



Roll Call Number

21.1935

Agenda Item Number

51

Date December 20, 2021

CONSENT TO ASSIGNMENT OF LEASE AGREEMENT WITH GREATER DES MOINES
BASEBALL CO. TO DBH IOWA, LLC

WHEREAS, the City of Des Moines and Greater Des Moines Baseball Co. (GDMBC) entered into a Lease Agreement as of August 26, 1991, an Addendum to Lease Agreement as of September 13, 1999, an Amendment dated August 23, 2004, a Second Amendment dated October 9, 2006, a Third Amendment dated April 7, 2008, and a Fourth Amendment dated March 6, 2017 under which Lessee was granted a lease of the premises described in the Lease, and commonly referred to as Principal Park, f/k/a Sec Taylor Stadium, the team clubhouse building and surrounding parking lots and grounds (collectively the "Lease Agreement"); and

WHEREAS, the Lease Agreement has a term ending on December 31, 2027, with two additional 5 year options to renew; and

WHEREAS, Greater Des Moines Baseball Co. proposes to assign the Lease Agreement to DBH Iowa, LLC; and

WHEREAS, the Lease Agreement provides that GDMBC shall not assign the Lease Agreement or sublease the Leased Premises to any other party without first obtaining the approval of the City; and

WHEREAS, the Lease Agreement further provides that the Lessee shall not sell, transfer or convey the existing professional baseball franchise, the majority interest in its voting common stock or the majority control in the shares of the prospective seller without giving the City an opportunity to purchase the franchise or the stock or the majority control in the shares of the prospective seller, unless the third party agrees in a binding written instrument to continue to maintain and operate a professional baseball team in Des Moines for the term of this Lease, to use the Leased Premises for this purpose, and further agrees to assume the obligations of Lessee under this Lease for the duration of the Lease term, including any then exercised extensions or renewals thereof; and

WHEREAS, the City has received a third-party commitment from the proposed buyer as set forth in the Lease.



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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the City of Des Moines hereby consents, pursuant to the Lease Agreement, to the assignment of the Lease Agreement from Greater Des Moines Baseball Co. to DBH Iowa, LLC.

BE IT FURTHER RESOLVED that the Mayor is authorized and directed to execute the Consent, Assignment and Assumption Agreement with Greater Des Moines Baseball Co. and DBH Iowa, LLC consenting to the assignment of the Lease Agreement from GDMBC to DBH Iowa, LLC, a copy of which is on file in the City Clerk's Office, on behalf of the City of Des Moines, and the City Clerk is directed to attest to the Mayor's signature.

Moved by Boesen to adopt.

APPROVED AS TO FORM:

Jeffrey D. Lester by AD
Jeffrey D. Lester
City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

J. M. Frankin Cownie
Mayor

P. Kay Cmelik
City Clerk

CONSENT, ASSIGNMENT AND ASSUMPTION AGREEMENT

This CONSENT, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into as of December 20, 2021, by and among Greater Des Moines Baseball Co., an Iowa corporation ("GDMBC"), DBH Iowa, LLC, a Delaware limited liability company ("DBH"), and the City of Des Moines, Iowa, a municipal corporation, ("City").

RECITALS

A. GDMBC and Iowa Cub Club of Des Moines, Inc., an Iowa corporation (the "Cub Club"), collectively, operate the professional baseball club currently known as the "Iowa Cubs" (the "Club").

B. GDMBC and the City entered into a Lease Agreement, dated as of August 26, 1991, as amended from time to time (the "Lease Agreement"), pursuant to which the City leases the baseball stadium in Des Moines, Iowa previously referred to as "Sec Taylor Stadium" and currently referred to as "Principal Park" to GDMBC for the operation of the Club.

C. GDMBC warrants and represents that GDMBC owns the sole and exclusive right to operate the Club as part of the MLB Professional Development Leagues, LLC ("MLB PDL"), pursuant to that certain Player Development License Agreement, dated as of February 12, 2021, by and between GDMBC and MLB PDL (the "PDL License Agreement").

D. GDMBC, Cub Club, and DBH entered into an Asset Purchase Agreement, dated December 2, 2021 (the "Purchase Agreement"), pursuant to which GDMBC and Cub Club have agreed to sell substantially all of their assets used in the operation of the Club to DBH and DBH has agreed to assume substantially all of the liabilities of GDMBC and Cub Club relating to the operation of the Club (including without limitation GDMBC assigning its rights, obligations, and liabilities under the Lease Agreement and the PDL License Agreement to DBH), provided that the closing of the transactions contemplated by the Purchase Agreement (such transactions are the "Transactions" and such closing is the "Closing") is subject to certain customary conditions.

E. A condition to the Closing is that the MLB PDL provide approval of, consent to, or provide a no-objection letter required to assign the PDL License Agreement from GDMBC to DBH pursuant to the PDL License Agreement (the "MLB PDL Condition"). GDMBC warrants and represents that the foregoing is the only approval, consent, or no-objection letter required to assign the PDL License Agreement from GDMBC to DBH.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Effective as of the Closing, GDMBC assigns and transfers to DBH all of GDMBC's rights, obligations, and liabilities (subject to the last sentence of Paragraph 2) under the Lease Agreement from and after the Closing.

2. Effective as of Closing, DBH accepts the assignment of the Lease Agreement and assumes and agrees, from and after the Closing, to be bound by all of the terms, conditions,

obligations and responsibilities of the Lessee as defined in and under the Lease Agreement, to provide the services and perform, discharge and fulfill all of the duties and obligations of the Lessee and requirements imposed on Lessee under the Lease Agreement, and agrees to provide all necessary proof of its discharge and fulfillment, including without limitation the insurance and indemnification requirements of Lessee under the Lease Agreement and agrees to hold harmless the City as set forth in the Lease Agreement from and after the Closing. GDMBC agrees to fulfill its obligations as a lessee under the Lease Agreement to indemnify and hold the City harmless in accordance with the Lease Agreement for the period of time prior to Closing. Solely as between GDMBC and Cub Club, on the one hand, and DBH, on the other hand, this Agreement does not amend, alter, or otherwise modify any of such parties' rights or obligations under the Purchase Agreement.

3. Effective as of Closing, DBH hereby agrees, as a "third party commitment" (as described in the Lease Agreement), to (i) maintain and operate a professional baseball team in the City for the term of the Lease Agreement, (ii) use the Leased Premises (as defined in the Lease Agreement) for such purposes, and (iii) to assume the obligations of Lessee (as defined in the Lease) for the duration of the Lease term, including any then exercised extensions or renewals thereof. The City acknowledges that this Paragraph 3 constitutes a "third party commitment" under the Lease Agreement by DBH and that the City has no right of first refusal to purchase the Club in connection with the Transaction, provided that, this acknowledgement does not affect the City's rights under the Lease Agreement with respect to any subsequent sale of the assets of the Club.

4. The City of Des Moines, Iowa, hereby consents to the above-described assignment of the Lease Agreement and acknowledges that, notwithstanding the Transaction or the assignment of the Lease Agreement to DBH, the Lease Agreement will remain in full force and effect following the Closing, provided however, that such consent shall only become effective upon the satisfaction of the MLB PDL Condition, which satisfaction will be promptly confirmed in writing via email by GDMBC or DBH to the City Attorney. For the avoidance of doubt, the City's consent shall automatically become effective without further action upon GDMBC's or DBH's sending confirmation of satisfaction of the MLB PDL Condition to the City Attorney. GDMBC, Cub Club and DBH will not Close the Transactions without the MLB PDL Condition having been satisfied.

5. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Iowa without giving effect to the principles of conflicts of law thereof. This Agreement may be amended, modified or supplemented but only in a writing signed by each of the parties hereto.

6. This Agreement is solely for the benefit of the parties hereto and their successors and assigns, and no provision of this Agreement shall be deemed to confer upon other persons or entities any remedy, claim, liability, reimbursement, cause of action or other right.

7. If the Closing does not occur for any reason or does not occur prior to January 1, 2022, this Agreement will be null and void and of no effect.

8. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single Agreement. Electronic copies of this Agreement and signatures thereon shall have the same force, effect and

legal status as originals. Delivery of an executed signature page to this Agreement by electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this Agreement as of the Execution Date.

GREATER DES MOINES BASEBALL, CO.

By _____
Name: Michael G. Gartner
Title: Secretary

DBH IOWA, LLC

By _____
Name:
Title:

CITY OF DES MOINES, IOWA



T.M. Franklin Cownie, Mayor

Approved As To Form:

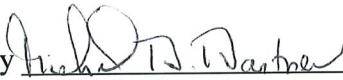




Assistant City Attorney

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this Agreement as of the Execution Date.

GREATER DES MOINES BASEBALL, CO.

By 
Name: Michael G. Gartner
Title: Secretary


DBH IOWA, LLC

By _____
Name:
Title:

CITY OF DES MOINES, IOWA

T.M. Franklin Cownie, Mayor

Approved As To Form:


Assistant City Attorney

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this Agreement as of the Execution Date.

GREATER DES MOINES BASEBALL, CO.

By _____
Name:
Title:

DBH IOWA, LLC

By PH
Name: Robert Hillier
Title: Authorized Signatory

CITY OF DES MOINES, IOWA

T.M. Franklin Cownie, Mayor

Approved As To Form:

Ann DiDonato
Assistant City Attorney