

Memorandum

To: Bill Hanson

From: Kerry M. Leider

Date: November 17, 2014



Re: John Beargrease Sled Dog Marathon Lease Agreement

Attached please find two (2) copies of the Lease Agreement between the John Beargrease Sled Dog Marathon and ISD 709 covering the period from January 24 – January 25 2015. The total rental fee for use of the facility located at 301 North 40th Avenue East is \$700.00.

I am recommending approval of the Lease Agreement with the John Beargrease Sled Dog Marathon to conduct the pre-race set up activities and race start for the sled dog marathon competition. After review and if you concur, please sign both copies and return them to the Facilities Management office for processing.

Attachments

**LEASE BETWEEN
INDEPENDENT SCHOOL DISTRICT NO. 709
DULUTH, MINNESOTA
and
THE JOHN BEARGREASE SLED DOG MARATHON**

THIS INDENTURE OF LEASE, made and entered into this 24th day of September, 2014, by and between **Independent School District #709**, a public corporation, party of the First Part, hereinafter called Lessor, and **The John Beargrease Sled Dog Marathon**, a private nonprofit corporation created and existing under the laws of the State of Minnesota, party of the Second Part, hereinafter called the Lessee,

WITNESSETH:

In consideration of the covenants, conditions and promises hereby mutually undertaken to be kept and performed by the parties, Lessor hereby demises and leases and Lessee hereby hires and takes the following described premises situated in the City of Duluth, County of St. Louis and State of Minnesota, to wit:

The facility located at 301 North 40th Avenue East, designated as the "East High School Lots and Drives and the Lower Storeroom Portion of the Ordean Stadium Concessions Building", as shown on Exhibit A, of the Duluth Public Schools, and sidewalks, alleys, easements, rights and appurtenances in connection with the " Ordean Stadium and Portion of the Stadium Concessions Building " of the Duluth Public Schools or belonging thereto, all being collectively referred to as the demised premises. The Lease does not include the school building or playing field or track areas.

TO HAVE AND TO HOLD THE SAME, unto the said Lessee, on January 24th and January 25th, 2015 during the hours of 4:30 p.m. on the 24th until 6:00 p.m. on the 25th except where otherwise indicated in this Agreement, with the following terms and conditions and covenants, to-wit:

General Use of Premises – The Lessee will use and occupy said premises to conduct Pre-Race Setup Activities and Race Start of Sled Dog Marathon Competition and for no other use or purpose without the written consent of Lessor, and Lessee shall not use the premises for any purpose in violation of any federal, state, or municipal statute or ordinance, or of any regulation, order, or directive of a governmental agency, as such statutes, ordinances, regulations, orders, or directives now exist or may hereafter provide, concerning the use and safety of the demised premises. On the breach of any provision hereof by Lessee, Lessor may at his option terminate this lease forthwith and re-enter and repossess the demised premises.

Exclusive Use – Parking Lots and Drives and baseball PA systems - Use does not include concession stand or restroom facilities – On the dates and during the times listed above the Lessee shall have exclusive use of the parking lots and driveways as shown on exhibit A attached hereto, for starting line and associated activities relating to the sled dog marathon competition. The Lessee agrees the Lessor shall have the right of access to all areas of the site and buildings at all times for the purpose of inspection.

Ordean Stadium and Concession Building – John Beargrease Sled Dog Marathon Lease

Non-exclusive Use - Parking Lots – On the dates and during the times listed above the Lessee and its patrons will be allowed use of the parking lots in conjunction with other users authorized by the Lessor.

Rent – The Lessee agrees to pay to the Lessor in lawful money of the United States, a net rent as follows: For the entire period of the lease terms, commencing on January 24th, 2015, and ending on January 25th, 2015, the sum of Seven Hundred Dollars (\$700) payable in one installment on or before January 16th 2015. All amounts paid by the Lessee under this agreement shall be delivered or mailed to Duluth Public Schools Accounts Payable at 215 North 1st Avenue East, Duluth MN 55802.

Concessions – The Lessee shall have the non-exclusive right to provide food and souvenir concessions on the grounds of the leased premises. The Lessor or its designated student activities or booster groups, shall have the right to operate concession stands on or about the school grounds, in the school building or stadium concession stand. Food items to be sold by the Lessee require the approval of the St. Louis County Health Department and the Lessor. Vending of certain items may be refused due to their impact on refuse, cleaning and sanitization.

Intoxicating and Non-intoxicating Malt Beverages – The sale and / or consumption of intoxicating beverages and non-intoxicating malt beverages is prohibited on School District property. On the dates and during the times listed above the Lessee shall police and enforce the prohibited consumption of intoxicating beverages and non-intoxicating malt beverages.

Use of Smoking and Tobacco Products Prohibited – The sale and / or use of smoking and tobacco products is prohibited on School District property. On the dates and during the times listed above the Lessee shall police and enforce the prohibited sale and use of tobacco products.

Gate and Advertising Revenues – The Lessee Shall be entitled to 100% of the gate receipts charged or donated at the leased property and start of competition held on the dates and during the times subject to this agreement. Lessee shall be entitled to all revenues generated by the sale of advertising displayed or temporarily attached to the premises. All signs, other advertising fixtures, and their content are subject to the review and acceptance of the Lessor. All advertising signs or other displays authorized by the Lessor must be removed at the end of the event date.

Media – The Lessee shall have the right to control all broadcast rights to the Lessees operations and competition held on the date and times listed in this agreement, and shall have the right to retain all of any income derived by it as a result of said broadcast.

Public Announcement and Time Keeping Equipment – The Lessee will provide their own officials equipment including but not limited to public announcement, broadcast, and timekeeping equipment, and provide electric power supply as necessary for the operation of said equipment; except that the Lessee shall have access to the press box PA system if it so chooses to use it. For any purpose other than starting line PA system, no power cords shall be run from the School, Stadium Press Box, Concessions or any other Building without the specific permission of the Lessor.

Ordean Stadium and Concession Building – John Beargrease Sled Dog Marathon Lease

Site Security and Damage Control – The Lessee will supply, at the Lessee's sole expense, a uniformed Duluth Police Officer to be present on site during the event. In addition to the required uniformed police officer, the Lessee is responsible for providing security and supervision personnel necessary to prevent damage to the demised premises due to the intentional or unintentional action of the Lessee, competitors, vendors, and or patrons and guests attending the events.

Crowd Control and Other Personal Injury Prevention – The Lessee shall provide, at the Lessee's sole expense, security personnel required to maintain crowd control, prevent illegal behavior and to prevent personal injury that may result from the behavior or actions of the competitors and their support crews, the audience, and the employees of the Lessee and others who may be present at the event.

Site Manager and Site Inspectors – The Lessor shall have the right to assign and identify a site manager who shall have the unrestricted access to all areas of the demised premises to monitor the Lessee's activities and use of the facilities. The site manager may identify activity or actions that are causing or may cause damage to the demised premises. The site manager shall have the right to demand the Lessee take appropriate corrective action to prevent or stop damage from occurring. The Lessee's failure to appropriately respond to demands made by the site manager shall constitute a breach, and may result in the immediate termination of this agreement. The Lessor shall provide the Lessee with a list of other employees and agent's names who must be allowed free access to the demised premises during the dates and times identified in this agreement.

Assignment and Subletting – Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession rights or license to use the premises or any part thereof. An assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease.

Alteration of Property – No alteration, addition, or improvement to the leased property, that cannot be removed or immediately repaired prior to the end of the lease term, shall be made by the Lessee without the written consent of the Lessor

Right to Enter – The Lessor shall have reasonable right to enter into demised premises for examining or to make any needful repairs or alterations, but the making of any repairs, or exhibiting of the premises shall not unnecessarily interfere with Lessee's use of the premises or the conducting of the Lessee's business therein. That nothing herein shall be construed to require the Lessor to make repairs, and the Lessor shall not be liable to the Lessee, or any other person or persons, for failure or delay in making said repairs, or for damage or injury to person or property caused in or by the making of such repairs, or the doing of such work.

Utilities – The Lessor shall be responsible for paying the cost of all utilities associated with the use of the Press Box. Lessee agrees to indemnify, defend and save harmless the Lessor from any and all claims, demands, actions, causes of action or damages arising from the temporary loss of electrical power or failure of other utilities that results in the damage or loss of gate receipts due to the failure of electric power.

Ordean Stadium and Concession Building – John Beargrease Sled Dog Marathon Lease

Restroom Facilities – The Lessee shall be responsible for providing adequate numbers of temporary restroom facilities to be placed on the leased premises for the use by race participants, support personnel, workers, volunteers and race event spectators. The Lessee or its contracted provider of these temporary restroom facilities shall be responsible for the cleaning, sanitation, and stocking paper products and hand sanitizers during the entire time of their use or until they are removed from the leased premises. The location of the temporary restrooms shall be reviewed and agreed by the Lessor prior to their placement on the premises. The temporary restroom facilities shall be removed before 5:30 pm on the 25th of January 2015.

Insurance and Indemnification – The Lessee hereby agrees to indemnify, defend and save harmless the Lessor and its officers, agents, servants and employees from any and all claims, demands, actions, causes of action or damages arising from the Lessee's use and occupation of the property and its operations conducted thereon. At all times during this agreement, the Lessee shall maintain and keep in force, at the Lessee's sole expense, a public liability insurance policy in the amount of at least One Million Five Hundred Thousand Dollars (\$1,500,000). Such policy shall be in the form of a "Comprehensive General Liability" policy or such other form as may be approved by the Lessor. It shall be written by a company licensed to do business in the State of Minnesota and shall name the Lessor as an additional insured. The Lessee shall furnish to the Lessor a certified copy of said policy including an endorsement naming the Lessor as an additional insured, or a certificate of insurance: provided, however, in the event that a certificate of insurance is provided, the words "endeavor to" shall be stricken from the notice provisions thereof and said certificate shall require thirty (30) days notice to the Lessor prior to termination. Insurance shall be subject to the approval of Lessor for the limits and the adequacy of protection. Lessor will provide at Lessor's expense such insurance as in the Lessor's judgment may be proper and necessary to protect against any loss, damage or destruction to the building or any other insured portions of the demised premises by fire or other casualty. The Lessor and the Lessee hereby mutually waive as against each other any claim, action or cause of action for any loss, cost, damage or expense which may arise during the term hereof as a result of occurrence of perils covered by the Minnesota Standard Fire Insurance Policy and extended coverage endorsements, unless the insurer prohibits such waiver. The policy of insurance shall include coverage for damage to Lessor's property both pursuant to this contract and damage to Lessor's property due to reasons not specified in this contract.

Snow Placement On Driveways – The Lessor shall be responsible for the placement of snow acquired from the site that is readily available and suitable for use as the initial start of the race taking place on paved surfaces and sidewalks. The Lessor will attempt to locate approximately 6"-12" of snow onto the paved surface approximately 14 feet wide and the length and area as shown on the attached Exhibit A. The Lessee shall be responsible for confirming the suitability of the snow placed by the Lessor for the purposes of the race. The lessor shall not be held responsible for the suitability or condition of the snow placed for this purpose, and the Lessee agrees to hold the Lessor harmless from any and all claims made that related to the snow condition or its placement. The Lessee will be considered to have accepted the conditions of the placed snow once it allows the race to begin and racers and dogs to travel over this placed material. Following the completion of the final competitor start and after 6:30 pm on January 25th the Lessor shall accept responsibility for the placed snow and its removal from the driving surfaces and sidewalks along Greyhound Drive.

Ordean Stadium and Concession Building – John Beargrease Sled Dog Marathon Lease

Facility Clean Up – The Lessee shall be responsible for the removal and disposal of all refuse, including but not limited to concessions containers, race pamphlets, spectator generated refuse, and straw bedding, sled dog generated material left on the grounds drives and parking areas. Lessee shall be responsible for the removal of all food and food container waste, packaging materials, and refuse and temporary restroom facilities. The cleanup of the site shall be complete before 6:00 pm on the 25th of January 2015.

Waiver of Consent – The failure of the Lessor or Lessee to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any rights or remedies that the Lessor or Lessee may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.


Breach – Failure of the Lessee to make lease payment by the date indicated in the Rent Section of this Agreement constitutes a breach. The Lessor may, without waiving its rights to other available remedies, refuse the Lessee's entry and access to the premises because of the Lessee's breach of any terms of this agreement.

Cancellation – This lease may be canceled and terminated by the Lessor for any reason at its sole discretion by giving a written notice to the Lessee of the Lessor's intent to terminate 10 days prior to the date of the intended termination, by sending the required notice to the Lessee at the address specified in this lease, or by personal delivery.

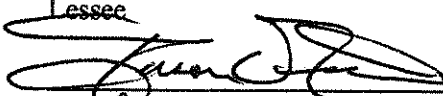
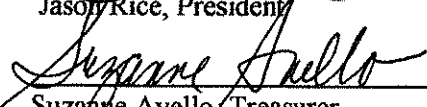
Notices – Whenever notice, demand or communication shall be required to be given to the Lessee, it shall be deemed sufficient for that purpose to mail such notice by e-mail sent to Jason Rice, President; Suzanne Avello, Treasurer at Jason Rice [jrice2005@hotmail.com] and Suzanne Avello [szavello@gmail.com], or as Lessee may from time to time designate in writing, and notice given as aforesaid shall be sufficient service thereof. Whenever notice, demand or communication is to be given to or made on the Lessor, it shall be deemed sufficient for the purpose to mail such notice to the Lessor addressed to: **Kerry Leider, Independent School District #709, 215 North First Avenue East, Duluth, Minnesota 55802**, or as Lessor may from time to time designate in writing and notice given as aforesaid shall be sufficient service thereof.

IN WITNESS WHEREOF, the parties hereto have executed this lease and affixed their seals thereto, the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709
Lessor


William Hanson, Dir. of Business Services

JOHN BEARGREASE SLED DOG MARATHON
Lessee


Jason Rice, President

Suzanne Avello, Treasurer

