facility; and

WHEREAS, there are limited City programs or activities scheduled at Sherman Field, but Sherman Field is used by the Lincoln Public Schools and American Legion Baseball resulting in a high degree of necessary maintenance; and

WHEREAS, the City through its Parks and Recreation Department shall maintain ultimate use and control over Sherman Field.

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

1. The City hereby grants to the Lessee a lease commencing on May 16, 2005, and ending on December 31, 2010, for nonexclusive use, except for that exclusive use as described in Paragraph No. 13, of the above-described premises for recreational uses and subject to the following conditions.

2. Lessee shall not be responsible for any major renovation or replacement of the equipment, structures or premises in excess of \$250 per occurrence. If any equipment, structures or premises require major renovations or replacement, Lessee shall report such to the Lessor. Lessee shall be responsible for minor repairs and maintenance of the playing field, premises, equipment, and structures. Lessee shall also be responsible for timely payment of all utilities, including water, sewer, and electricity. Lessee will not be responsible for refuse service.

3. Lessee shall coordinate and schedule events sponsored by other organizations. Such schedules shall be submitted to the Director of Parks and Recreation for approval. Scheduling shall be so conducted as to promote to a maximum extent the public use and enjoyment of the premises. Lessee guarantees that other organizations shall have use of the premises. Organizations which have used the premises in the past on a regular basis shall be allowed to continue such use similar to such past use. Lessee shall not discriminate against responsible organizations requesting use of the premises. Conflicts over scheduling shall be submitted to the Director of Parks and Recreation for resolution.

4. Lessee may charge other organizations a reasonable fee for use of the premises. Such fee may be based on a percentage of admission fees to be charged by such organizations. A schedule of fees shall be submitted to the Director of Parks and Recreation for approval. Lessee may also charge an admission fee for its events. All admission charges must be reasonable and shall be subject to approval of the Director of Parks and Recreation. The City shall be paid two percent (2%), for youth events, or twelve percent (12%), for adult events, in accordance with the applicable rules and regulations for use of the premises, of the total gross gate admissions or season passes sold on-site. Gross admissions shall be defined as all monies collected on-site prior to any expenses taken out, and all admission-charging users shall submit a final statement of income to the Director of Parks and Recreation.

5. Rules and regulations for use of the premises shall be promulgated by the City through the Director of Parks and Recreation. Lessee may suggest additional rules and regulations subject to the approval of the Director of Parks and Recreation. All rules and regulations for use of the premises shall be approved by the Mayor and placed on file in the City Clerk's office.

6. Lessee may place improvements on the premises subject to prior written approval by the Director of Parks and Recreation. Such improvements shall become a part of the premises and shall be and remain the property of the City at all times during and after the period of this Lease.

7. The City may grant concession licenses to individuals to occupy or remain upon the subject premises according to Lincoln Municipal Code § 12.08.197. The City shall notify Lessee of such licenses. The City may reserve to itself a percentage of revenue from such concessions.

8. The Lessee shall indemnify and save harmless the City from claims and demands of every nature and description arising out of the use or maintenance of said premises by the Lessee, its

agents, employees and volunteers, and the Lessee agrees that it shall have no rights nor privileges under or by virtue of any of the terms of this Lease unless and until it shall file with the City and keep in full force and effect during the entire period of this Lease, a certificate of liability insurance issued by an insurance company authorized to do business in the State of Nebraska, providing liability coverage protecting both the City and the Lessee from all liability arising out of all operations of the Lessee, its agents and employees, hereunder. Such insurance coverage shall be in the minimum amounts of \$2,000,000.00 for the injury or death of any number of persons per occurrence, and \$2,000,000.00 for property damage per occurrence; and such insurance shall provide that it cannot be canceled prior to the end of the period of this Lease except upon 30 days written notice to the City. Such insurance shall be subject to the approval of the City Attorney. Lessee shall require all other users of the premises to which it grants exclusive use or a license to agree in writing to save and keep the City free and harmless from any and all loss or damages or claims for damages arising from or out of such use. The City may require Lessee to require from such users insurance coverage in the minimum amounts of \$500,000.00 for the injury or death of any number of persons per occurrence, and \$300,000.00 for property damage per occurrence. Both the user and the City shall be insureds. Such insurance shall provide that it cannot be canceled prior to the end of the period of the use or license except upon 10-days written notice to the City. Such insurance shall be subject to the approval of the City Attorney.

9. Lessee shall on the 15th day of November furnish to the City in writing a report of the Lessee's receipts and disbursements in connection with this Lease, together with such other information as the City may require.

10. This Lease cannot be assigned or sublet, except that the Lessee shall be allowed to let others have temporary use of said premises according to the terms and conditions set forth herein.

11. This Lease may be terminated by the City at any time upon the giving of 30 days written notice in the event of failure of the Lessee to fully comply with all the terms and conditions hereof, except that upon termination of insurance coverage, notice of 10 days shall be sufficient.

12. The Lease may be terminated by the City or Lessee at any time upon the giving of six (6) months written notice. Notice to the City shall be sent to the Director of Parks and Recreation.

13. The City hereby reserves in its proper officers the power to supervise and control the use of said premises for the benefit of the public, except that while the Lessee is using the said premises for the purposes of conducting its sponsored baseball games and other events, the Lessee shall be given exclusive control, subject to reasonable rules, regulations, and ordinances of the City, for the purpose of conducting its sponsored baseball games and other events. This Lease shall not be construed to prevent the City from using said premises for public purposes when such use does not interfere with or hinder that of the Lessee at such times as events scheduled by the Lessee on its behalf or on behalf of other organizations are not actually in progress. It is understood and agreed that the City does not intend to surrender jurisdiction of its park property described in this Lease and that such property will continue to be used for the benefit of the public.

14. The Lessee, its agents and employees, and organizations allowed by the Lessee to use said premises, shall procure and pay for all necessary permits as required by law for the operations hereunder.

15. The Lessee, its agents and employees, and organizations allowed by the Lessee to use said premises, shall not discriminate against any person or persons because of race, color, sex, religion, age, national origin, ancestry, disability, or marital status in the conduct of the operations hereunder, and shall fully comply with the requirements of Chapter 11.04 of the Lincoln Municipal Code relating to equal accommodations and constitutional rights.

16. The Lessee shall comply with all ordinances and rules and regulations of the City with respect to the use and enjoyment of said premises, including the erection of any structure thereon.

Dated this _____ day of _____, 2005.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

City Clerk

Coleen J. Seng, Mayor

The Lessee hereby agrees to accept this Lease and to be bound by all the terms and conditions hereof.

Dated this _____ day of _____, 2005.

ATTEST:

THE AMERICAN LEGION, LINCOLN POST NO. 3
a Nebraska nonprofit corporation

Roger E. Wild
Adjutant

Greg Seng
Commander

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

On _____, 2005, before me, the undersigned, a Notary Public, personally came Coleen J. Seng, to me known to be the Mayor of the City of Lincoln, Nebraska, a municipal corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said City.

Witness my hand and notarial seal the day and year last above written.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

On _____, 2005, before me, the undersigned, a Notary Public, personally came _____, to me known to be the Commander of the American Legion, Lincoln Post No. 3, a Nebraska nonprofit corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and notarial seal the day and year last above written.

Notary Public