

EXCLUSIVE USE AREA LEASE AGREEMENT

THIS EXCLUSIVE USE AREA LEASE AGREEMENT (the "Lease") is made and entered into as of the 20th day of February, 2024, by and among THE CITY OF GASTONIA, NORTH CAROLINA (hereinafter called "City" or "Landlord"), ZGE, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Team"), and, solely for purposes of Section 26 hereof, SYA BASEBALL, LLC ("Limited Guarantor"), a limited liability company organized and existing under the laws of the State of Florida. City and Team are sometimes each referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

In consideration of the mutual covenants and agreements contained herein, the Parties agree for themselves and their successors and assigns as follows:

1. DESCRIPTION OF DEMISED PREMISES

(a) Use, and Operating Agreement. The Parties have entered into that certain "Use and Operating Agreement" dated February 6, 2024 (the "Agreement"), that governs the management of a Stadium (as that term is defined in the Agreement) on certain Land (as that term is defined in the Agreement) within the City of Gastonia, North Carolina. The Agreement is attached to this Lease as Exhibit A and is incorporated into this Lease by reference. Defined terms used in this Lease shall have the meanings assigned to them in the Agreement.

(b) Demised Premises Defined. The Agreement states the Exclusive Use Areas are those areas of Stadium identified in the Agreement, and as more fully described in this Lease, which shall be reserved for the exclusive use of Team during the Term. The Exclusive Use Areas are comprised of the spaces set forth in Exhibit B, attached hereto and incorporated into this Lease by reference, and any necessary space associated with use of such spaces as shall be determined by the mutual agreement of the Parties. The Exclusive Use Areas, comprised of those spaces listed in Exhibit B, as more particularly shown in the areas highlighted in yellow in Exhibit B-1, shall be referred to collectively as the "Demised Premises" in this Lease.

(c) Lease of Demised Premises. Landlord hereby leases to Team, and Team hereby accepts and rents from Landlord, in accordance with this Lease's terms and conditions, the "Demised Premises." For the avoidance of doubt and notwithstanding anything contained within the Lease or Agreement, Team shall have the exclusive right to use the Demised Premises for the Term (as defined herein) of this Lease.

2. TERM

(a) Initial Term. The term of this Lease shall commence on the date (the "Lease Commencement Date") that is the Commencement Date under the Agreement and shall continue for a period of fifteen (15) years¹ from the Lease Commencement Date (the "Initial Term"). Once the Lease Commencement Date is established, Landlord and Team agree to execute a document confirming the Lease Commencement Date and the Memorandum of Lease to be recorded as required by Section 20 of this Lease shall reflect the Lease Commencement Date and scheduled

expiration date of this Lease. Upon expiration of the Initial Term and provided that the Agreement is still in effect, City and Team shall use their best efforts to enter into a new lease agreement on substantially the same terms and conditions as contained herein. The word "Term" as used in this Lease shall mean the full term of this Lease, as may be extended by the Parties from time to time.

(b) Occupancy of the Demised Premises. During each calendar year during the Term of this Lease, Team shall have the right to control, occupy, and use the Demised Premises pursuant to this Lease at all times, and Landlord shall not have the right to control, occupy, and use (and grant to others the right to control, occupy, and use) the Demised Premises. Nothing in this Section, however, shall affect any rights that Team or Landlord may have with respect to the Demised Premises by virtue of the Agreement.

(c) Automatic Termination. Notwithstanding anything herein to the contrary, this Lease shall terminate automatically upon the termination of the Agreement, provided that Landlord shall provide Team with notice, if any, required by the Agreement of such termination. Upon such termination, Team shall have the right to enter the Demised Premises and remove all of Team's personal property and equipment.

3. RENTAL AND OTHER TENANT PAYMENTS

(a) Rental.

(i) Initial Term Rental. During the Initial Term, on or before the Lease Commencement Date and then each year on or before the anniversary of that date, Team shall pay to Landlord, without notice, demand, reduction, setoff or any defense in accordance with the payment instructions set forth in Section 3(f) below, an annual rental in the amounts set forth in the chart below (the "Initial Term Rental").

Period	Initial Term Rental
Lease Commencement Date - Lease Year 5	\$35,808.00*
Lease Year 6 - Lease Year 10	\$37,598.40
Lease Year 11 - Lease Year 15	\$39,478.32

*Represents the market rate of Twelve Dollars and 00/100 (\$12.00) per square foot for the square footage of the Exclusive Use Areas as described in Exhibit B and Exhibit B-1.

(ii) The Initial Term Rental and any extension or holdover period are sometimes hereinafter referred to as "Rental."

(b) Taxes. Team shall pay all ad valorem taxes (or any tax hereafter imposed in lieu thereof) assessed against this Lease pursuant to applicable provisions of North Carolina law. Team shall further pay all taxes assessed against trade fixtures, equipment, machinery, inventory, or merchandise owned by Team, or other of Team's personal property, which is located on the Demised Premises, as all such taxes or assessments may become due and payable, without any delinquency. Team shall have the right to contest the applicability or amount of any tax by appropriate proceedings.

(c) Operating and Maintenance Costs. The Parties' obligations with respect to the payment of operating expenses, including maintenance costs, with respect to the Stadium, including the Demised Premises, are set forth in the Agreement.

(d) Documentary Tax. In the event that any documentary stamp tax, sales tax or any other tax or similar charge levied on the rental, leasing or letting of the Demised Premises, whether local, state or federal, is required to be paid due to the execution hereof or otherwise with respect to this Lease or the payments due hereunder, the cost thereof shall be borne by Team and shall be paid promptly and prior to same becoming past due. Team shall provide Landlord with copies of all paid receipts respecting such tax or charge promptly after payment of same.

(e) Late Payment. All unpaid Rental and other sums of whatever nature owed by Team to Landlord under this Lease shall bear interest from the due date thereof until paid at an interest rate per annum (the "Default Rate" that is two percent (2%) per annum over the "prime rate" of interest announced, reported or published from time to time in *The Wall Street Journal* on the Money Rates Page (or a similar publication if *The Wall Street Journal* is no longer published or no longer announces, reports or publishes such rate), changing as and when said "prime rate" changes, unless a lesser rate is then the maximum rate permitted by law with respect thereto, in which event said lesser rate shall apply. Acceptance by Landlord of any payment from Team hereunder in an amount less than that which is currently due shall in no way affect Landlord's rights under this Lease and shall in no way constitute an accord and satisfaction. In the event Landlord reasonably determines no "prime rate" may be attained as set forth in this subsection, Parties agree to negotiate in good faith to determine a reasonable interest rate for late payments.

(f) Payment Instructions. All rental and other payments required of Team hereunder shall be made payable to Landlord and mailed or hand delivered to Landlord at the address for notices set forth in Section 13.4 of the Agreement or at such other address as shall be designated in writing by Landlord.

4. DELIVERY OF POSSESSION

Landlord will deliver the Demised Premises to Team on the Lease Commencement Date and beginning on the Commencement Date, Team shall accept the Demised Premises in its "AS-IS, WHERE-IS" condition and Team acknowledges that City shall have no obligations to make any improvements to the Demised Premises except as may be provided for in the Agreement.

5. ALTERATIONS AND IMPROVEMENTS BY TEAM

The Parties' obligations with respect to alterations to the Stadium, including the Demised Premises, are set forth in the Agreement. Non-structural alterations to the Demised Premises up to Twenty-Five Thousand Dollars (\$25,000.00) ("Alterations") may be made without City's approval, provided that: (a) Team has obtained all certificates, licenses, permits, authorizations, consents and approvals necessary for such Alterations from all governmental authorities having jurisdiction with respect to the Demised Premises or such Alterations; and (b) Team shall cause all Alterations to be made and completed by licensed and insured contractors with first class materials and in a good, substantial and workmanlike manner, and in compliance with all laws.

6. USE OF DEMISED PREMISES

(a) Compliance. Team shall comply with all laws, ordinances, orders, regulations or zoning classifications of any lawful governmental authority, agency or other public or private regulatory authority (including insurance underwriters or rating bureaus) having jurisdiction over the Demised Premises. Team shall not do any act or follow any practice relating to the Demised Premises that shall constitute a nuisance or detract in any way from the reputation of Stadium as a first-class facility. Team's duties in this regard shall include allowing no material noxious or offensive odors, fumes, gases, smoke, dust, steam or vapors, or any unusual loud or disturbing noise or vibrations to emit from the Demised Premises. Landlord represents that the Team's use of the Demised Premises for the purposes as described more fully in this Lease and the Agreement shall not be deemed a violation of the laws, ordinances, orders, regulations or zoning classifications of the City under this Section.

(b) Toxic or Hazardous Waste. Without limiting the generality of Section 6(a) above, the Demised Premises shall not be used for the treatment, storage, transportation to or from, use or disposal of toxic or hazardous wastes, materials, or substances in violation of law.

(c) Due Care. Team shall exercise reasonable care in its respective use and occupancy of the Demised Premises and shall not intentionally or negligently commit or allow waste to be committed on any portion of the Demised Premises; and at the expiration or earlier termination of this Lease, subject to the provisions of Section 3(c) hereof Team shall deliver the Demised Premises to City in substantially the same condition as on the Commencement Date, ordinary wear and tear and acts of God alone excepted. Damage or deterioration to the Demised Premises not caused by the intentional or negligent acts of Team shall not be deemed a violation of this provision.

(d) Indemnification. Team shall indemnify, defend, and save Landlord harmless from any claims, liabilities, penalties, fines, costs, expenses or damages resulting from the failure of Team to comply with the provisions of this Section 6. This indemnification shall survive the termination or expiration of this Lease.

7. INSURANCE COVERAGE

The Parties' obligations with respect to insurance shall be governed by the Agreement.

8. REPAIRS AND MAINTENANCE

The Parties' obligations with respect to the repair and maintenance of Stadium, including the Demised Premises, are set forth in the Agreement.

9. UTILITIES

The Parties' obligations with respect to the arrangement and payment for utilities of the Stadium, including the Demised Premises, are set forth in Section 7.27 of the Agreement.

10. DAMAGE OR DESTRUCTION OF DEMISED PREMISES

Damage or destruction of all of any portion of the Demised Premises shall be governed by Article XII of the Agreement.

11. COMPLIANCE WITH LAWS

Team agrees to observe and comply with all laws that may be in effect from time to time that are applicable to Team's use or occupancy of the Demised Premises. Team shall not be required to make any Capital Repair, Maintenance or Improvements (as defined in the Agreement) in order to comply with the requirements of this Section.

12. INDEMNIFICATION

(a) Indemnification by Team. Team shall, except as otherwise provided in this Section 12, defend, protect, indemnify and hold City and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Demised Premises by Team, or by Team's respective contractors, employees, officers, directors, agents on or after the Commencement Date, (ii) Team's failure to comply with its obligations under this Agreement or (iii) the gross negligence or willful misconduct of Team, or of Team's respective contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, Team shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with:

(i) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or willful misconduct of City, its employees, officers, directors, contractors, agents or invitees;

(ii) City's violation of any provisions of this Agreement or any applicable Governmental Authority or deed restriction or insurance policy, now or hereafter in effect and applicable to City;

(iii) Any Hazardous Materials that are released at, delivered to, or introduced to the Demised Premises, migrate from the Demised Premises, or are shipped from the Demised Premises prior to the Commencement Date by City, or any of its employees, officers, directors, contractors, or agents; or

(iv) Any actions or omissions of the Prior Operator (as defined in the Agreement).

(b) Indemnification by City. To the maximum extent permitted by applicable Governmental Rule, City shall, except as otherwise provided in this Section 12(b), defend, protect, indemnify and hold Team and its Affiliates, and their respective officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Demised Premises prior to the Commencement Date, (ii) City's failure to comply with its obligations under this Agreement, or (iii) the gross negligence or willful act of City or City's contractors, employees, officers, directors

or agents. Notwithstanding the provisions of the preceding paragraph, City shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with:

- (i) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or willful act of Team, or of its employees, officers, directors, contractors, agents or invitees;
- (ii) Team's violation of any provisions of this Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to Team; or
- (iii) Any Hazardous Materials that are released at, delivered to, or introduced to the Demised Premises, migrate from the Demised Premises, or are shipped from the Demised Premises after the Commencement Date by Team, or any of its employees, officers, directors, contractors, or agents.
- (iv) Any actions or omissions of the Prior Operator (as defined in the Agreement).

The provisions of this Section 12 are solely for the benefit of City, Team and its Affiliates, and are not intended to create or grant any rights, contractual or otherwise, to any other person.

(c) Indemnification Procedures. In case any claim shall be brought or, to the knowledge of any indemnitee, threatened against any indemnitee in respect of which indemnity may be sought, such indemnitee shall promptly notify the other in writing; provided, however, that any failure so to notify shall not relieve the indemnitor of its obligations under this Section 12(a) or (b), as applicable, unless (i) such failure so to notify precludes investigation and defense of such claims as a matter of law, and (ii) the indemnitor does not otherwise have knowledge, either actual or constructive, of such claim. The indemnitor shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel, reasonably acceptable to the indemnitee, and the payment of all expenses. Each indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such indemnitee unless (i) the employment of such counsel has been specifically authorized by indemnitor, in writing, (ii) indemnitor has failed after receipt of notice of such claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both parties, and the indemnitee, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnitor (in which case, if such indemnitee notifies the indemnitor in writing that it elects to employ separate counsel at indemnitee's expense, indemnitor shall not have the right to assume the defense of the action on behalf of such indemnitee; provided, however, that indemnitor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the indemnitee, which firm shall be designated in writing by the indemnitees). Each indemnitee shall cooperate with the indemnitor in the defense of any action or claim. The indemnitor shall not be liable for any settlement of any action or claim without its

consent, but if any such action or claim is settled with the consent of the indemnitor or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, the indemnitor shall indemnify and hold harmless the indemnitees from and against any damages by reason of such settlement or judgment.

(d) Survival Right to Enforce. The provisions of this Section 12 shall survive the termination of this Agreement. In the event of failure by an indemnitor to observe the covenants, conditions and agreements contained in this Section 12, any indemnitee may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the indemnitor under this Section 12. Except as otherwise provided herein, the obligations of the parties under this Section 12 shall not be affected by any assignment or other transfer of its rights, titles or interests under this Agreement and will continue to inure to the benefit of the indemnitees for one (1) year after any such transfer.

13. LANDLORD'S RIGHT OF ENTRY

Landlord, and those persons authorized by it, shall have the right to enter the Demised Premises at all reasonable times and upon reasonable notice, which shall be no less than two (2) days' notice, for any reasonable purpose, including making inspections or showing the same to lenders and other interested parties, as well as at any time in the event of emergency involving possible injury to property or persons in or around the Demised Premises or the Stadium. Except in the case of any emergency, Team shall have the right to have a representative of Team accompany Landlord or persons authorized by Landlord while in the Demised Premises. Further, during the last six (6) months of the Term, Landlord and those persons authorized by it shall have the right at reasonable times and upon reasonable notice to show the Demised Premises to prospective tenants.

14. EVENTS OF DEFAULT AND REMEDIES

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(i) Team's failure to pay when due any rental or other sum of money payable hereunder and such failure is not cured within thirty (30) days after written notice thereof;

(ii) Team's failure to *perform* any other of the material terms, covenants or agreements contained in this Lease to be performed by Team if not remedied within thirty (30) days after receipt of written notice thereof, or if such default cannot be remedied within such period, Team does not within thirty (30) days after written notice thereof commence such act or acts as shall be necessary to remedy the default and shall not thereafter complete such act or acts within a reasonable time;

(iii) Team shall commit an Act of Bankruptcy (as such term is defined in the Agreement); or

(iv) There is a Team Default under the Agreement.

(b) Upon the occurrence and during the continuation of any Event of Default beyond any applicable notice and cure period by Team hereunder, City shall have the following rights and remedies, it being understood that, notwithstanding anything to the contrary in this Lease, City shall not have any right to terminate this Lease as a result of an Event of Default by Team hereunder unless such Event of Default causes a termination of the Agreement in accordance with the Agreement's provisions:

(i) To institute any and all proceedings or claims permitted by law or equity to recover all unpaid sums and amounts then due and payable by Team under this Lease, and any and all amounts necessary to compensate City for all the damage proximately caused by Team's failure to perform its obligations under this Lease; and/or

(ii) To institute any and all proceedings or claims permitted by law or equity to compel specific performance with respect to Team's obligations under this Lease and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel Team to comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Lease.

(c) Notwithstanding anything contained herein to the contrary, if a court of competent jurisdiction has determined pursuant to a final non-appealable order that an Event of Default has occurred under this Lease and such Event of Default is continuing under this Lease, Landlord shall have the right, in addition to any other rights it may have pursuant to this Lease, to cure such Event of Default on behalf of Team, and Team shall reimburse the Landlord upon demand for any sums paid or costs incurred by Landlord in curing such Event of Default, including interest thereon at the Default Rate and reasonable attorneys' fees and other legal expenses.

15. SUBORDINATION OF LIEN OF LEASE

This Lease and any permitted or approved subleases shall be junior and subordinate to any existing lien, lease or other encumbrance heretofore existing relating to the Demised Premises. Furthermore, the Team hereby agrees that this Lease and any permitted or approved subleases are and will be junior and subordinate to any lien or other encumbrance that may hereafter be created or arise relating to the acquisition, development, construction, financing or refinancing of the Project Improvements, as defined in the Agreement, or any future improvements to the Demised Premises, and the Team agrees to execute and deliver such instruments, agreements or other items of evidence necessary to evidence the subordination of this Lease and any permitted or approved subleases to such other permitted liens or encumbrances.

16. ASSIGNING AND SUBLETTING

Except to the extent authorized by this Section, Team may not assign, sublet, mortgage, pledge or encumber this Lease, the Demised Premises, or any interest in the whole or in any portion thereof, directly or indirectly, without the prior written consent of Landlord, which Landlord may withhold in its sole discretion. Notwithstanding the foregoing, Team may assign its interest in this Lease without Landlord's consent to the same extent, and to the same assignee, that Team may assign its interest in the Agreement without Landlord's consent in accordance with Article X of

the Agreement. Landlord's consent to one assignment or sublease will not waive the requirement of its consent to any subsequent assignment or sublease as required herein.

17. COVENANT OF QUIET ENJOYMENT

Landlord represents that Landlord has full right and authority to lease the Demised Premises and Team shall peacefully and quietly hold and enjoy the Demised Premises for the full term hereof, subject to the provisions of this Lease.

18. ESTOPPEL CERTIFICATES

Within ten (10) days after a request by Landlord, Team shall deliver a written estoppel certificate, in form supplied by or acceptable to the Landlord, certifying, to the extent true, that this Lease is in full force and effect, that, to Team's knowledge, no default exists on the part of Landlord or Team, that Team is in possession, that Team has commenced the payment of Rental, that Team claims no defenses or offsets with respect to payment of Rental under this Lease, and such other matters as may reasonably be requested. Likewise, within ten (10) days after a request by Team, Landlord shall deliver to Team a similar estoppel certificate covering such matters as are reasonably required by Team.

19. PROTECTION AGAINST LIENS

Team shall do all things necessary to prevent the filing of any mechanic's, materialmen's or other types of liens whatsoever, against all or any part of the Demised Premises by reason of any claims made by, against, through or under Team. If any such lien is filed against the Demised Premises, Team shall either cause the same to be discharged of record within thirty (30) days after filing or, if Team in its discretion and in good faith determines that such lien should be contested, it shall furnish such security as may be necessary to prevent any foreclosure proceedings against the Demised Premises during the pendency of such contest. If Team shall fail to discharge such lien within said time period or fail to furnish such security, then Landlord may at its election, in addition to any other right or remedy available to it, discharge the lien by paying the amount claimed to be due or by procuring the discharge by giving security or in such other manner as may be allowed by law. If Landlord acts to discharge or secure the lien, then Team shall immediately reimburse Landlord for all sums paid and all costs and expenses (including reasonable attorneys' fees) incurred by Landlord involving such lien together with interest on the total expenses and costs at the maximum lawful rate.

20. MEMORANDUM OF LEASE

Landlord and Team shall execute a recordable Memorandum of Lease specifying the term of this Lease and such other terms as the parties shall mutually determine, and the Memorandum of Lease shall be recorded in the Office of the Register of Deeds of Gaston County, North Carolina.

21. FORCE MAJEURE

Notwithstanding any other provision of this Lease to the contrary, in the event that either Party hereto shall be delayed or hindered or prevented from performing any obligation or act required under this Lease by reason of an event of Force Majeure (as defined in the Agreement), and not by reason of lack of funds or other financial reason, then the period for the performance

of any such act or obligation shall be extended for a period equivalent to the period of such delay. The Party so delayed, hindered, or prevented shall use commercially reasonable efforts to fulfill the obligation or act in question as soon as reasonably practicable by arranging alternate methods of providing the work, services, or materials being delayed. The Parties acknowledge and agree that each Party's right to rely on the foregoing shall be in no way limited or otherwise affected by the fact that any of the foregoing delays may be anticipated or predicted as of the date hereof. In addition, and notwithstanding anything to the contrary herein, if a Force Majeure Condition (as hereinafter defined) exists, then, beginning on the first (1st) day following the occurrence of the applicable Force Majeure Condition, Team's obligations with respect to Rental to be paid by Team pursuant to this Lease shall be waived and excused until the applicable Force Majeure Condition no longer exists.

For the purposes hereof, "Force Majeure Condition" means an event of Force Majeure resulting from or related to any Pandemic, governing body and/or any federal, state, or local government recommended or mandated closures of Team's business that renders all or any portion of the Demised Premises untenable or deprives the Team of its right or ability to use and/or access its Demised Premises or any portion thereof or any other similar event which prevents the Team from accessing the Demised Premises or conducting Team's business therein.

22. REMEDIES CUMULATIVE - NONWAIVER

Unless otherwise specified in this Lease or the Agreement, no remedy of Landlord or Team shall be considered exclusive of any other remedy, but each shall be distinct, separate and cumulative with other available remedies. Each remedy available under this Lease or at law or in equity may be exercised by Landlord or Team from time to time as often as the need may arise. No course of dealing among Landlord or Team or any delay or omission of Landlord or Team in exercising any right arising from the other party's default shall impair such right or be construed to be a waiver of a default.

23. HOLDING OVER

If Team remains in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease, whether with or without Landlord's acquiescence, Team shall be deemed only a tenant at will and there shall be no renewal of this Lease without a written agreement signed by both parties specifying such renewal. The annual rental payable by Team during any such tenancy at will period shall be one hundred percent (100%) of the Rental being paid in the most recent period until the thirtieth anniversary of the date hereof, after which the annual rental payable by Team during any such tenancy at will period shall be one hundred fifty percent (150%) of the Rental being paid in the most recent period. Team shall also remain liable for any and all damages, direct and consequential, suffered by the Landlord as a result of any holdover without Landlord's unequivocal written acquiescence.

24. NOTICES

Any notice allowed or required by this Lease shall be deemed to have been sufficiently served if the same shall be in writing and placed in the United States mail, via certified mail or registered mail, return receipt requested, with proper postage prepaid and addressed as provided in Section 13.4 of the Agreement.

25. LEASING COMMISSION

Landlord and Team represent and warrant each to the other that they have not dealt with any brokers or any other person claiming any entitlement to any commission in connection with this transaction. Landlord and Team agree to indemnify and save each other harmless from and against any and all claims, suits, liabilities, costs, judgments and expenses, including reasonable attorneys' fees, for any leasing commissions or other commissions, fees, charges or payments resulting from or arising out of their respective actions in connection with this Lease.

26. GUARANTY.

Limited Guarantor hereby absolutely and unconditionally guarantees: (a) the full, prompt and complete payment when due, whether by declaration or otherwise, and at all times hereafter, of all sums payable by Team to the City under this Agreement and all other obligations and indebtedness now or hereafter owing by Team to the City, however or whenever created, incurred, arising or evidenced, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, or due or to become due, and any and all renewal or renewals, extension or extensions, modification or modifications thereof, and substitution or substitutions therefor, either in whole or in part; and (b) the full, prompt and complete performance and satisfaction of all covenants and obligations of Team under this Agreement or any document executed or delivered in connection therewith or relating thereto, together with any and all renewal or renewals, extension or extensions, modification or modifications thereof, and substitution or substitutions therefor, either in whole or in part (collectively, the "Liabilities"). Limited Guarantor agrees that if the Liabilities are not paid, satisfied, or performed, as the case may be, by Team when due, Limited Guarantor will promptly do so. This guaranty shall remain in full force and effect until each of the Liabilities have been fully and completely paid, satisfied and performed. Limited Guarantor waives presentment, demand, dishonor, notice of dishonor, protest and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of all contracts and commitments, of the existence or creation of any of the Liabilities, or the amounts and terms thereof, and of all defaults, disputes or controversies, and of the settlement compromise or adjustment thereof. This guaranty is a guaranty of payment and not of collection. The liability of Limited Guarantor under this guaranty shall be primary, direct and immediate.

27. MISCELLANEOUS

(a) Evidence of Authority. If requested by Landlord, Team shall furnish appropriate legal documentation evidencing the valid existence and good standing of Team and the authority of any parties signing this Lease to act for Team.

(b) Nature and Extent of Agreement. This Lease, together with the Agreement, contain the complete agreement of the parties concerning the lease by Team of the Demised Premises, and there are no oral or written understandings, representations, or agreements pertaining thereto which have not been incorporated herein or therein. This Lease creates only the relationship of landlord and tenant between the parties, and nothing herein shall impose upon either party any powers, obligations or restrictions not expressed herein.

(c) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(d) Captions and Headings. The captions and headings in this Lease are for convenience and reference only, and they shall in no way be held to explain, modify, or construe the meaning of the terms of this Lease.

(e) Governing Law. This Lease shall be governed by the laws of the State of North Carolina.

(f) Counterparts. This Lease may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. All signatures of the parties to this Lease and any amendment hereto may be provided or executed by manual, facsimile or electronic signatures, which shall expressly include images of manually executed signatures transmitted by facsimile or any other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign), each of which will for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

(g) Conflicting Terms. In the event of any conflict or inconsistency between the terms set forth in this Lease and the terms set forth in the Agreement, the terms set forth in the Agreement shall govern and control.

(h) Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be ruled by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law notwithstanding the invalidity of any other term or provision hereof.

[Signature Pages to Follow]

CITY:

ATTEST:



CITY OF GASTONIA, NORTH CAROLINA

Suzanne J. Gibbs
Suzanne J. Gibbs, City Clerk

Michael C. Peoples
Michael Peoples, City Manager

Date: 02/20/2024

Date: 02/20/2024

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Crystal Certain
Crystal Certain, Financial Director

TEAM:

ZGE, LLC

By: SYA Baseball, LLC
Its: Sole Member and Manager

By: Zawyer Sports, LLC
Its: Manager

By:
Name: Andrew Kaufmann
Title: Sole Member of Zawyer Sports, LLC
Date: _____

LIMITED GUARANTOR, solely for purposes of Section 26:

SYA Baseball, LLC

By: Zawyer Sports, LLC
Its: Manager

By: _____
Name: Andrew Kaufmann
Title: Sole Member of Zawyer Sports, LLC
Date: _____

EXHIBIT A
Use and Operating Agreement



Contract Approvals/Certificates

CONTRACT: 20240146 -EXCLUSIVE USE AREA LEASE AGREEMENT

Approved as to form:

A handwritten signature in cursive script, appearing to read "J. Ashley Smith".

2/22/2024 9:07:22AM

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USE AND OPERATING AGREEMENT

This Use and Operating Agreement ("Agreement") is made and entered into this 6th day of February, 2024, but to be effective as of the 20th day of February, 2024 ("Effective Date"), by and among the **CITY OF GASTONIA, NORTH CAROLINA** ("City"), a municipal corporation, incorporated under the laws of the State of North Carolina, **ZGE, LLC**, a limited liability company organized and existing under the laws of the State of Florida and qualified to do business in the State of North Carolina ("Team"), and, solely for purposes of Section 13.29 hereof, **SYA BASEBALL, LLC** ("Limited Guarantor"), a limited liability company organized and existing under the laws of the State of Florida and qualified to do business in the State of North Carolina (City and Team are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, City owns Land (as defined herein) on which City constructed a multi-use sports and entertainment facility with fixed seating capacity for approximately 2,000 attendees for use as the home venue for a League (as defined herein) team and in connection with other sporting and entertainment events ("Stadium"), subject to the terms and conditions set forth herein;

WHEREAS, City believes the Stadium has helped spur economic development in the downtown core, created new jobs, and enhanced the quality of life for its citizens and that its operation will continue to do so;

WHEREAS, on June 23, 2020, City and NC Gas House Gang, LLC (the "Prior Operator") entered into that certain Use and Operating Agreement ("Original Agreement"), pursuant to which City granted the Prior Operator certain rights related to the Stadium;

WHEREAS, City conveyed those areas shown as "PARCEL A", "PARCEL B", and "PARCEL C" on Exhibit "A" attached hereto (collectively, the "Outparcels") to Prior Operator pursuant to that certain Economic Development Agreement dated June 23, 2020, which areas include the parking lot located directly north of the Stadium and the kids' zone for the Stadium. Accordingly, City has no ownership interest or control over the Outparcels, the Outparcels are not part of the Stadium, Land (as defined herein) or Premises (as defined herein), and the Outparcels are expressly excluded from the terms of this Agreement.

WHEREAS, City delivered a final notice of breach to the Prior Operator on November 15, 2023, and filed a Complaint and Motion for Preliminary Injunction in Gaston County Superior Court on November 17, 2023 (Case No. 2023-CVS-3947), which case was removed by the Prior Operator to the United States District Court Western District of North Carolina, Charlotte Division on December 21, 2023 (Case 3:23-cv-892-RJC-SCR) (the "State Court Proceeding"), requesting, among other relief, to terminate the Original Agreement and Prior Operator's possession of the Premises (as defined herein);

WHEREAS, the Prior Operator filed for bankruptcy under Chapter 11 on December 1, 2023, in the Federal Bankruptcy Court for the District of Maryland (the "Bankruptcy Court") (Case No. 23-18766) (the "Bankruptcy Proceeding"). On December 21, 2023, the Bankruptcy Court entered an order lifting the automatic stay on the State Court Proceeding (the "Bankruptcy Order"), allowing the City to pursue its state court remedies as to the Original Agreement. The appeal period from the Bankruptcy Order expired on January 4, 2024, without an appeal being filed by the Prior Operator;

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WHEREAS, on January 8, 2024, City delivered a letter to Prior Operator to immediately terminate the Original Agreement and the Prior Operator's right to possession of the Premises due to Prior Operator's default under the Prior Agreement for an Act of Bankruptcy;

WHEREAS, subject to the terms and conditions set forth in this Agreement, including, without limitation, satisfaction of the conditions precedent identified in Section 13.23 hereof, Team, intends to locate and operate a professional minor league baseball team in the City at the Stadium, subject to approval of the League; and

WHEREAS, having a professional baseball team operate a full-season schedule in Stadium that shall maintain the Premises and manage and be responsible for the operation of Stadium is critical to Stadium's long-term sustainability and greatly lessens City's burden associated with downtown economic development and related efforts.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. In addition to terms defined elsewhere in this Agreement, the following terms, for the purposes of this Agreement, shall have the meanings set forth below:

- (a) "Abandonment of Premises" means that the Premises become vacant or deserted for a continuous period of sixty (60) days, except by reason of Force Majeure.
- (b) "Act of Bankruptcy" means the commencement of a bankruptcy or similar proceeding by or against City or Team, including, but not limited to, the following: the making of a general assignment for the benefit of creditors, the commencing of a voluntary or involuntary case under the Federal Bankruptcy Code or the filing of a petition thereunder, petitioning or applying to any tribunal for the appointment of, or the appointment of, a receiver, or any trustee for a substantial part of the assets of such person, commencing any proceeding under any bankruptcy, reorganization, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; provided, however, that with respect to the filing of an involuntary petition in Bankruptcy or other involuntary commencement of a bankruptcy or similar proceeding, such petition or proceeding shall fail to be dismissed within ninety (90) days of its filing or commencement.
- (c) "Affiliate" means a Person who directly or indirectly controls, is controlled by or under common control with, Team. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.
- (d) The first "Agreement Year" means the period beginning on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date; thereafter, each "Agreement Year" shall consist of each consecutive twelve (12) calendar month period after the first "Agreement Year".

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- (e) "Authorized Representatives" means such officers, employees or other representatives of City and Team, respectively, authorized by such Party to act on its behalf under Article XIII of this Agreement.
- (f) "Breakeven Threshold" shall have the meaning ascribed to it in Section 4.3.
- (g) "Break-Up Fee" means \$150,000.00.
- (h) "Breakup Limit" means \$500,000 which amount is the limit of the City's obligation to both i) indemnify the Team for any Losses sustained by Team as a result of the Litigation Proceedings pursuant to Section 9.1.2(B), and ii) reimburse the Team for any Losses incurred by Team as a result of the Dispossession pursuant to Section 13.24.2, provided any payment by City as part of the Breakup Limit shall not be due and payable to Team until after January 1, 2025. For the avoidance of doubt, it is understood that the Breakup Limit is a single amount that applies to all claims, both individually and in the aggregate, asserted under Sections 9.1.2(B) and 13.24.2.
- (i) "Business Day" means any day which is not a Sunday, a Saturday, or a legal holiday of City.
- (j) "Capital Repair, Maintenance and Improvements Account" shall mean the account held by City for the benefit of Capital Repair, Maintenance and Improvements on the Premises and funded and disbursed pursuant to Section 7.3.
- (k) "Capital Repair, Maintenance and Improvements" shall mean any and all design, permitting, labor, repairs, maintenance, materials or other improvements: (i) related to any structural modifications, repair or maintenance to Stadium, including, but not limited to, the roof (or any portion thereof), utility lines, sewer lines and water lines, including connections and appurtenances, servicing the Premises, both interior and exterior, all such utility lines, sewer lines, water lines and ducts passing through the Premises, or (ii) related to such work which is reasonably necessary to repair, restore, refurbish or replace the Premises' elevators, HVAC system, information technology infrastructure, generator, and fire monitoring and suppression system, if such work is necessitated by: (a) any material defects in design, construction or installation of the Premises by or on behalf of the City; (b) Physical Obsolescence of a portion or component of the Premises (including replacement necessitated by repeated breakdown of a component of the Premises despite efforts to repair or restore it short of such replacement); (c) modifications required by applicable Governmental Rule; or (d) any other design, permitting, labor, repairs, maintenance, materials or other improvements intended to ensure age, use, ordinary wear and tear and deterioration of the Premises do not materially adversely impact its use or the cost to maintain the Premises, and to prevent Physical Obsolescence of any asset (excluding Operational Maintenance obligations of the Team, pursuant to Section 7.1). The term "Capital Repair, Maintenance and Improvements" shall not include (i) any Operational Maintenance, (ii) any casualty repair work pursuant to Section 12.1, (iii) any condemnation repair work pursuant to Section 12.2, (iv) the portion of any contract for the performance of any of the foregoing, (v) Team's Remedial Work, (vi) maintenance or repairs on any property, including Removables, owned by Team, or (vii) the Premises as of the Commencement Date.

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- (l) "Capital Repair, Maintenance and Improvements Schedule" means the schedule of Capital Repair, Maintenance and Improvements described on Exhibit "T" attached hereto and incorporated herein.
- (m) "City" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (n) "City Default" shall have the meaning ascribed to it in Section 11.1.
- (o) "City Event(s)" shall have the meaning ascribed to it in Section 7.16.
- (p) "City's Contribution" shall mean the Twenty-Six Million Two Hundred Thousand Dollars (\$26,200,000.00) committed by the City toward the payment of Project Costs. For the avoidance of doubt, it is acknowledged that such investment was made by City prior to entering into the Original Agreement.
- (q) "City Manager" shall mean the manager for the City.
- (r) "City's Remedial Work" shall have the meaning ascribed to it in Section 13.13.
- (s) "Commencement Date" means the date City delivers to Team actual physical possession of the Premises; provided, however, in no event shall the Commencement Date be later than March 15, 2024.
- (t) "Comparable Facilities" means 2,000-4,500 fixed seat capacity minor league baseball stadiums constructed in the five (5) years prior to the Effective Date; provided, however, that in determining compliance with any "Comparable Facilities" standard or requirement set forth in this Agreement, such stadiums shall be looked at together and no one stadium nor any individual system or component at any such stadium shall be looked at alone.
- (u) "Construction Addendum" means those changes to the Project Plans mutually agreed to by City and Team, attached hereto and incorporated herein as Exhibits "F," and "F-1" (as may be amended hereafter in writing upon mutual agreement between City and Team).
- (v) "Default Rate" means the lesser of (i) the Prime Rate plus three percent (3%) and (ii) the maximum per annum rate of interest permitted to be charged either Party by applicable Governmental Rule.
- (w) "Effective Date" shall have the meaning given it in the Preamble of this Agreement.
- (x) "Environmental Law" means any applicable federal, state, or local Governmental Rule relating to protection of natural resources or the environment.
- (y) "Event of Default" shall have the meaning ascribed to it in Article XI.
- (z) "Exclusive Use Areas" shall mean the areas that are identified in Exhibit "B" attached hereto and made a part hereof which are reserved for the exclusive use of the Team during the Term.

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- (aa) "Exclusive Use Lease Agreement" shall mean that certain Exclusive Use Lease Agreement to be entered by and between City and Team prior to the Commencement Date granting Team a leasehold interest in the Exclusive Use Areas, substantially in the form attached hereto as Exhibit "C".
- (bb) "Facility Capital Improvement Charge" or ("FCI Charge") shall mean an assessment charged to Team and payable to City for each Team Game ticket sold after the Break-Even Threshold, as set forth in Section 4.3.1(b), whether as part of a season ticket package, multi-game package, group sales ticket, single game ticket, premium seat ticket, or any other Team Game ticket for which a charge is made, excluding any complimentary tickets distributed by Team or provided to City pursuant to Section 7.20.
- (cc) "FF&E Addendum" means the additional equipment, systems, facilities, features and amenities mutually agreed to by City and Team to be part of the Minimum Project Requirements, attached hereto and incorporated herein as Exhibit "H" (as may be amended hereafter in writing upon mutual agreement between City and Team). All items in the FF&E Addendum shall be deemed Project Improvements under the terms of this Agreement and shall revert to City upon termination of this Agreement for any reason.
- (dd) "Force Majeure" means the occurrence of any of the following, but only for the period of time, if any, that the performance of a Party's material obligations under this Agreement are actually delayed or prevented thereby: Acts of God, tornadoes, named tropical storms, hurricanes, flooding on the Premises, sabotage strikes, lockouts, acts of the public enemy, terrorism, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, including shutdowns of business operations by Governmental Rule that are not the result of a Party's violation of applicable law, insurrections, riots, epidemics and pandemics (including, but not limited to, the Coronavirus and COVID-19), fires, restraining of government and people, civil disturbances, explosions, nuclear accidents, wars, part or entire failure of utilities, or any other cause not reasonably within the control and not the fault of the Party claiming inability to perform or delay in performance due to such cause. Moreover, a condition or event of "Force Majeure" hereunder shall be deemed to exist only so long as the Party relying on such condition or event to excuse its performance promptly and specifically notifies the other Party in writing of such delay and exercises due diligence to remove or overcome it. The Party claiming inability to perform or delay in performance due to a condition or event of "Force Majeure" shall demonstrate, to the reasonable satisfaction of the other Party, that the claimed inability to perform or delay in performance was in fact caused by the event of Force Majeure. The Parties will use good faith efforts to agree on the extent to which the claimed inability to perform or delay in performance has been caused on account of any such Force Majeure event.
- (ee) "Governmental Authority" means any federal, state or local government, agency, court, commission or other body with jurisdiction over the matter in question.
- (ff) "Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental

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Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

- (gg) "Hazardous Materials" means any substance or material, including asbestos, now or hereafter defined or listed by any Governmental Authority as a hazardous substance, hazardous material, or hazardous waste, and terms of similar meaning, and shall include, without limitation, petroleum products in a quantity over fifty (50) gallons.
- (hh) "Injunctive Relief" shall have the meaning ascribed to it in Section 4.12.
- (ii) "Land" means the land shown as "PARCEL D" on the plat entitled "FUSE RECOMBINATION PLAT" recorded in Book 89, Page 42 in the Gaston County Register of Deeds attached hereto and incorporated herein as Exhibit "A", specifically excluding those areas shown as "PARCEL A", "PARCEL B" and "PARCEL C" on Exhibit "A".
- (jj) "League" means the Atlantic League of Professional Baseball Clubs, Inc., its entities or affiliates, and any other baseball association that Team certifies to City's reasonable satisfaction is a comparable baseball association that sanctions professional baseball teams.
- (kk) "League Requirements" means the minimum rules and regulations of the League in effect on the Effective Date and the League's Facility Standards Procedures in effect on the Effective Date.
- (ll) "Liabilities" shall have the meaning ascribed to it in Section 13.29.
- (mm) "Limited Guarantor" shall have the meaning ascribed to it in the Preamble.
- (nn) "Litigation Proceedings" shall have the meaning ascribed to it in Section 9.1.2.
- (oo) "Losses" of a person or entity means any and all damages, liabilities, deficiencies, proceedings, judgments, interests, awards, penalties, fines, costs, or expenses, including reasonable attorneys' fees.
- (pp) "Minimum Personal Property Requirements" means all reasonable improvements, fixtures, equipment, systems, facilities, features and amenities necessary to operate, repair, and maintain the Project Improvements. Minimum Personal Property Requirements shall not include equipment intended for on-field use solely by the members of the minor league baseball team in connection with the playing of baseball games, warm-ups, practices, training rooms or weight training activities.
- (qq) "Minimum Project Requirements" shall mean the improvements, fixtures, equipment, systems, facilities, features and amenities required pursuant to this Agreement, including, without limitation, the Minimum Stadium Requirements, the Minimum Personal Property Requirements, all applicable Governmental Rules, the Project Plans, the FF&E Addendum and League Requirements, subject to the waivers granted by the League for the Project Improvements attached hereto as Exhibit "E" (collectively, the "League Waiver").

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- (rr) "Minimum Stadium Requirements" means all improvements, fixtures, equipment, systems, facilities, features and amenities which are described in the Project Plans.
- (ss) "Mortgage" shall have the meaning ascribed to it in Section 10.5.
- (tt) "Naming Rights" shall have the meaning ascribed to it in Section 7.10.
- (uu) "New Removables" shall have the meaning ascribed to it in Section 5.4.
- (vv) "Old Removables" shall have the meaning ascribed to it in Section 5.4.
- (ww) "Management Commissions" shall have the meaning ascribed thereto in Section 4.3.
- (xx) "Non-Relocation Default" shall have the meaning ascribed thereto in Section 4.12.1
- (yy) "Non-Relocation Period" is the period of time that begins on the Commencement Date and ends upon the conclusion of the 2034 League season.
- (zz) "Operational Maintenance" shall have the meaning ascribed to it in Section 7.1.
- (aaa) "Physical Obsolescence" and "Physically Obsolete" means any Project Improvements (and, for the avoidance of doubt, not including Removables or any other property owned by Team) which do not comply with applicable Governmental Rule or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of Team's failure to perform its Operational Maintenance obligations under the Agreement. For purposes of determining Physical Obsolescence or Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other component shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or any other component has deteriorated to a degree that cannot be remedied through Operational Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).
- (bbb) "Premises" means (i) the Land; (ii) the Stadium; and (iii) any other buildings, structures, improvements, equipment, fixtures and facilities directly related to the Stadium, and all appurtenances to the same, as depicted on the Project Plans as of the Effective Date of this Agreement. For clarity, the Parties agree that those areas shown as "PARCEL A", "PARCEL B" and "PARCEL C," on Exhibit "A" are not part of the Land or the Premises.
- (ccc) "Prime Rate" means the per annum rate of interest from time to time published by the *Wall Street Journal* as the "prime rate".
- (ddd) "Project" means the Stadium, together with all the other Project Improvements.
- (eee) "Project Costs" means all of the costs incurred on behalf of City for the Project Improvements, including, but not limited to: (a) all amounts payable under any of contracts for construction of the Project Improvements; (b) costs for project

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management services; (c) all other costs incurred by City and paid to third parties to fulfill its obligations under the Agreement contracts to develop, construct, equip or furnish the Project including management fees and fees and expenses of architects, engineers, testing firms, or other consultants (not including legal costs, accountants, attorneys or other administrative personnel) necessary to complete the design, development, construction, equipping and furnishing of the Project Improvements; (d) all other costs in connection with the operation and maintenance of the Land prior to the Commencement Date; (e) development costs and fees associated with the Project Improvements; and (f) all finance issuance costs incurred by City, and/or on behalf of City, with respect to the Project including any reserve funds or capital or repair accounts. Notwithstanding anything herein to the contrary, City has already funded the City's Contribution toward the Project Improvements, the costs for the Construction Addendum and the costs for the FF&E Addendum. The term "Project Costs" excludes, however, costs not directly related to the fulfillment of City's obligations under this Agreement to cause completion of the Project Improvements, including: (i) any costs paid from the proceeds of insurance recoveries; (ii) Land acquisition costs, (iii) costs to obtain (other than those on the Premises) any necessary easements, rights of way, or other infrastructure improvements; or (iv) legal costs, accountants, and attorneys.

- (fff) "Project Improvements" means the Stadium and all other improvements, fixtures, equipment, systems, facilities, features, amenities and appurtenances situated on the Land and owned by City, all as described more fully in this Agreement, including the Minimum Project Requirements, and specifically excluding Removables.
- (ggg) "Project Plans" means the construction drawings and any as-built drawings for the Project Improvements, including the Minimum Project Requirements, and as amended by the Construction Addendum attached hereto and incorporated herein as Exhibits "F," and "F-1,". The Project Plans are attached hereto and incorporated by reference herein at Exhibit "D".
- (hhh) "Proposed Improvements" shall have the meaning ascribed to it in Section 7.2.
- (iii) "Remedial Compliance Work" shall have the meaning ascribed to it in Section 5.6.
- (jjj) "Seat Rights" shall have the meaning ascribed to it in Section 7.9.
- (kkk) "Stadium" shall have the meaning ascribed to it in the Recitals.
- (lll) "Stage" shall have the meaning ascribed to it in Section 4.5.3.
- (mmm) "State" means the State of North Carolina.
- (nnn) "Team" shall have the meaning ascribed to it in the Preamble.
- (ooo) "Team Default" shall have the meaning ascribed to it in Section 11.3.

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- (ppp) "Team Event(s)" shall mean any event that is conducted, sponsored, organized, or scheduled by Team, its licensee or designee, but not including Team Games or City Events.
- (qqq) "Team Game(s)" shall mean all minor league professional baseball games in which Team is a participant, including, without limitation, Team's preseason games, exhibition games, regular season games and postseason games.
- (rrr) "Team's Remedial Work" shall have the meaning ascribed to it in Section 13.12.
- (sss) "Team Rights" shall have the meaning ascribed to it in Section 7.6.
- (ttt) "Term" shall have the meaning ascribed to it in Section 4.2.
- (uuu) "Termination Notice" shall have the meaning ascribed to it in Section 11.5.
- (vvv) "Unacceptable Condition" shall mean the existence of any one of the following conditions but only to the extent the same is not the result of the failure of Team to perform its obligations as required under this Agreement:
 - (i) The Premises are not in compliance with League Requirements for any reason, excepting any non-compliance subject to the League Waiver, the result of such non-compliance is that the League, or its rules, prohibit Team from conducting sanctioned games or authorizes the League to assess fines or penalties, and City fails to cause the same to be placed into compliance within a reasonable time following City's receipt of written notice of such non-compliance (City hereby agreeing to perform such work as necessary to keep the Premises in compliance);
 - (ii) The use or occupancy of the Premises for baseball games is not permitted under applicable Governmental Rule or is restricted in any material respect under applicable Governmental Rule, including, but not limited to, denial of access;
 - (iii) The use or occupancy of twenty percent (20%) or more of any of the public seating areas, or other public areas, collectively, within the Premises is materially restricted by City or are unusable (and not replaced by suitable temporary accommodations) for a period of thirty (30) consecutive days or sixty (60) days out of any consecutive one hundred twenty (120) day period; or
 - (iv) The use or occupancy of twenty percent (20%) or more of the concession areas within the Premises is materially restricted by City or unusable during the Team's season for a period of thirty (30) consecutive days or sixty (60) days out of any consecutive one hundred twenty (120) day period.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

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Section 2.1 Representations and Warranties by City. City represents and warrants to Team, both as of the Effective Date and the Commencement Date, as follows:

- (a) City is a municipal corporation, incorporated under the laws of the State, existing and in good standing under the laws of the State, and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by City of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of City.
- (b) Each of the agreements related to the subject matter of this Agreement to which City is a party, including this Agreement, have been duly executed and delivered by duly authorized representatives of City, and constitute valid and binding obligations of City, enforceable against City in accordance with their respective terms.
- (c) Except for the State Court Proceeding and the Bankruptcy Proceeding, there is no litigation now pending or, to City's knowledge, threatened challenging the powers of City with respect to this Agreement or that is expected to have a material adverse effect on the ability of the City to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to City, which violation would materially and adversely affect the ability of City to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; (ii) except with regard to the Prior Operator and its rights (if any) under the Original Agreement, conflict with or would result in the breach of, or constitute a default under, this Agreement or the transactions or documents contemplated hereby or thereby or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which City is a party or by which City may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of City under the term of any instrument or agreement which conflict, breach, default or encumbrance would materially and adversely affect the ability of City to perform its obligations under this Agreement or any of the transactions or documents contemplated hereby or thereby; or (iii) violate the charter of City. No consent, approval, authorization or order of any Governmental Authority or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by City of this Agreement or the transactions or documents contemplated hereby or thereby, or compliance with the terms and provisions hereof or thereof, except (i) such as have been obtained and are in full force and effect, and (ii) the approvals contemplated by this Agreement.
- (e) No event has occurred and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default, breach, or default with respect to or on the part of City under this Agreement or that could materially adversely affect the ability of City to perform its obligations hereunder or thereunder.

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- (f) The Stadium was constructed in material compliance with Governmental Rules in effect at the time of construction. As of the Effective Date, the City has not received any notice of non-compliance with Governmental Rules in relation to the Stadium.

Section 2.2 City Covenants. For purposes of this Agreement and without derogating its police power, City hereby covenants that during the Term, Team's use of the Premises in compliance with the terms of this Agreement will not violate the certificate of occupancy issued for the Premises.

Section 2.3 Representations and Warranties by Team. Team represents and warrants to City, both as of the Effective Date and the Commencement Date, as follows:

- (a) Team is a limited liability company duly organized under the laws of the State of Florida and is duly qualified to do business in the State, is in good standing in the State of Florida and has power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by Team of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Team.
- (b) Each of the agreements to which it is a party related to the subject matter of this Agreement, including this Agreement, have been duly executed and delivered by Team, and constitute valid and binding obligations of Team, enforceable against Team in accordance with their respective terms.
- (c) There is no litigation now pending or, to Team's knowledge, threatened, challenging the limited liability company existence of Team and, except for the State Court Proceeding and the Bankruptcy Proceeding, there is no pending, or to Team's knowledge, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of Team or the ability of Team to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to Team or any of its Affiliates, which violation would materially or adversely affect the ability of Team to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; (ii) except with regard to the Prior Operator and its rights (if any) under the Original Agreement, conflict with or would result in the breach of, or constitute a default under, this Agreement, or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which Team is a party or by which Team or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Team under the term of any instrument or agreement, which conflict, breach, default or encumbrance would materially and adversely affect the ability of Team to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (iii) violate the organizational documents of

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Team. No consent, approval, authorization or order of any Governmental Authority, the League, or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by Team of this Agreement or the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof, except (i) such as have been obtained and are in full force and effect, and (ii) the approvals contemplated by this Agreement.

- (e) Team has duly and validly obtained all material certificates, licenses and permits from all public authorities, both federal and state, required as of the Commencement Date to enable Team to carry on its business as it is now conducted and to enter into this Agreement.
- (f) No event has occurred and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default with respect to or on the part of Team under this Agreement or that could materially adversely affect the ability of Team to perform its obligations hereunder.
- (g) Prior to the Commencement Date, Team will hold a membership with the League, which membership will permit Team the right to own and operate a member club of the League in City beginning in the 2024 playing season. Team shall locate such team in City and, subject to Section 4.9, play all Team Games and any all-star games awarded to Team by the League at the Stadium.
- (h) Team has sufficient financial capital and resources to perform each of its obligations under this Agreement, under a membership agreement with the League, and to maintain its membership with the League.

ARTICLE III PROJECT DEVELOPMENT

Section 3.1 Project Design. The Team acknowledges that: (i) the Stadium was constructed and developed prior to the execution of the Original Agreement; (ii) the City has provided the Team with a copy of the Project Plans; and (iii) prior to the Effective Date, the Team has been provided with an opportunity to physically inspect the Stadium. City represents and warrants that the Stadium was constructed generally in accordance with the Project Plans. No representation or warranty is made as to the accuracy of any "as-built" plans that are part of the Project Plans, nor is any representation or warranty made as to work that was conducted by the Prior Operator under the Original Agreement. By executing this Agreement, Team accepts the current condition of the Stadium as being appropriate for its intended uses. Team agrees to assist City with respect to ensuring compliance with the League Requirements, subject to the League Waiver.

Section 3.2 [Reserved.]

Section 3.3 [Reserved.]

Section 3.4 [Reserved.]

Section 3.5 Performance and Payment Bonds. For any construction work at Premises to be performed by or on behalf of Team, prior to Team commencing any construction project estimated to cost

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greater than Five Hundred Thousand Dollars (\$500,000), Team (or its contractor(s)) shall provide to City for its approval a statutory form payment and performance bond for such project. The requirement to provide such bond may be waived by the City in its sole discretion.

Section 3.6 Deliverables. To facilitate Team's ability to exercise its rights and obligations hereunder, on the Commencement Date, City shall deliver to Team (i) all keys, access codes and other items required for entering and securing the Premises and all portions thereof, (ii) originals or clear and legible copies of instruction booklets, operating and service manuals, owner or user guides, and similar materials pertaining to the Project Improvements, to the extent the same are in the possession of City or may reasonably be obtained by City, and (iii) copies of all operating manuals, warranties and guarantees provided by contractors, suppliers and/or manufacturers in connection with the Project Improvements, to the extent the same are in the possession of City or may reasonably be obtained by City.

ARTICLE IV ENGAGEMENT OF THE TEAM; TERM; FEES

Section 4.1 Engagement of the Team.

- 4.1.1 In consideration of and pursuant to the covenants, agreements, and conditions set forth herein, the City hereby engages Team, and Team hereby accepts such engagement, to manage, operate and promote the Premises, with the right to maximize the economic rights arising out of or relating to the Premises as provided for in this Agreement. On the Commencement Date, subject to the terms and conditions of this Agreement and except as may be expressly set forth otherwise in this Agreement, City will give and deliver to Team the exclusive right to manage, operate and promote the Premises free and clear of all tenancies, licenses, and parties in possession of such Premises claiming through City (excluding those arising by, through or under Team and those between third parties and Prior Operator related to the operation and maintenance of the Stadium). City shall make the Premises available to Team on the Commencement Date, and beginning on the Commencement Date, Team shall accept the Premises in its "AS-IS, WHERE-IS" condition (subject to the terms and conditions of this Agreement) and Team acknowledges that City shall have no obligations to make any improvements to the Premises except as otherwise set forth in this Agreement.
- 4.1.2 City covenants for the Term that, upon keeping, observing and performing the terms, covenants and conditions of this Agreement, including, without limitation, the terms, covenants and conditions set forth in Article VI of this Agreement, Team shall and may manage, occupy, and use the Premises on behalf of the City, and enjoy the Premises without interference by or from City, or any third party claiming through City, subject only to the terms and provisions set forth herein.
- 4.1.3 Team's rights under this Agreement shall be junior and subordinate to any existing lien, lease or other encumbrance heretofore existing relating to the Premises. Furthermore, the Team hereby agrees that the Team's rights under this Agreement are and will be junior and subordinate to any lien or other encumbrance that may hereafter be created or arise relating to the acquisition, development, construction, financing or refinancing of the Project Improvements or any future improvements to the Premises, and Team agrees to execute and deliver such instruments, agreements or other items of evidence necessary to evidence the

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subordination of Team's rights under this Agreement to such other permitted liens or encumbrances.

- 4.1.4** The Team is being engaged by the City to use and operate the Stadium as a replacement for the Prior Operator. Neither the Team nor the City have complete access to the records, contracts and files of the Prior Operator, but it is assumed by both Parties that the Prior Operator entered into various contracts and agreements related to the Stadium (such contracts, the "Prior Operating Agreements"). The exact nature of the Prior Operating Agreements is unknown by the Parties but are assumed to include one or more contracts with concessionaires as well as contract(s) related to Naming Rights and broadcast rights. The City makes no representation or warranty of any kind about the Prior Operating Agreements or the rights such vendors may have with respect to the Stadium. The City will use its best efforts to obtain copies of the Prior Operating Agreements and shall take commercially reasonable efforts to assist the Team in replacing the services previously provided under the Prior Operating Agreements.

Section 4.2 Term. This Agreement shall commence upon the Commencement Date and shall continue thereafter for a period which shall expire upon the earlier of: (i) fifteen (15) calendar years thereafter, or (ii) thirty (30) calendar days following the conclusion of the fifteenth (15th) consecutive baseball playing season thereafter; unless earlier terminated in accordance with the terms hereof (the "Term"). Following the Non-Relocation Period, provided a Team Default has not occurred that is then continuing, Team shall have the annual right to terminate this Agreement, for any reason or no reason, by providing at least one hundred eighty (180) days' prior written notice to City, provided such termination shall not take effect until the completion of the full season Team Games for the calendar year in which such termination notice would be effective and no later than December 31.

Section 4.3 Management Commissions.

- 4.3.1** In partial consideration of the rights granted to Team as set forth in this Agreement, Team shall pay (or cause to be paid) to City, on or before October 31st of each Agreement Year, the Management Commissions at City's address provided for in this Agreement or as otherwise specified by City in writing. For purposes of this Agreement, "Management Commissions" means:

- (a) Fifty Thousand Dollars (\$50,000) for each Agreement Year; and
- (b) The Facility Capital Improvement Charge, which shall be payable as follows:
 - (i) One Dollar (\$1.00) for each Team Game ticket sold during the prior Agreement Year after the total number of Team Game tickets sold during the prior Agreement Year exceeds One Hundred Forty-Five Thousand Five Hundred (145,500) (the "Break-Even Threshold").

Section 4.4 Audit. Team shall maintain books and records with respect to all receipts and expenditures relating to the sale of tickets as provided in this Agreement, in material compliance with generally accepted accounting principles. During the Term and for three (3) years thereafter, City shall have the right, upon reasonable written notice and during normal business hours, to inspect and audit those portions of Team's books and records relating to such subject matter. City shall engage an auditor to perform said inspection and audit and advise City on its findings and determinations in a manner that shall not create a public record of Team's books and records or the results of such inspection and audit. Errors revealed by such inspection

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and audit shall be rectified by Team and any differences in payments shall be remitted to City by Team within thirty (30) days of notice from City. City shall bear the cost of such inspections and audits, unless a discrepancy of more than five percent (5%) of the amounts due to City is revealed, in which case Team shall bear the reasonable cost of any such inspections and audits.

Section 4.5 Permitted Uses.

- 4.5.1 Throughout the Term, Team shall occupy and use the Premises for the primary purpose of conducting Team Games (including radio and television broadcasting or other transmission of same) in accordance with the League Requirements. In addition to the foregoing, Team's permitted uses shall include Team Events, including without limitation the conduct of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, baseball games other than Team Games, other sporting events, and other similar traditional functions that will encourage economic development and tourism in City; and for purposes related and incidental thereto including, without limitation, operation of concession facilities in the Stadium (during games and events and at other times), sale of food and beverages (alcoholic and non-alcoholic), conducting tours, and for any other lawful purpose that is not a prohibited use described in Section 4.8.
- 4.5.2 Team shall use best efforts to foster Stadium activation with the goal of reaching two hundred (200) events (including Team Games and Team Events) per year at the Stadium. So long as the League maintains a League schedule that provides for at least seventy (70) Team Games during each of the first five (5) Agreement Years hereunder, Team shall use best efforts to achieve at least sixty percent (60%) of the goal by the end of the fifth Agreement Year.
- 4.5.3 In furtherance of Team's obligations under Section 4.5.2, City shall provide Team a stage and ancillary equipment, as described in Exhibit H attached hereto (the "Stage"). The Stage shall be City's personal property that Team shall have the right to use for Team Events. In no event shall City be obligated for any costs with respect to the Stage pursuant to this Agreement, unless such costs (including, without limitation, maintenance, repair, and replacement costs) are related to (i) City's use of the Stage, or (ii) the negligence or intentional misconduct of City. Team shall be solely responsible for transporting the Stage to and from the Stadium and all necessary set up and take down of the Stage for Team Events.

Section 4.6 Compliance with Laws. Team shall, throughout the Term, and at no expense to City, promptly comply, or cause compliance, in all material respects with all Governmental Rules of duly constituted Governmental Authorities, which may be applicable from time to time to its use of the Premises and its operation, repair and alteration thereof.

Section 4.7 Obligations of Team Unconditional. The obligations of Team under this Agreement including, but not limited to, the obligations to pay the Management Commissions, to maintain the Premises and to pay the premiums or charges necessary to maintain or cause to be maintained the insurance required herein, and to provide the indemnities required herein shall be absolute and unconditional and shall not be subject to any right of set-off or abatement, except as expressly permitted by this Agreement.

Section 4.8 Prohibited Uses. Team shall not allow the Premises to be used for any of the following purposes: public nuisance (as presently defined by City ordinance); any use violating Governmental Rule; or use as an industrial site or waste disposal facility. City hereby agrees to Team's use of fireworks displays

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on multiple occasions throughout each Agreement Year, subject to applicable permit approvals and Governmental Rule. City agrees to use best efforts to assist and support Team's acquisition of all such permits and approvals. If, due to a rule, code, ordinance, regulation, interpretation, order or similar action enacted or taken by City, conducting professional baseball games at the Stadium shall be or become prohibited uses under this Section 4.8, then Team (i) may immediately terminate this Agreement without further compensation or liability to City whatsoever, except those obligations that expressly survive the termination of this Agreement, and (ii) shall be entitled to the Break-Up Fee, which shall be payable by City to Team within thirty (30) calendar days of the date of termination of this Agreement, provided, however, in no event shall the Break-Up Fee be due and payable to Team until after January 1, 2025.

Section 4.9 Covenant to Play in Stadium. Subject to the provisions hereof, Team hereby covenants and agrees to play, all home Team Games in the Stadium from and after the Commencement Date and continuing throughout the Non-Relocation Period. Notwithstanding the foregoing, Team shall, subject to City's prior written approval not to be unreasonably withheld, conditioned, or delayed, be entitled to play up to five (5) home Team Games each Agreement Year at a facility other than the Stadium.

Section 4.10 Untenantability of the Stadium. Notwithstanding the provisions of Section 4.9 to the contrary, if the Stadium shall be in an unusable condition at any time during the Term, the Parties agree that Team may play its home Team Games at an alternate site, but only during the period of time that the Stadium is in an unusable condition.

Section 4.11 Non-Relocation.

4.11.1 Without limiting or impairing the obligations of this Article IV, the Team shall not (i) transfer, assign or surrender the Team's membership in the League in a manner that results in the Team playing any of their pre-season home Team Games or regular season or post-season/playoff home Team Games outside of the Stadium in violation of Section 4.9, or (ii) transfer, assign or surrender the Team's membership in the League in a manner that results in the Team not playing in Gastonia through the end of the Non-Relocation Period.

4.11.2 Provided that City Default has not occurred and is not continuing beyond the applicable notice and cure period, Team shall not apply for or seek approval from the League during the period commencing on the Effective Date through the end of the Non-Relocation Period for the relocation of the Team outside the boundaries of Gastonia, North Carolina.

Section 4.12 Non-Relocation Defaults and Remedies.

4.12.1 Provided that City Default has not occurred and is not continuing, the occurrence of any of the following shall be a "Non-Relocation Default" by Team:

- (a) Any failure of Team to play its home Team Games in the Stadium during the Non-Relocation Period to the extent required in Section 4.9; or
- (b) Any voluntary transfer, assignment or surrender by Team of the Team's membership in the League that results in the Team no longer playing or being able to play League games in Gastonia, North Carolina during the Non-Relocation Period, including any such action that is taken between the Effective Date and the Commencement Date.

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4.12.2 Upon the occurrence of any Non-Relocation Default, City shall have the option to pursue any one or more of the following remedies, in its sole discretion, upon written notice to Team:

- (a) City may seek and obtain injunctive or declaratory relief pursuant to Section 4.12.3 hereof, including, without limitation, specific performance;
- (b) [Reserved.]; or
- (c) City may terminate this Agreement.

Notwithstanding any terms of this Agreement to the contrary, City shall exhaust the remedies set forth in Sections 4.12.2(a) before seeking any other remedies available to City at law and in equity for a Non-Relocation Default.

4.12.3 Team acknowledges and agrees that:

- (a) [Reserved.]
- (b) Having Team play its home Team Games in the Stadium throughout the Non-Relocation Period provides a unique value to the City in terms of generating new jobs, additional revenue sources and economic development and increased tourism for the City;
- (c) City would suffer immediate and irreparable harm if a Non-Relocation Default were to occur, including the material loss City would incur upon taking over a Stadium with no resident home baseball team, thus bearing all losses from operation of the Stadium that are likely to occur if a Non-Relocation Default occurred; and
- (d) Monetary damages cannot adequately compensate City for the damage they would incur if a Non-Relocation Default were to occur.

Therefore, City shall be entitled to obtain injunctive relief prohibiting action, directly or indirectly, by Team or any Affiliate, that causes or would reasonably be expected to cause a Non-Relocation Default or mandating action that averts or will avert such Non-Relocation Default ("Injunctive Relief"), and Team hereby consents to the entry of an order granting such Injunctive Relief by any court of competent jurisdiction. City shall further be entitled to seek declaratory relief with respect to any matter under this Article IV. Team acknowledges and agrees that (i) City may restrain or enjoin any breach by Team or threatened breach of any covenant, duty, or obligation of Team contained in this Article IV without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, and (ii) the administration of an order for Injunctive Relief would not be impractical and, in the event of any breach of any covenant, duty or obligation contained in this Article IV, the balance of hardships would weigh in favor of entry of injunctive relief; and (iii) City may enforce any such covenant, duty or obligation of Team through specific performance. The Parties hereby agree and irrevocably stipulate that (i) the rights of City to Injunctive Relief pursuant to this Article IV shall not constitute a "claim" pursuant to Section 101(5) of the Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Team, and

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(ii) the provisions of this Article IV are not an "executory contract" as contemplated by Section 365 of the Bankruptcy Code.

ARTICLE V
BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS

Section 5.1 Beginning Condition. On the Commencement Date and subject to the Sections 5.6 and 5.7, City shall turn over and deliver the Premises to Team for Team's use, and for Team to begin management and operation thereof. Beginning on the Commencement Date, Team shall accept the Premises in its "AS-IS, WHERE-IS" condition (subject to the terms and conditions of this Agreement) and Team acknowledges that City shall have no obligations to make any improvements to the Premises, except as otherwise set forth herein.

Section 5.2 Alterations. Any alterations, additions, or construction of new improvements on or in the Premises subsequent to the Commencement Date, including any change to the overall color scheme of the Stadium, must be consistent with the permitted uses of the Premises as set forth in Section 4.5, must be consistent with the then appearance of the Premises and the uses being made thereof, and must be approved in advance in writing by City, which approval shall be subject to the City's sole discretion; provided, however, that Team is not required to obtain City's prior approval for (a) non-structural remodeling, installation or removal of Removables or other trade fixtures and equipment; (b) temporary improvements or alterations to accommodate particular events; (c) Project Improvements duly approved in accordance with Section 7.2, or (d) any other nonstructural alterations. For the avoidance of doubt, Operational Maintenance does not require the prior consent or approval of City. Team may not, without the consent of City, construct additional facilities upon the Land or make any structural alterations to the Stadium or Premises. For work requiring City's approval, Team shall submit the plans, specifications and construction drawings to City with Team's request for approval.

Section 5.3 Compliance with Regulatory Requirements. Team agrees that all additions and alterations on or to the Premises constructed by it (or its designee) shall be constructed in accordance with all Governmental Rules. Team shall, at its sole cost and expense, procure or cause to be procured all necessary building permits, other permits, licenses and other authorizations required for Team's lawful and proper addition to or alteration, use, occupation, operation, and management of the Premises.

Section 5.4 Ownership of Improvements. Title to and ownership of the Premises during the Term of this Agreement shall be and remain in City, except for: (i) trade fixtures, furniture, equipment, furnishings and personal property installed in or affixed to the Premises by or on behalf of Team and owned by Team (collectively, the "New Removables"), all of which shall remain Team's sole property, and (ii) trade fixtures, furniture, equipment, furnishings and personal property installed in or affixed to the Premises by or on behalf of Prior Operator and owned by Prior Operator (collectively, the "Old Removables"), all of which shall remain Prior Operator's sole property. At the expiration or other termination of the Agreement, all alterations, additions, and improvements to the Premises (except for the New Removables) must remain upon and be surrendered with the Premises. For the avoidance of doubt, any trade fixtures, furniture, equipment, furnishings and items of personal property included in the Project Improvements, or those paid for by City as part of City's Contribution or out of the Capital Repair, Maintenance and Improvements Account, shall be the property of City.

Section 5.5 City's Right of Inspection. Prior to City giving or withholding its consent to any proposed construction, alteration, or addition to the Premises requiring such consent as set forth in Section 5.2, City may review Team's conceptual design drawings and construction drawings for such construction work. Upon completion of any new construction or alteration or addition to existing improvements for which City's approval is needed under the terms of this Agreement, Team shall obtain a written certification

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addressed to City from a licensed architect or engineer reasonably acceptable to City stating that the construction has been completed substantially in accordance with the construction drawings and that, to the best of each professional's knowledge, the completed improvements are in compliance with all applicable Governmental Rules. Additionally, City may at its sole discretion, cost and expense, have the Premises inspected by an inspector qualified to determine compliance with the League Requirements, in order to determine whether or not Team is maintaining the Premises commensurate with the League Requirements.

Section 5.6 Relationship to Act of Prior Operator. Both Parties acknowledge that the Premises were used and operated by the Prior Operator prior to the Commencement Date and neither Party has a full understanding of what, if any, modifications were made to the Premises by the Prior Operator. Prior to the Commencement Date, the City and the Team conducted a joint walkthrough of the Premises in order to identify any issues (including the location and nature of the Old Removables) that are likely to impact the Team's use and operation of the Premises. If, however, no later than three (3) months after the Commencement Date, Team determines that the Premises are not in material compliance with Governmental Rules due to alterations made to the Premises by the Prior Operator, any necessary work to remedy such non-compliance ("Remedial Compliance Work") will be added to the Capital Repair, Maintenance and Improvements Schedule. In the event (i) there are insufficient funds in the Capital Repair, Maintenance and Improvements Account to fully pay for the Remedial Compliance Work, or (ii) the City Council fails to approve the Remedial Compliance Work pursuant to Section 7.2 of this Agreement, and if such non-compliance is of reasonable economic importance to Team such that it would justify termination of this Agreement, then Team shall have the one-time right to terminate this Agreement upon written notice to the City.

Section 5.7 Certain Understandings Related to Hazardous Materials. With respect to third parties, nothing in this Agreement is intended to alter the liability or obligations of the Parties for hazardous materials under applicable law. As between the Parties, the City shall be responsible for hazardous materials that were found on the Premises prior to the effective date of the Original Agreement and Team shall be responsible for hazardous materials brought to the Premises by Team or any of its authorized vendors, agents, employees or invitees. To the extent that the Prior Operator, its vendors, agents or employees brought hazardous materials onto the Premises or any unauthorized third party introduced hazardous materials onto the Premises after the effective date of the Original Agreement, the City and Team shall be jointly responsible for the remediation or removal of such hazardous materials to the extent that the cost of such does not exceed Ten Thousand Dollars (\$10,000) and is otherwise incidental to the operation of the Premises. If the remediation or removal of such hazardous materials exceeds Ten Thousand Dollars (\$10,000), Team shall have the ability to terminate this Agreement upon written notice to the City, unless the City agrees to pay for such remediation or removal.

ARTICLE VI OPERATION AND MANAGEMENT

Section 6.1 Management. Subject to City's rights to host City Events (as defined below), Team shall be the exclusive manager of the Premises and shall have the exclusive right and the obligation to contract for its license or use during the Term in a manner that will promote and further the purposes for which the Stadium has been constructed. Team shall do all things and take all commercially reasonable actions necessary for the operation and maintenance of the Stadium as a baseball stadium and sports and entertainment facility in accordance with this Agreement and in a manner consistent with the League Requirements and in a manner generally consistent with the operation and maintenance of the Comparable Facilities as of the Effective Date. Team may license or permit use and occupancy of the Premises by vendors, concessionaires and others pursuant to agreements that do not convey a leasehold interest without the City's consent; *provided, however*, that any proposed grant of a leasehold interest of the Premises or any portion thereof must be tendered to City for approval and execution. For the avoidance of doubt, it is

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acknowledged that special events will generally be authorized through license agreements of limited duration between the Team and event promoters and that such license agreements shall not require City approval provided they have a duration of less than twenty one (21) days. Records, reports, invoices and receipts required to be maintained or submitted by Team for, to or on behalf of City pursuant to this Section 6.1 shall be maintained in accordance with Government Rule. Without limiting the generality of the foregoing, Team is authorized to and shall:

- 6.1.1** charge and collect all operating revenue, concession revenue, and seat and premium area use charges for the Stadium and Premises and, in connection therewith, use all commercially reasonable efforts to obtain all fees, rents and other amounts due from licensees, concessionaires and other users of the Stadium and Premises; and shall cause notices to be served upon such licensees and other users to quit and surrender space occupied or used by them where desirable or necessary in the opinion of Team and shall ask for, demand, collect and give receipts for all amounts which at any time may be due from any licensees and other users of the Stadium and Premises;
- 6.1.2** commence, defend and settle in good faith such legal actions and proceedings concerning the operation of the Stadium by Team (except for City Events) as are necessary or required in the opinion of Team and shall retain counsel in connection therewith;
- 6.1.3** employ, pay and supervise all personnel that Team determines to be necessary for the operation of the Stadium and as required by League Requirements (such personnel, during the course of such employment, shall be employees of Team and shall not be employees of City); determine all matters with regard to such personnel, including without limitation, compensation, bonuses, fringe benefits, hiring and replacement and shall prepare, on its own behalf and file when due, all forms, reports and returns required by applicable law relating to the employment of such personnel;
- 6.1.4** maintain the Stadium in accordance with League Requirements, subject to normal wear and tear, and maintain and operate the Stadium in compliance with all requirements necessary for the conduct of all Team Games;
- 6.1.5** prepare, coordinate, implement, revise as necessary and administer a preventative maintenance plan and program for the Stadium, its machinery and equipment in compliance with League Requirements, and provide a maintenance log for each prior Agreement Year;
- 6.1.6** maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Stadium;
- 6.1.7** furnish to City a statement on or before the 15th day of the first month following the end of each Agreement Year showing the following for the prior Agreement Year:
 - (a) a current user summary and use activity report;
 - (b) invoices for reimbursement from City or the Capital Repair, Maintenance and Improvements Account;
 - (c) expenses and receipts for all City Events;

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- (d) all expenditures by Team with respect to Team's Operational Maintenance obligations;
- (e) an accounting of attendance at Team Games, Team Events and City Events; and
- (f) such other related information as the City may reasonably request; it being understood, however, that Team shall not be required to: (i) generate any special reports pursuant to this clause (f), rather Team is only required to make available to City any reports already prepared by Team in the normal conduct of its business, or (ii) provide Team's confidential or proprietary information.

Receipt and acceptance of any statement furnished by Team or payments paid by Team to City hereunder shall not preclude City from questioning the correctness thereof for a period of twelve (12) calendar months from the date such information was furnished or such payments were made by Team to City. In the event any errors are disclosed, either through questioning or as the result of an audit of such statements, all erroneous statements shall be rectified and any differences in payments shall be remitted to City by Team within thirty (30) days. In the event that an audit reveals an underpayment by Team, Team shall, in addition to the payment and interest provided for in this Agreement, reimburse City for reasonable costs and expenses of such audit if the underpayment is five percent (5%) or more than the amount required to be paid for the applicable period that was audited.

- 6.1.8 permit City (including its accountants, attorneys and other representatives designated by City) to inspect and copy such books and records during the Term and for one (1) year thereafter at Team's office, at all reasonable times upon not less than three (3) Business Days' written notice; provided, that, the books and records subject to inspection by City include only the books, records and data related to the Premises itself and activities thereat (such as attendance records, facilities maintenance records, City Events records and accounting, ticket sales records, etc.) not of Team itself (such as, without limitation, Team's tax returns) and Team shall not be required to provide its confidential or proprietary information, including without limitation its private financial information of any kind whatsoever not otherwise required to be provided under this Agreement.
- 6.1.9 for a period of five (5) years after the end of the calendar year to which they pertain, during the Term, Team shall keep and maintain the following books, records and documents at Team's office at the Premises and, upon expiration or termination of this Agreement, Team shall provide City with a complete and accurate copy of such books and records for immediate access and use by City:
 - (a) a list of Team's contacts for Team Events or other use or license agreements relating to the Premises and original insurance certificates, all of which may be maintained by Team in electronic form;
 - (b) maintenance and repair files;
 - (c) accounting books and records and supporting documentation for amounts payable to City pursuant to this Agreement;
 - (d) operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;

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- (e) service contracts, including cleaning, maintenance, landscaping, trash removal, etc.;
- (f) permits and licenses;
- (g) copies of insurance policies; and
- (h) such other books, records and documents as City may reasonably require Team to maintain.

6.1.10 procure and negotiate contracts with concessionaire(s) for the operation of consumable and/or non-consumable concessions at the Stadium (unless Team shall self-operate such concessions);

6.1.11 provide adequate supervision and security, including supervision and security required by League Requirements, and shall strictly enforce all rules, regulations, and safety procedures that are required by applicable law or regulation and that are required in general for the safe and orderly use of the Premises. At all times the Stadium shall be under the supervision and security of Team (or its designee(s));

6.1.12 control the issuance of and issue all credentials for events at the Stadium; and

6.1.13 employ commercially reasonable methods to protect City's assets from theft, gross negligence or fraudulent activity on the part of Team's employees or other agents. Uninsured losses arising from gross negligence or fraud of Team, its employees or agents are to be borne by Team and not as an operating expense of the Premises.

Section 6.2 Promotions and Marketing. Team shall have the discretion to adopt and implement such promotional and marketing practices as Team deems appropriate for the operation of its business at the Premises, subject to Governmental Rule.

ARTICLE VII

MAINTENANCE AND REPAIRS; ADDITIONAL COVENANTS OF CITY AND TEAM

Section 7.1 Maintenance of the Premises. Team shall, at its sole cost and expense, be responsible for all Operational Maintenance (as defined below) including the interior and exterior, nonstructural portions of the improvements, and in compliance with all applicable Governmental Rules of any Governmental Authority applicable to the Premises from time to time and League Requirements, subject to ordinary wear and tear, Force Majeure events, events of condemnation, and damage and destruction of the Premises (subject to the terms and conditions of this Agreement). "Operational Maintenance" includes all work performed and expenses incurred for routine, regular, and/or ordinary course maintenance and repairs reasonably necessary for the cleaning, upkeep and/or operation of any equipment, facility or other component of the Premises. Notwithstanding the foregoing, Operational Maintenance that is the direct or indirect result of City Events, or other non-Team related usage as may be authorized by the City or its representatives, shall be performed by the City, at its sole cost and expense. Except as provided for in this Section and subject to City's obligations as set forth in Section 7.2 below, City has no additional obligation to perform or incur expenses related to Operational Maintenance. "Operational Maintenance" shall not include Capital Repair, Maintenance and Improvements. "Operational Maintenance" shall include, by way of example only and without limitation, baseball field maintenance and repair (except as caused by Physical Obsolescence of the playing surface), maintenance of natural landscaped areas of Stadium, janitorial services, performing all reasonable preventative and routine maintenance as recommended by equipment

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manufacturers in operating manuals or maintenance bulletins, replacing light bulbs, fuses and circuit breakers, cleaning services, seat repair, maintenance and non-structural repair of Exclusive Team Use Areas and touch-up painting. Notwithstanding anything to the contrary in this Agreement, Team shall be responsible for all reasonable maintenance and repairs to the Premises, even if structural in nature, arising from Team's use of the Stage (as described on Exhibits H) on the Premises, including but not limited to any damages to the field and its subsurface, but excluding City's use of the Stage for City Events. To the extent any Operational Maintenance is caused by a non-Team affiliated event, including City Events, and beyond reasonable wear and tear, the City shall, at its sole cost and expense, be responsible for such Operational Maintenance. Team shall be responsible for any damage directly arising from Team's use of the Stage on the Premises (excluding any damage arising from City's use of the Stage for City Events, which shall be the responsibility of the City) and any claims arising from such damage shall not be applied to the City's insurance policies. In no event shall Team use the field in the Stadium to store the Stage; the Stage shall be removed from the field and relocated to off-site storage after each use within a commercially reasonable timeframe for the entertainment industry.

Section 7.2 Capital Repair, Maintenance and Improvements.

- 7.2.1 Except as otherwise set forth in this Section 7.2, City shall be responsible for Capital Repairs, Maintenance and Improvements, which shall be made in accordance with the Capital Repairs, Maintenance and Improvements Schedule attached hereto as Exhibit "I".
- 7.2.2 As of the Effective Date, City and Team mutually agree that the Capital Repair, Maintenance and Improvements Schedule is a reasonable estimate of Capital Repair, Maintenance and Improvements (for the avoidance of doubt, excluding Operational Maintenance, as defined in Section 7.1) expected to be performed during the Term. The Capital Repair, Maintenance and Improvements Schedule may be amended from time to time upon mutual agreement of City and Team.
- 7.2.3 Beginning with the second (2nd) Agreement Year and then annually thereafter, on or before September 30th of each Agreement Year during the Term, Team may present to the City a list of proposed repairs, maintenance or improvements to the Stadium which are not included in Operational Maintenance or on the Capital Repair, Maintenance and Improvements Schedule (the "Proposed Improvements"), together with a proposed schedule for and estimated budget for such Proposed Improvements for the upcoming calendar year, which schedule shall be based on the Capital Repair, Maintenance and Improvements Schedule and which budget, to the extent practicable, shall be based on estimates obtained by Team. Concurrently with such annual list and report on Proposed Improvements, Team shall also provide an anticipated list of Proposed Improvements for the upcoming three (3)-year period together with a proposed schedule and estimated budget in order to facilitate budgetary planning for the Parties.
- 7.2.4 The Proposed Improvements together with the estimated budget and schedule shall be subject to the approval of City. Upon receipt from Team of the Proposed Improvements, City Manager shall put such request in the next fiscal year budget for the City for consideration by the City Council. City shall not unreasonably withhold, condition or delay approval of the Proposed Improvements so long as (i) the Proposed Improvements are consistent in exterior appearance with the architectural theme of the Stadium (if exterior appearance is applicable), (ii) when completed, the Proposed Improvements will not have reduced the overall utility of

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the Stadium or weakened or impaired the structural integrity of the Stadium and (iii) there are sufficient funds in the Capital Repair, Maintenance and Improvements Account to complete such Proposed Improvements in addition to any expected Capital Repair, Maintenance and Improvements as noted on the Capital Repairs, Maintenance and Improvements Schedule attached hereto as Exhibit "I"; provided, however, that if such approval is withheld solely as a result of clause (iii), the Parties shall approve such Proposed Improvements if Team agrees in writing to pay for (x) the balance of the cost of such Proposed Improvements not paid for out of the Capital Repair, Maintenance and Improvements Account and (y) any shortfall in the cost of any Capital Repair, Maintenance and Improvements scheduled for subsequent years if the payment for the Proposed Improvements shall cause the Capital Repair, Maintenance and Improvements Account to have insufficient funds to pay for scheduled Capital Repair, Maintenance and Improvements pursuant to the Capital Repair, Maintenance and Improvement Schedule, after taking into account the forecasted amount of funds to be contributed into such account in subsequent years. For clarity, it is the intent of the Parties that when there are funds remaining in the Capital Repair, Maintenance and Improvement Account after funding the costs of any expected Capital Repair, Maintenance and Improvements as noted on the Capital Repairs, Maintenance and Improvements Schedule and the cost of any Capital Repair, Maintenance and Improvements scheduled for subsequent years, those funds shall be available for Proposed Improvements.

7.2.5 City or City's vendors shall perform all Capital Repair, Maintenance and Improvements approved pursuant to this Section 7.2; provided, however, that, Team and City may mutually agree that any Capital Repair, Maintenance and Improvements shall be performed by Team, or indirectly by Team's vendors, and Team shall be reimbursed from the Capital Repair, Maintenance and Improvements Account for the cost of any such work. If, in Team's reasonable discretion, it is necessary to immediately perform any Capital Repair, Maintenance and Improvements to protect the safety of fans, players and/or operate of the Premises without interruption, Team may perform such improvement without the approvals required hereunder and submit to the City Manager for reimbursement from the Capital Repair, Maintenance and Improvement Account. Approval of such reimbursement shall be subject to the same standards as approval and payment of Capital Repair, Maintenance and Improvements as set forth above in this Section 7.2.

7.2.6 In the event Team pays for any such Proposed Improvements or Capital Repair, Maintenance and Improvements pursuant to Section 7.2.4, Team shall be reimbursed from the Capital Repair, Maintenance and Improvements Account when such account has sufficient funds to make such payment and such reimbursement will not cause the Capital Repair, Maintenance and Improvements Account to have an insufficient amount of funds, after taking into account the forecasted amount of funds in the Capital Repair, Maintenance and Improvements Account to pay for Capital Repair, Maintenance and Improvements that are scheduled to be completed in subsequent years pursuant to the Capital Maintenance Schedule.

7.2.7 Any proposed repairs, maintenance or improvements to the Stadium which are not included in Operational Maintenance or Capital Repair, Maintenance and Improvements, shall be handled by the same procedure outlined in Sections 7.2.3 through 7.2.6.

Section 7.3 Capital Maintenance and Improvement Account.

- 7.3.1** On or before November 30 of each Agreement Year (including the first Agreement Year), City shall fund a Capital Repair, Maintenance and Improvements Account for Capital Repair, Maintenance and Improvements to the Stadium and the City shall place all revenues received from the Team for payments under the Exclusive Use Lease and Management Commissions into the Capital Repair, Maintenance and Improvements Account. Expenditures from the Capital Repair, Maintenance and Improvements Account shall be made in accordance with Section 7.2 herein. Upon performance of the approved Project Improvements or Capital Repair, Maintenance and Improvements by Team, subject to Team's compliance with this Agreement, City shall reimburse Team for such approved expenditures (to the extent that Team performs such Capital Repair, Maintenance and Improvements pursuant to Section 7.2). If City performs such Capital Repair, Maintenance and Improvements, then City may use funds available in the Capital Repair, Maintenance and Improvements Account, along with any other City funds allocated for capital repair or maintenance of City facilities.
- 7.3.2** Management Commissions payable by Team pursuant to Section 4.3 hereof shall be remitted to the City following each Agreement Year within thirty (30) days of the final Team Game, along with an accounting, and shall be dedicated by the City for deposit as part of the City's contribution into the Capital Repair, Maintenance and Improvements Account.

Section 7.4 Taxes and Other Charges. Team shall pay prior to delinquency, in addition to the payment of Management Commissions, each and every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, by reason of Team's interest in the Premises or any portion thereof or by reason of or in any manner connected with or arising out of Team's possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises, or any part thereof. Team shall pay and discharge, prior to the delinquency thereof, all lawful assessments, ad valorem taxes (if any) sales taxes, business and occupation taxes, occupation license taxes, telephone, internet and gas (if any) charges imposed on the Premises and Team's use and occupancy of the Premises, and all other governmental taxes, impositions, and charges of every kind and nature, ordinary or extraordinary, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, and all applicable interest and penalties, if any, which at any time during the Term becomes due and payable by Team because of its rights or obligations under this Agreement and which is lawfully levied, assessed or imposed on Team or its interest in the Premises under or by virtue of any present or future law, statute, ordinance, regulation or other requirement of any Governmental Authority, whether federal, state, county, city, municipal, school or otherwise. Team also shall pay or cause to be paid all lawful charges for telephone, internet and gas (if any (and services used, rendered or supplied to, upon or in connection with the Premises (Team to pay or cause to be paid all of such charges directly to the provider thereof). Team shall furnish to City promptly upon request, proof of the payment or timely contest of any such tax, assessment or other governmental or similar charge, or any utility charge which is payable by Team, or evidence of the deposit of such funds into a reserve account, all as set forth above. The provisions of this paragraph shall expressly survive the expiration or sooner termination of this Agreement.

Section 7.5 Liens and Encumbrances. Team covenants and agrees that, except for this Agreement, it will not create or suffer to be created by, through or under Team any lien, encumbrance or charge upon the Premises. Team shall satisfy or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same occurs, all such claims and demands for labor, materials, supplies or other items which, if not satisfied, might by law become a lien upon the Premises or any part

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thereof. If any such lien is filed or asserted against Team or the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Team or the Premises at the request or with the permission of Team or of anyone claiming under them, Team shall, within sixty (60) days after receipt of notice of the filing thereof or the assertion thereof against the Premises, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof, by contest, payment, deposit, bond, order of court or otherwise.

Section 7.6 Team Liens. Team may, at any time or from time to time, grant liens upon its membership rights with the League or any other of its personal property (the "Team Rights"); *provided, however*, that (i) any such liens shall be made or granted in compliance with and subject to the requirements and obligations of Team pursuant to this Agreement, (ii) if any person, entity or combination thereof acquires the Team Rights pursuant to any foreclosure or other similar transaction under any such liens, such occurrence shall be an Event of Default by Team; *provided, however*, that such occurrence shall not constitute an Event of Default if the foreclosing person, entity or combination thereof who acquires the Team Rights pursuant to any foreclosure or other transaction under any such liens shall take the Team Rights strictly subject to and assume the covenants and obligations of Team pursuant to this Agreement. Upon any such granting of such liens, Team shall obtain from each such lien holder a written acknowledgement and acceptance of the terms, provisions, and restrictions contained herein and shall provide an executed copy thereof to City and shall state in the instruments creating and perfecting such lien that any transfer is subject to the terms herein. In the event involuntary liens or material encumbrances are placed on the Team Rights that, upon foreclosure, would result in a violation hereof, Team will use good faith efforts to promptly remove such liens or material encumbrances after reasonable contest periods.

Section 7.7 Vacation of Premises. Upon the termination of this Agreement, Team shall vacate the Premises (including all improvements thereon) in a condition which would have been in compliance with the Operational Maintenance requirements of Section 7.1 of this Agreement had the Agreement not terminated, reasonable wear and tear and damage by casualty, condemnation, or Force Majeure excepted. Team shall take all Removables upon so vacating the Premises.

Section 7.8 Operation Obligation and Standards. Team agrees to operate and maintain the Premises throughout the Term in a condition necessary to conduct the permitted uses described in Section 4.5 and in manner that complies with League Requirements and that will provide a first class fan experience appropriate for a minor league baseball stadium of similar size and stature. This undertaking expressly includes the obligation to provide concessions, janitorial services, security, maintenance and upkeep at commercially reasonable levels for a minor league baseball stadium of similar size and stature; *provided*, however, that this undertaking does not require the Team to fund substantial capital upgrades to the existing Premises that would otherwise be required to keep the Premises on par with similarly situated minor league baseball stadiums nor does it require the Team to fund the replacement of major building systems such as the scoreboard or playing field at the end of those systems useful life. Except as provided herein, Team may not assign any rights, duties or obligations to operate and maintain the Premises throughout the Term to any party, other than its Affiliates, without the prior written consent of City. City acknowledges that Team may contract with third parties without City's consent to provide services such as concessions, security, janitorial and similar venue-operating services. Team acknowledges and agrees that one of the primary reasons for City's financial and other commitments to build the Stadium and enter into this Agreement is to provide for the betterment of the community generally. Team will make reasonable efforts to provide opportunities for local and regional charities and non-profits to utilize and gain exposure through the Premises. Team acknowledges that use of the Premises reflects upon the image and goodwill of City, and Team agrees that no Team Event, signage at the Premises, promotion of Team Events, or any other use of the Premises by Team or its respective agents, contractors or sublicensees shall be inconsistent with such uses at Comparable Facilities located in North Carolina, taken as a whole. Without limiting the generality of the foregoing, and unless otherwise approved by City in writing, no signage, advertising or other

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promotions at the Premises shall be authorized or permitted by Team for any of the following: political candidates or matters, cigarettes, tobacco, firearms, contraceptives, adult entertainment, or any illegal activities of any kind or nature, nor shall Team authorize or permit any advertising or promotions which violate applicable Governmental Rules. Notwithstanding the foregoing, signage, advertising or other promotions at the Premises are authorized for the North Carolina State Lottery.

Section 7.9 Right of Team to Revenues. Except as provided in Section 4.3 (Management Commissions), and Section 7.16 (Use of Premises), Team shall be entitled to, and is hereby granted the exclusive right to, contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the Team or Premises, including, without limitation, all gross revenues, royalties, license fees, concession fees and income and receipts of any nature, including, without limitation, those arising from (a) all advertising rights (including, but not limited to, Naming Rights), (b) all broadcast rights, (c) promotion of events at the Premises, (d) the sale of food, beverages at the Premises, (e) the sale of merchandise, programs and other goods and wares of any nature whatsoever at the Premises, and (f) all telecommunications rights. Team shall have the right, without the prior consent of City, to sell or grant rights to purchase future tickets for reserved seats and club seats, including personal seat licenses (collectively, "Seat Rights"). All Seat Rights shall be subject and subordinate to the provisions of this Agreement and shall not survive the termination or expiration of this Agreement. Team shall have no responsibility or obligation to sell Seat Rights and City shall not have any liability or responsibility to assure the sale of Seat Rights. Team shall be entitled to, and are hereby granted the exclusive right to, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the sale or other distribution of Seat Rights, tickets or passes (including general admission) for any admission to the Premises, except as otherwise provided in this Agreement. City shall have the right to sell and retain revenue generated from the sale of temporary advertising associated with City Events, including temporary signage, advertising on the scoreboard and any other video displays, print media and broadcast media. Such advertising shall be provided at City's sole cost and expense and shall not replace or cover existing signage, nor shall advertising displayed by City at the Premises for a City Event conflict with promotional category exclusivities granted by Team with respect to the Premises for which Team has provided City with the terms of any such exclusivities.

Section 7.10 [Reserved.]

Section 7.11 Sponsorship, Display and Broadcast Rights. Except as set forth herein with respect to City Events, Team has the exclusive right to enter into agreements with others whereby such others may display names, logos, trademarks, advertisements, slogans, emblems, brand names, and the like in or about the Premises. Except as set forth herein with respect to City Events, Team also retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom. City retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises with respect to City Events, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom.

Section 7.12 Advertising Content. Team agrees that no advertising shall be allowed on the Premises for political candidates or matters, cigarettes, tobacco, firearms, contraceptives, adult entertainment, or any illegal activities of any kind or nature.

Section 7.13 Notification of Certain Events. Team shall promptly notify City in writing if Team becomes aware of any of the following:

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- 7.13.1 Any breach or alleged breach by Team under this Agreement or the occurrence of an Event of Default specifying the details of such Event of Default and the action that Team proposes to take with respect thereto;
- 7.13.2 any litigation or potential litigation affecting the Premises or City, or any litigation or potential litigation affecting Team that could reasonably be expected to have a material and adverse effect on Team and/or its services or obligations under this Agreement;
- 7.13.3 any bankruptcy filings, whether voluntary or involuntary with respect to Team;
- 7.13.4 any casualty, loss, injury, claim or other event relating to the Premises that might result in a claim against City or under any applicable insurance policies;
- 7.13.5 any violation or alleged violation of applicable Governmental Rules or insurance requirements; and
- 7.13.6 any involuntary lien filed against the Premises.

Section 7.14 City to Provide Signage. City has provided and installed at the Stadium, at its cost and expense and as part of Project Plans and City's Contribution, wayfinding signage, a digital videoboard on the southern wall of Stadium, and other signage as was required by Governmental Rule and League Requirements. City will coordinate reasonably with the United States and North Carolina Departments of Transportation and other appropriate Governmental Authorities in an effort to alter or construct new directional signage on freeways and other major thoroughfares, and directing vehicles to the Premises. City will reasonably assist Team in obtaining permission and approval to: (i) hang banners within City limits (subject to reasonable restrictions), and (ii) display sponsored Team and Stadium event information on the videoboard installed on the southern wall of Stadium (facing Franklin Boulevard) in order to generate interest in the Stadium and in major events to be held at the Premises.

Section 7.15 City's Right of Entry and Inspection. City retains and shall have the right, at reasonable times, upon reasonable request, or, at such time as City has reason to believe that an emergency situation exists at the Premises, to enter upon the Premises, for the purpose of inspecting the same and verifying Team's compliance with the terms and conditions of this Agreement.

Section 7.16 Use of Premises.

- 7.16.1 City shall have the right to schedule up to ten (10) events at the Premises during each Agreement Year (the "City Event(s)"). City's right to City Events may be assigned to other municipal and non-profit entities within Gaston County. City shall be responsible for all costs associated with a City Event, including, without limitation, maintenance and preparation of the Premises, ticket-takers, ushers, in-Stadium security, scoreboard/sound and other personnel, trash removal, repairs, supplies, and all other direct event costs in connection with all City Events. City shall not be responsible for any share of Team's indirect operational costs in conjunction with City Events (including without limitation taxes imposed on Team, insurance, and other administrative costs, which shall be the sole responsibility of Team), except to the extent that Team's indirect operational costs materially increase as a direct result of the City Event. By way of example only, such additional costs could include a special permit, licensing fees, or additional insurance premiums. City or its assignee or designee shall retain all revenue

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generated from City Events, including, without limitation, ticket, sponsorship, merchandising and other sales revenue. In connection with City Events, Team shall operate all food and beverage concessions at the Premises; provided, City shall receive fifty percent (50%) of Team's share of net profit (based on Team's agreement for food and beverage concessions) generated by the concessions operations at the City Event. For the avoidance of doubt, Team shall retain the remaining fifty percent (50%).

- 7.16.2** Team shall maintain a schedule of all events at the Premises. Team shall be responsible for the scheduling of all events at the Premises, in its commercially reasonable discretion. Scheduling priority shall be given first to Team Games, followed by Team Events, and then – subject to Sections 7.16.3 and 7.16.4 herein – City Events. Once an event is scheduled, it shall not be moved to another date without the prior written consent of the Team in the case of Team Games and Team Events, or of the City in the case of City Events; provided, however, that best efforts shall be made to accommodate changes to the initial schedule of Team Games made by the League. Commencing on the first day of the first full month following the Commencement Date, and every month thereafter during the Term, Team shall provide a schedule of all Team Games and Team Events for the upcoming month (e.g. Team shall provide a schedule of all Team Games and Team Events for February 2024 on or before January 1, 2024).
- 7.16.3** If City identifies to Team certain City Events which would potentially recur during each Agreement Year (for example and without limitation, graduations or other similar recurring civic events), then Team agrees to use commercially reasonable efforts to (a) schedule such recurring City Events around the same dates during each Agreement Year, and (b) take such recurring City Events into consideration when scheduling future Team Games and Team Events.
- 7.16.4** City Events shall not be scheduled which would be similar in nature to traditional Team Events or Team Games such that they would compete with such Team Events or Team Games.
- 7.16.5** Notwithstanding anything to the contrary in this Section, Team shall have the exclusive right to use the Exclusive Use Areas as set forth in the Exclusive Use Lease Agreement.
- 7.16.6** In recognition of the significant public funding of the Project, Team shall make the concourse area of the Stadium available for public use, without charge, as an exercise walking track on a regular schedule on weekdays to the maximum extent feasible within the commercially reasonable discretion of the Team. The Parties understand and agree that public use may be limited on Team Game and Team Event days, but that Team will make best efforts to allow public use on Team Game and Team Event days within its commercially reasonable discretion.

Section 7.17 [Reserved.]

Section 7.18 Concession Improvements; Access. City caused the food and beverage concession areas to be constructed at City's sole cost and expense as part of the original construction of the Stadium and in a manner generally consistent with the Project Plans. City makes no representation or warranty, however, as to whether all of the equipment, fixtures currently found in the Stadium and/or the concession areas is

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the property of the City or whether such equipment or fixtures are owned by Prior Operator or its concessionaire(s). If Team desires for any concessionaire to build out and upfit their own concession area, or should it be necessary to provide any equipment or fixtures not shown on the Project Plans in order to replace such equipment or fixtures owned by the Prior Operator or its concessionaire(s), the City will not be responsible for said cost. City agrees that Team and its agents, contractors, licensees, and concessionaires shall, subject to the requirements of City's insurers, have the right of access, for themselves and their authorized representatives, to the Premises, without charges or fees, as described in Section 3.3.

Section 7.19 Security and Traffic Management. City shall provide security for Stadium patrons as is reasonably necessary outside the Stadium, at levels determined by City's law enforcement officials, in City's sole discretion. City shall also provide traffic management, at levels determined in City's reasonable discretion but with advice and input from Team, to ensure orderly and efficient vehicular and pedestrian traffic in and out of Stadium before and after all events. Team is responsible for patron security within the Premises (including Stadium), pursuant to Article VI, herein.

Section 7.20 City Tickets to Events. Upon request by City at least one (1) Business Day prior to the scheduled time of a Team Game or Team Event, Team shall provide to City twenty (20) tickets to all Team Games and Team Events. The use of such tickets shall be for economic development, tourism and other official business of City. Tickets for Team Games shall be located in the lower seating tier of Stadium and between first and third base along the infield, if available, and shall be provided to City at no cost. Tickets for Team Events shall be located in the seating areas of the Stadium with the highest cost tickets for such Team Event, if available, and shall be provided to City at the greater of either (a) no cost, or (b) at Team's purchase cost for such tickets as required by the promoter or organizer of such Team Event.

Section 7.21 Use for Disaster Recovery Efforts and Disaster Preparedness. If City or surrounding area is threatened by a hurricane or some other emergency situation, Team shall comply with all lawful orders of City Manager under City's disaster preparedness plan. In the event of a declared federal, state, or local emergency as allowed by law or in the event of an actual or imminently threatened disaster or similar emergency situation (a "Declared Emergency") City shall have the right to use the Premises, but not including the Exclusive Use Areas, as a staging area for disaster preparations, response or other related uses and purposes. In connection with a Declared Emergency use, City shall be responsible for the costs of any damage to the Premises, personal injury, bodily injury and /or loss of life caused by City's use, provided that City shall not be responsible to Team for any damage, cost, or other loss arising from the underlying Declared Emergency event. Nothing herein shall diminish Team's right to claim loss of use, business interruption or similar damage under any applicable insurance policy or federal, state or local regulation or program for disaster recovery.

Section 7.22 Parking. City shall make available to Team, at no cost to Team, the maximum number of parking spaces available at the Adult Recreation Center, located at 519 West Franklin Boulevard, for use by Team for parking needs on Team Game days and Team Event days, and at all times for Team's full-time employees and staff. Team shall be entitled to all revenue collected for such parking.

Section 7.23 Permits. City will assist and provide reasonable support to Team in the procurement of all licenses, permits and clearance from all public authorities, both federal and state, required to enable Team to carry on its business as required or permitted hereunder, including, without limitation, the acquisition of a liquor license(s) (whether by Team or its third-party designee) and rights to use and display fireworks shows.

Section 7.24 Competitive Bidding. When required by applicable Governmental Rule, all contracts for repairs, capital improvements, goods and services with respect to the Premises will be awarded on the basis of competitive bidding or other process required by applicable Governmental Rule that is conducted in

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accordance with applicable Governmental Rule. Even if not required by Governmental Rule, Team agrees to use its good faith efforts to ensure that local and local disadvantaged business enterprises and minority businesses have an equal opportunity to participate in the procurement of contracts relating to Operational Maintenance and Capital Repair, Maintenance and Improvements and will actively seek and identify qualified local and local disadvantaged business enterprises and minority businesses and offer them the opportunity to participate in the procurement of contracts relating to Operational Maintenance and Capital Repair, Maintenance and Improvements.

Section 7.25 Membership in Recognized Professional Baseball League. Team shall at all times during the Non-Relocation Period own and maintain in good standing a Team that is a full-season minor league baseball team in a recognized professional baseball league authorized by the League to play its home games at the Stadium.

Section 7.26 City Name in Team Name and on Jerseys. Team shall be responsible, at its sole cost and expense, for rebranding of the Team name from the Honey Hunters to a new Team name, including, but not limited to, rebranding at the Premises and all necessary signage replacements. The name of the City, Gastonia, must be in the name of the Team and must be displayed on both primary home and away jerseys of all players. By way of illustration, if the Team is named the Chargers, the official name of the Team shall be the "Gastonia Chargers". By way of further illustration, the City name, "Gastonia" must be displayed somewhere on the jerseys such that it is reasonably visible and readable at a distance of ten (10) feet, but need not be displayed on the jerseys in the same font as the rest of the Team name.

Section 7.27 Utilities. City shall arrange for and provide and pay or cause to be paid when due all charges for water, solid waste, sewer, and electricity for the Stadium. Team shall arrange for and pay or cause to be paid when due all charges for telephone, internet and gas (if any) for the Stadium. City and/or its contractor(s) shall be responsible for providing permanent utility services infrastructure and hook-ups for Team's use.

Section 7.28 Off-Site Storage. City shall provide Team with off-site storage at a City-owned or controlled facility at no cost to Team at a location to be determined by City based on the nature and amount of materials to be stored; *provided, however*, that the Parties agree that such storage shall be sufficient to safely and securely store the Stage (and any ancillary equipment associated with use of the Stage) and the equipment described on Exhibit H hereto.

ARTICLE VIII INSURANCE

Section 8.1 Team Insurance Policies. Team shall, effective as of the Commencement Date, obtain and maintain throughout the Term of this Agreement Commercial General Liability coverage including bodily injury, personal injury, property damage, and contractual liability in combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; automobile liability coverage with limits of One Million Dollar (\$1,000,000) combined covering all owned, non-owned, leased and hired vehicles; umbrella excess liability with limits of at least Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate; and workers compensation coverage, in such amounts as required by applicable law, to protect Team's permanent and temporary employees. Such coverage shall be evaluated by the Parties every fifth (5th) year during the Term and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Team will name City as additional insured on the Commercial General Liability, automobile liability and umbrella policies, and each such policy shall provide that the insurer must provide City thirty (30) days prior written notice of any reduction in coverage or cancellation. Team shall provide City certificates of all required insurance policies herein at least thirty (30) days prior to the Commencement Date, and Team shall also deliver to City a

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certificate of insurance of all renewal policies or required endorsements, as applicable, evidencing renewal within ten (10) days of receipt of such renewal by Team. Insurance coverage required herein shall be placed with carriers licensed to do business in North Carolina, and have a rating in the most current edition of A.M. Best's Property Casualty Key Rating Guide that is reasonably acceptable to City. Team shall maintain property insurance on all assets owned by Team within the Premises.

Section 8.2 City Insurance Policies.

8.2.1 City shall maintain, at City's sole cost and expense, property insurance on the Premises (other than for assets therein owned by Team) including all buildings and improvements, against damage or destruction by fire, flood, hurricanes, tornados, terrorism or other casualty under a standard "all risk" policy ("Damage"). Insurance shall be for one hundred percent (100%) replacement value. City shall be responsible for paying deductible costs, except that in the event the damage by fire or by other casualty is due to any negligence of the Team, then the Team shall be responsible for paying a reasonable deductible. City shall also maintain the following insurance coverages at City's sole cost and expense: (a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily liability, premises and operations, personal and advertising injury; products and completed operations; contractual liability; (b) umbrella excess liability (or equivalent underlying limits) with minimum limits of \$4,000,000 per occurrence and in the aggregate; (c) Workers' Compensation covering City's employees meeting statutory limits in compliance with applicable state and federal laws. Team will be named as additional insured on all such policies (except Workers' Compensation) and City will provide to Team certificates of insurance evidencing such coverage. Certificates of insurance shall be produced to Team prior to the Commencement Date.

8.2.2 In lieu of purchasing insurance policies as described in Section 8.2.1, the City may self-insure or participate in pooled coverage with other governmental units, with reserves adequate to provide equivalent coverage to that listed in Section 8.2.1.

Section 8.3 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting City which arise out of any of the matters relating to this Agreement or otherwise, Team shall notify City promptly upon becoming aware of same and Team shall provide reasonable assistance in the defense or other disposition thereof. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting Team which arise out of any of the matters relating to this Agreement or otherwise, City shall notify the Team promptly upon becoming aware of same and City shall provide reasonable assistance in the defense or other disposition thereof.

ARTICLE IX INDEMNIFICATION

Section 9.1 Indemnification.

9.1.1 By Team. To the maximum extent permitted by applicable law, and except as otherwise provided in this Section 9.1.1, Team shall defend, protect, indemnify and hold City and its officers, directors, employees, and agents (collectively, "City Indemnitees") harmless from and against any and all Losses arising from or in connection with any injury to or death of a Person or any damage to property

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resulting from, arising out of, or in connection with (i) the use or occupancy of the Premises by Team, or by Team's respective contractors, employees, officers, directors or agents on or after the Commencement Date, (ii) any breach by Team of any warranties or representations made in this Agreement; (iii) any breach by Team of any covenant or other term or condition of this Agreement; or (iv) the negligent act, omission, or intentional misconduct of Team, or of Team's contractors, employees, officers, directors, agents, sub-contractors or representatives. Notwithstanding the provisions of the preceding paragraph, Team shall not be liable for Losses arising from or in connection with:

- (a) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or intentional misconduct of City, its employees, officers, directors, contractors, agents or invitees;
- (b) City's breach of or other violation of any provisions of this Agreement, including Losses incurred by the Team that would have been covered by any insurance policy required to be maintained by City pursuant to Section 8.2 hereof where such policy was not in fact provided by the City, or any applicable Governmental Rule, now or hereafter in effect and applicable to City; or
- (c) Any Hazardous Materials that are released at, delivered to, or introduced to the Premises, migrate from the Premises, or are shipped from the Premises prior to the Commencement Date.

9.1.2 By City. To the maximum extent permitted by applicable law, and except as otherwise provided in this Section 9.1.2, City shall defend, protect, indemnify and hold Team, its Affiliates, and each of their respective members, managers, officers, directors, employees, agents, and representatives (collectively "Team Indemnitees") harmless from and against (A) any and all Losses arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of, or related to (i) any negligent act, omission, or intentional misconduct of City or any of its officers, directors, employees, agents, contractors, sub-contractors, or representatives, (ii) the use or occupancy of the Premises by City, including any such use by City's officers, directors, elected officials, employees and agents, except when attending a Team Game or Team Event; (iii) any breach by City of any warranties or representations made in this Agreement; or (iv) any breach by City of any covenant or other term or condition of this Agreement, and (B) any and all Losses, specifically, for purposes of this Section 9.1.2., including, without limitation, all direct, indirect, incidental, consequential, and other Losses, sustained by Team resulting from, arising out of, or related to the State Court Proceeding or the Bankruptcy Proceeding (and any other action, litigation, or proceeding concerning the Prior Operator's rights in or to the Stadium or the Premises) (collectively, "Litigation Proceedings") in an amount not to exceed the Breakup Limit, provided that in the event both the City and Team are parties to the Litigation Proceedings, Team shall agree to joint representation for the City and Team with counsel reasonably satisfactory to Team, and provided further that any payment by City of the Breakup Limit shall not be due and payable to Team until after January 1, 2025.

Notwithstanding the provisions of the preceding paragraph, City shall not be liable for any Losses arising from or in connection with:

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- (a) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or intentional act of Team, or its employees, officers, directors, contractors, agents or invitees;
- (b) Team's breach of or other violation of any provisions of this Agreement, including Losses incurred by City that would have been covered by any insurance policy required to be maintained by Team pursuant to Section 8.1 hereof where such policy was not in fact provided by the Team, or any applicable Governmental Rule, now or hereafter in effect and applicable to Team; or
- (c) Any Hazardous Materials that are released at, delivered to, or introduced to the Premises, migrate from the Premises, or are shipped from the Premises after the Commencement Date by Team, or any of its employees, officers, directors, contractors, or agents.

The provisions of this Section 9.1 are solely for the benefit of City, City Indemnitees, Team, Team's Affiliates and Team Indemnitees, and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

Section 9.2 Indemnification Procedures. In case any claim shall be brought or, to the knowledge of any indemnitee, threatened against any indemnitee in respect of which indemnity may be sought, such indemnitee shall promptly notify the other in writing; provided, however, that any failure so to notify shall not relieve the indemnitor of its obligations under Section 9.1 or 9.2, as applicable, unless (i) such failure so to notify precludes investigation and defense of such claims as a matter of law, and (ii) the indemnitor does not otherwise have knowledge, either actual or constructive, of such claim. The indemnitor shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel, reasonably acceptable to the indemnitee, and the payment of all expenses. Each indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such indemnitee unless (i) the employment of such counsel has been specifically authorized by indemnitor, in writing, (ii) indemnitor has failed after receipt of notice of such claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both parties, and the indemnitee, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnitor (in which case, if such indemnitee notifies the indemnitor in writing that it elects to employ separate counsel at indemnitee's expense, indemnitor shall not have the right to assume the defense of the action on behalf of such indemnitee; provide, however, that indemnitor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the indemnitee, which firm shall be designated in writing by the indemnitees). Each indemnitee shall cooperate with the indemnitor in the defense of any action or claim. The indemnitor shall not be liable for any settlement of any action or claim without its consent, but if any such action or claim is settled with the consent of the indemnitor or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, the indemnitor shall indemnify and hold harmless the indemnitees from and against any damages by reason of such settlement or judgment.

Section 9.3 Survival Right to Enforce. The provisions of this Article IX shall survive the termination or earlier expiration of this Agreement. In the event of failure by an indemnitor to observe the covenants, conditions and agreements contained in this Article IX, any indemnitee may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the indemnitor under this Article IX. Except as otherwise

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provided in Article X below, the obligations of the Parties under this Article IX shall not be affected by any assignment or other transfer of its rights, titles or interests under this Agreement and will continue to inure to the benefit of the indemnitees after any such transfer.

Section 9.4 Non Impairment. The City represents and warrants that it shall not adopt any law or regulation that is designed to limit Team's indemnification rights granted hereunder nor shall it adopt any law or regulation that is designed to alter Team's material rights under this Agreement; provided, however, that laws or regulations of general applicability (such as a noise ordinance) shall not be deemed a violation of this provision.

ARTICLE X ASSIGNMENTS; MORTGAGES

Section 10.1 Assignment.

10.1.1 Except as provided in Sections 10.4 and 10.5 below, neither Party shall assign its interest in this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of the other Party, which, in the case of an assignment by Team, consent may be withheld if in City's sole judgment such assignment might materially and adversely affect the financial condition or operations of the Stadium or if, in City's sole judgment, such assignment is to a party that is less credit-worthy than Team.

10.1.2 Upon any assignment or transfer as described above, Team shall be released from liability under this Agreement (other than any liabilities arising or accruing prior to the date of assignment, unless such liabilities are expressly assumed by the assignee in writing).

Section 10.2 Notice of Intent. If Team shall, at any time during the Term, desire to assign this Agreement or all or part of its interests under this Agreement to a party, Team shall give notice thereof to City, which notice shall be accompanied by: (a) a statement setting forth the terms of the proposed assignment which are relevant to compliance with the terms of this Agreement; (b) a statement setting forth, in reasonable detail, the identity of the proposed assignee and the nature of its business; (c) banking and business references of the proposed assignee; and (d) evidence satisfactory to City that the proposed assignee has been granted the rights by the League to own and operate a minor league baseball team and have its home games played at the Stadium. City shall have the right to inspect the proposed assignment agreement at a mutually agreeable time to the Parties.

Section 10.3 Reserved.

Section 10.4 Assignments and Concession Arrangements. Notwithstanding the foregoing, this Section 10 shall not limit or otherwise restrict Team's exercise of its rights or performance of its obligations hereunder, including, without limitation, Team's right to enter into or grant certain contractual rights, subcontracts, sublicenses, and other arrangements for concessions, retail, security, services and other providers as Team may desire, all without consent from City, to the extent such contracts, subcontracts, sublicenses and other arrangements do not circumvent any prohibition or restriction on the assignment of Team's rights or obligations hereunder as a whole.

Section 10.5 Mortgages. Team shall have no right to encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof (collectively, a "Mortgage") or otherwise to encumber or affect in any way the titles, interests, or estates of City in or to the Land or the Premises, but Team may

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encumber its Team Rights, as well as Team's receivables, accounts, or revenue streams from the Premises, and Removables, all without the need for obtaining City's consent.

ARTICLE XI DEFAULT

Section 11.1 City Default. The occurrence of any of the following shall be an "Event of Default" by City or a "City Default": (a) the failure of City to pay any of its monetary obligations under this Agreement when due and payable under this Agreement if such failure continues for thirty (30) days after Team gives notice to City that such amount was not paid when due; (b) the failure of City to perform, observe, and comply with any of its obligations, representations, warranties, covenants or agreements to be performed, observed, or complied with by City under this Agreement, including, without limitation, the non-appropriation of any funds, if necessary, to fulfill City's monetary obligations prior to the date such obligations are due, within thirty (30) days after written notice from Team of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by City shall occur unless City fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion within a commercially reasonable amount of time thereafter; or (c) the occurrence of an Act of Bankruptcy with respect to City.

Section 11.2 Team's Remedies. If a City Default shall have occurred and be continuing, Team may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) Team may terminate this Agreement, as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to City Default specified in Section 11.1(c) above); (b) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means; and (c) Team may exercise any and all other remedies available to Team at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.3 Team Default. The occurrence of the following shall be an "Event of Default" by Team, or a "Team Default": (a) the failure of Team to pay any of its monetary obligations to City under this Agreement when due and payable if such failure continues for thirty (30) days after City gives notice to Team that such amount was not paid when due; (b) the failure of Team to perform, observe, or comply with any of the obligations, representations, warranties, covenants or agreements to be performed, observed, or complied with by Team under this Agreement or the Exclusive Use Area Agreement within thirty (30) days after written notice from City of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by Team shall occur unless Team fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion within a commercially reasonable amount of time thereafter; (c) the occurrence of an Act of Bankruptcy with respect to Team; (d) Abandonment of Premises by Team; (e) failure to maintain location in City of the Team, as required in Section 4.9, Section 4.11 and 4.12; (f) material failure to maintain approval and good standing by the League, as required in Section 2.3(g), which material failure cannot be remedied within 10 Business Days of Team's loss of approval and good standing with League; or (g) the transfer of Team or Team Rights as set forth in Section 4.11, Section 4.12 and Section 7.6.

Section 11.4 City's Remedies. If any Team Default shall have occurred and be continuing, City may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) City may terminate this Agreement as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to the Team Default specified in Section 11.3(c), (d), (e), (f) or (g); (b) seek another

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professional or amateur (including collegiate) baseball team to conduct its regularly scheduled home games at the Stadium; (c) City may, in its own name and for its own account, without impairing the ability of City to pursue any other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute, institute such action against Team as may appear necessary or desirable to collect such Management Commissions and any other amounts then due under this Agreement, or to enforce performance and observance of such covenant, condition or obligation of Team hereunder, or to recover damages for Team's non-payment, non-performance or non-observance of the same; (d) City may exclude Team from possession of the Premises and reenter the same and take whatever action at law or in equity as may appear necessary or desirable to collect the Management Commissions and any other amounts then due, to enforce performance and observance of any covenant, condition or obligation of Team hereunder, or to recover damages for Team's non-payment, non-performance or non-observance of the same; provided that City shall be required to mitigate its damages to the extent required by law and Section 11.6 hereof; (e) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means; and (f) exercise any and all other remedies available to City at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.5 Termination.

11.5.1 City Termination. Upon the occurrence of a Team Default as described in Section 11.3, in addition to its other remedies at law or in equity, City shall have the right to terminate this Agreement after the expiration of either (i) the thirty (30)-day cure period, or (ii) the commercially reasonable period of time to cure such Team Default if such performance cannot be reasonably accomplished within such thirty (30)-day period, following delivery of the City's notice of a Team Default pursuant to Section 11.3, by delivering a notice of termination ("Termination Notice") to the Team, and upon delivery of the City Termination Notice, this Agreement shall automatically terminate and all obligations of the Parties hereunder shall automatically terminate without liability to the other Party, except for those obligations which, by their terms, are intended to survive termination of this Agreement. If, however, within such applicable cure period Team cures such Team Default, then this Agreement shall not terminate by reason of such Termination Notice. Notwithstanding the foregoing, no Termination Notice shall be required and the City may declare this Agreement immediately terminated if the Team Default is an Act of Bankruptcy, or Team Default specified in Section 11.3 (d), (e), (f), or (g).

11.5.2 Team Termination. Upon the occurrence of a City Default as described in Section 11.1, the Team, in addition to its other remedies at law or in equity, shall have the right to give to terminate this Agreement after the expiration of either (i) the thirty (30)-day cure period, or (ii) the commercially reasonable period of time to cure such City Default if such performance cannot be reasonably accomplished within such thirty (30)-day period, following delivery of the Team's notice of a City Default pursuant to Section 11.1, by delivering a Termination Notice to the City. Upon delivery of the Team Termination Notice, this Agreement shall terminate, and all obligations of the Parties hereunder shall automatically terminate without liability to the other Party, except for those obligations which, by their terms, are intended to survive termination of this Agreement. If, however, within such applicable cure period City cures such City Default, then this Agreement shall not terminate by reason of such Termination Notice.

Section 11.6 Team to Remain Liable for Payments; Replacement of Operator.

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11.6.1 Notwithstanding the exercise by City of its remedies pursuant to Section 11.4 hereof (other than termination of this Agreement or any other remedy therein which would have the effect of mitigating, in whole or in part, the result of the Team Default), and unless otherwise set forth expressly in this Agreement, Team shall continue to be liable for the payment of all amounts payable under Section 4.3 hereof and other amounts, if any, payable under this Agreement. Team shall make such payments at the same times and in the same manner as provided in this Agreement.

11.6.2 In the event City elects to exclude Team from management and possession of the Premises and re-enter same, then City shall use commercially reasonable efforts to find a new operator for the Premises for the Management Commissions, or other similar operating fees which it may reasonably obtain, provided, however, that City shall have no obligation to engage as a new operator for the Premises any person who will not use the Premises for the purposes set forth in Section 4.5 hereof. Any such amounts received prior to the stated termination date of this Agreement shall be applied first to the payment of reasonable expenses incurred by City in connection with finding and engaging a new operator, and second, to reimburse City for Management Commissions due hereunder.

Section 11.7 [Reserved].

Section 11.8 No Remedy Exclusive. Except as otherwise noted expressly in this Agreement, no remedy herein conferred upon either Party is intended to be exclusive of any other available remedy or remedies, and each such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default granted under this Agreement shall impair any right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient, and the exercise of any one right or remedy shall not impair the right to any or all other remedies under this Agreement. **NOTWITHSTANDING ANY CONTRARY PROVISIONS HEREOF IN NO EVENT SHALL CITY OR TEAM BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF CITY AND TEAM OR ANY OF THEIR AFFILIATES OR RELATED PARTIES. WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF CITY OR TEAM FOR RECOVERY OF SUCH DAMAGES PURSUANT TO ARTICLE IX TO THE EXTENT SUCH DAMAGES WERE AWARDED TO A THIRD PARTY AGAINST CITY OR TEAM, AS APPLICABLE.**

Section 11.9 No Additional Waiver Implied By One Waiver; Consents to Waiver. The waiver of a Party of any breach by another Party of any covenant, condition or obligation under this Agreement shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, condition or obligation under this Agreement, nor shall any forbearance by a non-defaulting Party not breaching to seek a remedy for any breach by another Party be a waiver by such non-defaulting Party not breaching any of its rights and remedies with respect to such breach or any subsequent breach of the same or with respect to any other breach.

Section 11.10 Delay not a Waiver. No delay or omission in the exercise of any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Agreement may be exercised

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from time to time and as often as may be deemed expedient. Any Party may waive any default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedies under this Agreement. No such waiver shall extend to or affect any other existing or subsequent default or impair any rights or remedies consequent thereon.

Section 11.11 Interest on Overdue Obligations. If any sum due hereunder is not paid on the due date thereof, the Party hereto owing such obligation to the other Party shall pay to the other Party interest thereon at the Default Rate, concurrently with the payment of the amount from the date such amount was due until paid. Any payment of interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder.

Section 11.12 [Reserved.]

Section 11.13 Declaratory or Injunctive Relief. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of certain of its obligations under this Agreement would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) if a breach or a threatened breach by such Party of any such obligations occurs, then, in addition to the remedies set forth in this Article XI, the Parties shall be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, and declaratory relief with respect to any matter under this Agreement.

ARTICLE XII DAMAGE AND CONDEMNATION

Section 12.1 Damage and Destruction.

12.1.1 If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, Team shall promptly give written notice thereof to City. All applicable insurance proceeds shall be applied by City either to repair, rebuild or restore the property damaged or, if the Parties determine and mutually agree that it is impracticable to rebuild the Premises, subject to the provisions of Section 12.1.2, such proceeds shall be used to effect the defeasance or prior redemption of obligations issued for the construction of the Stadium. Any remaining balance after payment for such repair, rebuilding or restoration shall be deposited into the Capital Repair, Maintenance and Improvements Account, and City shall receive a corresponding credit against its future funding obligations to same, as described in Section 7.3 herein.

12.1.2 Unless the Parties mutually agree that it is impracticable to rebuild the Premises pursuant to Section 12.1.1, City shall promptly apply for all permits and licenses necessary to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by City after consultation with Team and which will not impair productive capacity or the character of the Premises. City shall consider, in good faith, any requests or suggestions made by Team with respect to any such changes, alterations and modifications. City shall commence such work within sixty (60) days after the date all necessary permits and licenses are obtained and in all events complete its work

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within eighteen (18) months following the date of damage, subject to delays caused by an event of Force Majeure or Team. If City does not complete the required repairs and deliver the Premises to Team in a repaired condition within such period, subject to delays caused by an event of Force Majeure or Team, Team shall have the right to terminate this Agreement by providing written notice to City, in which event this Agreement shall terminate (a) effective as of the date of Team's notice, in the event Team is not operating in the Premises, or (b) effective as of the date thirty (30) days after delivery of Team's notice, in the event Tenant is operating in any portion of the Premises. Notwithstanding the foregoing, in the event that (a) substantially all of the improvements shall be damaged or destroyed by casualty at any time during the final five (5) years of the Term creating an Unacceptable Condition, (b) any portion of the Premises shall be damaged or destroyed by casualty at any time during the Term and the Governmental Rules then applicable to the Premises do not permit the restoration of the Premises so as to eliminate an Unacceptable Condition, or (c) if the necessary repairs, rebuilding or restoration are estimated to take more than one (1) year to complete, then either City or Team may, at such Party's option (exercised with reasonable promptness in the circumstances, but in all events within ninety (90) days after such damage or destruction), terminate this Agreement by serving upon the other parties hereto notice within such period setting forth City's or Team's, as applicable, election to terminate this Agreement as a result of such damage or destruction as of the end of the calendar month in which such notice is delivered to the other parties hereto. Upon the service of such notice and the making of such payments within the foregoing time period, this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed as the expiration date of this Agreement and no Parties shall have any further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

12.1.3 If the casualty repairing, rebuilding, or restoration shall render the Premises untenable, in whole or in part, all costs and expenses of the Team under this Agreement shall abate until the date the City completes the repairs or rebuilding.

12.1.4 Team's Right of First Offer. If this Agreement is terminated in accordance with this Article and City elects to rebuild the Stadium within two (2) years of the date of termination, then City shall give Team written notice of City's intentions to rebuild and City shall first offer to Team any space within the new Stadium that is substantially the same as the Premises were prior to the casualty or other event which gave rise to termination of this Agreement. City shall deliver a written offer to Team incorporating terms that are substantially comparable to those that City would utilize to market the space to third parties, including a site plan and other information reasonably necessary to enable Team to determine if it is interested in leasing space. Team shall have sixty (60) days following receipt of City's offer to respond and either accept or reject the offered terms. In the event Team fails to respond to City within such 60-day period, City's offer shall be deemed rejected and City shall be free to market the space to whomever City chooses.

Section 12.2 Condemnation.

12.2.1 In the event that title to the Premises or the interest of Team created by this Agreement or any part of either thereof shall be taken under the exercise of the

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power of eminent domain by any governmental body or by any person, firm or corporation acting under Governmental Authority, or shall be conveyed in lieu thereof, this Agreement shall terminate. Any condemnation award attributable to any interest of Team created by this Agreement shall be paid to Team and any condemnation award attributable to the temporary use or temporary condemnation of the Premises shall be divided equitably between Team and City based on Team's and City's scheduled use of the Premises during such period. If only a part of the Premises or interest of Team is taken, City will cause any proceeds received by it from any award made in such eminent domain proceedings with respect to the Premises, to be applied towards the restoration of the Premises to allow for the operation of the Premises in substantially the same manner and to the extent that it was operated prior to the exercise of the said power of eminent domain. City shall use good faith and reasonable diligence to restore the Premises. If City does not restore the Premises as set forth above, then Team may terminate this Agreement and shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

12.2.2 City shall cooperate fully with Team in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof and will, to the extent it may lawfully do so, permit Team to litigate in any such proceedings for the purpose of seeking and obtaining a separate award for damage to the Removables, the value of Team's interest, and damage to Team's business. In no event will City voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the value of Team's interest, and damage to Team's business without the written consent of Team, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if as a result of any condemnation, an Unacceptable Condition exists or if the damage caused thereby occurs during the last three (3) years of the Term, City or Team may terminate this Agreement by providing written notice to the other Party hereto to such effect whereupon this Agreement shall terminate as of the date set forth in such notice and City and Team shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement. The provisions of this Article XII shall survive the termination of this Agreement.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Amendments, Changes and Modification. No amendment, change, addition to or waiver of any of the provisions of this Agreement shall be binding upon the Parties hereto unless in writing signed by an Authorized Representative of Team and an Authorized Representative of City.

Section 13.2 Applicable Law; Venue. The Agreement shall be governed exclusively by the provisions hereof and by the applicable Governmental Rules of the State of North Carolina, without giving effect to the principles of conflicts of law. Venue for any proceeding to enforce this Agreement shall be in Gaston County, North Carolina, or the United States District Court for the Western District of North Carolina. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

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Section 13.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the Term, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

Section 13.4 Notices and Demands. Any notices or other communications required or desired to be given to the other Party hereto shall be given in writing and delivered by courier, overnight delivery service, facsimile transaction or through the U.S. postal service, postage prepaid and by certified mail, return receipt requested, at the following addresses:

To City: City of Gastonia
181 S. South Street
Gastonia, NC 28053
Attention: City Manager

and

City of Gastonia
181 S. South Street
Gastonia, NC 28053
Attention: City Attorney

To Team: SYA Baseball, LLC
3605 Philips Highway
Jacksonville, FL 32207
Attention: Andy Kaufmann

With copy to: Lippes Mathias LLP
10151 Deerwood Park Boulevard, Building 300, Suite 300
Jacksonville, FL 32256
Attention: Benjamin T. White

Section 13.5 References. All references in this Agreement to particular Articles or sections are references to Articles or sections of this Agreement, unless otherwise indicated. Article and section headings are furnished for convenience only and do not constitute a part of this Agreement. References in the singular number in this Agreement shall be considered to include the plural, if and when appropriate, and vice versa. Any times referred to herein shall be deemed references to Gastonia, North Carolina time.

Section 13.6 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 13.7 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

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Section 13.8 Recordation. City and Team shall not record this Agreement, but both Parties agree, on request of the other, to execute a memorandum of this Agreement in recordable form and complying with applicable Governmental Rules of the State, which memorandum may be recorded by the requesting Party.

Section 13.9 Attorneys' Fees. The prevailing Party in any litigation related to this Agreement shall be entitled to recover from the non-prevailing Party the reasonable attorneys' fees and costs incurred by such prevailing Party in connection with such litigation.

Section 13.10 Time is of the Essence. Time is expressly declared to be of the essence in this Agreement.

Section 13.11 Parties' Relationship. It is the intent of the Parties, as evidenced by this Agreement, that the relationship between City and Team is solely a contractual relationship pursuant to which Team will own and operate an Atlantic League team to play its games at Stadium and Team will provide specified management and operational services necessary for the operation of the Premises as set forth herein. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, or by any third party, to create the relationship between City and Team of partnership, joint venture, or landlord and tenant (except to the extent set forth in the Exclusive Use Lease Agreement), but only a contractual relationship pursuant to which Team will act as third-party service provider having all the rights and obligations conferred upon and assumed by Team as herein set forth. The employees or agents of City may not be, nor be construed to be, the employees or agents of Team for any purpose, and the employees or agents of Team may not be, nor be construed to be, employees or agents of City for any purpose.

Section 13.12 Team's Remedial Work. Team shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by Team or any of its respective agents, contractors or subcontractors or (ii) environmental contamination from any Hazardous Materials that were introduced to the Premises on or after the Commencement Date by Team or its respective agents, contractors or subcontractors at any time ("Team's Remedial Work"). Team shall promptly inform City and all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Materials discovered by Team (or any agent, contractor or subcontractor of Team) in, on or under the Premises, promptly furnish to City any and all reports and other information available to Team concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 13.13 City's Remedial Work. City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by City or any of its agents, contractors or subcontractors, or (ii) environmental contamination from Hazardous Materials that were introduced to the Premises by the City or any of its agents, contractors, or subcontractors on or before the Commencement Date (the "City's Remedial Work"). City shall promptly inform Team and all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Materials discovered by City (or any agent, contractor or subcontractor of City) in, on or under the Premises, promptly furnish to Team any and all reports and other information available to City concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 13.14 [Reserved.]

Section 13.15 Non-Appropriation.

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13.15.1 Current Expenses. The obligations of City for payment and other monetary obligations under this Agreement are each subject to an appropriation and, accordingly, (i) shall constitute a current expense of City in the fiscal year of City to which an obligation applies and (ii) shall not constitute an indebtedness of City within the meaning of any applicable Governmental Rule. Nothing herein shall constitute a pledge by City of any funds, other than funds designated pursuant to lawful appropriations from time to time to pay any money or satisfy any other monetary obligation under any provision of this Agreement.

13.15.2 Result of Non-Appropriation. If a non-appropriation occurs in response to a request for a proposed appropriation, City shall provide Team with written notice of such non-appropriation on or before the twentieth (20th) day after the non-appropriation.

Section 13.16 Authority to Execute. Each of the Parties acknowledges that the individual who has executed this Agreement has been duly authorized to execute this Agreement.

Section 13.17 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

Section 13.18 Limitations Regarding Premises. City does not warrant its title to the Premises. This Agreement and the rights and privileges granted to Team in and to the Premises are subject to all covenants, conditions, restrictions and exceptions of record or apparent. There may be in existence contracts, licenses, tenancies and other agreements between third parties and Prior Operator related to the operation and maintenance of the Stadium that may be a part of the Bankruptcy Proceeding and may not be terminated prior to the Commencement Date. Nothing contained in this Agreement may be construed to imply the conveyance to Team of rights in the Premises that exceed those owned by the City, and the City's ability to grant the rights to Team contained in this Agreement are expressly conditioned on the conditions precedent in Section 13.23.

Section 13.19 Non-Discrimination. Each Party warrants that it is and will continue to be an Equal Opportunity Employer. Each Party covenants and agrees that it will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State.

Section 13.20 Not for Benefit of Third Parties. Except for the parties identified in Article IX, this Agreement is only for the benefit of City and Team, and no third party has any rights or claims under this Agreement. No provision of this Agreement creates a third party claim against City or Team beyond that which may legally exist in the absence of any provision of this Agreement.

Section 13.21 Other City Ordinances. This Agreement and the ordinance that authorized the execution of this Agreement do not operate to repeal, rescind, modify, or amend any ordinances or resolutions of City relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other ordinances, resolutions, or regulations not specifically set forth in the ordinance authorizing this Agreement. Notwithstanding the foregoing, if any of such ordinances or resolutions prohibit Team from operating professional baseball games at the Stadium in accordance with the terms and conditions of this Agreement, then Team (i) shall have the right to terminate this Agreement in accordance with Section 11.5 without further liability to City, and (ii) shall be entitled to the Break-Up Fee, which shall be payable by City to Team within thirty (30) calendar days of

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the date of termination of this Agreement provided, however, in no event shall the Break-Up Fee be due and payable to Team until after January 1, 2025.

Section 13.22 Surrender. Team acknowledges and understands that City's agreement to engage Team to operate the Premises as provided by this Agreement is expressly conditioned on the understanding that the Premises must be surrendered, upon the expiration, termination, or cancellation of this Agreement, in as good a condition as received, reasonable use and wear, Force Majeure events, condemnation, damage and destruction, where Team is without fault, (subject to the terms and conditions of this Agreement), excepted.

Section 13.23 Conditions Precedent. This Agreement and the obligations of City and Team hereunder shall not become effective unless and until all the following conditions are met, unless otherwise waived in writing by the Party against whom such condition is charged:

13.23.1 The Gastonia City Council must approve this Agreement, together with the Exclusive Use Lease Agreement, and all other governmental approvals must have been obtained;

13.23.2 [Reserved.]

13.23.3 [Reserved.]

13.23.4 Team shall have acquired (or have proof of a contractual right to acquire, in a form acceptable to City) a membership right to operate a professional baseball team in the League to play its Team Games at the Premises;

13.23.5 Team shall have acquired all approvals required by the League with respect to the transactions contemplated by this Agreement; and

13.23.6 City shall have delivered actual physical possession of the Premises to Team, on or prior to March 15, 2024 free and clear of all tenancies, licenses, and parties in possession of such Premises claiming through City (excluding those arising by, through or under Team and those between third parties and Prior Operator related to the operation and maintenance of the Stadium).

Section 13.24 Failure of Conditions Precedent and Team Dispossession.

13.24.1 The Parties agree to work in good faith and use commercial best efforts to assure that all of the conditions set out in Section 13.23 are satisfied. If any of the foregoing conditions are not satisfied on or before March 15, 2024, as it may be extended by mutual agreement of the Parties, either Party may terminate this Agreement upon written notice to the other, whereupon it shall be null and void and neither Party shall have any further obligations to the other under this Agreement. Upon satisfaction of the foregoing conditions, either Party may request execution of a supplement to this Agreement establishing the satisfaction of the foregoing conditions.

13.24.2 If Team takes possession of the Stadium and it is subsequently determined that the Prior Operator is legally entitled to operate and use the Stadium and the Prior Operator does in fact exercise such rights in any way which prohibits or materially restricts Team's ability to use the Stadium (such event being the "Dispossession"),

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the City shall reimburse Team for such Losses incurred by Team as a result of the Dispossession in an amount not to exceed the Breakup Limit, and provided further that such Breakup Limit shall not be due and payable to Team until after January 1, 2025. It is understood and agreed that in no event shall Team be entitled to recover from the City an amount in excess of the Breakup Limit as a result of (1) the Dispossession and (2) any Litigation Proceedings, and that the Breakup Limit is a material term of this Agreement and that establishing the Breakup Limit for the combined Losses incurred by Team due to Dispossession and Litigation Proceedings was a necessary inducement to the City entering into this Agreement.

Section 13.25 City Approvals. For each provision in this Agreement which requires the consent or approval of the City, such consent or approval shall be given by the City Manager of the City or his/her designee, except as expressly set forth herein or as may be required by applicable Governmental Rule.

Section 13.26 Survival. Article IX, Article XI and XIII shall survive termination or earlier expiration of this Agreement, together with any and all other provisions hereof which, by their terms, are intended to survive termination or earlier expiration of this Agreement.

Section 13.27 No Governmental Immunity. Nothing contained in this Agreement shall be construed as any waiver of governmental immunity to the extent that it is possessed or enjoyed by the City, provided that the City shall not be entitled to assert, nor will the City assert, governmental immunity as a bar to enforcement by Team of any of the City's covenants, obligations, or responsibilities under this Agreement.

Section 13.28 Team Assignment of Rights. Subject to any rules and regulations of the Sanctioning Association, Team agrees that if, for any reason other than a City default that continues beyond the applicable notice and cure period, Team no longer plays its home games in Gastonia during the Non-Relocation Period (for example, whether by termination of this Agreement, relocation or other event or circumstance), Team agrees to transfer or assign to City all intellectual property rights to the team name, trade dress, logo, team colors, mascot or other trademarked rights, to the extent owned by Team. The intent of this Section is to allow City to procure a successor organization to play its home games in the Stadium and create a sense of continuity and history between the successor baseball team and the previous team.

Section 13.29 Guaranty. Limited Guarantor hereby absolutely and unconditionally guarantees: (a) the full, prompt and complete payment when due, whether by declaration or otherwise, and at all times hereafter, of all sums payable by Team to the City under this Agreement and all other obligations and indebtedness now or hereafter owing by Team to the City, however or whenever created, incurred, arising or evidenced, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, or due or to become due, and any and all renewal or renewals, extension or extensions, modification or modifications thereof, and substitution or substitutions therefor, either in whole or in part; and (b) the full, prompt and complete performance and satisfaction of all covenants and obligations of Team under this Agreement or any document executed or delivered in connection therewith or relating thereto, together with any and all renewal or renewals, extension or extensions, modification or modifications thereof, and substitution or substitutions therefor, either in whole or in part (collectively, the "Liabilities"). Limited Guarantor agrees that if the Liabilities are not paid, satisfied or performed, as the case may be, by Team when due, Limited Guarantor will promptly do so. This guaranty shall remain in full force and effect until each of the Liabilities have been fully and completely paid, satisfied and performed. Limited Guarantor waives presentment, demand, dishonor, notice of dishonor, protest and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of all contracts and commitments, of the existence or creation of any of the Liabilities, or the amounts and terms thereof, and of all defaults, disputes or controversies, and of the settlement compromise or adjustment thereof. This guaranty is a guaranty of

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payment and not of collection. The liability of Limited Guarantor under this guaranty shall be primary, direct and immediate.

[Signatures Appear on Following Page]

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EXECUTED IN DUPLICATE, each of which shall be considered an original, to be effective as of the Effective Date.

CITY:

ATTEST:

Suzanne J. Gibbs, City Clerk

CITY OF GASTONIA, NORTH CAROLINA

Michael C. Peoples, City Manager

Date:

2/7/2024

Date:

2/7/2024

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Crystal Certain

Crystal Certain, Finance Director

TEAM:

ZGE, LLC

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

By: SYA Baseball, LLC
Its: Sole Member and Manager

By: Zawyer Sports, LLC
Its: Manager

DocuSigned by:

By:

Andy Kaufmann

Name: Andrew Kaufmann

Title: Sole Member of Zawyer Sports, LLC

Date: 2/7/2024

LIMITED GUARANTOR, solely for purposes of Section 13.29:

SYA Baseball, LLC

By: Zawyer Sports, LLC
Its: Manager

DocuSigned by:

By:

Andy Kaufmann

Name: Andrew Kaufmann

Title: Sole Member of Zawyer Sports, LLC

Date: 2/7/2024

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EXHIBIT A

Land

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EXHIBIT B

Exclusive Use Areas

Total Square Footage: 2,984 square feet

1. President Office
2. Utility Closet
3. Offices 1 and 2
4. Work Area
5. Ticketing Area
6. Office 3
7. Office 4
8. Office 5
9. Bathroom One
10. Bathroom Two
11. Break Room
12. Lobby
13. Team Storage
14. Safe

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EXHIBIT C

Exclusive Use Area Lease Agreement

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EXHIBIT D

Project Plans

The following link to an electronic database has been provided to Team prior to Team's execution of this Agreement containing the Project Plans as of the Effective Date: <https://ftp.gastonianc.gov/EFTClient/Account/Login.htm>.

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EXHIBIT E
League Waiver

EXHIBIT E

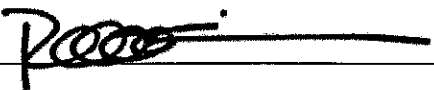
Sanctioning Association Waiver for Project Plans and Team Consent (the "Waiver")

Sanctioning Association and Team acknowledge and agree that the Stadium constructed as shown on the Project Plans does not comply with certain requirements contained in the Atlantic League of Professional Baseball Clubs, Inc. Facility Standards Procedure dated November 1, 2020 "Atlantic League Standards").

Sanctioning Association hereby permanently waives, and Team consents to, any non-compliance with the Atlantic League Standards. The execution of this Waiver by Sanctioning Association, and Team's execution of the Agreement, shall be conclusive evidence that any non-compliance of the Stadium with the Atlantic League Standards is waived by Sanctioning Association and consented to by Team.

SANCTIONING ASSOCIATION:

ATLANTIC LEAGUE OF PROFESSIONAL BASEBALL CLUBS, INC.

By: 

Name: Rick White

Title: President

Date: December 4, 2023

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EXHIBIT F

Construction Addendum

City and Team hereby mutually agree to the following changes to the Project Plans to be completed at the City's sole cost and expense:

1. Prior to June 30, 2024, City shall fully design and construct the following Stadium enhancements:
 - a. Alter the men's and women's restrooms and egress gates as required by the North Carolina building code so as to permit a capacity of approximately 8,000 occupants and as generally depicted in those plans attached hereto and incorporated herein as Exhibit F-1 ("Restroom Enhancements"). Notwithstanding anything to the contrary in the foregoing, this obligation does not include an undertaking to install any additional fixed seating.

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EXHIBIT F-1

Plans for Restroom Enhancements

The following link to an electronic database has been provided to Team prior to Team's execution of this Agreement containing the Plans for Restroom Enhancements as of the Effective Date: <https://ftp.gastonianc.gov/EFTClient/Account/Login.htm>.

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EXHIBIT G

[Reserved]

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EXHIBIT H

FF&E Addendum

City and Team hereby mutually agree that the following additional equipment, systems, facilities, features and amenities shall be part of the Minimum Project Requirements at the City's sole cost and expense. All items are subject to Team's approval prior to City's acquisition as to type, model and brand, such approval not to be unreasonably withheld, conditioned or delayed:

1. Three (3) desks
2. Nine (9) chairs
3. One (1) mobile concert stage, type SL-260 or equivalent, including associated power cables, sound system, lights, microphones and microphone stands, all of which are owned by City and will be available for City use at other locations when not needed by Team at the Stadium.
4. 4,000 folding chairs
5. One (1) forklift
6. One (1) utility trailer, to the extent not already included in the FF&E pre-dating this FF&E Addendum
7. Twenty (20) aluminum bleachers
8. As needed, additional trash cans in excess of those already included in the FF&E pre-dating this FF&E Addendum not to exceed one hundred (100) fifty (50)-gallon trash cans
9. Two (2) Wii golf and two (2) baseball games
10. Two (2) outdoor pool tables
11. Two (2) ping pong tables

EXHIBIT I

Capital Repair, Maintenance and Improvements Schedule

Future Years 2024 – 2029: No major capital anticipated other than small miscellaneous items.

Future Years 2032 – 2034:

- Kitchen related equipment, grills, cookers, reach-in coolers, keg coolers, ovens, etc.
- IT related upgrades, upfits, and replacement.
- Carpet replacement (Premium Level / Admin areas).
- Walk-in freezer / refrigerator (compressors, motors, etc.).
- HVAC replacements (motors, compressors, etc.)

Future Years 2034 – 2039:

- Field turf.
- Tables, chairs, etc.
- Stadium lighting components.
- Rolling stock (forklift, gator, etc.).
- Elevator components.
- Audio / Visual: TVs, sound system components, etc.
- Overhead fans, heaters, etc.

NOTES:

1. Actual capital item replacements / upfits and equipment life cycles can be more or less depending upon usage, routine maintenance, preventative maintenance initiatives, and other factors directly related to said life cycles.

EXHIBIT B

Exclusive Use Areas Spaces (the “Demised Premises”)

Total Square Footage: 2,984 square feet

1. President Office
2. Utility Closet
3. Offices 1 and 2
4. Work Area
5. Ticketing Area
6. Office 3
7. Office 4
8. Office 5 (shown as “Admin Storage” on Exhibit B-1)
9. Bathroom One
10. Bathroom Two
11. Break Room
12. Lobby
13. Team Storage
14. Safe

EXHIBIT B-1

Exclusive Use Areas Spaces (the “Demised Premises”)

[DRAWING TO BE ATTACHED]



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Pencilum Studio PLLC II
1572 Indiana Ave. SE
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P: 404.525.7030 | F: 404.525.7040
www.pencilumstudio.com

LABELA
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Labela Associates, PC
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Atlanta, GA 30309

Millennium
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www.landscapearchitects.com



PERMIT SET

GASTONIA FUSE COMPLEX
City of Gastonia

Project No. 1002719
Revision # 1002719-01

NO.	DATE	DESCRIPTION
1	10/20/2019	ISSUED FOR PERMIT
2	11/15/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
3	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
4	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
5	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
6	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
7	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
8	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
9	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES
10	12/10/2019	REVISION: SEE SHEET A100.1 FOR CHANGES

KEY: P1, A1



ART PLAZA LEVEL - QUADRANT PLAN - QUADRANT A

A100.1



A01 ART PLAZA LEVEL QUADRANT A

