City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MJP-W

FROM: Jack Wardell, Director of Parks and Recreation JW

DATE: April 14, 2017

SUBJECT: Merchants Park Baseball Stadium Lease – Bucko Baseball d/b/a Carroll Merchants

- Resolution – Baseball Stadium Lease Agreement

Last year the Carroll Merchants baseball team played approximately 17 home games at Merchants Stadium. This year they will have a similar schedule. There will be more dates and less double headers during the 2017 season.

Last year went very well. Games were well attended and ran very smoothly. I would recommend that the Mayor and City Council approve the agreement and resolution allowing Carroll Merchants to play another full baseball season at newly renovated Carroll Merchants Baseball Stadium.

Attached to this memorandum is a letter from John Perrin, Carroll Athletic Association requesting permission to serve alcohol again during the Carroll Merchants home games.

RECOMMENDATION: Mayor and City Council consideration and approval the attached resolution with Bucko Baseball d/b/a Carroll Merchants.

RESOLUTION NO._____

A RESOLUTION APPROVING THE AGREEMENT WITH BUCKO BASEBALL d/b/a CARROLL MERCHANTS

WHEREAS, Chapter 17, of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the City be reduced to writing and approved by the City Council by resolution; and

WHEREAS, the Carroll Baseball Stadium Lease is attached hereto as Exhibit "A'; and

WHEREAS, it is determined that the appoval of the attached Agreement is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED that the Carroll Baseball Stadium Lease, attached as Exhibit "A", be authorized and approved, and that the Mayor and the City Council are authorized to execute the contract on behalf of the City of Carroll;

PASSED AND APPROVED by the City Council of the City of Carroll, Iowa, this _____ day of April, 2017.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

BY: _____
Eric P, Jensen, Mayor

ATTEST

By: _____
Laura A. Schaefer, City Clerk

CARROLL BASEBALL STADIUM LEASE

THIS AGREEMENT made and entered into this _____ day of _____, 2017, by and between the City of Carroll, Iowa (Landlord) and Donny Roberts (Tenant) d/b/a Bucko Baseball d/b/a Carroll Merchants.

The parties agree as follows:

1. **PREMISES AND TERM**. Landlord leases to Tenant, the Carroll Baseball Stadium/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 2017 baseball season (May 1st through September 1st). 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 2017 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: One dollar ($1.00) and other good and valuable consideration, payable 30 days in advance of the first day of May 1, 2017.

3. **POSSESSION**. Tenant shall be entitled to possession on May 1, 2017, and shall yield possession to Landlord on the last day of this Lease, which is September 1, 2017.

4. **USE.** Tenant shall use the premises only for the Carroll Merchants baseball team games and practices. Associated promotional baseball events must be specifically authoritized by the Landlord and proof of additional insurance must be provided as required by the Landlord.

Games and practices of the Carroll Merchants shall not interfere with Kuemper High School or Carroll High School varsity or junior varsity games or practices. If any conflict occurs, it will be the obligation of the Tenant to make alternate arrangements for its games, practices or other events. The Tenant is responsible for obtaining the high schools schedules and making all necessary scheduling arrangements with each high school's Activities Director.

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.

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 tenant shall notify the Landlord and receive prior approval of the Landlord, if the tenant desires to sell alcohol on the premises. If approval is granted, the tenant shall be responsible for all permits, licenses and insurance requirements.

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 stadium, by picking up trash and generally policing the area.

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 business on the premises, this lease may be terminated at the option of either party. Such termination shall be effected 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.** Advertising, such as signs, banners, tarps, flags, fence coverings or any other display of advertising is prohibited unless prior approval is received from the Landlord.

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

By:_____
Eric P. Jensen, Mayor
112 E 5th
Carroll, IA 51401

By:_____
Donnie Roberts, Tenant
W4743 County Highway A
Spooner, WI 54801

ATTEST:

By:_____
Laura Schaefer, Clerk

CARROLL ATHLETIC ASSOCIATION

April 14, 2017

The Carroll Athletic Association is the requesting the use of the Carroll Merchant Baseball Stadium and the area outside the baseball field (but within the fence) to set up beer ticket and dispensing stands during the Carroll Merchants home baseball games.

The Carroll Merchants regular season will run from June through July of this year. There will be 18 scheduled home games. In addition, there will be playoff game(s) during the first week of August.

The Association will create temporary beer ticket and beer dispensing stands during each home Merchant game. (These will be dis-assembled following the game and stored securely until next use.) Only those serving beer will be allowed inside either stand. The location of the each respective stands is noted on the map submitted with the license application and notarized signature.

Patrons will be asked to show their ID and those over 21 years of age will be given a wristband. They will be a limited to buying only 2 beers at a time. They will be allowed to consume the beers in the grandstand and on the outside bleachers as shown on the map. Volunteers who work in the beer ticket or beer dispensing area will be asked to complete a state-sanctioned safe-serve program.

A good-faith effort will be made by the Association, volunteers, and players to remove all remnants of the beer sales from visibility following each game.

The Carroll Athletic Association will hold the liquor license and the dram insurance for the beer stand.

Thank you for your consideration.

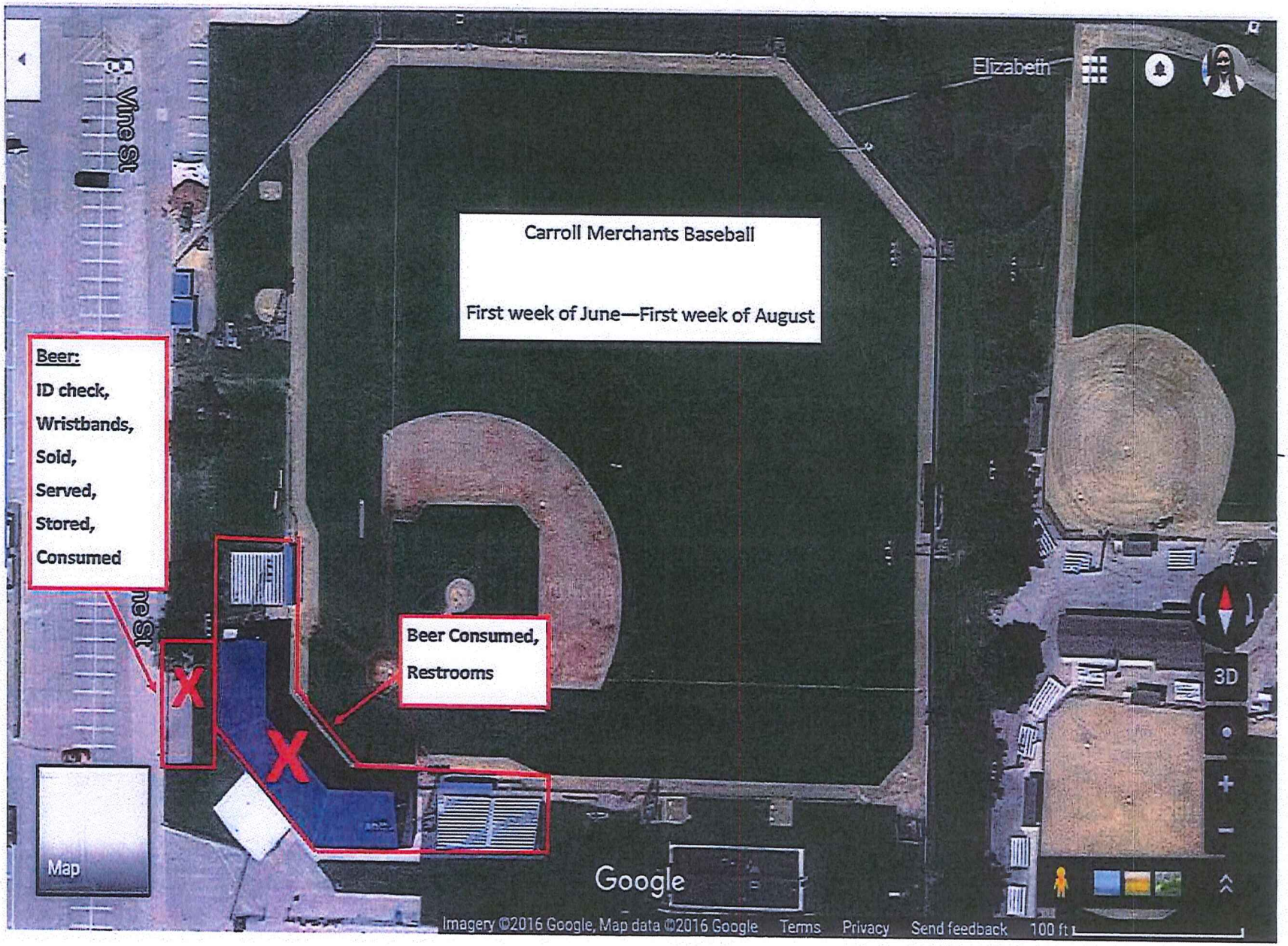
John Perrin,

Carroll Athletic Association

225 East 7th Street, Carroll, Iowa 51401-0863

Barry Bruner, Chair • Jim Greteman • Jim Gossett • Matt Lujano • Ed Lawler • Paul Milligan • John Perrin• Chris Whitaker

Carroll Athletic Association is a 501(c)(3) Non-profit Corporation



801 E 8TH STREET
CARROLL, IA 51401

City of Carroll

Brad Burke, Chief of Police *Police Department*

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-3536 FAX: (712) 792-8088

TO: Mike Pogge-Weaver, City Manager MJP-W

FROM: Brad Burke, Chief of Police BB

DATE: April 20, 2017

RE: New License

The following establishment has made application for a new license:

Carroll Athletic Association (Merchants Park)
Class "B" Liquor License (6 Month) including Wine Coolers, Outdoor Service and Sunday Sales

RECOMMENDATION: Council consideration and approval of this application.