Lease Agreement

AIB (American Institute of Business)

&

DMPS Rails Ball Fields @ 1000 SW Porter

Contact: Bill Good & Matt Smith

Date: 8/20/13

AGREEMENT FOR THE USE OF LINCOLN SOFTBALL AND BASEBALL FIELDS

THIS AGREEMENT is by and between the **Des Moines Independent Community School District** ("**District**") and **AIB College of Business** ("**AIB**").

1. **USE OF REAL PROPERTY.** The District shall permit AIB to use the facilities known as Lincoln South Softball and Baseball Fields ("Fields") located on Porter Avenue and 12th Street in Des Moines, Iowa, for the AIB athletic programs. For the fall of 2013, said usage shall include but may not necessarily be limited to AIB's home softball and baseball games, and a reasonable number of practice times, mutually agreed upon by the Lincoln Activities Director and the AIB Athletic Director, for both athletic programs and post-season games or events if AIB qualifies for post-season play. The schedule for future years of the use of the Fields for home games of AIB softball and baseball teams and events shall be scheduled by the District in cooperation with the AIB Athletic Director. The District and AIB may also agree to the use of the Fields for other athletic events as then agreed to by executing an Addendum to this Agreement.

The use of the Fields shall include such areas as are reasonably necessary for AIB teams and fans to enjoy home Field softball and baseball practices and games and events, including the playing field, practice fields, the restrooms, the bleachers, designated portions of the press box, the scoreboard and use of parking spaces (limited parking availability on school grounds during the DMPS school day; alternative plan for parking during the event of an AIB softball or baseball game coinciding with Lincoln school day dismissal). These areas are collectively known as "the Fields" in this Agreement.

- 2. **ALTERATIONS, ATTACHMENTS.** Except as otherwise provided herein, all decorations or attachments made by AIB to the Fields shall require prior approval by the District, which approval shall not be unreasonably withheld.
- 3. **RIGHT TO ENTER AND TO EJECT VISITORS.** The District shall have the right to enter any portion of the Fields during the use of the Fields by AIB, as long as such entry does not interfere with AIB's proper and reasonable use of the Fields per this Agreement. The District shall also retain the right, but not the duty, and in cooperation with AIB, to remove any objectionable person from the Fields.
- 4. **CONCESSIONS**. The District and AIB agree that the Lincoln High School Booster Club if they choose can open and operate an appropriate number of concession stands available on the Fields during the time that AIB is using the Fields. The funds received from any concession stand shall be the sole property of the Lincoln High Booster Club. AIB may set up merchandise stands (not to include the sale of food or beverages) at the Fields. The funds received from any merchandising stand shall be the sole property of AIB.
- 5. **MAINTENANCE OF FIELDS.** The District shall maintain the Fields in good condition and repair, including the playing field and turf, the restrooms, the bleachers, the press box, and the scoreboard. The District shall be solely responsible for the costs of renovating, repairing, maintaining and financing the Fields, except that AIB shall be responsible for paying the District for the costs of any damages to the Fields caused by AIB's employees, invitee, agents, independent contractors, participants, or guests which damage occurs as a result of the use of Fields by AIB pursuant to this Agreement other than for minor or incidental damages that

may be repaired by District maintenance for under \$500.00 per damage repair, provided, however, minor or incidental damages which cumulatively exceed \$1,000.00 in any one year shall be charged to and paid by AIB. The District shall be responsible for the Fields' landscaping and snow removal. AIB shall be solely responsible for infield prep before AIB practices and AIB games. Mowing of the fields will be the responsibility of the District. Additional cost for painting the outfield lines will be billed directly to AIB. Additional mowing requested outside the normal schedule will be billed directly to AIB. AIB shall utilize their own equipment for field prep or pay DMPS for costs incurred using district equipment. The cost shall be mutually determined between AIB and Lincoln Athletic Director. Should AIB purchase and utilize their own equipment, housing and storage will need to be provided by AIB.

- 6. **UTILITIES.** The costs of gas, electric, water and sewer services for the Fields shall be paid by the District unless field lighting is installed.
- 7. **ACTIVITIES.** AIB shall not conduct or permit any activities or programs on the Fields that violates any federal, state or local law or regulation. No alcoholic beverages, illegal substances, advertising, smoking, tobacco products or pets shall be permitted on the Fields during any use by AIB pursuant to this Agreement.
- 8. **ADMISSION FEES.** AIB may charge admission fees to AIB athletic events. Such admission fees shall be the sole property of AIB. The District shall make any existing ticket booth(s) available upon request of AIB.
- 9. **MEDIA RIGHTS.** AIB retains all radio, television, and media rights for AIB athletic events conducted on the Fields pursuant to this Agreement.
- 10. **CUSTODIAL.** The District shall be responsible for hauling trash away from the Fields and for maintaining the Fields in a neat and clean condition. AIB maintains responsibility for the trash collection of the bleachers and Fields during practices and events held at the Fields. In the event the District reasonably finds AIB's efforts regarding trash collection to be unacceptable, the District shall bill AIB for the District's trash collection services. If DMPS assigns a custodian, then there is added cost at the rate of a minimum of \$30/hour for a minimum of 2 hours per event.
- 11. **BASE RENT.** AIB agrees to pay the District as rent \$1.00 per year for the initial term of this Agreement (the "Base Rent"). AIB's obligation for rent shall begin on September 1, 2013. All rent payments shall be made payable to the Des Moines Independent Community School District and delivered or mailed to the District, in care of Business and Finance, at 901 Walnut Street, Des Moines, Iowa 50309.
- 12. **USAGE FEE.** AIB agrees to pay, in addition to the Base Rent, a usage fee for the Fields of \$100.00 per event or per day whichever is the greater length of time (the "Usage Fee" will cover the costs of the event) for either a softball or baseball game held at the Fields. This amount does not include District custodial overtime for Fields and common areas. Should the cost of the event equal more than the \$100.00 usage fee, AIB will pay the remaining amount to cover the cost of the event. This Usage Fee is effective as of September 1, 2013. Beginning September 1, 2013, the Usage Fee will be increased 3% per year over the term of the agreement. The Fields lighting charge will not increase on an annual basis, but is subject to change upon approval of both parties. The District will not charge a fee for AIB to utilize the Fields for practices. The parties agree that the Usage Fee is a good faith estimate of the actual costs incurred by the District in maintaining and operating the Fields pursuant to the terms of this

Agreement. All usage fee payments shall be made payable to the Des Moines Independent Community School District and delivered or mailed to the District, in care of the Business and Finance Officer at 901 Walnut Street, Des Moines, Iowa 50309.

- 13. **STEERING COMMITTEE.** A non-binding steering committee will meet at least once per year in order to review collaboration between the parties and to ensure the ongoing success and growth of the relationship between the parties. The committee is authorized to meet as needed to review issues related to the use and maintenance of the Fields. The composition of the committee shall consist of the Lincoln High School Activities Director, a Des Moines Public School District Administrator Designee, the AIB Athletic Director, and an AIB Designee, and one mutually-agreed upon community member.
- 14. **CONTRIBUTION.** The parties acknowledge and agree that an integral factor in the District allowing the use of the Fields by AIB is a separate contribution to be made by AIB to renovate the softball and baseball Fields. After the Board of Directors for the District approves the construction contract for the renovation of the Fields, AIB shall contribute an amount not less than \$100,000 in cash and/or professional services in Year 1, and a minimum of \$50,000 per year in years 2, 3, and 4, for the renovation of the Fields. Contributions made by AIB in excess of the \$50,000 minimum for years 2-4 will be mutually agreed upon by the Steering Committee. In the event AIB fails to provide the services and/or cash on or before the Contribution Date, the District may terminate the Agreement after providing AIB 90 days' notice of its right to cure.
- 15. **SCHEDULING.** Attached hereto as Exhibit B is a schedule showing the dates and times that AIB shall be permitted to use the Fields for home games for the 2013 and 2014 softball and baseball season(s). On or before January 1 of each successive year, AIB agrees to provide the District with a proposed schedule for the upcoming softball and baseball season(s) showing the dates and times that AIB intends to use the Fields for its home games. The District shall approve the schedule by executing an Addendum to this Agreement in substantially the form attached hereto as Exhibit A, unless the District's planned usage of the Fields conflicts with the schedule proposed by AIB. In the event of a scheduling conflict, the parties agree to negotiate in good faith to determine a mutually acceptable schedule for the use of the Fields. AIB shall not have a priority over the District's use of the Fields. All arrangements for use of the Fields for practice shall be scheduled through the District at Lincoln High School.

16. INSURANCE AND INDEMNIFICATION.

(a) **Property Insurance.** District shall insure the Fields and its contents. In the event of destruction or damage such that AIB is not able to use the Fields in any year for all or a portion of the AIB Softball and Baseball season(s), AIB shall be provided with access to other district baseball and/or softball fields. In the event of the partial destruction of the Fields by fire or any other casualty, the District shall restore or repair the Fields to their condition immediately before the damage with reasonable diligence and so long as sufficient funds are available. In the event that the Fields are substantially destroyed by fire or any other casualty, then this Agreement shall remain in full force and effect and District shall proceed with all reasonable diligence to repair and replace the Fields to their condition immediately before the destruction so long as sufficient funds are available. Field and/or facility damage directly to practice or play during an AIB event will be the responsibility of AIB to repair in a reasonable time.

- (b) **Liability Insurance.** Both the District and AIB shall carry comprehensive general liability insurance for protection of the District and AIB from any liability arising out of any accidents or other occurrence causing any injury and/or damage to any person or property on the Fields due directly or indirectly to the use or occupancy thereof by the insured, or any person claiming through or under the insured. Liability policies shall have limits of not less than \$5 Million per occurrence and \$5 Million annual aggregate, which limit can be met with a combination of primary and umbrella policies. Each party shall also carry workers compensation and employers' liability insurance in amounts of not less than \$100,000.00 per accident per employee/\$500,000.00 policy limits, and automobile liability coverage with a minimum combined single limit of \$5,000,000.00 (for bodily injury and/or property damage). However, to the extent either party is self-insured for purposes of workers' compensation they shall be deemed to be in compliance with the terms of this provision. Policy limits and deductibles shall be reviewed on an annual basis by the parties and adjusted if commercially reasonable and appropriate.
- (c) Other Insurance Provisions. All required insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Iowa. Each party shall be furnished with a certificate of insurance required under subparagraph (b) of this Agreement no later than two weeks prior to the first use of the Fields by AIB and by August 1st of each year thereafter. All policies shall contain an agreement by the insurer that such policies shall not be modified, cancelled, or non-renewed except upon at least thirty (30) days' prior written notice to both the District and AIB. A renewal certificate shall be provided prior to expiration of the current policies.
- (d) Waiver of Subrogation Rights. District and AIB each release the other from any claim for recovery for any loss or damages to any of its property, which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. This waiver applies only when permitted by the applicable policy of insurance. Each party shall be responsible for the payment of any applicable property deductible.
- (e) AIB's Indemnification of District. Except for the negligence or willful misconduct of the District or of its independent contractors, AIB will protect, defend, hold harmless, and indemnify the District from and against any and all losses, costs, damages and expenses, including attorneys' fees 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 of the Fields, or due directly or indirectly to the use of the Fields or any part thereof by AIB or any person claiming through or under AIB. The provisions of this subparagraph (e) shall survive termination of this Agreement with respect to any damage or injury occurring prior to such termination.
- (f) **The District's Indemnification of AIB.** To the extent allowed by law, District will protect, defend, hold harmless, and indemnify AIB from and against any and all losses, costs, damages and expenses, including attorneys' fees and expenses, occasioned by, or arising out of, any accident or other occurrence, causing or

inflicting injury or damage to any person or property caused by any District employee, agent or independent contractor happening or done in, upon or about the premises of the Fields or due to a defect in the premises or equipment of the Fields. The provisions of this subparagraph (f) shall survive termination of this Agreement with respect to any damage or injury occurring prior to such termination.

17. **TERM.** The "Initial" term of this Agreement shall be for a period of five (5) years commencing September 1, 2013, and ending August 31, 2018. At the end of the Initial term of this Agreement, AIB shall have options to extend the Agreement for four (4) three-year terms with the approval of the Des Moines Public School District.

Option 1: begins September 1, 2018 through August 31, 2021

Option 2: begins September 1, 2021 through August 31, 2024

Option 3: begins September 1, 2024 through August 31, 2027

Option 4: begins September 1, 2027 through August 31, 2030

Each three (3) year option shall be memorialized by a written amendment signed by both Parties prior to June 1 of the expiration year of the Option in the event AIB exercises an option. After the end of the fourth Option this Agreement shall continue year to year unless a notice of termination is given pursuant to paragraph 18.

- 18. **TERMINATION.** This Agreement may be terminated at any time by mutual consent. Following the Initial term of this Agreement, AIB may terminate this Agreement at any time for any reason upon ninety (90) days' advance notice without further obligation to make any payments. The District may terminate this Agreement as of August 31, 2018 or as of any succeeding August 31 by giving at least twelve (12) months' advance written notice, or as otherwise provided in Section 26 of this Agreement. In the event the District terminates the Agreement prior to August 31, 2021, and as long as AIB is not in default, the District shall provide 60 days' advance notice and pay to AIB, on or before the effective termination date, a termination fee equal to the outstanding unamortized renovation costs of the Fields, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the renovations and ending on August 31, 2030, it being the intent of the parties that in the event this Agreement is terminated for reasons other than default, AIB shall be reimbursed for its costs of renovating the Fields.
- 19. **RIGHT OF FIRST REFUSAL.** The District grants to AIB a right of first refusal to purchase the Fields. AIB shall have a right of first refusal to purchase the Fields under the same terms and conditions as any bona fide offer received by the District. The District shall notify AIB in writing when any such offer is received and promptly provide to AIB a copy of the written offer to purchase (the "Offer"). In the event AIB desires to exercise its right of first refusal, AIB shall be required to give the District written notice within ten (10) days from the date AIB received the Offer. If AIB does not purchase the Fields pursuant to this Paragraph 19, this Agreement shall remain in full force and effect regardless of any sale to a third party purchaser.
- 20. **RECORDING OF AGREEMENT.** The parties shall record this Agreement, or memorandum thereof, in the records of the Polk County, Iowa Recorder.

- 21. **SIGNS**. AIB shall have the right and privilege of attaching, affixing, painting or exhibiting "AIB" signs on the premises provided that (1) such signs shall comply with the ordinances of the City of Des Moines; (2) such signs shall not change the structure of the Fields; (3) such signs if and when taken down shall not damage the Fields or AIB shall repair any such damage (notwithstanding paragraph 5 herein); and (4) such signs shall be subject to the written approval of the District, which approval shall not be reasonably withheld. In addition, AIB shall have the right to exhibit advertising signs during AIB events, provided that any advertising content displayed on the scoreboard during events is the sole responsibility, but not the cost, of the District and only advertising approved by the District Chief Operating Officer will be displayed.
- 22. **AMENDMENTS.** This Agreement may be amended only by a written instrument approved by the District and by AIB.
- 23. **EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 24. **SEVERABILITY.** If any clause, provision or section of this Agreement shall, for any reason, be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. In case any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the parties, to the full extent permitted by law.
- 25 **ASSIGNMENT**. This Agreement shall not be assigned except with mutual consent of both parties.
- 26. **NOTICES.** Any and all notices or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, or by receipted hand delivery, by Federal Express, courier, or other similar and reliable carrier, or by confirmed facsimile or electronic mail which shall be addressed to each party as set forth as follows:

If to AIB: If to the District:

President Chief Operations Office
AIB College of Business Des Moines Public Schools
2500 Fleur Drive 1917 Dean Avenue
Des Moines, IA 50321 Des Moines, IA 50316

And a copy to: And a copy to:

Athletic Director

AIB College of Business

2500 Fleur Drive

Des Moines, IA 50321

Lincoln High School

2600 SW 9th Street

Des Moines, IA 50315-1998

Each such notice shall be deemed to have been provided at the earliest of the following: (a) at the time it is actually received; or (b) in the case of overnight hand delivery courier or services

such as Federal Express with guaranteed next day delivery, within one day; or (c) in the case of registered U.S. Mail, within five (5) days. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

- **REMEDIES.** In the event that any of the payments by AIB required to be made hereunder are not timely made, and remain unpaid after thirty (30) days written notice by the District, the District may terminate this Agreement upon sixty (60) days advance written notice to AIB. Failure of AIB to provide an insurance certificate evidencing the coverage required herein shall bar use of the Fields by AIB until proper evidence of insurance is provided. If default shall be made in the observance or performance of any of the other covenants or conditions in this Agreement, which Agreement is required to observe and perform and such default is not cured within thirty (30) days after receipt by AIB of written notice from the District (or if such default cannot be reasonably cured within thirty (30) days then AIB shall have a reasonable time to cure said default provided AIB in good faith diligently proceeds to take steps to cure said default within said thirty (30) day period), or if AIB shall abandon or fail to use the Fields as agreed herein during the term of the Agreement, then the District may treat the occurrence of any one or more of the foregoing events as a default or breach of this Agreement, and thereupon at its option may terminate this Agreement and/or seek other legal remedies. The remedies provided for herein are cumulative and are not exclusive of any other remedies that may be available to any party at law or in equity or otherwise.
- 28. **NO WAIVER; MODIFICATIONS IN WRITING.** No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, or consent to any departure therefrom, shall be effective unless the same shall be in writing and signed or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.
- 29. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matters hereof and supersedes all negotiations, preliminary understandings, and all prior or contemporaneous discussions or understandings of the parties hereto in connection with the subject matters hereof.

[SIGNATURE PAGES FOLLOW]

AIB COLLEGE OF BUSINESS

		By Nancy A. Williams, President
STATE OF IOWA)	
COUNTY OF POLK) ss:)	
the State of Iowa, per president of AIB Colleg AIB College of Busine	rsonally appeared lege of Business, these by authority of the execution of the	, 2013, before me, a Notary Public, in and for Nancy A. Williams to me personally known to be the nat the agreement was executed and signed on behalf of its Board of Trustees; and that the said person, as such the agreement to be the voluntary act and deed of AIB untarily executed.
		Notary Public in and for the State of Iowa

Directors of the Des Moines Independen	EEMENT and pursuant to a Resolution of the Board of at Community School District approved on the day has executed this instrument on the day of
	DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT
	By Chair, Board of Directors
Attest:	
Secretary, Board of Directors	
STATE OF IOWA)) ss: COUNTY OF POLK)	
COUNTY OF POLK)	
the State of Iowa, personally appeared known to be the Chair and Secretary of the said corporation described in and we that the school district has no seal, and the district by authority of its board of of	, 2013 before me, a Notary Public, in and for Richard Murphy and Thomas Harper, to me personally the Des Moines Independent Community School District, which executed the agreement to which this is attached; that the agreement was executed and signed on behalf of lirectors; and that the chair and secretary, as such officers trument to be the voluntary act and deed of the district by
	Notary Public in and for the State of Iowa

EXHIBIT A

2013 SOFTBALL SCHEDULE

Sunday, September 1 Official Fall Team Practice Begins: 4-6 pm

Monday – Thursday, Sept. 2-5 Practice: 9am-Noon

Games, Practices & Scrimmages:

Mon-Thurs, Sept. 9-12 Practice: 2 pm-5 pm

Friday, Sept. 13 Practice: 10 am-Noon

Saturday, Sept. 14 Intra-squad Scrimmage 10 am -1:00 pm

Sunday, Sept. 15 Character Training/Team Leadership

Mon-Thurs, Sept. 16-19 Practice: 2 pm-5 pm

Friday, Sept. 20 Practice: 10 am-Noon

Sunday, Sept. 22 AIB vs Iowa CC @ AIB (DH)- Noon

Mon-Thurs, Sept. 23-26 Practice: 2 pm-5 pm

Saturday, Sept. 28 Practice: 10 am-Noon

Mon-Tues, Sept. 30-Oct.1 Practice: 2 pm-5 pm

Wed. Oct.2 Intra-squad Scrimmage: 2 am -5:00 pm

Friday, Oct. 4 Practice: 10 am-Noon

Sunday, Oct. 6 AIB vs Ellsworth CC @ AIB (DH)-Noon

Monday, October 21-Tuesday, November 19

2-4/4-6) Monday-Thursday & Friday 8-10am/10am-12pm

Final Off Season Practice Sessions: Dec. 2-19

2014 SOFTBALL SCHEDULE

All Practices are Indoor until weather permits

Monday, Jan. 6 Classes Begin: Team Meeting- 3:00 pm

Tuesday, Jan 7-12 Conditioning/Throwing/Weight Training/Team Building

Monday, Jan 13 AIB Spring Team Practice Begins (Indoor)

Monday – Thursday 2-4pm/4-6pm (Alternating with Baseball)

Fridays 8-10am/10am-Noon (Alternating with Baseball)

Saturdays 8-10am/10am-Noon (Alternating with Baseball)

Outside Spring Practices Monday-Thursday: 2-5 pm, Fridays & Saturdays: 9-Noon

(Early March if possible) Sundays: Noon-3 or 3-6 pm

AIB 2014 Spring Games

Wed., March 12	TBA Home game (DH)	Home
Sat., March 22	Viterbo vs AIB	Home
Sat., March 23	Clarke vs AIB	Home
Wed., March 26	Waldorf vs AIB	Home
Wed., April 2	TBA	Home
Wed., April 9	Grand View vs AIB	Home
Sat., April 12	Mt. Mercy vs AIB	Home
Sun., April 13	Graceland vs AIB	Home
Wed., April 23	William Penn vs AIB	Home
Sun., April 27	St. Ambrose vs AIB	Home

2013 BASEBALL SCHEDULE

Sunday, September 1 Official Fall Practice Begins

Fall 2013 Practices and Games to be held on Des Moines East High School Fields

Practices Monday through Saturday from August 20 - October 12.

Practices will run from 2 p.m. to 5:30 p.m.

2014 BASEBALL SCHEDULE

Outside Spring Practices (Early March if possible)

Monday through Saturday from August 20 - October 12.

Practices will run from 2 p.m. to 5:30 p.m.

Outside Fall Practices - Monday through Saturday from August 20 - October 12.

Practices will run from 2 p.m. to 5:30 p.m.

2014 Game Schedule

<u>Date</u>		Team	# of Games	Time	Location
Wed	March 19	Simpson College	1-9	2 p.m	. HOME
Tues	March 25	*Grandview University	ity 2-7	2 p.m	. HOME
Sat	March 29	*Clarke University	2-7	1 p.m	. HOME
Sun	March 30	*Clarke University	2-7	Noon	HOME
Tues	April 1	Graceland University	2-7	3 p.m	. HOME
Wed	April 2	*Viterbo University	2-7	1:00	HOME
Tues	April 8	*Grandview Univers	ity 2-7	TBA	Des Moines, IA
Sat	April 12	Ashford University	2-7	1 p.m	. HOME
Sun	April 13	Ashford University	1-9	1 p.m	. HOME
Sat	April 26	*William Penn Unive	rsity 2-7	1 p.m	. HOME
Sun	April 27	*William Penn Unive	ersity 2-7	Noon	HOME