

ORDINANCE NO. 105-20

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO THE
"SECOND AMENDMENT TO LEASE" BETWEEN THE CITY OF
AVON AND BLUE DOG BASEBALL, LLC
AND DECLARING AN EMERGENCY**

WHEREAS, pursuant to Ordinance No. 79-08, Council authorized the Mayor to enter into a Lease Agreement with Avon Baseball, LLC, owners of the Lake Erie Crushers, a franchise that plays independent, non-affiliated baseball in the Frontier League, to play their games at the 9.7141 acre baseball complex owned by the City at the corner of Baseball Blvd. and Recreation Lane; and

WHEREAS said lease is to run from June of 2008 to October 31, 2024; and

WHEREAS, pursuant to Ordinance No. 162-15, Council authorized the transfer of said Lease from Avon Baseball, LLC to Blue Dog Baseball, LLC, after Blue Dog purchased the team in December of 2015; and

WHEREAS, pursuant to Ordinance No. 23-19, which passed on February 25, 2019, Council authorized the 1st Amendment to said Lease with Blue Dog Baseball, LLC which provided a more equitable method of scheduling games for the Avon Local School teams and clarification on calculating and sharing the Team's advertising revenues which the City deposits into its Stadium Highway Marquee Fund No. 284 for future capital improvements; and

WHEREAS, recently and as a direct result of the COVID-19 pandemic, the Administration and Blue Dog recognized the need for additional amendments to certain provisions of the Lease pertaining to 1) rent payments for the year of 2020; 2) a lease extension until October 31, 2025; 3) turf replacement by the City (which the City committed to in Resolution R-19-19); and 4) Tenant's minimum Net Advertising-Sponsorship Revenues for the year 2020; and

WHEREAS, the Administration negotiated with the owner of the team (Blue Dog Baseball) to arrive at an equitable 2nd Amendment to the lease which recognizes the devastating impact the COVID-19 pandemic and ensuing government regulations have had on the profitability and viability of all indoor and outdoor entertainment venues; and

WHEREAS, Council, having reviewed the 2nd Amendment to the Lease with Blue Dog Baseball, LLC, finds it to be fair and equitable in light of the current circumstances to both the City and the Lessee and that authorizing the Mayor to execute same is in the best interests of the health, safety and welfare of the citizens of Avon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the Mayor is hereby authorized to execute the "2nd Amendment" to the lease between the City and Blue Dog Baseball, LLC in substantially the form as set forth in the attached Exhibit A, which is incorporated herein by this reference.

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Section 2 - All other provisions of the Lease not amended as set forth in Exhibit A remain in full force and effect.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to execute the 2nd Amendment to the Lease with Blue Dog Baseball, LLC before the end of 2020; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: November 23, 2020 DATE SIGNED: November 23, 2020

By:

Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: November 24, 2020

[Signature]

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director
City of Avon, Ohio

ATTEST:

Barbara J. Brooks
Barbara J. Brooks
Clerk of Council

Posted: November 25, 2020
In Five Places as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 105-20, passed by the Council of said City on November 23, 2020.

IN WITNESS WHEREOF, I have on this 24th day of November, 2020, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

SECOND AMENDMENT TO LEASE

^{23rd} This Second Amendment to Lease (the "Second Amendment") is made as of the November, 2020, at Avon, Ohio, by and between **City of Avon**, an Ohio political subdivision and municipal corporation ("Landlord") and **Blue Dog Baseball, LLC**, an Ohio limited liability company ("Tenant").

WHEREAS, Landlord and Avon Baseball L.L.C. ("Avon Baseball") entered into a certain lease agreement (the "Lease") dated June 16, 2008, with respect to certain real estate (the "Leased Premises") located at Sprenger Stadium (f/k/a All Pro Freight Stadium), 2009 Baseball Boulevard, Avon, Ohio 44011, which is more fully described in the Lease; and

WHEREAS, Tenant, pursuant to its purchase of all rights, title and interest of those certain assets previously owned by Avon Baseball, LLC, assumed the Lease; and

WHEREAS, on February 25, 2019, Landlord and Tenant executed that certain First Amendment to Lease to, among other things, amend certain Sections of the Lease, including, but not limited to Sections 2 and 6; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") declared the novel coronavirus (COVID-19) outbreak a global pandemic and, as a result, federal, state and local governments and health agencies implemented various preventative measures to limit transmission of COVID-19, including, but not limited to, restricting travel, implementing "stay home" orders, ordering non-essential businesses closed and instituting social distancing; and

WHEREAS, as a result of COVID-19 and the measures instituted by federal, state and local governments and health agencies, Tenant's use of the Leased Premises for its intended purpose has been severely impacted, resulting in a near-complete decline in revenue generation for fiscal year 2020; and

WHEREAS, on June 24, 2020, the Frontier League, in which Tenant participates, cancelled its 2020 season; and

WHEREAS, with all games cancelled and the resulting significant loss of revenue to Blue Dog Baseball, Landlord and Tenant desire to amend the Lease as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Landlord and Tenant agree as follows:

1. Landlord and Tenant agree that the annual Rental Payment for year 2020 of the Initial Term shall be reduced to a minimum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "2020 Rental Payment").
2. Landlord acknowledges the receipt of a single rental payment of \$50,850 on September 16, 2020 and agrees to accept this payment as payment in full on Tenants rent for the year 2020.
3. Landlord and Tenant agree that remittance by Tenant of the 2020 Rental Payment shall not constitute an Event of Default pursuant to Section 11.1(a)(1).

4. Landlord and Tenant agree that the Initial Term specified in Article III, Section 3.1 of the Lease shall be increased by one (1) year, now to conclude on October 31, 2025.

5. Landlord and Tenant agree that Section 3.1 of the Lease shall be deleted in its entirety and replaced with the following:

Section 3.1 Term. This Lease shall commence and be deemed to be effective as of the Effective Date, and continue until October 31, 2025 (the "Initial Term"). After the Initial Term, this Lease may be renewed at the Team's option for four (4) five (5)-year terms thereafter (each, a "Renewal Term"; the Initial Term and any effective Renewal Term collectively referred to as the "Term"). The Team shall provide written notice of its intent to renew the Term by providing the City with written notice of such renewal at least one (1) year prior to the expiration of the then current Term.

6. Landlord and Tenant agree that Section 6, subsection (e)(2)(a) shall be amended to read: "Effective as of January 1, 2017, the minimum amount of Net Advertising-Signage Revenues payable to the City by the Team annually shall be Thirty Thousand (\$30,000.00) Dollars." Furthermore, for year 2020 of the Initial Term, Section 6.1(e)(2)(B), shall be waived by Landlord (the "2020 Advertising-Signage Waiver").

7. Landlord and Tenant agree the 2020 Advertising-Signage Waiver shall not (i) constitute an Event of Default pursuant to Section 11.1(a)(1), and (ii) will relieve Tenant of its obligation to remit to Landlord the Net Advertising-Signage Revenues, as more specifically set forth in Section 6.1(e)(2).

8. Landlord and Tenant agree that Landlord remains committed to replacing the field turf at the Stadium, as more specifically described in Resolution No. R-19-20, passed on September 14, 2020, captioned *A RESOLUTION TO AMEND RESOLUTION R-19-19 IN SUPPORT OF REPLACING THE FIELD TURF AT CRUSHER (f.k.a. SPRENGER) STADIUM AND DECLARING AN EMERGENCY*, at or before the close of the 2022 Frontier League Baseball Season.

9. The provisions of this Second Amendment shall control notwithstanding any contrary provisions in the Lease, and the provisions of this Second Amendment shall be deemed to be incorporated into the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have set their hands as of the day and year set forth above.

City of Avon

By: 
Bryan Jensen, Mayor, City of Avon

"Landlord"

Blue Dog Baseball, LLC

By: _____
Thomas Kramig, Member

"Tenant"