

TO: Elinor Carbone, Mayor
City Council
FROM: Victor M. Muschell, Corp. Counsel
DATE: March 29, 2021
RE: Renew Bishop Donnelly License Agreement

Attached find a new License Agreement between the Catholic Cemeteries Association of the Archdiocese of Hartford, Inc. and the City pertaining to the Bishop Donnelly field on East Pearl Rd. This agreement is substantially the same as the previous agreement that expired on November 30, 2020 with three substantive changes: 1) the duration has been changed from five (5) years to three (3) years; 2) the commencement date is January 1st [2021] rather than December 1st [2015] with the termination date being December 31st [2023] rather than November 30th [2020]; and 3) there is no option to renew as before. These changes are at the request of the Archdiocese. There have been other edits which are basically typographical and not substantive.

There is no cost to the city. The Agreement has been approved by Bret Simmons on behalf of the Park and Recreation Department who has indicated that the field is needed as usual for summer activities.

3/29/2021 12:32 PM

RECEIVED FOR RECORD
TORRINGTON TOWN CLERK

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made effective as of this 1st day of January, 2021 and is made by and between **CATHOLIC CEMETERIES ASSOCIATION OF THE ARCHDIOCESE OF HARTFORD, INC.**, a Connecticut non-stock corporation having its chief executive office and principal place of business located at 700 Middletown Avenue, North Haven, Connecticut 06473 ("Licensor") and **THE CITY OF TORRINGTON** ("Licensee").

W I T N E S S E T H:

WHEREAS, it has been determined by the Licensee that certain land owned by Licensor is beneficial for the future growth and development of the City of Torrington; and

WHEREAS, the Licensor has agreed to permit the Licensee the continued use of certain land commonly known as the Bishop Donnelly Sports Complex subject to the terms and conditions contained herein; and

WHEREAS, in order to effectuate the foregoing, the Licensor and Licensee have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, it is agreed as follows:

1. License. The Licensor hereby grants to the Licensee and the Licensee hereby accepts from the Licensor, a revocable, non-exclusive License ("License") to use the Land, specifically for the use of the existing ball fields, as hereinafter defined, as an Athletic Field and Park, which Land is more particularly described in **Schedule A** attached hereto and designated as "Park and Athletic Field" thereon (the "Land"). The Land is subject to all the hereinafter specified conditions and covenants.

2. Term of License Agreement. The term of the License shall be for a three (3) year period of time commencing on January 1, 2021 and ending on December 31, 2023, unless the same has been previously terminated as provided herein or modified by a written extension of this Agreement.

3. Nonexclusivity. The Licensee's use of the Land shall be nonexclusive.

4. Signage. The Licensee may erect and/or install signs around and within the Land at no cost to the Licensor with the prior written consent of the Licensor, not to be unreasonably withheld, delayed or conditioned. The Licensor reserves the right, in its sole and absolute discretion, to erect and/or install any such signs as it may deem appropriate in connection with the Land. All existing signs currently located on the Land are hereby approved by Licensor and may remain.

5. Proof of Insurance. The Licensee agrees to secure and maintain for the duration of this Agreement, including any supplements thereto, and all renewals thereof if any, with the Licensor being named as an additional insured, the following insurance coverage or coverages regarding the said Land at no cost to the Licensor. In the event that Licensee secures excess/umbrella liability insurance to meet the minimum requirements specified below, the Licensee shall also be named as an additional insured.

(a) Licensee agrees to maintain in full force throughout the term of this Agreement and thereafter so long as Licensee is in occupancy of any part of the Land, a policy of public liability and property damage insurance under which Licensor (and such other persons as are in privity of estate with Licensor) and Licensee are named as insureds and under which the insurer agrees to indemnify and hold Licensor and those in privity of estate with Licensor, harmless from and against all costs, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages mentioned in this Section 5, in the broadest form of such coverage from time to time available in the State of Connecticut. Each such policy shall contain a full waiver of the right of subrogation of such insurance company against Licensor and its officers, directors and members and those in privity with Licensor and shall be non-cancelable and non-amendable with respect to Licensor without ten (10) days prior written notice to Licensor; a duplicate original or certificate thereof shall be delivered to Licensor. The minimum limits of liability of such insurance shall be \$2,000,000.00 for bodily injury, \$2,000,000.00 aggregate and \$500,000.00 worker's compensation and employer's liability, \$1,000,000 automobile coverage and \$1,000,000.00 with respect to damage to property; such insurance shall be increased from time to time as required by Licensor. Licensee agrees to name Licensor as additional insured under a policy of liability insurance in form and content acceptable to Licensor. Licensor does not waive its rights of subrogation or any rights of recovery against the Licensee for damages that are covered by Licensee's insurance coverage. Licensee agrees to keep any building adequately insured under policies of insurance as Licensor deems advisable. Licensee agrees to keep any building adequately insured under policies of insurance as Licensor deems advisable.

6. The Licensee shall produce, within five (5) business days, a copy or copies of all applicable insurance policies requested by Licensee. By signing this Agreement, the Licensee agrees that the Licensor is authorized to contact the insurance provider(s) of the insurance policy(ies) directly. This provision shall survive the suspension, expiration or termination of this Agreement. The parties hereto will use best efforts to ensure that all communications and correspondence with the Licensee's insurance carrier will be communicated through Licensee's insurance representatives.

7. Payment to Licensor. None.

8. Use of Land. Notwithstanding the foregoing, any and all fees, costs and expenses in any way related to, arising under and/or in any manner connected with Licensee's use of the Land shall be paid by Licensee when due and owing. Accordingly, any and all charges for the furnishing of gas, water, electricity, sewer or other public utility to the Land during the term of this Agreement shall be paid by Licensee including any and all other such costs, expenses and fees associated with the Land. Licensee shall use the Land solely as an Athletic Field and/or Park and the Land shall not be used for any other purposes, and shall be used in accordance with all applicable laws, statutes and regulations including, without limitation, any and all state and Federal environmental laws and regulations. Licensee shall not use or occupy, or permit or suffer, the Land or any part thereof to be used or occupied for any unlawful or illegal business, use, or purpose, nor in such manner as to constitute a nuisance of any kind, nor for any purpose, or in any way in violation of governmental laws, orders, regulations, rules, ordinances or requirements. Licensee shall immediately upon the discovery or notice from Licensor of any such unlawful or illegal use or any such nuisance take all necessary steps, legal and equitable, to compel the discontinuance of such use, or to oust and remove any occupants or other persons guilty of such unlawful or illegal use or any such nuisance including the Licensee.

Licensee shall obtain any and all permits and approvals from all governmental agencies and/or quasi-governmental agencies required for the operation of its business, if any, and submit same to Licensor.

Licensor makes no representations or warranties of any kind that Licensee's proposed use of the Land, as contemplated pursuant to this Agreement, complies with any and all laws, statutes and/or regulations, including, without limitation, any and all zoning regulations, laws and ordinances. Accordingly, by entering into this Agreement, Licensee has agreed that it has reviewed and accepted the current state of all applicable laws including all zoning regulations with respect to the Land, and Licensee's proposed use thereon "AS IS" and "WHERE IS", and Licensee has, without any representation, warranty or agreement from Licensor of any kind, satisfied itself that Licensee's use of the Land, as contemplated by Licensee herein complies with all applicable laws, regulations and statutes including, without limitation, all applicable zoning laws and regulations.

9. Alterations and Improvements. Licensee shall not make any alterations and/or improvements to the Land, including, without limitation, any structural, non-structural alterations and/or improvements in or to the Land without the prior written consent of Licensor, not to be unreasonably withheld, conditioned and/or delayed. Licensor will attempt to respond within thirty (30) days of receipt of the request of permission to make any modifications and/or improvements to the Land. Licensee shall upon termination of the Agreement, restore the Land to the condition it was in at the commencement of the term of this Agreement.

10. Liens. Licensee will indemnify Licensor for all liens arising with respect to the Land because of Licensee, its agents, employees, invitees or visitors. If any such lien is filed against the Land or improvements made by Licensee, Licensee shall, within thirty (30) days after such lien is recorded, pay and discharge the same or otherwise bond over the same in a manner satisfactory to Licensor. If

Licensee fails to discharge or bond any such lien within such thirty (30) day period, Licensor may pay or bond over the lien, without inquiring into the validity thereof, and Licensee shall forthwith reimburse to Licensor, upon presentation of a bill therefor, the total expenses incurred by Licensor in discharging the lien, including costs and attorneys' fees.

11. Pavement Markings. The Licensee shall provide adequate and suitable pavement markings to direct proper traffic flow to and from the Land to and from the nearest public street if required by Licensor.

12. Maintenance. The Licensee shall maintain the Land in a clean, safe condition and shall allow no waste to be committed thereon. In this regard, any all maintenance which may be required in connection with the Land including, without limitation, grass cutting, snow removal, trimming, pruning of trees and shrubbery, maintenance of landscaping shall be done all at Licensee's sole cost and expense. Licensor shall not be required to perform or be liable to maintain the Land whatsoever during the term of this Agreement. Accordingly and notwithstanding anything to the contrary contained in this Agreement, Licensor shall not be required or obligated to provide any repairs, maintenance and upkeep of any nature or kind with respect to the Land, including, without limitation, snow removal.

13. Termination. Notwithstanding anything to the contrary contained herein, either party may cancel this Agreement at any time for any reason whatsoever upon ninety (90) days written notice to the other party.

14. Tax Liability. The Licensee shall be responsible for the payment of any and all taxes levied on the Land, if any.

15. Existing Lot Condition. The Licensor has examined the Land (including various drives, aisles, areas designated as passways) and accepts same in its present condition.

16. Responsibility Upon Termination. The Licensor shall not be obligated to construct or reconstruct the Land in any manner. However, upon expiration or termination of this Agreement, the Licensee shall remove all signs erected or installed by the Licensee and shall repair any damage to the Land caused as a direct result of the removal and return the Land to the condition it was prior to the commencement of this Agreement.

17. Title to Land. No legal title or leasehold interest in the Land shall be deemed or construed as having been created or vested in the Licensee by the grant of this License.

18. Indemnification. Licensee agrees to indemnify and hold Licensor and/or its officers, directors, members, representatives, agents, servants, employees, successors and assigns harmless from and against any act or omission of Licensee and/or any of its contractors, licensees, agents,

invitees, servants or employees, and from and against any third-party claims of whatever nature arising under, relating to and/or in any manner connected with this Agreement and/or the Land including all expenses and liabilities incurred in connection with any such claims or proceedings brought thereon, including reasonable attorneys' fees for defense thereof.

19. Environmental Indemnity. Licensor represents and warrants that no Hazardous Substances, as herein defined, have ever been or will be used, stored, treated, disposed of or generated at or on the Land, except in compliance with all applicable Environmental Laws. Licensor shall promptly take any and all necessary or appropriate remedial action in response to the suspected present use, disposal, release or discharge of any Hazardous Substances, on, in, under or about the Land.

Licensee hereby grants Licensor, its agents, consultants and contractors, an irrevocable license, easement and authorization to enter upon and inspect the Land, and to perform such tests, including without limitation, subsurface testing, soils and groundwater testing, and such other tests as Licensor, in its sole discretion, determines is necessary to protect its interest in the Land. In the event that either (i) a release, spill, leak, or emission of a hazardous substance (collectively "Hazardous Spills") occurs on, in, under about or from the Land, or (ii) Licensee receives any summons, citation, notice of violation, letter or other communication from the United States Environmental Protection Agency, the Department of Energy and Environmental Protection ("DEEP"), any other governmental authority, or from any other person or entity (collectively "Environmental Notices") concerning any violation or alleged violation of, or liability pursuant to, one or more Environmental Laws, Licensee shall notify and furnish Licensor, within five (5) business days following such occurrence or receipt, with a letter describing such event and attaching copies of all relevant communications and documents with respect thereto in the manner of providing notice as set forth herein.

As used herein the term "Hazardous Substances" shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated byphenyls, petroleum (including crude oil or any fraction thereof), and any other chemical substance or material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any of the Environmental Laws. The term "Environmental Laws" shall mean all applicable Federal, State, county and local statutes, laws, regulations, rules, ordinances, codes, standards, guidelines, orders, licenses and permits of any governmental authorities relating to environmental, health or safety matters, including by way of illustration and not by way of limitation, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act of 1970, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Toxic Substances Control Act (including any amendments or extensions to any of the foregoing and any rules, regulations, standards or guidelines issued pursuant to any of such laws that have not been resolved other than as set forth above).

Licensee and its successors and assigns, hereby agree, forever to defend, indemnify and hold harmless Licensors, its employees, agents, officers, directors, successors and assigns, from and against any and all actions, claims, demands, fines, harms, judgments, losses, liabilities, damages, penalties, settlements, costs and expenses, including reasonable attorneys' and consultants' fees, of whatever kind or nature, known or unknown, contingent or otherwise in any way suffered, incurred or paid by the Licensors in whole or in part, arising out of or in any way related to: (i) Hazardous Substances at any time located or present on, in, under, at or affecting the Land or the soil, water, air, vegetation, buildings, persons, animals or otherwise except to the extent first being present on the Land or unless caused by Licensors, its employees, agents, invitees and/or other licensees (ii) any failure by Licensee or its employees, agents, invitees to comply with any and all Environmental Laws; (iii) the breach of any agreement, covenant, warranty or representation set forth herein; and (iv) the imposition of any lien on the Land pursuant to Connecticut General Statutes §22a-452a or any other Federal, state or local law, ordinance, regulation or otherwise, except to the extent first being present on the Land or unless caused by Licensors, its employees, agents, invitees and/or other licensees. This indemnification shall survive the termination, foreclosure, discharge and release of this Agreement.

20. Waiver. No failure by Licensors to insist upon the strict performance of any term hereof, or to exercise any right, power or remedy, consequent upon a breach thereof. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the rights of Licensors with respect to any other then existing or subsequent breach.

21. Notice.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Agreement to Licensors or Licensee shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered at such address, or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

LICENSOR: **CATHOLIC CEMETERIES ASSOCIATION OF THE
ARCHDIOCESE OF HARTFORD, INC.**

700 Middletown Avenue
North Haven, Connecticut 06473

Copy to: **RUSSO & RIZIO, LLC**

10 Sasco Hill Road
Fairfield, CT 06824
Attn: Raymond Rizio, Esq.

LICENSEE: **THE CITY OF TORRINGTON**

140 Main Street
Torrington, Connecticut 06790

ATTN: Elinor Carbone, Mayor

Copy to: Corporation Counsel
140 Main Street
Torrington, CT 06790

Bret Simmons, Superintendent
Park and Recreation Department
153 South Maun Street
Torrington, CT 06790

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

22. Applicable Law. This Agreement shall be governed, interpreted and construed under and in accordance with the laws of the State of Connecticut.

23. Miscellaneous. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

24. Jurisdiction and Forum Language. This Agreement shall be governed, interpreted and construed under and in accordance with the laws of the State of Connecticut, whether or not its conflict of laws principles would dictate otherwise. This Agreement shall be deemed to have been made in Hartford, Connecticut.

The Licensee irrevocably consents with respect to any claims or remedies at law or in equity, arising out of or in connection with this Agreement to the jurisdiction of the Connecticut Superior Court (except as otherwise required by law or that License Agreement), and, with respect to any claim between the Parties, to venue in Judicial District of Litchfield at Torrington, and irrevocably waives any objections that it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise.

25. Entire Agreement. The terms and provisions herein contained constitute the entire Agreement between the parties and shall supercede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing signed by both parties hereto; and nothing contained in the terms

or provisions of this Agreement shall be construed as waiving any of the rights of the Licensee under the laws of the State of Connecticut.

26. Severability. Should any part of any provision of this Agreement be declared invalid by a court of competent jurisdiction, such decision or determination shall not affect the validity of any remaining portion of such provision or any other provision and the remainder of the Agreement shall remain in full force and effect and shall be construed in all respects as if such invalid or unenforceable provision or portion thereof were not contained herein. In the event of a declaration of invalidity, the provision or portion thereof declared invalid shall not necessarily be invalidated in its entirety, but shall be observed and performed by the parties to the Agreement to the extent such provision is valid and enforceable.

27. Section Headings. The section headings contained herein are for convenience of reference only and shall not be considered any part of the terms of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have hereunto put their hand, all as of the day and year first above written.

WITNESSED BY:

LICENSOR
**CATHOLIC CEMETERIES ASSOCIATION
OF THE ARCHDIOCESE OF HARTFORD, INC.**

By: _____

John Pinone
Its Executive Director
Duly Authorized

LICENSEE
THE CITY OF TORRINGTON

By: _____

Elinor Carbone
Its Mayor
Duly Authorized
