

STATE OF NORTH CAROLINA

LEASE

COUNTY OF BUNCOMBE

THIS LEASE, executed this the 14th day of December, 2012, by and between the CITY OF ASHEVILLE, a body politic and corporate, duly existing under the laws of the State of North Carolina (hereinafter called "Lessor"), and DeWINE SEEDS-SILVER DOLLAR BASEBALL, L.L.C., a limited liability corporation (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessee is the current owner of a franchise agreement with the South Atlantic League and the current owner of a Player Development Contract with the Colorado Rockies baseball organization. Lessor recognizes that Lessee may become affiliated with a different Major League Baseball team during the term of this Lease. Lessee's affiliation with a different Major League Baseball team during the term of this Lease will not affect the rights or duties of the Lessor or Lessee under this Lease; and

WHEREAS, Lessee operates a professional minor league baseball team in the City of Asheville in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Lessor entered into a Lease ("the Original Lease") with the Asheville Tourists Baseball Club, Inc. for the below described Premises on July 1, 2005, which was to terminate on June 29, 2015. Lessor consented to the assignment of the Original Lease to Palace Baseball, L.L.C., as Lessee, on October 25, 2005. Lessor further consented to the assignment of the Original Lease from Palace Baseball, L.L.C. to DeWine Seeds-Silver Dollar Baseball, L.L.C., as Lessee, on January 26, 2010. The Lessor and Lessee now desire to mutually terminate the Original Lease and enter into a new Lease. The Original Lease will terminate upon execution of this Lease.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, including, without limitation, the covenant to pay annual Lease fees and other good and valuable consideration, Lessor and Lessee hereby agree as follows:

1. PREMISES: Lessor leases to Lessee and Lessee leases from Lessor the Premises known as McCormick Field, which includes all stadium facilities and parking lot, located at 30 Buchanan Place in the City of Asheville, North Carolina, 28801 as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter "the Premises").
2. TERM: The term of this Lease shall be for a period of five (5) years and shall commence on January 1, 2012 and shall terminate on December 31, 2016, subject to the rights of the Lessor set forth herein.
3. ANNUAL LEASE FEES: The annual Lease fee due from the Lessee to the Lessor shall be \$1.00 (One Dollar) per year. The fee is due and payable by the first day of January of each year of the term.

4. **DEFAULT:** The occurrence of any one of the following shall constitute an event of default by Lessee:
- a. Failure to pay annual Lease fees when due or within ten days after receipt of certified mail notice of non-payment from Lessor;
 - b. Abandonment or vacation of the Premises (it being agreed that absence from the Premises for thirty consecutive days after annual Lease fees have become delinquent is conclusive presumption of abandonment);
 - c. Failure to perform any other provision of this Lease if the failure to perform is not cured within forty-five (45) days after notice thereof has been given to Lessee. Notice given by Lessor shall specify the alleged default and the applicable Lease provision and shall further demand that Lessee perform the effected provision of the Lease within forty-five (45) days.
5. **LESSOR REMEDIES:** Upon an event of default, Lessor shall have the right to pursue its remedies at law to eject the Lessee and shall also have the right to pursue its remedies at law or in equity to recover of Lessee the Lease fees then due or thereafter accruing, and such other damages as are caused by Lessee's default.
6. **USE OF PREMISES BY LESSEE:** During the term of this Lease, Lessee shall have the exclusive right, privilege and obligation to use and occupy, at its sole discretion, the Premises, for any and all purposes, including but not limited to, playing professional baseball games in accordance with an official league schedule, as approved or modified by the league, conducting practice sessions, playing charity and exhibition baseball games, holding concerts, carnivals, festivals, fundraisers, and/or any other event, together with all uses incidental to any of the above. This provision is intended to be broad and encompass any and all events which Lessee intends to hold on the Premises. The Lessee is responsible for all operating and staff costs associated with an event it holds on the Premises. In the event that Lessor wishes to utilize the Premises, Lessor shall contact Lessee President, Brian DeWine, to coordinate Lessor's use of the Premises. Lessor must receive written approval from Lessee's President, Brian DeWine, to use the Premises. Lessee shall not unreasonably withhold its consent upon Lessor's request to use the Premises. Lessor's use of the Premises will not interfere with Lessee's use of the Premises as set forth in any Paragraph or subsection of this Lease.
7. **LESSEE'S DUTIES:** Lessee agrees that for the duration of this Lease, the Lessee shall be a member in good standing with the National Association of Professional Baseball Leagues, Inc.
8. **OPERATIONS:** Lessee shall be responsible for all operations of the Premises, including, but not limited to:
- a. *Concessions* - Lessee or its designee shall have the exclusive right to sell and to offer for sale, on the Premises, either directly or through one or more

concessionaires, selected solely by Lessee, all concessions for food, beverage, wares and merchandise, and to retain all proceeds from such sales. Lessee must maintain a rating of "A" from State of North Carolina Department of Health for all concession areas. Lessee shall be responsible for all operating and staffing costs for the sale of concessions.

- b. *Distribution of Printed Materials* – Lessee or its designee shall have the exclusive right to sell and offer for sale at the Premises, all printed materials, including but not limited to, tickets for admission to any baseball game or event, score cards, programs, souvenir books, or similar printed materials relating to baseball games played or any event held by Lessee on the Premises, and to retain all proceeds from such sales. Lessee shall be responsible for all operating and staffing costs for the distribution of printed materials.
- c. *Advertising of Events* – Lessee or its designee shall have the exclusive right, in its sole discretion, to advertise or promote any use of the Premises, as identified in Paragraph 6. This includes Lessee's right to sell or trade-in-kind any and all forms of advertising, including but not limited to, programs, signs, signage, banners, and display boards on the Premises.
- d. *Merchandise* – Lessee or its designee shall have the exclusive right, in its sole discretion, to sell or trade-in-kind any and all merchandise related to any use or event of or at the Premises, as identified in Paragraph 6.
- e. *Third-Party Vendors* – Lessee shall have the exclusive right, in its sole discretion, to allow third-party vendors on the Premises for the sale or operation or implementation of any aspect of the use of the Premises.
- f. *Sale of Competing Products* – Unless otherwise prohibited by law, Lessor will not permit or grant any individual, group, and/or entity the right to sell or distribute any product, including but not limited to any item identified in Paragraph 8 or its subparts, within 300 yards of the Premises.
- g. *Alcohol* – This Lease authorizes Lessee or its designee, at its own cost, to apply for and obtain an ABC permit and any other necessary and related permits and approvals, so that the serving, possession and consumption of alcohol may be permitted within the Premises in accordance with Section 11-11 of the City of Asheville Code of Ordinances. Lessee shall provide Lessor with a copy of the issued permit prior to serving or allowing any alcohol on the Premises.
- h. *Smoking* – The City Manager will authorize designated smoking areas within the Premises in accordance with Section 11-32 of the City of Asheville Code of Ordinances. The location of the designated smoking areas on the Premises shall be determined by mutual agreement of the Lessor and Lessee, through the City Manager.

- i. *Hours of Operation* – This Lease authorizes the Lessee to operate between the hours of 7:00 AM to 12:00 AM. Beyond these hours of operation, Lessor permits operation of the Premises beyond 12:00 AM to complete a baseball game that was started prior to 12:00 AM, without the need for approval by the Parks Director. Lessee will not be permitted to begin a baseball game after 12:00 AM. If Lessee wishes to begin a baseball game after 12:00 AM, Lessee must seek written permission of the Parks Director in accordance with Section 12-41 of the City of Asheville Code of Ordinance.
9. **USE OF OPERATIONAL EQUIPMENT:** Lessor and Lessee shall enter into a **Memorandum of Understanding** within six months (6 months) of the execution of this Lease, or an otherwise mutually agreed upon timeframe, regarding the use of the existing operational equipment at the premises.
10. **UTILITIES:** Lessee shall be responsible for the payment of all utility services for the use of the Premises including, but not limited to, all electricity to the Premises and the separately metered lighted signs on the Premises. Lessee shall be responsible for the payment of all water, sewer, gas, telephone, and internet services for the use of the Premises.
11. **MAINTENANCE AND REPAIRS:** The Lessor and Lessee agree to the following regarding the maintenance and repair of the Premises:
 - a. **Lessee Responsibilities:** Lessee shall be responsible for the day-to-day maintenance of the Premises. This shall include, but not be limited to, day to day playing field maintenance and cleaning of the Premises. Lessee shall be responsible for all costs associated with the day-to-day maintenance of the Premises.
 - b. **Lessor Responsibilities:** Lessor shall be responsible for all repairs necessary or required on the Premises, including, but not limited to, all repairs to any electrical, plumbing, HVAC, gas, water, and sewer services to the Premises, and all structural repairs to the Premises. Structural repairs is intended to be broad and include any and all repairs to the Premises, including, but not limited to painting of the Premises. Lessor shall be responsible for all landscaping outside of the stadium. Lessor shall be responsible for all trash removal services on the Premises. Lessor shall be responsible for all pest control services, alarm systems, fire protection systems, including, but not limited to, smoke detectors and fire extinguishers, and generator services for the Premises. Lessor is responsible for complying with all federal, state, county, city and local maintenance requirements and permits to ensure that all systems in this subsection are in proper working condition at all times. Lessor is responsible for all costs associated with all repairs and maintenance to the Premises, including payment to any third-party to complete all repairs.
12. **CONDITION OF PROPERTY AND IMPROVEMENTS:** Lessee agrees to

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accept the property in "as is" condition. Lessee will not be permitted to change the physical structure of the Premises without written permission from Lessor. Lessor and Lessee will enter into a **Memorandum of Understanding** within six (6) months of the execution of this Lease, or an otherwise mutually agreed upon timeframe, regarding the need and responsibility for long range capital improvements. It is anticipated that the Lessor will allocate approximately \$765,000.00 over the term of the Lease for improvements, including but not limited to, lighting replacement, playing surface replacement, clubhouse renovations, and bleacher replacement.

13. **NAMING RIGHTS:** The Lessor and Lessee will enter into a **Memorandum of Understanding** within six (6) months of the execution of this Lease, or an otherwise mutually agreed upon timeframe, regarding the naming rights of the stadium and playing field on the Premises. Lessee shall not enter into any naming rights agreements for the stadium or playing field on the Premises, until the Memorandum of Understanding has been executed. This Paragraph does not apply to and is not intended to prohibit in any way Lessee's rights under Paragraph 8, or its subparts.
14. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from the claims of any and all persons and entities for personal injury or damage to property, or both, arising out of, or in connection with Lessee's use and/or occupancy of the Premises. This Paragraph shall not apply to any personal injury, damage, and/or claims suffered by, made by, or on behalf of, any individual and/or third-party whose personal injuries, damages, or claims arose as a result of being on the Premises, pursuant to Paragraph 11(b) of this Lease.
15. **SAFE AND SANITARY CONDITION:** Lessee shall not permit, allow or cause any act or deed to be performed upon the Premises which shall cause, or be likely to cause injury to any person, the Premises, the building, or any improvements located thereon. Lessee shall at all times keep the Premises in a neat and orderly condition.
16. **SECURITY:** Lessee shall provide, at Lessee's expense, adequate security personnel stationed on the Premises, or assigned to duty there, at any and all games and events operated by Lessee at the Premises. The determination as to the need for and/or the amount of adequate security personnel shall be at the sole discretion of Lessee.
17. **COMPLIANCE WITH LEGAL REQUIREMENT:** Lessee shall comply with all legal requirements affecting the Premises of every nature, including those respecting any operation conducted, or any equipment, installations or other property placed upon, in or about the Premises, subject to the terms of Paragraph 11 and its subsections. In the event that physical modifications or repairs are necessary to the Premises as required by any federal, state, county, local, or city statute, law, or ordinance, Lessor shall be responsible for such physical modifications or repairs.
18. **INSPECTION:** Lessor shall have the right at all reasonable times, upon due and reasonable notice pursuant to Paragraph 23, to enter and inspect the Premises.

19. **LAW APPLICABLE:** This Lease is entered into in North Carolina and shall be construed under the laws, statutes, and ordinances of North Carolina and Buncombe County, and should a dispute arise between the parties concerning the terms and conditions of this Lease, jurisdiction for resolving said dispute shall be in the appropriate court in Buncombe County, North Carolina, and no other jurisdiction.
20. **INTEREST:** Any sums to be paid by Lessee to or for the benefit of Lessor which are not paid when due shall bear interest from the due date to date of payment at the rate of eight percent (8%) per annum.
21. **CONSTRUCTION OF LEASE:** This Lease shall not be construed more strictly against either party regardless of which party is responsible for the preparation of the same.
22. **WAIVER:** The waiver by Lessor or Lessee of any breach of any term, provision, or covenant of this Lease shall not be a waiver of any other breach or default of any other term, provision, or covenant of this Lease. The receipt and acceptance by Lessor of delinquent Lease fees shall not constitute a waiver of any other default, but shall constitute only a waiver of timely payment for the particular Lease fee payment involved.
23. **NOTICES:** All notices provided for in this Lease agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, addressed to: (a) Lessor as follows: Rodderick Simmons, Asheville Parks and Recreation Department, P.O. Box 7148, Asheville, North Carolina, 28802 and (b) Lessee as follows: Brian DeWine, President, DeWine Seeds-Silver Dollar Baseball, L.L.C., 30 Buchanan Place, Asheville, North Carolina, 28801. Either party hereto may from time to time, by notice as herein provided, designate a different person or address to which notices to it shall be sent.
24. **SIGNAGE:** It is agreed and understood that all signage on the Premises shall conform to all City of Asheville guidelines. Lessee shall be responsible for obtaining all necessary permits and approvals for any new signage.
25. **FENCING:** Lessee shall not significantly alter the size or design of the outfield fence without written permission from the Lessor.
26. **LESSOR'S REQUEST FOR USE OF THE PREMISES:** Lessor will provide Lessee with the name and contact phone number of a representative of Lessor who is responsible for scheduling events at Memorial Stadium in order to avoid conflicts in the scheduling of events. Lessor shall update the contact information as necessary.
27. **COVENANT OF QUIET ENJOYMENT:** Lessor covenants that Lessee shall peaceably and quietly have, hold, and enjoy the Premises in accordance with this Lease during the term of this Lease without any interruption or disturbance from Lessor or any party claiming by, through or under Lessor.

28. NO ORAL CHANGES: This Lease may not be amended, supplemented, or terminated orally.
29. INVALIDITY OF PARTICULAR PROVISIONS: If any provision of this Lease or the application of any provision of this Lease shall be invalid or unenforceable to any extent, the remainder of this Lease or the application of the provision to other persons shall not be affected thereby. If any provision of this Lease or the application of any provision of this Lease to any circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease or the application of the provision to other circumstances shall not be affected thereby.
30. CAPTIONS AND HEADINGS: The captions and headings of this Lease are for convenience of reference only. Words included in captions and headings shall not be deemed to define, limit, describe, explain, modify, amplify or add to the meaning of any provision of this Lease or the scope or intent of this Lease.
31. ATTORNEYS AND AGENTS: Any person may act under this Lease by its attorney or agent appointed by an instrument executed by the person.
32. COUNTERPARTS: If this Lease is executed in counterparts, the counterparts shall constitute but one and the same instrument.
33. EXPENSES OF PERFORMANCE: Each party is required to perform its obligations at its own expense unless it is specifically otherwise provided in this Lease.
34. RESPONSIBILITY OF ASSIGNEES: Any restriction or requirement imposed upon Lessee pursuant to this Lease shall be deemed to extend to Lessee's assignees. It shall be Lessee's obligation to cause Lessee's assignees to comply with the restriction or requirements of this Lease.
35. USE OF SINGULAR CASE: The singular includes the plural, and the plural includes the singular.
36. USE OF THE WORD "INCLUDING": Whenever the word "including" is used in this Lease, it shall be deemed to mean, "including but not limited to."
37. PUBLIC SAFETY. The Lessee agrees that at all times it will conduct its activities with full regard to public safety and will observe and abide by all applicable regulations and requests by the City and duly authorized governmental agencies responsible for public safety. A copy of the Fire Code Regulations is available from the Lessor to more fully indicate building and life safety information.
38. AMERICANS WITH DISABILITIES ACT ("ADA"). The Lessee hereby agrees to comply with all regulations of the ADA as it pertains to accommodations. Lessor shall be responsible for any and all repairs, improvements, and/or additions to the Premises as required by any federal, state, county, local, or city statute, law, or ordinance, including, but not limited to ADA accommodations.

39. **DAMAGE TO FACILITY:** The Lessee will be liable for all damage to buildings and equipment incidental to Lessee's use of the Premises. The Lessee shall not injure, mar, nor in any manner deface the Premises or any equipment contained therein. This Paragraph shall not apply to any damage done to the Premises as a result of the failure or malfunction of any system in Paragraph 11 and its subsections or by any individual or third-party on the Premises pursuant to Paragraph 11 and its subsections.
40. **PUBLIC LIABILITY/PROPERTY LOSS INSURANCE REQUIRED:** The Lessee agrees to obtain and keep in full force and effect general liability insurance with a company licensed to do business in North Carolina with minimum acceptable combined limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate and excess liability insurance with limits of Four Million Dollars (\$4,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate. Lessee shall furnish the Lessor with a certificate of insurance showing the Lessor as an additional insured and certifying that insurance heretofore required is in force and will remain in full force and effect during the term of this Agreement. No material change, alteration, or cancellation of said coverage shall occur without at least thirty (30) days written notice to the Lessor. All insurance required under this paragraph must be on file and approved by the Lessor at least seven (7) days prior to Lessee's first use of the Premises. If such insurance is not provided at least seven (7) days prior to the first event date, the Lessor may at its sole option: (a) cancel event; or (b) charge Lessee and provide the required liability insurance via a third party carrier.
41. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:** Lessee warrants that it is providing workers' compensation and employer's liability insurance to statutory limits.
42. **EVENT OF FORCE MAJEURE:** Means an event beyond the control of the Lessor or Lessee, which prevents either party from complying with any of its obligations under this Lease, including but not limited to: act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; rebellion, revolution, insurrection, or military or usurped power, or civil war; contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; riot, commotion, strikes, go slows, lock outs or disorder, or acts or threats of terrorism. If such event, as solely outlined in this Paragraph, occurs, Lessor expressly releases, discharges, and will save harmless the Lessee from any and all demands, claims, actions and causes of action arising out of any of these events.
43. **ASSIGNMENT:** Lessee shall not assign this Agreement without the written consent of the Lessor, which may be given by the City Manager subject to ratification by City Council within 30 days. The Lessor shall not unreasonably withhold its consent upon Lessee's request for assignment.

44. COMPLIANCE WITH LAW: Lessee shall use and occupy said Premises in a safe and careful manner, and shall comply with all applicable federal, state, city and local laws, and all rules/regulations as may be in force and effect during the Lease term. Lessee shall be responsible for obtaining all permits required to conduct its operations on the Premises.
45. CANCELLATION BY LESSEE: Lessee may terminate this Agreement by providing a written notice, one year in advance of the date of termination, to the City in accordance with Paragraph 23.
46. TERMINATION BY THE LESSOR: The Lessor reserves the right to terminate this Agreement only if Lessee is not in good standing with the National Association of Professional Baseball Leagues, Inc. pursuant to Paragraph 7. Notice of termination shall be as provided in Paragraph 23. Should the Lessor exercise the right to terminate this Agreement, Lessee agrees to forego all claims for damages against the Lessor, and further agrees to waive all rights that might arise by reason of the terms of this Agreement; and Lessee shall have no recourse of any kind against the Lessor. The Lessor may not cancel this Agreement with Lessee in favor of another professional baseball team.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

[SIGNATURE PAGE TO FOLLOW]

LESSOR: CITY OF ASHEVILLE

By: [Signature]
Name: Gary Jackson
Title: City Manager

LESSEE: DeWINE SEEDS-SILVER
DOLLAR BASEBALL, L.L.C.

By: [Signature]
Name: Brian J. DeWine
Title: Managing Member / President

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Sandra P. Cole, a Notary Public of the County and State aforesaid, do hereby certify that Gary W. Jackson, personally appeared before me this day and acknowledged that he is the City Manager of the City of Asheville and that the foregoing instrument was signed in its name by its City Manager sealed with its corporate seal, and attested by himself as its City Manager.

Witness my hand and notarial seal, this the 21 day of December, 2012.



Sandra P. Cole

Notary Public

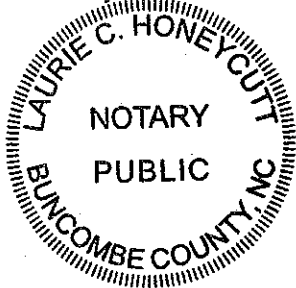
Sandra P. Cole

My Commission Expires: 6-24-2017

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Laurie C. Honeycutt, a Notary Public of the County and State aforesaid, do hereby certify that Brian DeWine personally appeared before me this day and acknowledged that he is the President of DeWine Seeds Silver-Dollar Baseball, L.L.C. and that the foregoing instrument was signed in its name by its President and attested by himself as its President.

Witness my hand and notarial seal, this the 14th day of December, 2012,



Laurie C. Honeycutt
Notary Public
Printed Name: Laurie C. Honeycutt
My Commission Expires: December 13, 2016

EXHIBIT "A"
Legal Description

Being the playing field and related facilities enclosed in the fenced area known as McCormick Field together with the parking lot located between the playing field and McCormick Street along approximately the following lines which are subject to correction or precise determination by survey to be provided hereafter: Beginning at the fence line at the top of the bank in the right field area of McCormick Field and following the fence along the top of the bank around to the existing property line on the north side of the existing City property, thence along said northern boundary to the eastern margin of McCormick Street thence along the eastern mark of McCormick Place to the northern margin of Ballpark Road and Buchanan Place, thence with the northern margin of said roads to the beginning point of the right field fence. Consisting of approximately 8.5 acres.