

## INDEMNIFICATION AGREEMENT (A2021-50)

WHEREAS, the City of Mitchell, Davison County, South Dakota, a political subdivision of the State of South Dakota, hereafter “City of Mitchell,” is preparing to enter into formal discussion that may result in it leasing to Corn Palace Stampede, Inc., a South Dakota nonprofit corporation, of Mitchell, Davison County, South Dakota, hereafter “Rodeo,” the following described property:

**The West 900’ of Lot 1 in the South 1/2 of the Northwest 1/4, Section 33,  
Township 104 North, Range 60 West of the 5th P.M, City of Mitchell,  
Davison County, South Dakota;**

all pursuant to the terms and conditions of a certain *Lease Agreement* to be agreed upon by the parties;

WHEREAS, Rodeo is currently involved in a civil action, SD UJS case #17CIV20-000235, entitled *Corn Palace Stampede, Inc., a South Dakota corporation, Plaintiff v. Horsemen's Sports Inc., a South Dakota corporation, and Brandon Neugebauer, both as a director of Horsemen's Sports, Inc., and individually, and Matt McCormick, both individually and as a director of Horsemen's Sports, Inc., and Joel M. Bergeson and Paul C. Parr, Defendants* (hereafter “Civil Action”); and

WHEREAS, the parties acknowledge: 1) that City of Mitchell is fully aware of the pending litigation between Rodeo and Horsemen’s Sports and the claims and counterclaims set forth therein; 2) that Rodeo contacted the City of Mitchell regarding a potential lease well after the Civil Action was filed; and 3) that Rodeo has represented to the City of Mitchell that it intends to terminate, or have judicially terminated, the lease giving rise to the Civil Action or otherwise satisfy any obligations thereunder that Rodeo has, or is determined by a court to have, but nevertheless Rodeo desires to secure an alternative location for its future activities.

**Now, therefore:**

Rodeo agrees to defend, indemnify and hold harmless the City of Mitchell, its agents, officers and employees, from and against any and all claims, either direct or indirect, primary or third party, arising out of the subject matter of the Civil Action.

Additionally, Rodeo agrees to defend, indemnify and hold harmless the City of Mitchell, its agents, officers and employees, from and against any and all claims, made by Horsemen’s Sports, or any of its members, officers, agents, or stakeholders, or other party to the Civil Action including, but not limited to, tortious interference with business relationships alleged to arise from Rodeo’s and City of Mitchell’s negotiations towards, agreements relating to, arrangements for, and the finalized terms of the aforesaid *Lease Agreement*. Rodeo and City of Mitchell acknowledge that the aforesaid *Lease Agreement* will be an arms length transaction, undertaken for good consideration including, but not limited to, the cultural, recreational, and educational well-being of the citizens of Mitchell, Davison County, South Dakota, and the surrounding area; and that delivery of this *Indemnification Agreement* is an integral part of the consideration for the

aforesaid *Lease Agreement* and a condition precedent to actually negotiating terms of the *Lease Agreement*.

Rodeo agrees that upon receipt of notice from the City of Mitchell to defend the City of Mitchell, its agents, officers and employees from any action or proceeding as described above, Rodeo will do so at its own cost and expense without contribution from the City of Mitchell.

The City of Mitchell, its agents, officers and employees may maintain an action against Rodeo to recover the amount of the judgment entered against the City of Mitchell, together with all the expenses incurred by the City, its agents, officers and employees in the action.

Dated this \_\_\_\_\_ day of August, 2021.

**Corn Palace Stampede, Inc.**

\_\_\_\_\_  
James A. Miskimins  
Chairman

ATTEST:

The foregoing *Indemnification Agreement* was approved, and the Chairman, James A. Miskimins, was authorized to execute and deliver the same, at a duly called meeting of the Directors of the corporation held on August 24, 2021.

\_\_\_\_\_  
Secretary

CORPORATE SEAL

**City of Mitchell, SD**

\_\_\_\_\_  
Robert B. Everson, Jr., Mayor

Attest:

\_\_\_\_\_  
Michelle Bathke, City Finance Officer

(seal)