

USE AND OPERATING AGREEMENT

This Use and Operating Agreement ("Agreement") is made and entered into this 13th day of December, 2016, by and between the **CITY OF FAYETTEVILLE, NORTH CAROLINA** ("City"), a municipal corporation, incorporated under the laws of the State of North Carolina, and **FAYETTEVILLE BASEBALL CLUB LLC** ("Operator"), a limited liability company organized and existing under the laws of the State of North Carolina (City and Operator are sometimes referred to herein individually as a "Party" and collectively as the "Parties");

WITNESSETH:

WHEREAS, the Parties entered into that certain Memorandum of Understanding between the City of Fayetteville, North Carolina, and Houston Baseball Partners, LLC, approved by Fayetteville City Council on August 18, 2016, and dated August 24, 2016, to negotiate in good faith this Use and Operating Agreement for the construction and operation of a minor league baseball stadium in the City, subject to certain terms and conditions set forth therein (unless otherwise mutually agreed);

WHEREAS, Operator wishes to locate and operate a Class A - Advanced minor league baseball team in the City, subject to approval by Sanctioning Association (as defined herein); and

WHEREAS; City and Operator desire that City construct a baseball stadium which will have the capacity for approximately 4,500 – 5,500 attendees for use in connection with the Class A – Advanced minor league baseball team to be located and operated in the City by Operator and for other sporting and entertainment events, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the payments herein required to be made by Operator, and the covenants and agreements hereinafter contained to be kept and performed by City and Operator, City agrees to authorize Operator to control, manage, and operate the Premises (as defined below) for the term and upon and subject to the terms and conditions hereinafter stated:

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 Operator, 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, Operator. 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) "Agreement Year" means each consecutive twelve (12) month period commencing on the Commencement Date and thereafter on each anniversary of the Commencement Date.
- (e) "Architect" means Populous Architects, P.C. or such other architect selected by the City after consultation with Operator and in accordance with City's selection process, including any bidding process as may be required by Governmental Rule, to design the Project Improvements.
- (f) "Architect's Contract" means the services contract between City and the Architect for, among other things, the design of the Project Improvements, the preparation of the Project Plans, and construction administration services, as the same may be amended, supplemented, modified, renewed, extended or replaced from time to time with the consent of City and Operator.
- (g) "Authorized Representatives" means such officers, employees or other representatives of City and Operator, respectively, authorized by such party to act on its behalf under Section 14.14 of this Agreement as certified to the other in writing.
- (h) "Baseball Stadium" means the baseball stadium to be constructed on the Land.
- (i) "Board of Advisors" shall have the meaning ascribed to it in Section 13.1.
- (j) "Business Day" means any day which is not a Sunday, a Saturday, or a legal holiday of City.
- (k) "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.
- (l) "Capital Repair, Maintenance and Improvements" shall mean any and all design, permitting, labor, repairs, maintenance, materials or other improvements related to any Project Improvements beginning on the date of Substantial Completion, related to the Minimum Personal Property Requirements or the Premises and reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or any other component of the Premises, 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

downtown neighborhoods; provided, however, that in determining compliance with any "Comparable Facilities" standard or requirement set forth in this Agreement (i) 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 and (ii) if the standards applicable to such stadiums or substantially similar quality stadiums taken as a whole should materially change during the Term in such a manner as to result in a material variation in the manner in which the stadiums had previously been operated or maintained and such change has a material and adverse impact on Operator's costs to operate and maintain the Premises, then Operator shall not be required to adopt such increased standards.

- (v) "Controversy" shall have the meaning ascribed to it in Section 14.14.
- (w) "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.
- (x) "Dispute" shall have the meaning ascribed to it in Section 14.14.
- (y) "Effective Date" shall have the meaning given it in the header of this Agreement.
- (z) "Environmental Law" means any applicable federal, state, or local Governmental Rule relating to protection of natural resources or the environment.
- (aa) "Event of Default" shall have the meaning ascribed to it in Article XI.
- (bb) "Exclusive Use Areas" shall mean the areas that are identified in Exhibit "F" attached hereto and made a part hereof which are reserved for the exclusive use of the Operator during the Term. In addition, "Exclusive Use Areas" shall include the "home" locker room each year of the Term for the period commencing at least two (2) weeks prior to the beginning of the first Team Game scheduled to be held at the Baseball Stadium and ending one (1) week after the conclusion of the last Team Game. The City and Operator intend that the City and Operator will execute the Exclusive Use Lease Agreement prior to the Commencement Date.
- (cc) "Exclusive Use Lease Agreement" shall mean that certain Exclusive Use Lease Agreement to be entered by and between City and Operator granting Operator a leasehold interest in the Exclusive Use Areas, substantially in the form attached hereto as Exhibit "G".
- (dd) "Final Completion" means the final completion of all aspects of such work and improvements in accordance with all Governmental Rules and in accordance with the Minimum Project Requirements, including, but not limited to, the completion of all punch-list items. Substantial Completion of such work and improvements is a prerequisite to Final Completion of the same.
- (ee) "Final Notice" shall have the meaning ascribed to it in Section 11.5.
- (ff) "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

short of such replacement); (c) requirements imposed by the Sanctioning Association after the date of Substantial Completion and applicable to the Baseball Stadium; (d) modifications required by applicable Governmental Rule; (e) structural maintenance and repairs; or (f) Functional Obsolescence any equipment, fixture, furnishing, facility, surface, structure or any other component at the Premises; or (g) 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 adversely impact its use or the cost to maintain the Premises, and to prevent Physical Obsolescence of any asset (excluding Maintenance obligations of the Operator pursuant to Section 7.1). The term "Capital Repair, Maintenance and Improvements" shall not include (i) any 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) Operator's Remedial Work, (vi) maintenance or repairs on any property, including Removables, owned by Operator, or (vii) the Premises as initially constructed.

- (m) "Capital Repair, Maintenance and Improvements Schedule" means the schedule of Capital Repair, Maintenance and Improvements described on Exhibit "E" attached hereto and made a part hereof.
- (n) "City" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (o) "City Default" shall have the meaning ascribed to it in Section 11.1.
- (p) "City Event(s)" shall have the meaning ascribed to it in Section 7.16.
- (q) "City's Contribution" shall mean the City's obligation to pay up to \$33,000,000.00 toward the payment of Project Costs. Notwithstanding anything herein to the contrary, the Parties understand that any Project Costs exceeding \$33,000,000.00 shall require the approval of City unless paid for by Operator.
- (r) "City's Remedial Work" shall have the meaning ascribed to it in Section 14.13.
- (s) "City's Share of the Naming Rights Revenue" shall have the meaning ascribed to it in Section 7.10.
- (t) "Commencement Date" means the first to occur of (i) the thirtieth (30th) day following the Substantial Completion date or (ii) the date on which Operator opens the Baseball Stadium for an open to the public general admission event (excluding pre-opening tours and events for charities, suite holders or season ticket holders). Occurrence of the Commencement Date prior to the Substantial Completion date as contemplated by this definition shall in no event be construed to release or waive (i) City's obligations hereunder to cause Substantial Completion of the Project Improvements Work to occur or (ii) any of Operator's rights and remedies hereunder in the event the Substantial Completion date does not occur or does not occur on or before the Target Substantial Completion Date.
- (u) "Comparable Facilities" means Class A minor league baseball stadiums constructed in the five (5) years prior to the Effective Date within urban

under this Agreement are actually delayed or prevented thereby: Acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, 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 of the party claiming inability to perform due to such cause.

- (gg) "Functional Obsolescence" and "Functionally Obsolete" means any portion or component of the Project Improvements (and, for the avoidance of doubt, not including Removables or any other property owned by Operator) set forth in the Minimum Project Requirements that is not dysfunctional (and thus not Physically Obsolete), but is no longer reasonably optimal for its intended purposes, by reason of (i) material innovations, inventions or improvements in the design, manufacture, operation or production of comparable equipment, systems or facilities which render more efficient, more satisfactory or more technologically advanced service, or (ii) business patterns or practices (such as methods for selling tickets or admitting patrons to the Baseball Stadium) that require the modification or addition of equipment or facility.
- (hh) "Governmental Authority" means any federal, state or local government, agency, court, commission or other body with jurisdiction over the matter in question.
- (ii) "Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.
- (jj) "Guaranty Agreement" is the agreement set forth in Exhibit "H" attached hereto and made a part hereof.
- (kk) "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.
- (ll) "Land" means the land described on Exhibit "A" attached hereto and made a part hereof.
- (mm) "Operator" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (nn) "Operator Default" shall have the meaning ascribed to it in Section 11.3.
- (oo) "Operator Event(s)" shall mean any event that is conducted or sponsored, organized or scheduled by the Operator, its licensee or designee, but not including Team Games or City Events.
- (pp) "Operator Requested Modifications" shall have the meaning ascribed thereto in Section 3.6.

- (qq) "Operator's Remedial Work" shall have the meaning ascribed to it in Section 14.12.
- (rr) "Maintenance" shall have the meaning ascribed to it in Section 7.1.
- (ss) "MiLB" or "Minor League Baseball" means the National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball.
- (tt) "Minimum Concession Improvements Requirements" means the interior and exterior improvements, build out and equipment required for concession operations at the Baseball Stadium in a manner consistent with Comparable Facilities which are described in the Project Plans and, whether or not shown on such Project Plans, the items described on Exhibit "D" attached hereto and made a part hereof. The Minimum Concession Improvement Requirements shall be subject to Operator's approval.
- (uu) "Minimum Personal Property Requirements" means all reasonable improvements, fixtures, equipment, systems, facilities, features and amenities necessary to operate, repair, and maintain the Project Improvements in a manner consistent with Comparable Facilities and, whether or not shown on such Project Plans, described on Exhibit "B" attached hereto and made a part hereof. Minimum Personal Property Requirements shall not include equipment intended for on-field use solely by the members of the Class A - Advanced minor league baseball players in connection with the playing of baseball games, warm-ups, practices, training rooms or weight training activities. The Minimum Personal Property Requirements shall be subject to Operator's approval.
- (vv) "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 and the Minimum Concession Improvements Requirements, the Project Construction Documents, all applicable Governmental Rules, the Project Plans and the requirements of the Sanctioning Association, including, without limitation, the Professional Baseball Agreement Minimum Facility Standards for Class A baseball stadiums and Major League Rule 58.
- (ww) "Minimum Stadium Requirements" means all improvements, fixtures, equipment, systems, facilities, features and amenities in a manner consistent with Comparable Facilities which are described in the Project Plans and, whether or not shown on such Project Plans, the items described on Exhibit "C" attached hereto and made a part hereof. The Minimum Stadium Requirements shall be subject to Operator's approval.
- (xx) "Mortgage" shall have the meaning ascribed to it in Section 10.5.
- (yy) "Naming Rights" shall have the meaning ascribed to it in Section 7.10.
- (zz) "Operating Expenses" shall mean the costs to operate, repair, and maintain the Project Improvements.

- (aaa) "Operating Fee" shall have the meaning ascribed thereto in Section 4.3.
- (bbb) "Parking Area" means 100 parking spaces made available by City to Operator as follows:
- (i) Thirty (30) spaces for Team players and coaches. These spaces shall be in a lot or deck proximate to the Premises and available during hours that the Team will be at the Premises for Team Games, practices and/or preparation therefore. City will also provide spaces for players and coaches to park their cars during road trips, though those spaces may be different from and less proximate than the spaces provided players and coaches for Team Games, practices and/or preparation therefore;
 - (ii) Twenty (20) spaces for full-time employees. These spaces will be available during regular working hours as well as during Team Games and Operator Events. These spaces will be within one-fourth (1/4) of a mile from the Premises; and
 - (iii) Fifty (50) spaces for game day employees and other usage by Operator. These spaces shall be available during Team Games (including hours of pre-game preparation and post-game clean-up) and shall be one-fourth (1/4) of a mile of the Premises.
- (ccc) "Person" means any association, individual, corporation, governmental entity, partnership, joint venture, business association, estate or any other organization or entity.
- (ddd) "Physical Obsolescence" and "Physically Obsolete" means any Project Improvements (and, for the avoidance of doubt, not including Removables or any other property owned by Operator) which does 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 Operator's failure to perform its 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 Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).
- (eee) "Premises" means (i) the Land; (ii) the Baseball Stadium; and (iii) any other buildings, structures, additions, improvements, equipment, fixtures and facilities directly related to the Baseball Stadium, and all appurtenances to the same, which are in the future constructed on the Land, pursuant to the terms and conditions herein.
- (fff) "Prime Rate" means the per annum rate of interest from time to time published by the *Wall Street Journal* as the "prime rate".

- (ggg) "Priority Dates for City Events" shall have the meaning ascribed to it in Section 7.16.
- (hhh) "Project" means the Baseball Stadium, together with all the other Project Improvements.
- (iii) "Project Budget" shall mean the total Project budget, as from time to time amended, for all Project Costs, broken down in reasonable detail by "hard" and "soft" cost categories, including, but not limited to, separate line items for debt service requirements (net of earned interest on invested funds), the amount payable under each of the Project Construction Documents, allowances, contingencies, and pre-opening expenses. City shall provide Operator the opportunity to review and comment on the Project Budget prior to finalization thereof and City shall consider, in good faith, any requests or suggestions made by Operator with respect thereto. Notwithstanding the foregoing, in no event shall the Project Costs fall below \$31,000,000.00 without the prior approval of Operator.
- (jjj) "Project Change Order" shall have the meaning ascribed to it in Section 3.9.
- (kkk) "Project Construction Contract" means the construction contract between City and the Project Contractor for the construction of the Project Improvements, as the same may be amended, supplemented, modified, renewed, extended or replaced from time to time with the consent of City and Operator.
- (lll) "Project Contractor" means the general contractor for the Project selected by the City after consultation with Operator and in accordance with City's selection process, including any bidding process as may be required by Governmental Rule.
- (mmm) "Project Construction Documents" means any and all contracts, documents or other instruments entered into by or on behalf of City for the design, management, monitoring or performance of the Project Improvements Work, including, but not limited to, the Architect's Contract, Project Plans, and Project Construction Contracts.
- (nnn) "Project Costs" means all of the costs incurred or to be incurred on behalf of City in order for City to fulfill its obligations under this Agreement to cause Final Completion of the Project Improvements Work, including, but not limited to: (a) all amounts payable under any of the Project Construction Documents; (b) costs for project management services; (c) all other costs incurred by City and paid to third parties to fulfill its obligations under the Agreement and Project Construction Documents 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, including Project Change Orders approved by Operator; (d) all other costs in connection with the operation and maintenance of the Land prior to the Commencement Date; (e) the following City development costs and fees: structural steel inspection fee, oversize fee, regional detention fee, and water meter fee, and (f) and all insurance premiums on all policies of insurance

required to be carried by City under this Agreement. Notwithstanding anything herein to the contrary, City agrees to fund the City's Contribution toward the Project Improvements. The term "Project Costs" excludes, however, costs not directly related to the fulfillment of City's obligations under this Agreement to cause Final Completion of the Project Improvements Work, including: (i) any costs paid from the proceeds of insurance recoveries; (ii) land acquisition costs, including all remediation and abatement costs arising from removal of Hazardous Materials or addressing environmental conditions; (iii) costs to obtain necessary easements, rights of way, or other infrastructure improvements; (iii) all financing costs incurred by City, and/or on behalf of City, with respect to the Project including any reserve funds or capital or repair accounts; or (iv) legal costs, accountants, attorneys, and other consultants.

- (ooo) "Project Improvements" means the Baseball Stadium and all other improvements, fixtures, equipment, systems, facilities, features, amenities and appurtenances to be 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.
- (ppp) "Project Improvements Work" means the design, development, construction, furnishing, equipping and placement in service and Final Completion of the Project Improvements at and within the Land in accordance with the Minimum Project Requirements.
- (qqq) "Project Plans" means individually and collectively, the concept drawings, schematic drawings, design development drawings and detailed working drawings and specifications for the Project Improvements (including the Minimum Project Requirements) prepared by the Architect in the form approved by City after consultation with Operator.
- (rrr) "Removables" shall have the meaning ascribed thereto in Section 5.4.
- (sss) "Sanctioning Association" means Major League Baseball, its entities or affiliates, the Carolina League, and the National Association of Professional Baseball Leagues, Inc., and their respective successors, if any, and any replacement or additional baseball association that Operator certifies to City is a nationally recognized baseball association that sanctions professional baseball teams affiliated with Major League Baseball.
- (ttt) "Seat Rights" shall have the meaning ascribed thereto in Section 7.10.
- (uuu) "State" means the State of North Carolina.
- (vvv) "Substantial Completion" (or "Substantially Complete") means the stage in the progress of the Project Improvements Work when the Project Improvements Work is (i) sufficiently complete in accordance with the Minimum Project Requirements so that Operator can occupy and use the Project Improvements for their intended purpose, (ii) the Minimum Project Requirements and all other improvements, equipment and systems included in the Project Improvements are operational as designed and scheduled, (iii) all designated or required governmental inspections and certifications have been made and posted, (iv) the

Project Contractor's instruction of Operator's designated personnel in the operation of equipment and systems has been completed, (v) all final finishes contemplated by the Minimum Project Requirements are in place and (vi) the only Project Improvements Work that remains is minor in nature, has been identified on a punch list approved by Operator, and may be completed without interfering with Operator's operation of the Premises.

(www) "Target Substantial Completion Date" shall have the meaning ascribed thereto in Section 3.5.

(xxx) "Targeted Tax" means any admission tax, parking tax, facility use tax and any other tax imposed by City not in effect as of the date hereof that either by its terms or effect of its application is not of general application but is designed to be applicable to Operator, the revenues from Operator's conduct of its business, the activities on the Premises, or Operator's personnel.

(yyy) "Team" means a minor league baseball franchise owned by Operator or its Affiliate and approved by the Sanctioning Association to play baseball in the Baseball Stadium and which has a player development contract associated with a Major League Baseball franchise.

(zzz) "Team Game(s)" shall mean all professional baseball games, including, without limitation, preseason games, exhibition games, regular season games, postseason games and any all-star game.

(aaaa) "Term" shall have the meaning ascribed thereto in Section 4.2.

(bbbb) "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 Operator to perform its obligations as required under this Agreement:

- (i) The Premises are not in compliance with rules and regulations in effect on the Effective Date of the applicable Sanctioning Association for any reason, the result of such non-compliance is that the Sanctioning Association, or its rules, prohibit Operator or its Affiliate from conducting sanctioned games or authorizes the Sanctioning Association 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; or
- (iii) The use or occupancy of thirty percent (30%) or more of any of the public seating areas, Parking 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 sixty

(60) consecutive days or ninety (90) days out of any consecutive one hundred eighty (180) day period; or

- (iv) The use or occupancy of thirty percent (30%) or more of the private suites or thirty percent (30%) 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 sixty (60) consecutive days or ninety (90) days out of any consecutive one hundred eighty (180) day period.

(cccc) "Warranty Claim" shall have the meaning ascribed to it in Section 3.3 hereto.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by City. City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (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) 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) 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 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 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, (ii) any permits required to be obtained with respect to the construction of the Project, (iii) the approval of the North Carolina Local Government Commission with respect to the issuance of any debt, and (iv) the approvals contemplated by Section 14.25.1.

- (e) To the best of City's knowledge, 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, any of the Project Construction Documents to which it is a party, or that could materially adversely affect the ability of City to perform its obligations hereunder or thereunder.

Section 2.2. Representations and Warranties by Operator. Operator makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) Operator is a limited liability company duly organized under the laws of the State and duly qualified to do business in the State, is in good standing in the State 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 Operator 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 Operator.
- (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 duly authorized officers of Operator, and constitute valid and binding obligations of Operator, enforceable against Operator in accordance with their respective terms.
- (c) There is no litigation now pending or, to Operator's knowledge, threatened, challenging the corporate existence of Operator and there is no pending, or to Operator'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 Operator or the ability of Operator 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 Operator or any of its Affiliates, which violation would materially and adversely affect the ability of Operator to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; (ii) 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 Operator is a party or by which Operator 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 Operator under the term of any instrument or agreement, which conflict, breach, default or encumbrance would materially and adversely affect the ability of Operator to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (iii) violate the charter, articles of incorporation or bylaws of Operator. 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 Operator 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, (ii) any permits required to be obtained with respect to the construction of the Project and (iii) the approvals contemplated by Section 14.25.1.

- (e) Operator has duly and validly obtained all material certificates, licenses and permits from all public authorities, both federal and state, required as of the Effective Date to enable Operator to carry on its business as it is now conducted and to enter into this Agreement.
- (f) To the best of Operator's knowledge, 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 Operator under this Agreement or that could materially adversely affect the ability of Operator to perform its obligations hereunder.
- (g) Operator or its Affiliate will secure the right to locate and operate a Class A - Advanced MiLB team in City, approved by a Sanctioning Association that is affiliated with a major league baseball team; Operator or its Affiliate shall locate such team in City and play its regular season home games, postseason home games in which Team is eligible to participate and any all-star games awarded to Operator by the Sanctioning Committee at the Baseball Stadium (subject to temporary changes in "home" vs. "away" status as may be directed from time to time by the Sanctioning Association).

ARTICLE III PROJECT DEVELOPMENT

Section 3.1. Project Design. City will enter into the Architect's Contract and, except as set forth in Section 3.6, shall be solely responsible for the payment of all fees and reimbursable expenses due and payable from time to time under the Architect's Contract. Subject to Force Majeure, City shall be responsible for the timely completion of the design of the Project. The Project Plans shall be in compliance with applicable written rules and regulations of the Sanctioning Association in effect on the Effective Date and permit Final Completion of the Project Improvements Work for an amount not to exceed City's Contribution. City shall provide Operator the opportunity to review and comment on the Architect's Contract prior to execution by City of the Architect's Contract and City shall consider, in good faith, any requests or suggestions made by Operator with respect thereto. Operator agrees to assist

City with respect to ensuring such compliance with the applicable rules and regulations of the Sanctioning Association.

Section 3.2. Project Improvements. City agrees to fund the City's Contribution toward the Project Improvements. Should Operator require any changes to the Minimum Project Requirements or any changes to Project Plans and such changes result in the Project Costs exceeding City's Contribution, unless otherwise mutually agreed, Operator agrees to be solely responsible for the payment of such amounts in excess of City's Contribution, and shall timely deposit with City in such manner as City and Operator shall determine such additional amounts for the purpose of funding the Project Improvements. City shall enter into a Project Construction Contract for the Project Improvements Work for the Project Improvements, in accordance with the Minimum Project Requirements. City shall provide Operator the opportunity to review and comment on the Project Construction Contract prior to execution by City of the Project Construction Contract and City shall consider, in good faith, any requests or suggestions made by Operator with respect thereto. The Project Plans (including detailed plans and specifications) shall be developed and prepared by the Architect at City's expense and direction and in cooperation with Operator and submitted by City to Operator for its review and approval, which approval will not be unreasonably withheld, conditioned or delayed (it being understood, however, that Operator may only withhold its approval to the extent the Project Plans are not in compliance with the applicable written rules and regulations of the Sanctioning Association or do not include all of the Minimum Project Requirements). In addition, City shall consider, in good faith, any requests or suggestions made by Operator with respect to the Project Plans. Operator shall have thirty (30) days to review the Project Plans and if they do not object within such time, they are deemed approved. In the event there is a dispute between City and Operator regarding the Project Plans, provided they (i) are in compliance with applicable written rules and regulations of the Sanctioning Association in effect on the Effective Date and (ii) include all of the Minimum Project Requirements, City shall have the final approval of the Project Plans. Any changes to the final Project Plans shall be subject to the prior approval of City.

Section 3.3. Contract Requirements and Warranty Claims. City shall ensure that the Project Construction Contract for the Project Improvements and all subcontracts for the supply of equipment or systems to the Project Contractor for the Project Improvements shall provide for the assignment of all warranties, maintenance agreements thereunder to Operator and give Operator the independent right to enforce the same as an express third party beneficiary thereunder, and permit Operator to use (but not own) any plans and specifications to which City is then entitled pursuant to any such contracts. City covenants and agrees that without the prior consent of Operator, which consent shall not be unreasonably withheld, conditioned or delayed, City will not (i) voluntarily, involuntarily, by operation of law or otherwise, sell, assign or transfer any of the maintenance and warranty contracts to any person other than Operator; (ii) terminate any of the maintenance and warranty contracts; (iii) waive or release any of the respective obligations of any person under any of the maintenance and warranty contracts; or (iv) in any way voluntarily modify or amend any of the maintenance and warranty contracts. Further, City agrees that Operator is a third-party beneficiary of the warranty contracts and hereby conveys, transfers and assigns to Operator the nonexclusive right to enforce any and all of the respective obligations of any person under the maintenance and warranty contracts, including, but not limited to, any and all representations and warranties thereunder. City and Operator shall cooperate with each other regarding the enforcement of any and all warranty and similar claims under any and all contracts or other agreements with third parties for the design, construction, supply, alteration, improvement, maintenance or renewal of the Project Improvements and Premises, including, but not limited to, any and all such claims under the Project Construction Contract (each a "Warranty Claim"). All recoveries from any such Warranty Claims shall be applied, first, to the cost of collection, second, on a proportional basis to City and Operator to (x) reimburse Operator for the cost and expenses incurred in order to repair, restore, renew or replace any part of the Project Improvements or Premises as to which such Warranty Claim

relates and which have not been paid out of the Capital Repair, Maintenance and Improvements Account and (y) to reimburse City for amounts paid by City as City's expenses relating to such Warranty Claim.

Section 3.4. Access to the Project. Operator and its agents, contractors, licensees, and concessionaires shall have the right of access at normal construction hours during the construction period, for themselves and their authorized representatives, to the Land and the Project Improvements and all portions thereof for the following purposes, without charges or fees or the commencement of payment of Operating Fees under this Agreement, provided Operator and all such agents, contractors, licensees, and concessionaires (i) notify City at least forty-eight (48) hours in advance of such proposed entry, (ii) do not hinder or interfere with the Project Improvements Work or the activities of City's contractors, (iii) take such reasonable protective precautions or measures as City or the Project Contractor may reasonably request, given the stage of the Project Improvements Work at the time of such entry; and (iv) comply with the provisions of the Project Construction Contract relating to City's rights to access: (a) conducting inspections for purposes of determining compliance with this Agreement; (b) construction and installation of any improvements permitted by the Agreement so long as, in either case, Operator does not unreasonably interfere with the construction of the Project Improvements Work by the Project Contractor; (c) preparation and use of its offices for ticket sales and promotions and other normal and customary business, and equipping locker room and related facilities for Operator; (d) installation of any additional fixtures or equipment desired by Operator; (e) tours of the Land and Project Improvements sponsored by Operator; and (f) the erection and maintenance of billboards and signs during the construction period consistent with Operator's Naming Rights and advertising rights under this Agreement. Prior to Operator starting any work on the Premises, it shall obtain and cause all of its contractors and subcontractors to obtain insurance in amounts and upon terms reasonably acceptable to City (but not exceeding the requirements City imposes on contractors working on City property). Subject to compliance with City's ordinances related to occupancy of buildings, Operator shall have the right to take possession of its offices (subject to the terms hereof) and use the same for the conduct of Operator's normal and customary business. Any entry, access or occupancy provided to Operator pursuant to the terms of this Section 3.4 shall not be deemed to be acceptance of the Project Improvements Work or commence the Term. Operator shall be responsible for all utility and other costs associated with taking possession of its offices. Operator shall cooperate with City in all aspects of the development and construction of the Baseball Stadium and not unreasonably hinder, delay or interfere with the development and construction of the Project Improvements.

Section 3.5. Schedule for Substantial Completion and Liquidated Damages. City shall cause Substantial Completion of the Project Improvements Work to occur, or shall have obtained a temporary certificate of occupancy for the Project Improvement Work (a "Temporary CO") on or before twenty (20) days prior to the first Team Game of the 2019 Carolina League season (the "Target Substantial Completion Date"). In addition, City agrees to use commercially reasonable efforts to include in the Project Construction Contract a provision whereby the Project Contractor agrees to pay liquidated damages (i) in the amount of \$1,000 per day for each day beyond the Target Substantial Completion Date that the Project Contractor fails to achieve Substantial Completion, and (ii) in the amount of \$50,000 for each scheduled regular season baseball game which Operator is unable to conduct in the Project Improvements due to the failure of the Project Contractor to have achieved Substantial Completion on or before the Target Substantial Completion Date, except, in each case, to the extent that the failure to achieve Substantial Completion on or before the Target Substantial Completion Date is the result of Operator Requested Modifications or is otherwise caused by Operator or its representatives or a Force Majeure. For purposes hereof, Operator will be deemed to be unable to conduct its first scheduled baseball game if Substantial Completion has not been achieved or a Temporary CO has not been obtained at least fourteen (14) days prior to the scheduled date of such opening or subsequent game and the \$50,000 liquidated damages shall be due and payable for each such game unless the game is in fact played at the Baseball Stadium. Notwithstanding anything in this Agreement, the Project Construction

Documents or any other agreements related hereto to the contrary, Operator agrees that Operator's sole remedy for any delay in Substantial Completion of the Project Improvements Work beyond the Target Substantial Completion Date is to obtain the liquidated damages from the Project Contractor; provided, however, that if City uses commercially reasonable efforts but fails to include the liquidated damages amount above in the Project Construction Contract, Operator is unable to play any of its scheduled regular season home baseball games at the Baseball Stadium as a result of the failure of the Project Contractor to have achieved Substantial Completion on or before the Target Substantial Completion Date, then the Operating Fees for such year shall be reduced on a pro-rated basis based on the number of such home baseball games that were not able to be played at the Baseball Stadium, provided that in the event Substantial Completion occurs after the Target Substantial Completion Date, but prior to the first scheduled regular season home baseball game, Operator shall use commercially reasonable and good faith efforts to cause such baseball game to be played at the Baseball Stadium. For the avoidance of doubt, Operator acknowledges and agrees that in no event shall City be responsible for the payment of any liquidated damages contemplated by this Section 3.5 or the Project Construction Contract.

Section 3.6. Operator Requested Modifications. In the event that Operator determines that it desires any additions or modifications to the Minimum Project Requirements or any changes to Project Plans ("Operator Requested Modifications"), Operator shall submit a written request along with plans and specifications for the Operator Requested Modifications to City and City shall consider, in good faith, any such requests. In the event that City accepts any Operator Requested Modification and such Operator Requested Modification results in an increase in the Project Cost over and above City's Contribution, unless otherwise mutually agreed, such increase shall be the sole responsibility of Operator, and it will be the sole responsibility of Operator to timely pay the cost of the Operator Requested Modification. After confirming Operator's commitment to pay such increase, City shall direct the Project Contractor to perform the same.

Section 3.7. Performance and Payment Bonds. Prior to Operator commencing any construction project estimated to cost greater than \$500,000, Operator shall provide to City for its approval a statutory form payment and performance bond for such project.

Section 3.8. Change Orders. No changes in plans or specifications shall be made to the Project or the Minimum Project Requirements unless agreed to in a written change order ("Project Change Order") approved in writing by City and Operator, provided, that Operator may not withhold its approval to any such change to the Project unless such change results in the Project's failure to comply with the applicable written rules and regulations of the Sanctioning Association or to include all of the Minimum Project Requirements. City shall consider, in good faith, any requests or suggestions made by Operator with respect to any Project Change Order. Unless otherwise agreed with respect to any specific Project Change Order, the Party submitting the proposed Project Change Order shall be responsible for all costs relating to the preparation of such Project Change Order.

ARTICLE IV ENGAGEMENT OF THE OPERATOR

Section 4.1. Engagement of the Operator.

- 4.1.1** In consideration of and pursuant to the covenants, agreements, and conditions set forth herein, the City hereby engages the Operator, and the Operator hereby accepts such engagement, to control, manage, operate and promote the Premises, with the right to exploit 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, City will give and deliver to Operator the exclusive right to control, manage,

operate and promote the Premises the Premises free of all tenancies, licenses, and parties in possession of such Premises (other than those arising by, through or under Operator) and free of Hazardous Materials in concentrations that exceed applicable standards under Environmental Law. City shall make the Premises available to Operator on the Commencement Date and shall ensure that the Premises are in good condition and repair and are in a clean and orderly condition.

4.1.2 City covenants for the Term that Operator, upon paying the Operating Fees and upon keeping, observing and performing the terms, covenants and condition of this Agreement to be kept, observed and performed by Operator, including, without limitation, the terms, covenants and conditions set forth in Article VI of this Agreement, shall and may occupy, use, and enjoy the Premises without interference by or from City, subject only to the terms and provisions set forth herein.

4.1.3 City covenants that Operator's rights to the Premises arising under this Agreement shall be senior and prior to any lien, lease or other encumbrance existing, created or arising in connection with the acquisition, development, construction or financing of the Premises or the Project Improvements Work or any portion thereof. The foregoing does not extend to any liens, leases or encumbrances arising by, through or under Operator or its agents acting in such capacity.

Section 4.2. Term. The term (the "Term") of this Agreement shall commence upon the Commencement Date and shall continue for a period of thirty (30) years thereafter, unless earlier terminated in accordance with the terms hereof; provided, however, that if the expiration date of the Term shall fall during a baseball season, then the Term shall be automatically extended to the day that is thirty (30) days after the last home game (regular or postseason) of such season and the Operating Fee shall be prorated for such extension period based on the Operating Fee then in effect for such final Agreement Year.

Section 4.3. Operating Fees.

4.3.1 It is the intent of the Parties that the City have a secure and definite annual revenue stream from the operations of the Project. The amounts agreed to in this Section shall be a combination of the lease payments made by the Operator under the Exclusive Use Lease Agreement and the Operating Fee pursuant to this section.

4.3.2 Whereas the exact amount of the lease payments due and payable under the Exclusive Use Lease Agreement cannot be accurately determined until final plans and construction drawings for the Project are agreed to by both Parties, the exact nature and square footage of the Exclusive Use Areas is determined, and a market rate lease payment calculated and agreed to by both parties for the Exclusive Use Areas, the Parties agree that the combined annual payments that the Operator shall pay to the City shall be an annual Operator Fee for each agreement Year during the base Agreement Term, plus the amount agreed to in the Exclusive Use Lease Agreement, such that the total of the two payments shall equal the following amounts:

Agreement Years 1 – 5	- \$250,000.00 per Agreement Year
Agreement Years 6 – 10	- \$275,000.00 per Agreement Year
Agreement Years 11 – 15	- \$300,000.00 per Agreement Year
Agreement Years 16 – 20	- \$325,000.00 per Agreement Year
Agreement Years 21 – 25	- \$350,000.00 per Agreement Year

- 4.3.3** Operator shall pay to City on or before June 1st of each Agreement Year the Operator Fee portion of the payment as calculated above, without deduction or setoff (except as otherwise expressly provided in this Agreement), at City's address provided for in this Agreement or as otherwise specified by City in writing.

Section 4.4. Permitted Uses. Throughout the Term, Operator shall occupy and use the Premises for the primary purposes of conducting its regular season home games, any postseason home games in which Team is eligible to participate and any all-star games awarded to Operator by the Sanctioning Association (including radio and television broadcasting or other transmission of same) in accordance with the rules and regulations of the Sanctioning Association. In addition to the foregoing, the permitted uses shall include the conducting of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, other baseball games and sporting events, and other similar traditional baseball functions that will encourage economic development and tourism in City; and for purposes related and incidental thereto including, without limitation, operation of restaurants and concession facilities in and adjacent to the Baseball Stadium (during games and events and at other times), sale of food and beverages (alcoholic and non-alcoholic), conducting tours, storage, and office uses, and for any other lawful purpose that is not a prohibited use described in Section 4.7.

Section 4.5. Compliance with Laws.

- 4.5.1** Operator shall, throughout the Term, and at no expense to City, promptly comply or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements 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.
- 4.5.2** Operator shall not, however, be required to comply or cause compliance with such laws, ordinances, orders, rules, regulations or requirements, if Operator is, after prior written notice to City, contesting the same or the validity thereof in good faith, at Operator's expense by appropriate proceedings; and provided further, such noncompliance will not have a material adverse effect on the Premises or Operator or the performance of its obligations hereunder. Such contest may be made by Operator in the name of Operator and City shall, at Operator's expense, cooperate with Operator in any such contest to such extent as Operator may reasonably request; provided, however, that Operator may not contest in the name of City any law, ordinance, rule, regulation, order or requirement of City, and City has no obligation to cooperate in any such contest against City. City shall not, however, be subject to any liability for the payment of any costs or expenses in connection with any such proceedings brought by Operator, and Operator covenants to pay, and to indemnify and save City harmless from, any such costs or expenses, including, but not limited to, court costs and attorneys' fees.

Section 4.6. Obligations of Operator Unconditional. The obligations of Operator under this Agreement including, but not limited to, the obligations to pay the Operating Fees, 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 indemnity required herein shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set-off, counterclaim, abatement or otherwise except as expressly permitted by this Agreement.

Section 4.7. Prohibited Uses. Operator shall not allow the Premises to be used for any of the following purposes: public nuisance; any use violating law; use as a sexually oriented business as defined in the City Code; or use as an industrial site or waste disposal facility. If conducting professional baseball games at the Baseball Stadium shall be or become prohibited uses under this Section 4.7, then Operator may terminate this Agreement.

ARTICLE V BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS

Section 5.1. Beginning Condition. On the Commencement Date, City shall deliver exclusive and vacant possession of the Premises to Operator with all Project Improvements Work being Substantially Complete and in good working order and condition and having been accepted in writing by Operator (subject only to immaterial items which can be completed by City or the Project Contractor without interfering with Operator's operation of the Premises); provided, Operator may only withhold acceptance if the Premises are not in compliance with the applicable written rules and regulations of the Sanctioning Association or do not include all of the Minimum Project Requirements. In no event shall Operator's acceptance pursuant to this Section be construed to release or waive (i) City's obligations hereunder to cause Substantial Completion of the Project Improvements Work to occur or (ii) any of Operator's rights and remedies hereunder in the event the Substantial Completion date does not occur or does not occur on or before the Target Substantial Completion Date.

Section 5.2. Alterations. Any subsequent alterations, additions, or construction of new improvements on or in the Premises must be consistent with the permitted uses of the Premises as set forth in Section 4.4 and 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 in its sole discretion; provided, however, that Operator is not required to obtain City's prior approval for (a) non-structural remodeling or installation or removal of Removables or other trade fixtures and equipment; (b) temporary improvements or alterations to accommodate particular events; (c) alterations required to comply with any applicable Governmental Rule or any requirements of the Sanctioning Association; (d) alterations resulting from restorations or repairs of existing facilities; or (e) any other nonstructural alterations. For the avoidance of doubt, Maintenance does not require the prior consent or approval of City. Operator may not, without the consent of City, construct additional facilities upon the Land or make structural alterations. For work requiring City's approval, Operator shall submit the plans, specifications and construction drawings to City with Operator's request for approval.

Section 5.3. Compliance with Regulatory Requirements. Operator agrees that all additions and alterations on or to the Premises constructed by it shall be constructed in accordance with all applicable ordinances and statutes of Governmental Authority as well as the codes of City. Operator 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 the lawful and proper addition to or alteration, use, occupation, operation, and management of the Premises (City agrees to cooperate with Operator's efforts with respect to obtaining such permits, licenses or other authorizations).

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 trade fixtures, furniture, equipment, furnishings and their personal property installed in or affixed to the Premises by or on behalf of Operator and owned by Operator (collectively, the "Removables"), all of which shall remain Operator's sole property. At the expiration or other termination of the Agreement, all alterations, additions, and improvements to the Premises (except for the 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

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, addition to the Premises requiring such consent as set forth in Sections 5.2, City may review Operator's conceptual design drawings and construction drawings for such construction work, the reasonable, out-of-pocket costs paid to third parties therefore to be paid by Operator. 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, Operator shall obtain a written certification 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 ordinances, statutes, and the requirements of all Governmental Authority. Additionally, City may, at its sole discretion, cost and expense, have the Premises inspected by an inspector qualified to determine compliance with the standards and regulations of the Sanctioning Association, in order to determine whether or not Operator is maintaining the Premises commensurate with the standards and regulations of the Sanctioning Association and/or whether or not Operator is maintaining the Premises at a level commensurate with the Comparable Facilities, as required in Section 6.1.5 herein.

ARTICLE VI THE OPERATOR'S RIGHTS AND OBLIGATIONS

Section 6.1. Management. Subject to City's rights to host City Events (as defined below), Operator shall be the exclusive manager and operator of the Baseball Stadium and shall have the exclusive right to contract for its license or use during the Term in a manner that will promote and further the purposes for which the Baseball Stadium has been constructed; provided, however, that if, at any point after the fifth Agreement Year the total average attendance per year at Operator Events and City Events over the preceding three (3) year period is less than 50,000 attendees, City shall have the right to revoke from Operator the right to manage and operate the Baseball Stadium in accordance with Section 7.16.3 below. Operator shall do all things and take all commercially reasonable actions necessary for the operation and maintenance of the Baseball Stadium as a baseball stadium and entertainment facility in accordance with this Agreement and in a manner generally consistent with the operation and maintenance of the Comparable Facilities as of the Effective Date, subject to normal wear and tear. Without limiting the generality of the foregoing, Operator is authorized to and shall:

- 6.1.1** charge and collect all operating revenue, concession revenue, and seat and suite use charges for the Baseball 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 Baseball 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 Operator 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 Baseball Stadium and Premises;
- 6.1.2** commence, defend and settle in good faith such legal actions and proceedings concerning the operation of the Baseball Stadium (except for City Events) as are necessary or required in the opinion of Operator and shall retain counsel in connection therewith;
- 6.1.3** employ, pay and supervise all personnel that Operator determines to be necessary for the operation of the Baseball Stadium (such personnel, during the course of such employment, shall be employees of Operator 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 law relating to the employment of such personnel;

- 6.1.4** maintain the Baseball Stadium in accordance with Comparable Facilities subject to normal wear and tear, and maintain and operate the Baseball Stadium in compliance with all requirements necessary for the conduct of all home games;
- 6.1.5** prepare, coordinate, implement, revise as necessary and administer a preventative maintenance plan and program for the Baseball Stadium, its machinery and equipment, and provide a maintenance log for each prior Agreement Year;
- 6.1.6** from and after the Commencement Date, arrange for and provide all utility and other services for the Baseball Stadium and pay or cause to be paid when due all charges for water, sewer, gas, light, heat, telephone, electricity, and other utilities and services rendered to or used on or about the Baseball Stadium (City and/or the Project Contractor shall be responsible for arranging and paying for all utility services necessary for the construction and Final Completion of the Project Improvements Work and for providing permanent utility services infrastructure and hook-ups for Operator's use); provided, however, that City and Operator shall reasonably cooperate in an effort to obtain the most favorable rates for electricity and other utility services;
- 6.1.7** maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Baseball Stadium;
- 6.1.8** furnish to City a statement on or before the 15th day of the first month following the end of each calendar quarter during the Term showing the following for the prior quarter and year to date:
 - (a) a current user summary and detailed 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;
 - (d) all expenditures by Operator with respect to Operator's Maintenance obligations;
 - (e) a detailed accounting of Official Attendance (as defined below) together with a calculation of all amounts to be paid by Operator to City pursuant to Section 7.3 with respect to Official Attendance; and
 - (f) such other related information as the City may reasonably request; it being understood, however, that Operator shall not be required to generate any special reports pursuant to this clause (f) but rather just make available to City any reports already prepared by Operator in the normal conduct of its business.

Receipt and acceptance of any statement furnished by Operator or payments paid by Operator to City hereunder shall not preclude City from questioning the correctness thereof for a period of five (5) years after such receipt and acceptance. 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 Operator within ten (10) days. In the event that an audit reveals an underpayment by Operator, Operator 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.

- 6.1.9** 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 five (5) years thereafter at Operator's office, at all reasonable times upon not less than forty-eight (48) hours' 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, parking records, etc.) not of Operator itself (such as, without limitation, Operator's tax returns) or the Team and neither Operator nor the Team shall be required to provide its private financial information of any kind whatsoever not otherwise required to be provided under this Agreement.
- 6.1.10** for a period of five (5) years after the end of the calendar year to which they pertain, Operator shall keep and maintain the following books, records and documents at Operator's office at the Premises and, upon expiration or termination of this Agreement, Operator shall provide City with a complete and accurate copy of such books and records for immediate access and use by City:
- (a) executed use agreements for Operator Events, or other use or license agreements relating to the Premises, original insurance certificates, and related correspondence, all of which may be maintained by Operator 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;
 - (e) service contracts, including cleaning, maintenance, landscaping, trash removal, etc.;
 - (f) permits and licenses;
 - (g) copies of insurance policies or certificates; and
 - (h) such other books, records and documents as City may reasonably require Operator to maintain.
- 6.1.11** procure and negotiate contracts with concessionaire(s) for the operation of consumable and/or non-consumable concessions at the Baseball Stadium (unless Operator shall self-operate such concessions);

- 6.1.12 provide adequate supervision and security and shall strictly enforce all rules, regulations, and safety procedures that are required by law or regulation and usual and customary for Comparable Facilities and that are required in general for the safe and orderly use of the Premises. At all times the Premises shall be under the control, supervision and security of Operator;
- 6.1.13 control the issuance of and issue all credentials for events at the Baseball Stadium; and
- 6.1.14 employ commercially reasonable methods to protect City's assets from theft, gross negligence or fraudulent activity on the part of Operator's employees or other agents. Uninsured losses arising from theft, gross negligence or fraud of Operator, its employees or agents are to be borne by Operator and not as an operating expense of the Premises.

Section 6.2. Promotions and Marketing. Operator's obligation to operate the Baseball Stadium generally consistent with Comparable Facilities shall not apply to promotional, event, or marketing activities, and Operator shall have the discretion to adopt and implement such promotional and marketing practices as Operator deems appropriate for the operation of its business at the Premises, subject to Governmental Rule.

ARTICLE VII ADDITIONAL COVENANTS OF CITY AND OPERATOR

Section 7.1. Maintenance of the Premises. Operator shall, at its sole cost and expense, perform all Maintenance (as defined below) required to keep, maintain, and operate the Premises, including the interior and exterior, structural (to the extent such maintenance is non-structural in nature) and nonstructural portions of the improvements, in as good repair as exists on the Commencement Date and in compliance with all applicable Governmental Rules of any Governmental Authority applicable to the Premises from time to time, and generally consistent with the operation and maintenance practices of the Comparable Facilities, subject to ordinary wear and tear, Force Majeure events and events of condemnation. "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, structure (to the extent such maintenance and repairs are non-structural in nature) or other component of the Premises. City has no maintenance and repair obligations under this Agreement and, subject to City's obligations as set forth in Section 7.16 below, City has no obligation to perform or incur expenses related to Maintenance. "Maintenance" shall not include Capital Repair, Maintenance and Improvements.

Section 7.2. Capital Repair, Maintenance and Improvements.

- 7.2.1 As of the Effective Date, City and Operator 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 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 Operator. Notwithstanding the foregoing, Operator agrees annually, on or before September 30th of each year, or such later date as may be agreed to by City, to present to the Board of Advisors a list of proposed Capital Repair, Maintenance and Improvements (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 Maintenance Schedule and which budget, to the extent practicable, shall be based on estimates

obtained by Operator. The Board of Advisors shall review such Proposed Improvements, budget and schedule and offer a recommendation or recommendations to the Fayetteville City Council regarding each such Proposed Improvements, and the budget and schedule for such items. The Proposed Improvements together with the estimated budget and schedule for each Capital Repair, Maintenance and Improvement shall be subject to the approval of the Fayetteville City Council.

7.2.2 The Fayetteville City Council shall not unreasonably withhold its approval of the Proposed Improvements so long as (i) the Proposed Improvements are consistent in exterior appearance with the architectural theme of the Baseball Stadium, (ii) when completed, the Proposed Improvements will not have reduced the overall utility of the Baseball Stadium or weakened or impaired the structural integrity of the Baseball Stadium and (iii) there are sufficient funds in the Capital Repair, Maintenance and Improvements Account to complete such Proposed Improvements and any expected Capital Repair, Maintenance and Improvements schedule to occur in subsequent years pursuant to the Capital Repair, Maintenance and Improvement Schedule after taking into account payment for the Proposed Improvements; provided, however, that if such approval is withheld solely as a result of clause (iii), the Parties shall approve such Proposed Improvements if Operator 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) 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, as determined by City.

7.2.3 In the event Operator pays for any such Proposed Improvements pursuant to Section 7.2.2, Operator 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, as determined by City, to pay for Capital Repair, Maintenance and Improvements that are scheduled to be completed in subsequent years pursuant to the Capital Maintenance Schedule.

7.2.4 Operator shall perform all Capital Repair, Maintenance and Improvements approved pursuant to this Section 7.2; provided, however, that, Operator and City may mutually agree that the approved Capital Repair, Maintenance and Improvements shall be performed by City, or indirectly by City's vendors, and City shall be reimbursed from the Capital Repair, Maintenance and Improvements Account for the cost of any such work. City will reasonably cooperate with Operator, at Operator's request, to perform, or indirectly perform through City's vendors, in whole or in part, the Capital Repair, Maintenance and Improvements. If, in Operator'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, Operator may perform such improvement without the approvals required hereunder and submit to the Fayetteville City Council 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.

Section 7.3. Capital Maintenance and Improvement Account. Each calendar year, Operator shall pay to City the following amounts, which amounts shall be contributed to the Capital Repair, Maintenance and Improvements Account: (i) City's Share of the Naming Rights Revenue applicable to such calendar year; and (ii) One dollar (\$1.00) per attendee at paid or ticketed Team Games and Operator Events (the "Attendance Revenue"), calculated based on the total official attendance at all Team Games (as reported to Sanctioning Association) and official attendance at Operator Events ("Official Attendance"), which Attendance Revenue shall be paid to City on or prior to January 15th of the next year. Such one dollar (\$1.00) payment shall only be owed for Official Attendance in excess of 50,000 attendees per calendar year. For example, if Official Attendance is 50,001 in a calendar year, Operator shall pay One Dollar (\$1.00) to City in Attendance Revenue. Should the average of the total annual deposits in the Capital Repair, Maintenance and Improvements Account with respect to any year during the Term (such year, the "Applicable Year"), determined as of January 31 of the following year and taking into account any Attendance Revenue that was due and payable with respect to the Applicable Year, fall below one percent (1.0%) of the hard construction costs included in the Project Costs, City and Operator shall each deposit fifty percent (50%) of such deficiency into the Capital Repair, Maintenance and Improvements Account on or before March 1 of the year following the Applicable Year (so that the average of the total annual deposits in the Capital Repair, Maintenance and Improvements Account, calculated as if such deficiency was cured by January 31 of such year, is equal to one percent (1.0%) of the hard construction costs included in the Project Costs). Upon written approval by the Fayetteville City Council of Operator's proposed Capital Repair, Maintenance and Improvements pursuant to Section 7.2 herein, subject to appropriation by the Fayetteville City Council, and subject to Operator's compliance with all applicable statutory requirements, City shall reimburse Operator for such approved expenditures through the Capital Repair, Maintenance and Improvements Account. For the avoidance of doubt, any request for reimbursement of Operator from the Capital Repair, Maintenance and Improvements Account shall first be presented to the Board of Advisors for a recommendation to then be presented to the Fayetteville City Council for approval.

Section 7.4. Taxes and Other Charges. Operator shall pay prior to delinquency, in addition to the payment of Operating Fees, each and every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, by reason of Operator's interest in the Premises or any portion thereof or by reason of or in any manner connected with or arising out of Operator's possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises, or any part thereof. Operator shall pay and discharge, prior to the delinquency thereof, all lawful assessments, ad valorem taxes, sales taxes, business and occupation taxes, occupation license taxes, water charges, sewage disposal charges, or other utility charges imposed on the Premises and Operator'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 Operator because of its rights or obligations under this Agreement and which is lawfully levied, assessed or imposed on Operator 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. Operator, upon written notice to City, may contest in good faith any such tax, imposition, charge or assessment levied by any Governmental Authority (other than water charges or sewage disposal charges), and in such event may permit such tax, imposition, charge or assessment (other than water charges or sewage disposal charges) to remain unsatisfied during the period of such contest and any appeal, provided, however, that prior to the commencement of such contest Operator shall demonstrate to City either (a) that Operator will have sufficient funds to pay such assessment (together with any interest and penalties thereon) if the contest is

unsuccessful (as determined to be acceptable in the sole discretion of City) or (b) that Operator has deposited into a separate escrow account funds equal to the contested amount, together with the anticipated interest and penalties, if any, that would be incurred in the event of an unfavorable disposition. Operator also shall pay or cause to be paid all lawful charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to, upon or in connection with the Premises (Operator to pay or cause to be paid all of such charges directly to the provider thereof except to the extent any of the same are provided by City as contemplated by Section 6.1.6 above, in which case, Operator shall reimburse City for such payments or, at City's request, make such payments on behalf of City). Operator 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 Operator, or evidence of the deposit of such funds into a reserve account, all as set forth above. Notwithstanding the foregoing, in the event the City's interest in the Premises is not exempt from property taxation due to any failure of City, then City shall be solely responsible for such tax. Furthermore, in the event a Targeted Tax is ever imposed by City, then Operator shall be entitled to a credit against all Operating Fees then due and thereafter becoming due so as to enable Operator to recapture the amount of the Targeted Tax paid by Operator; provided, that, in the event there are insufficient Operating Fees due and to become due hereunder to enable Operator to recapture through offset against the Operating Fees the amount of Targeted Tax paid by Operator, City shall directly pay to Operator the amount of such excess Targeted Tax within thirty (30) days following Operator's submittal to City of the payment of the Targeted Tax and an invoice for the reimbursement therefore. The provisions of this paragraph shall expressly survive the expiration or sooner termination of this Agreement.

Section 7.5. Liens and Encumbrances. Operator covenants and agrees that, except for this Agreement, it will not create or suffer to be created by, through or under Operator any lien, encumbrance or charge upon the Premises. Operator 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 thereof. If any such lien is filed or asserted against Operator or the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Operator or the Premises at the request or with the permission of Operator or of anyone claiming under it, Operator shall, within sixty (60) days after it receives 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. Franchise Liens. Operator may, at any time or from time to time, grant liens upon the Team and/or any and all ownership or franchise rights Operator has in or with respect to the Team (the "Franchise"); provided, however, that (i) any such liens shall be made or granted in compliance with and subject to the requirements and obligations of Operator pursuant to this Agreement, (ii) if any person acquires the Franchise pursuant to any foreclosure or other transaction under any such liens, such occurrence shall be an Event of Default by Operator and (iii) any person who acquires the Franchise pursuant to any foreclosure or other transaction under any such liens shall take the Franchise strictly subject to and assume the requirements and burdens imposed on Operator pursuant to this Agreement. Upon any such granting of such liens, Operator shall obtain from each such lien holder a written acknowledgment 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 Franchise that, upon foreclosure, would result in a violation hereof, Operator will use its good faith efforts to promptly remove such liens or material encumbrances after reasonable contest periods.

Section 7.7. Surrender of Possession. Upon the termination of this Agreement, Operator shall surrender the Premises (including all improvements thereon) to City in a condition which would have been in compliance with the Maintenance requirements of Section 7.1 of this Agreement had the Agreement not terminated, reasonable wear and tear and damage by casualty and condemnation excepted.

Section 7.8. Operation. Operator agrees to operate and maintain the Premises throughout the Term in a condition necessary to conduct the permitted uses described in Section 4.4, consistent with the general quality of operations at Comparable Facilities. Except as provided herein, Operator 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 the foregoing does not prohibit Operator from contracting with third parties to provide services such as concessions, security, janitorial and similar services. Operator acknowledges and agrees that one of the primary reasons for City's financial and other commitments to build the Baseball Stadium and enter into this Agreement is to provide for the betterment of the community generally. Operator will make reasonable efforts to provide opportunities for local and regional charities and non-profits to utilize and gain exposure through the Premises. Operator acknowledges that use of the Premises reflects upon the image and goodwill of City, and Operator agrees that no Operator Event, signage at the Premises, promotion of Operator Events, or any other use of the Premises by Operator or its agents, contractors or sublicensees shall be inconsistent with prevailing community standards. Without limiting the generality of the foregoing, no signage, advertising or other promotions at the Premises shall be authorized or permitted by Operator for any of the following: political candidates or matters, cigarettes, tobacco, firearms, contraceptives, adult entertainment, sports books, or any illegal activities of any kind or nature, nor shall Operator authorize or permit any advertising or promotions which violate applicable Governmental Rules.

Section 7.9. Right of Operator to Revenues. Except as provided in Section 7.16 and except as set forth herein with respect to City Events, Operator 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 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, (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. Operator shall have the right, without the prior consent of City, to sell or grant rights to purchase future tickets for reserved seats, club seats and luxury suites, 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. The Operator 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. Operator shall be entitled to, and is hereby granted the exclusive right to, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature (but excluding any Targeted Taxes) realized by, from or in connection with the sale or other distribution of Seat Rights, tickets or passes (including general admission) for any seats in the Premises. Except with respect to the Naming Rights, City shall have the right to sell and retain revenue generated from the sale of advertising associated with City Events, including temporary signage, advertising on the field-side scoreboard message center and video display, print media and broadcast media. Such advertising shall be provided at City's cost and shall not replace or cover existing signage, except where appropriate to secure a particular event, nor shall advertising displayed by City at the Premises for a City Event conflict with promotional category exclusivities granted by Operator with respect to the Premises for which Operator has provided City notice of such exclusivities.

Section 7.10. Naming and Other Rights. Operator and City shall mutually agree on a name for the Baseball Stadium and Operator and City shall jointly market the naming rights for the Baseball Stadium

(the "Naming Rights") during the Term of this Agreement and cooperate with each other in such marketing. City shall be entitled to fifty percent (50%) of any revenue generated from the sale of the Naming Rights to a licensee or Affiliate, net of costs attributable to the implementation of such Naming Rights (the "City's Share of the Naming Rights Revenue"). City's Share of the Naming Rights Revenue in the applicable calendar year shall be credited to the Capital Repair, Maintenance and Improvements Account. The name of the Baseball Stadium shall be a name that is appropriate for a City-owned facility. After either Party proposes a name of the Baseball Stadium to the other Party, such other Party shall have thirty (30) days to disapprove and thus prohibit such name for the Baseball Stadium (including the name for the concourses or other part of the Baseball Stadium), including, if disapproved by City, if the City Council reasonably deems such name to be in bad taste, offensive to City's image, a potential source of embarrassment to City or in conflict with community standards. Any such proposal made in connection with the sale or proposed sale of the Naming Rights shall include a written summary of the material terms of such sale. Any advertising, documents or media information prepared by or within the control of Operator describing any event at the Baseball Stadium shall identify City as the location of the Baseball Stadium. Without limiting the foregoing, Operator shall have the exclusive right to contract with any person with respect to use and enjoyment of such name for the Baseball Stadium and 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. The Parties reserve the right to change the name of the Baseball Stadium from time to time subject to the provisions of this Section 7.10. Except as set forth herein with respect to City Events, Operator 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. Any agreement executed by Operator that sells the right to name the Baseball Stadium shall provide that should the party to whom said right has been sold perform or be the subject of any Act of Bankruptcy, Operator shall have the right to immediately terminate such agreement and have the right to seek a new agreement with respect to the Naming Rights for the Baseball Stadium. Each party shall bear their own expenses in marketing the Naming Rights for the Baseball Stadium. Notwithstanding anything herein to the contrary, the Naming Rights shall be subject to and subordinate to this Agreement.

Section 7.11. Advertising Content. Operator agrees that no advertising shall be allowed on the Premises for political candidates or matters, cigarettes, tobacco, firearms, contraceptives, adult entertainment, sports books, or any illegal activities of any kind or nature.

Section 7.12. Notification of Certain Events. Operator shall promptly notify City in writing if Operator becomes aware of any of the following:

- 7.12.1** Any breach or alleged breach by Operator under this Agreement or the occurrence of an Event of Default specifying the details of such Event of Default and the action that Operator proposes to take with respect thereto;
- 7.12.2** any litigation or potential litigation affecting the Premises or City, or any litigation or potential litigation affecting Operator that could reasonably be expected to have a material and adverse effect on Operator and/or its services or obligations under this Agreement;
- 7.12.3** any bankruptcy filings, whether voluntary or involuntary with respect to Operator or, to the extent of Operator's actual knowledge (and without any obligation of due inquiry or investigation) any party performing any Capital Repair, Maintenance or Improvements;

- 7.12.4 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;
- 7.12.5 any violation or alleged violation of applicable Governmental Rules or insurance requirements; and
- 7.12.6 any involuntary lien filed against the Premises.

Section 7.13. City to Provide Scoreboard. City shall provide and install at the Baseball Stadium, at its cost and expense and as part of City's Contribution, a high definition LED video board scoreboard approved by Operator, which approval shall not be unreasonably withheld, conditioned or delayed, and meeting the Minimum Project Requirements and the requirements of the Sanctioning Association and of comparable quality to scoreboards at Comparable Facilities.

Section 7.14. City to Provide Signage. City shall provide and install at the Baseball Stadium, at its cost and expense and as part of City's Contribution, wayfinding signage and other signage as may be required by Governmental Rule and meeting the Minimum Project Requirements, the requirements of the Sanctioning Association and of comparable quality of signage at Comparable Facilities. City will use commercially reasonable efforts to cause the United States and North Carolina Departments of Transportation and other appropriate Governmental Authorities to alter or construct new directional signage on freeways and other major thoroughfares (which may include, at City's discretion, a Baseball Stadium marquee), directing vehicles to the Premises. City will assist Operator in obtaining permission and approval to hang banners within City limits (subject to reasonable restrictions) to generate interest in the Baseball Stadium and in major events to be held at the Premises.

Section 7.15. City's Right of Entry and Inspection. City 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 Operator'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 events at the Premises (the "City Event(s)"). 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 event costs in connection with all City Events. City or its designee shall retain all revenue generated from City Events, including, without limitation, ticket, sponsorship, merchandising and other sales revenue. In connection with City Events, Operator shall operate all food and beverage concessions at the Premises; provided, City shall receive twenty-five percent (25%) of all gross revenues (after taxes) generated by the concessions operations at the City Event. For the avoidance of doubt, Operator shall retain the remaining seventy-five percent (75%).

7.16.2 Throughout the Term, Operator shall provide its schedule of all Team Games (including tentative postseason home games) for each baseball season as soon as that schedule is finalized and approved by the Sanctioning Association. City shall have thirty (30) days, after receipt of the schedule, to reserve up to fifteen (15) priority dates for City Events ("Priority Dates for City Events") during the upcoming calendar year, provided such dates do not interfere with or otherwise disrupt Operator's use, operation, preparation or maintenance of the Premises for Team Games, including, without limitation, the baseball

playing surface. Rights to use the Premises shall be in accordance with the following order of priority: 1) Team Games; 2) Priority Dates for City Events; and 3) then, on a first-come-first served basis, Operator Events and other City Events. Except with respect to Team Games (including, without limitation, tentative postseason home games), which take priority over all other events, once an event is approved and scheduled, that event cannot be cancelled as a result of a subsequently requested event without the express written approval of the entity that scheduled the currently scheduled event, which permission may be granted or denied in the sole and absolute discretion of that entity; provided, however, that, to assure full, equitable usage of the Premises and to provide community access, City and Operator will each consider requests to reschedule events if requested by the other party and will negotiate in good faith to reschedule smaller or movable events to accommodate larger and/or less movable events, provided that the party requesting that the other party reschedule an event shall be responsible for reimbursing the other party for any incremental costs actually incurred in rescheduling such event. If City or Operator has reserved the Premises for a City Event or Operator Event, respectively, and such event is cancelled or is not otherwise scheduled to occur on the reserved date, the reserving party shall notify the other party that no City Event or Operator Event, as applicable, will occur on such date, as early as practicable after learning or determining that no such event will occur. No event may interfere with or otherwise disrupt Operator's use, operation, preparation or maintenance of the Premises for Team Games, including, without limitation, the baseball playing surface.

7.16.3 Due to the importance of additional events (beyond Team Games) to the success of the Project, if, at any point after the fifth Agreement Year the total average attendance per year at Operator Events and City Events over the preceding three (3) year period is less than 50,000 attendees, City shall have the right to revoke from Operator the right to program Operator Events at the Premises, and may grant such right to either itself or a third-party. If Operator's right to program Operator Events is revoked pursuant to this Section 7.16.3, any event held at the Premises shall be managed and operated in the same manner as a City Event. City, or the third party appointed by City to program Operator Events, shall be responsible for all costs associated with any event held at the Premises, including, without limitation, preparation and clean-up of the Premises with respect to such Operator Event, ticket-takers, ushers, in-stadium security, scoreboard/sound and other personnel, trash removal, repairs, supplies, and all other event costs in connection with such events.

7.16.4 Operator shall keep certain mutually agreed areas of the Premises open during non-event times for use by the public as a public park, provided Operator shall have no such obligation if, (i) in Operator's reasonable discretion, doing so will pose a safety or security risk to the Premises or any persons or property or (ii) doing so will impose incremental costs upon Operator of more than Twenty Five Thousand Dollars (\$25,000.00) per Agreement Year (the "Opening Expense"), which amount shall be increased each year by an amount equal to the product of the prior year's Opening Expense times a number equal to the percentage increase in the CPI over a 12 month period, calculated by using the most recently published CPI and the CPI published 12 months earlier. Such public use shall be from dawn to dusk and only extend to certain outdoor fan areas of the Premises and not to the playing field or interior areas. Operator may close the Premises a reasonable time in advance of any Team Game or event in order to properly prepare for such Team Game or event. For purposes hereof, "CPI" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers (1982-1984=100), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the

United States Department of Labor, Bureau of Labor Statistics of the United States Department of Labor, provided, that, in the event such index is discontinued, comparable statistics in the purchasing power of the consumer dollar, as published at the time of said discontinuance by a responsible financial authority shall be selected at City's reasonable discretion and shall be used in lieu of such index.

7.16.5 Notwithstanding anything to the contrary in this Section, Operator shall have the exclusive right to use the Exclusive Use Areas.

Section 7.17. Obligation to Provide Professional Baseball Team. Operator agrees that during the Term of this Agreement that it will ensure that the Team continuously uses the Premises for all of its home games (subject to temporary changes in "home" vs. "away" status as may be directed from time to time by the Sanctioning Association). The Team will initially be either a Class A - Advanced baseball team (or the equivalent thereof sanctioned by the Sanctioning Association) which is affiliated with a Major League Baseball team. All home games of the Team during the Term shall be played at the Premises (subject to temporary changes in "home" vs. "away" status as may be directed from time to time by the Sanctioning Association). If Operator shall lose or relinquish its baseball Franchise, league affiliation, or player development contract, the Operator shall continue to be obligated to field a team sanctioned by a Sanctioning Association which is affiliated with Major League Baseball at the Premises. Failure to provide said Team will be considered as a Operator Default under Section 11.3.

Section 7.18. Concession Improvements; Access. City shall cause the Concession Improvements to be constructed at City's sole cost and expense. Concession Improvements shall be of a quality generally consistent with concession improvements at Comparable Facilities. City agrees that Operator and its agents, contractors, licensees, and concessionaires shall, subject the requirements of City's insurers, have the right of access, for themselves and their authorized representatives, to the Premises, without charges or fees or the commencement of payment of Operating Fees hereunder, as described in Section 3.4.

Section 7.19. Security and Traffic Control. Subject to Operator's payment of City's customary charges for similar activities, City will provide traffic control and security as is reasonably necessary outside of the Premises to direct traffic to and from events at the Baseball Stadium at a level of service comparable to that provided to other venues within City. The Parties shall cooperate in good faith to develop a traffic control management plan to facilitate the ingress and egress of traffic to and from events at the Baseball Stadium; provided, however, that the Parties are under no obligation under the preceding clause to incur any costs in excess of costs otherwise required by this Agreement.

Section 7.20. City Tickets to Events. Operator agrees that City shall be provided with the use of (i) a suite at up to ten (10) Team Games or Operator Events held at the Baseball Stadium; and (ii) up to twelve (12) tickets to any Team Game or Operator Event. The use of such tickets shall be for economic development, tourism and other official business in City and shall be distributed by City at no cost.

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, Operator 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 event of Force Majeure or similar emergency situation (a "Declared Emergency") City shall have the right to use the Facility, but not including the Exclusive Use Areas, as a staging area for disaster preparations, response or other related uses purposes. In connection with a Declared Emergency use, City shall be responsible for the costs of any damage to the Facility, personal injury, bodily injury and /or loss of life caused by City's use, provided that City shall not be responsible to Operator for any loss arising from the underlying Declared Emergency event.

Section 7.22. Parking Area. City shall make the Parking Area available to Operator at no cost to Operator. In addition, City shall assist Operator in creating a parking study to demonstrate adequate parking within one-half (1/2) mile of the Baseball Stadium in compliance with the recommendations of the Sanctioning Association.

Section 7.23. Permits. City will assist Operator in the procurement of all licenses, permits and clearance from all public authorities, both federal and state, required to enable Operator to carry on its business as required or permitted hereunder, including, without limitation, the acquisition of a liquor license(s) 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 accordance with applicable Governmental Rule. Even if not required by Governmental Rule, Operator 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 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 Maintenance and Capital Repair, Maintenance and Improvements.

Section 7.25. Membership in MiLB. Operator shall at all times throughout the Term own a Team that (a) is a full-season Class A (or higher) minor league baseball team in a league that is a member of MiLB, (b) has a player development contract associated with a Major League Baseball franchise, and (c) is authorized by the Sanctioning Association to play its home games at the Premises.

ARTICLE VIII INSURANCE

Section 8.1. Operator Insurance Policies. Operator shall, effective as of the date that Operator is permitted to occupy the Premises pursuant hereto, 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 Five Million Dollars (\$5,000,000) per occurrence and in the aggregate; and workers compensation coverage to protect Operator's permanent and temporary employees. Such coverage shall be evaluated by the Parties, upon consultation with the Board of Advisors, every fifth (5th) year during the term hereof and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Operator will name City as additional insured on the commercial general liability and umbrella policies and will provide certificates of all insurance. Insurance coverage required herein shall be placed with carriers licensed to do business in the applicable State, have a rating in the most current edition of A.M Best's Property Casualty Key Rating Guide that is reasonably acceptable to City. Operator shall maintain All-Risk property insurance on all assets within the Premises that are owned by Operator on a full replacement cost basis. City will be named as additional insured on policies except Workers' Compensation. Operator will provide to City certificates of all insurance.

Section 8.2. City Insurance Policies. City shall maintain property insurance, 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 fault or neglect of the Operator, then the Operator shall be responsible for paying a reasonable deductible, not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate. on the Premises (other than for assets therein owned by Operator) on a full replacement cost basis; 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; Excess Umbrella with minimum limits of \$5,000,000 per occurrence and in the aggregate; Workers' Compensation covering City's employees meeting statutory limits in compliance with the applicable state and federal laws; Operator will be named as additional insured on such policies and City will provide to Operator certificates of insurance. Certificates of Insurance shall be produced to Operator prior to the beginning of the Term of this Agreement. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State.

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, Operator shall notify City promptly upon becoming aware of same and Operator shall give City all pertinent information possessed by Operator and 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 Operator which arise out of any of the matters relating to this Agreement or otherwise, City shall notify the Operator promptly upon becoming aware of same and City shall give Operator all pertinent information possessed by City and reasonable assistance in the defense or other disposition thereof.

ARTICLE IX INDEMNIFICATION

Section 9.1. Indemnification.

9.1.1 Operator shall, except as otherwise provided in this Section 9.1.1, 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 Premises by Operator or Operator's contractors, employees, officers, directors or agents on or after the Commencement Date, (ii) Operator's failure to comply with its obligations under this Agreement or (iii) the gross negligence or willful misconduct of Operator or Operator's contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, Operator 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:

- (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 willful misconduct of City, its employees, officers, directors, contractors, agents or invitees;
- (b) 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;

- (c) The existence of any Hazardous Materials in, on or under the Premises prior to the Commencement Date; or
- (d) Any environmental event caused by City or any of its employees, officers, directors, contractors, agents or invitees.

9.1.2 To the maximum extent permitted by applicable Governmental Rule, City shall, except as otherwise provided in this Section 9.1.2, defend, protect, indemnify and hold Operator 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 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, agents or invitees. 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:

- (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 willful act of Operator, its employees, officers, directors, contractors, agents or invitees;
- (b) Operator'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 Operator;
- (c) Any Hazardous Materials that are introduced to the Premises after the Commencement Date by Operator, or any of its employees, officers, directors, contractors, or agents; or
- (d) Any environmental event caused by Operator or any of its employees, officers, directors, contractors, or agents.

The provisions of this Section 9.1 are solely for the benefit of City and Operator 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 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 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.

ARTICLE X ASSIGNMENTS; MORTGAGES

Section 10.1. Assignment.

- 10.1.1** Except as provided below, Operator shall not assign its interest in this Agreement or any of its rights or obligations hereunder without the prior written consent of City, which consent may be withheld if in City's sole judgment such assignment might materially and adversely affect the financial condition or operations of the Baseball Stadium or if, in City's sole judgment, such assignment is to a party that is less credit-worthy than Operator.
- 10.1.2** Notwithstanding the foregoing, without City's consent, Operator shall have the right upon thirty (30) days prior written notice to City to assign its interest in this Agreement to any Affiliate of Operator. In addition, without City's consent, Operator shall have the right to transfer or assign any non-controlling interest (less than 50%) in Fayetteville Baseball Club LLC.
- 10.1.3** Notwithstanding the foregoing, after the conclusion of the seventh Agreement Year, with City's consent, which shall not be unreasonably withheld, conditioned or delayed, Operator shall have the right upon thirty (30) days prior written notice to City to assign its interest in this Agreement in connection with a sale of the Team or a sale by Operator of all or substantially all of its assets, in a single transaction or a series of transactions, that has been approved by the Sanctioning Association.

10.1.4 Upon any assignment or transfer as described above, the assignor shall be released from liability under this Agreement (other than any liabilities arising or accruing prior to the date of assignment).

10.1.5 Nothing in this section shall provide the City with any approval or consent rights relating to any transfer or assignment of Houston Baseball Partners, LLC or the Houston Astros Major League Baseball Franchise, at any time, even if such transfer or assignment shall result in the transfer or assignment of Fayetteville Baseball Club LLC.

Section 10.2. Notice of Intent. If Operator 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 (other than as permitted without City's consent under Section 10.1 above), Operator shall give notice thereof to City, which notice shall be accompanied by: (a) a conformed or photo static copy of the proposed assignment; (b) a statement setting forth, in reasonable detail, the identity of the proposed assignee and the nature of its business; (c) current financial information with respect to the proposed assignee, including its most recent financial statement (which may take into account the effects of the transfer); (d) banking and business references of the proposed assignee; and (e) evidence satisfactory to City that the proposed assignee has been approved by a Sanctioning Association to own and operate a minor league baseball team and have its home games played at the Baseball Stadium.

Section 10.3. Conditions Upon City's Consent to Assignment. In the event that Operator complies with all of the provisions of Sections 10.1 and 10.2 and provided no Event of Default then exists, City's consent to a proposed assignment shall not be unreasonably withheld or delayed, provided and upon condition that: (a) The proposed assignee is a reputable person or entity of good standing in the business community and with financial worth (after giving effect to the transfer) not less than that of Operator as of the date hereof, and City has been furnished with reasonable proof thereof; (b) The proposed assignment shall be in a form reasonably satisfactory to City and shall comply with the provisions of this Agreement; and (c) Operator shall reimburse City on demand for any costs and overhead that may be incurred and substantiated by City in connection with said assignment, including the costs of making investigations as to the acceptability of the proposed transferee and reasonable legal costs incurred in connection with the granting or withholding of any requested consent. If the foregoing conditions to an assignment are satisfied and the assignment is made, then upon such assignment the named Operator herein shall be released herefrom with respect to obligations, covenants, and agreements to be observed and performed by the Operator under this Agreement after such date.

Section 10.4. Assignments and Concession Arrangements. Notwithstanding the foregoing, this Section 10 shall not limit or otherwise restrict Operator's exercise of its rights or performance of its obligations hereunder, including, without limitation, Operator's right to enter into or grant certain contractual rights, subcontracts, sublicenses, and other arrangements for concessions, retail, security, services and other providers as Operator 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 Operator's rights or obligations hereunder as a whole.

Section 10.5. Mortgages. Operator 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 Operator may encumber Operator's right to use and occupy the Premises or Operator'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 Operator gives notice to City that such amount was not paid when due; (b) abandonment of the Project by City or any termination, in whole or in part, of any of the Project Construction Contract or any of the work thereunder by City without the consent of Operator unless pursuant to a right of termination based upon the existence of an event of default under such Project Construction Contract; (c) any suspension of the Project Improvements Work by City for longer than sixty (60) consecutive days or one hundred twenty (120) days in any three hundred sixty-five (365) day period for any reason other than Force Majeure; (d) the failure of City to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by City under this Agreement, including 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 notice from Operator 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 thereafter; provided further, however, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from the Operator to City of such failure (notwithstanding City's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by City hereunder; or (e) the occurrence of an Act of Bankruptcy with respect to City.

Section 11.2. Operator's Remedies. If a City Default shall have occurred and be continuing, Operator 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) Operator 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(e) above); (b) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means; and (c) Operator may exercise any and all other remedies available to Operator at law or in equity, but subject to any limitations thereon set forth in this Agreement.

Section 11.3. Operator Default. The occurrence of the following shall be an "Event of Default" by Operator or a "Operator Default": (a) the failure of Operator 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 Operator that such amount was not paid when due; (b) the failure of Operator to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by Operator under this Agreement or the Exclusive Use Lease Agreement within thirty (30) days after 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 Operator shall occur unless Operator fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; provided further, however, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from City to Operator of such failure (notwithstanding Operator's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by Operator hereunder; (c) the occurrence of an Act of Bankruptcy with respect to Operator; (d) Abandonment of Premises by Operator; (e) failure to maintain location in City of the Team owned by Operator and located in City, as required in Section 2.2(i), Section 4.4, and Section 7.17 herein; (f) failure to maintain approval by a Sanctioning Association of the Team owned by Operator and located

in City, as required in Section 2.2(i) and Section 7.17 herein; (g) failure to maintain the Premises commensurate with Major League Baseball facilities' standards and regulations and/or at a level commensurate with the Comparable Facilities, whichever level is determined to be a higher standard by a qualified inspector, as referenced in Section 5.5 herein; or (h) the transfer of the Franchise as set forth in Section 7.6(ii).

Section 11.4. City's Remedies. If any Operator 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 or Operator's right of possession of the Premises as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to the Operator Default specified in Section 11.3(c) above); (b) seek another professional or amateur (including, collegiate) baseball team to conduct its regularly scheduled home games at the Baseball 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 Operator as may appear necessary or desirable to collect such Operating Fees and any other amounts then due under this Agreement, or to enforce performance and observance of such covenant, condition or obligation of Operator hereunder, or to recover damages for Operator's non-payment, non-performance or non-observance of the same; (d) City may exclude Operator 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 Operating Fees and any other amounts then due, to enforce performance and observance of any covenant, condition or obligation of Operator hereunder, or to recover damages for Operator's non-payment, nonperformance 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(b) 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 thereon set forth in this Agreement.

Section 11.5. Termination. Upon the occurrence of a City Default as described in Section 11.1 or an Operator Default as described in Section 11.3, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give to the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Agreement or, in the event of an Operator Default, Operator's right of possession of the Premises, after the expiration of a period of ninety (90) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such ninety (90) day period, if the Event of Default is not cured, this Agreement shall terminate and/or Operator's possessory interest shall terminate, as applicable, without liability to the non-defaulting Party. If, however, within such ninety (90) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, no Final Notice shall be required and the non-defaulting Party may declare this Agreement immediately terminated if the Event of Default with respect to the defaulting Party is an Act of Bankruptcy. In the event of a termination of this Agreement by either Party under this Section 11.5, then notwithstanding anything to the contrary set forth in this Agreement all obligations of the Parties hereunder automatically shall terminate also, without liability to the other Party except for those obligations which, by their terms, are intended to survive termination of the Agreement.

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

11.6.1 Notwithstanding the exercise by City of its remedies pursuant to Section 11.4 hereof (other than termination), Operator shall continue to be liable for the payment of all Operating Fees payable under Section 4.3 hereof and other amounts, if any, payable

under this Agreement and Operator 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 Operator from 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 maximum operating fees 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 Operating Fees 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 Operating Fees due hereunder.

Section 11.7. No Remedy Exclusive. 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 OPERATOR BE LIABLE 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 OR OPERATOR OR ANY OF THEIR AFFILIATES OR RELATED PARTIES. WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF CITY OR OPERATOR FOR RECOVERY OF SUCH DAMAGES PURSUANT TO ARTICLE IX TO THE EXTENT SUCH DAMAGES WERE AWARDED TO A THIRD PARTY AGAINST CITY OR OPERATOR, AS APPLICABLE.**

Section 11.8. No Additional Waiver Implied By One Waiver; Consents to Waiver. The waiver of either party of any breach by the other 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 the non-defaulting party not breaching to seek a remedy for any breach by the other 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 11.9. 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 from time to time and as often as may be deemed expedient. Either 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 11.10. Declaratory or Injunctive Relief. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any 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.

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. Attorney's Fees. The defaulting Party shall pay all of the non-defaulting Party's reasonable fees and expenses, including reasonable attorneys' fees, in enforcing any covenant to be observed by the defaulting Party or pursuing any remedy upon an Event of Default with respect to such Party.

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, Operator 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 Baseball Stadium. Any remaining balance after payment for such repair, rebuilding or restoration shall be deposited into the Capital Repair, Maintenance and Improvements Account.

12.1.2 City will proceed promptly 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 Operator 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 Operator with respect to any such changes, alterations and modifications. If such damage results in an Unacceptable Condition, all Operating Fees shall abate during the period of repair and restoration. 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 or (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, then either City or Operator 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 party hereto notice within such period setting forth City's or Operator'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 party 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 neither party shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

Section 12.2. Condemnation.

12.2.1 In the event that title to the Premises or the interest of Operator created by this Agreement or any part of either thereof shall be taken under the exercise of the 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 Operator created by this Agreement shall be paid to Operator and any condemnation award attributable to the temporary use or temporary condemnation of the Premises shall be divided equitably between Operator and City based on Operator's and City's scheduled use of the Premises during such period. If only a part of the Premises or interest of Operator 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 Operator 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 Operator 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 Operator to litigate in any such proceedings for the purpose of seeking and obtaining a separate award for damage to the Removables, the value of Operator's interest, and damage to Operator'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 Operator's interest, and damage to Operator's business without the written consent of Operator, 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, either City or Operator 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 Operator 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 BOARD OF ADVISORS

Section 13.1. Generally. During the Term, a Board of Advisors (the "Board of Advisors") shall consult with the City regarding the operation and management of the Premises. Except as expressly set forth herein, the Board of Advisors is purely advisory and is intended to provide areas of expertise for the

Parties, input from various constituents with an interest in the Premises, and a forum for presenting and considering matters concerning the Premises, its operation and management. Except as expressly set forth herein, the Board of Advisors has no power to make any decisions of any kind that bind Operator or the City.

Section 13.2. Composition. The Board of Advisors shall have nine (9) members comprised as follows:

13.2.1 One (1) member appointed by Operator;

13.2.2 One (1) member appointed by the master developer of the Project and the immediately surrounding area;

13.2.3 One (1) member appointed by the then-current holder of the Naming Rights; and

13.2.4 Six (6) members appointed by the City or such organizations or individuals as designated by the City.

Members may be appointed and/or replaced only by the applicable constituent upon written notice to the other constituents.

Section 13.3. Meetings; Board Approval Procedures. During the first twelve (12) months of after occupancy of the Baseball Stadium by Operator, the Board of Advisors shall meet at least once every calendar quarter. For each year of this Agreement thereafter, the Board of Advisors shall meet at least on an annual basis. The location of the meetings shall be at the Baseball Stadium, unless the members of the Board of Advisors agree otherwise. Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. The vote of a majority of members of the Board of Advisors present at a meeting at which all members had reasonable advanced notice of such meeting shall be the act of the Board of Advisors. Notwithstanding any other provision in this Agreement to the contrary, the Board of Advisors will conduct its meetings and activities in full accordance with any applicable Governmental Rules.

ARTICLE XIV MISCELLANEOUS

Section 14.1. 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 Operator and an Authorized Representative of City.

Section 14.2. Applicable Law Venue. The Agreement shall be governed exclusively by the provisions hereof and by the applicable Governmental Rules of the State, without giving effect to the principles of conflicts of law thereof. Venue for any proceeding to enforce this Agreement shall be in Cumberland County, North Carolina. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. 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. Notwithstanding the foregoing, no party may initiate any lawsuit regarding this Agreement, except for an action to enforce the performance of this Agreement

seeking specific performance or injunctive relief, until after the Parties have complied with the provisions of Section 14.14, including having completed any mediation as may be required pursuant to Section 14.14.

Section 14.3. 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 14.4. 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 Fayetteville 433 Hay Street Fayetteville, NC 28301-5537 Attention: City Attorney
	and
	City of Fayetteville 433 Hay Street Fayetteville, NC 28301-5537 Attention: City Manager
With copy to:	Dentons US LLP 303 Peachtree Street NE Suite 5300 Atlanta, GA 30308 Attention: Steven Labovitz, Esq.
To Operator:	Reid Ryan President, Business Operations 501 Crawford Street, Suite 500 Houston, TX 77005
With copy to:	Giles Kibbe Sr. VP and General Counsel 501 Crawford Street, Suite 500 Houston, TX 77005

Section 14.5. 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 Fayetteville, North Carolina time.

Section 14.6. 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 14.7. 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.

Section 14.8. Recordation. City and Operator 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 14.9. Attorneys' Fees. The prevailing party in any litigation related to this Agreement shall be entitled to recover from the non-prevailing party or parties the reasonable attorneys' fees and costs incurred by such prevailing party in connection with such litigation.

Section 14.10. Time is of the Essence. Time is expressly declared to be of the essence in this Agreement.

Section 14.11. Parties' Relationship. It is the intent of the Parties, as evidenced by this Agreement, that the relationship between the City and the Operator is solely a contractual relationship pursuant to which the Operator will provide specified third-party 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 the Parties of partnership, joint venture, or landlord and tenant, but only a contractual relationship pursuant to which the Operator will act as a third-party service provider having all the rights and obligations conferred upon and assumed by the Operator as herein set forth. The employees or agents of either Party may not be, nor be construed to be, the employees or agents of the other Party for any purpose.

Section 14.12. Operator's Remedial Work. Operator 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 Operator or any of its 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 Operator or its agents, contractors or subcontractors at any time ("Operator's Remedial Work"). Operator shall promptly inform City and all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Materials discovered by Operator (or any agent, contractor or subcontractor of Operator) in, on or under the Premises, promptly furnish to City any and all reports and other information available to Operator concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 14.13. 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 on or before the Commencement Date (but excluding Hazardous Materials introduced by Operator or its agents, contractors or subcontractors at any time) (the "City's Remedial Work"). City shall promptly inform Operator 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 Operator 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 14.14. Settlement By Mutual Agreement. In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is connected with or related in any way to this Agreement or any right, duty or obligation arising herefrom or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 14.14. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Section 14.14. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Authorized Representative of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Authorized Representatives for such purpose or should no such meeting take place within such fifteen (15) day period, then either party may by notice to the other Party submit the Dispute or Controversy to mediation.

Section 14.15. Binding on Successors and Assigns. The Parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications, and recitals contained in this Agreement, except as otherwise expressly stated herein, shall extend to, inure to the benefit of and bind, City and Operator, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall always bind the successors of Operator and City, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

Section 14.16. Non-Appropriation.

14.16.1 Current Expenses. Except for the funds to be provided pursuant to Section 3.2, 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 (b) 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.

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

Section 14.17. Authority to Execute. Each of the Parties acknowledges that the individual who has executed this Agreement has been duly authorized to execute this Agreement. A certified copy of the required City ordinance or action of Operator's board of directors has been furnished by each Party to the other Party for attachment to this Agreement.

Section 14.18. 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 14.19. Limitations Regarding Premises. City does not warrant its title to the Premises. This Agreement and the rights and privileges granted Operator in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Agreement may be construed to imply the conveyance to Operator of rights in the Premises that exceed those owned by City.

Section 14.20. Non-Discrimination. Operator warrants that it is and will continue to be an Equal Opportunity Employer. Operator covenants and agrees that Operator 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. City hereby reserves the right to take the action as the United States may direct to enforce this covenant.

Section 14.21. Not for Benefit of Third Parties. This Agreement is only for the benefit of City and Operator, 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 Operator beyond that which may legally exist in the absence of any provision of this Agreement.

Section 14.22. 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 Operator from operating professional baseball games at the Baseball Stadium in accordance with the terms and conditions of this Agreement, then Operator shall have the right to terminate this Agreement in accordance with Section 11.5, including after giving effect to any applicable cure periods, without further liability to City.

Section 14.23. Publication. Operator agrees to pay the costs of newspaper publication of this Agreement and the ordinance authorizing the execution of this Agreement, as required by City Charter.

Section 14.24. Surrender. Operator acknowledges and understands that City's agreement to engage Operator 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, acts of God, fire and flood damage or destruction where Operator is without fault, excepted.

Section 14.25. Conditions Precedent. This Agreement and the obligations of City and Operator hereunder shall not become effective unless and until the following conditions are met:

14.25.1 The Fayetteville City Council must approve this Agreement together with the Exclusive Use Lease Agreement and the Project Construction Documents and all other governmental approvals, including any required approval of the North Carolina Local Government Commission with respect to the financing of the Project, must have been obtained;

14.25.2 City or its designee shall have acquired fee ownership of the Land on commercially reasonable terms;

14.25.3 City shall have secured bond financing, on commercially reasonable terms (as determined by City, in its sole discretion), for the development of the Premises;

14.25.4 Fayetteville Baseball Club LLC shall have acquired (or have proof of a contractual right to acquire, in a form acceptable to City) an affiliated, full-season Class A - Advanced MiLB team to play at the Premises; and

14.25.5 Fayetteville Baseball Club LLC and Operator shall have acquired all necessary baseball approvals from the Sanctioning Association, in a form reasonably satisfactory to City, with respect to (a) the transactions contemplated by Section 14.25.4 above, (b) the relocation of a full season minor league baseball team that is a member of MiLB to Fayetteville, North Carolina, which will be the Team, (c) the Team to play its home games at the Baseball Stadium, and (d) such other approvals as are required by the Baseball Authorities with respect to the transactions contemplated by this Agreement.

The Parties agree to work in good faith and use commercial best efforts to assure that all of the conditions set out in this section are satisfied. If any of the foregoing conditions are not satisfied on or before September 30, 2017, 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.

Section 14.26. City Approvals. Except as expressly set forth herein or as may be required by applicable Governmental Rule, any provision in this Agreement requiring 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.

Section 14.27. Guaranty. Payment of the Operating Fees shall be guaranteed by Houston Baseball Partners, LLC pursuant to the Guaranty Agreement.

Section 14.28. Survival. Sections Article XI and XIV shall survive termination of this Agreement together with any other provisions hereof which, by their terms, are intended to survive termination of the Agreement.

Section 14.29. No Waiver of 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 Operator of any of the City's obligations under this Agreement.

[Signatures Appear on Following Page]

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

CITY:

ATTEST:

Pamela Megill
PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE, NORTH CAROLINA

NAT ROBERTSON, Mayor

Date: 12/13/2016

Date: 12/13/2016

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

Cheryl Spivey
CHERYL SPIVEY, Chief Financial Officer



OPERATOR:

FAYETTEVILLE BASEBALL CLUB LLC

By: Reid Ryan
Name: Reid Ryan
Title: President, Business Operations

Date: 12/13/2016

EXHIBIT A

Site Map

EXHIBIT C-GRAPHIC LIMITS OF WORK

NOTE: PRIVATE DEVELOPMENT WITHIN THE LIMITS OF WORK WILL BE DESIGNED BY OTHERS. WHERE BALLPARK FUNCTIONS ARE LOCATED WITHIN THE PRIVATE DEVELOPMENT, THE BALLPARK DESIGN TEAM SHALL DESIGN THE FIT OUT FOR THOSE SPACES.

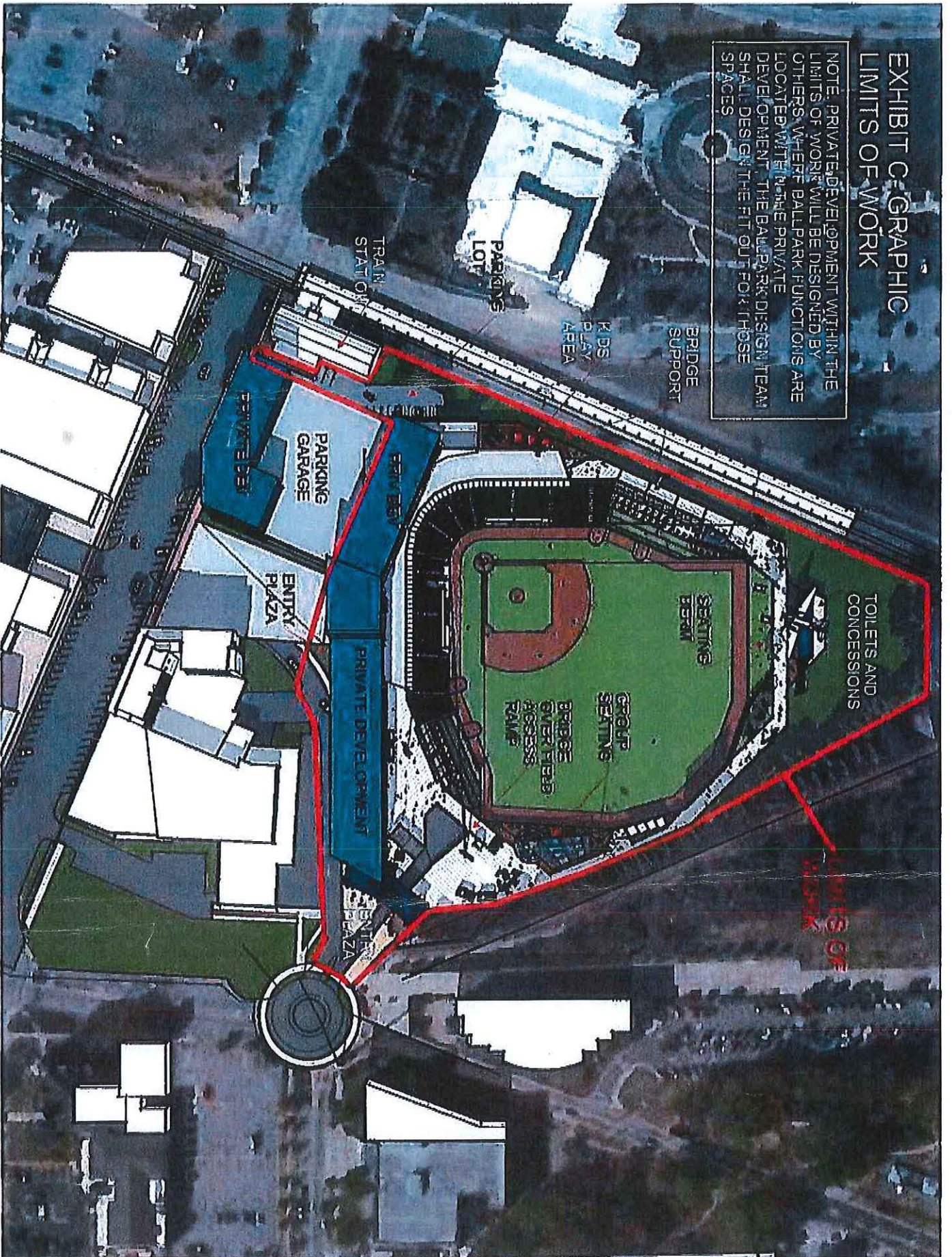


EXHIBIT B

Minimum Personal Property Requirements

- Stadium click effects – audio systems
- Video board driver system
- Televisions for the club, suites and clubhouses
- 2 – 50lb washers and 2- 75lb dyers for clubhouses
- 1 cube and 1 flaker ice machine for each clubhouse (4 total)
- Grounds equipment professional grade
- Greensmaster 3050 (2), 1 walk-behind infield mover, hand powered mowers, trimmers, top dressers and hand tools (or comparable equipment)
- Toro Workman 3200 (or comparable equipment)
- Toro Sand Pro 2020 (or comparable equipment)
- Covermaster tarps, field and mounds (or comparable equipment)
- Teleco/IT infrastructure for data, video and security

EXHIBIT C

Minimum Stadium Requirements

- Weight room – 1,000 square feet
- 2 enclosed and air conditioned batting cages
- Stadium Wi-Fi for ticketing and concession operations, 50 access points
- 4,000 – 5,000 chair back seats with cup holders
- LED video board & scoreboard
- 360-degree concourse
- Concession point of sale for every 200 fans
- Press box with 4 media bays, writing press area and scoreboard operations
- Kids play zone
- Final approval of location of team store, ticket office and administrative offices
- Distributed sound system
- Stadium concourse above seating sections
- Stadium club
- 6 - 8 Suites
- Concourse advertising signage backlit cabinets with wiring and cabling

EXHIBIT D

Minimum Concession Improvement Requirements

- Concession equipment based on kitchen/stands/equipment for modern 5,000 seat stadium;
- stoves, freezer, refrigerator, dishwasher, blenders, and microwave
- Fixed and portable concession areas totaling 50 POS (based on a 1/100 ratio on a 5,000 seat stadium)
- Portable concession power & water stub out in outfield and berm areas
- Power supply - Minimum of a 150 amp 120/208 service per fixed concession area
- Wi-Fi for POS system
- Operator offices
- Integrated POS system w/ hardware
- Digital menu boards
- Hood System for flat iron grills and gas powered fryers servicing each concession stand
- Up to 5 flat iron grills and 10 gas powered fryer machines for concessions

EXHIBIT E

Capital Repair, Maintenance and Improvements Schedule

See attached. The Parties acknowledge and agree that this Exhibit "E" will be updated, as agreed to by the Parties, upon completion of Construction of the Project. The attached preliminary below identifies the categories of potential capital maintenance, the anticipated frequency of investment for investment in such categories, the approximate amount of the expenditure in each area in current dollars and the anticipated expenditures on a year-by-year basis.

Capital Repair, Maintenance and Improvements Schedule

[illegible]

EXHIBIT F

Exclusive Use Areas

The following areas, all as specifically identified on the final Project Plans:

1. Team offices
2. Team store
3. Team storage space
4. The "home" locker room, but only for the period commencing at least two (2) weeks prior to the beginning of the first Team Game scheduled to be held at the Baseball Stadium each year of the Term and ending one (1) week after the conclusion of the last Team Game each year of the Term.

EXHIBIT G

Exclusive Use Lease Agreement

See attached.

EXCLUSIVE USE AREA LEASE AGREEMENT

THIS EXCLUSIVE USE AREA LEASE AGREEMENT (the "Lease") is made and entered into as of the 13th day of December, 2016, by and between THE CITY OF FAYETTEVILLE, NORTH CAROLINA (hereinafter called "City" or "Landlord") and FAYETTEVILLE BASEBALL CLUB, LLC (hereinafter called the "Operator"). The City and the Operator 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

The Parties have entered into a "Use and Operating Agreement" dated _____, __, 2016 ("Agreement"), that governs the construction and management of a Baseball Stadium (as that term is defined in the Agreement) on certain Land (as that term is defined in the Agreement) within the City of Fayetteville, 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.

Landlord hereby leases to Operator, and Operator hereby accepts and rents from Landlord, in accordance with this Lease's terms and conditions, the Exclusive Use Areas that are part of the Baseball Stadium and that are defined and identified in the Agreement, with those Exclusive Use Areas being referred to as the "Demised Premises" in 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 ten (10) years from the Lease Commencement Date (the "Initial Term"). Once the Lease Commencement Date is established, the Landlord and the Operator agree to execute a document confirming the Lease Commencement Date, and the Memorandum of Lease to be recorded as required by Paragraph 21 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 Operator shall use their best efforts to enter into a new lease agreement on substantially the same terms and conditions as contained herein.

(b) Occupancy of the Demised Premises. During each calendar year during the Initial Term and during any Renewal Periods, Operator shall have the right to control, occupy, and use the Demised Premises pursuant to this Lease only during the period commencing two (2) weeks prior to the beginning of the first Team Game scheduled to be held at the Baseball Stadium and ending one (1) week after the conclusion of the last Team Game. At all other times during the calendar year, Operator shall not have the right to control, occupy, or use the Demised Premises pursuant to this Lease and, instead, the Landlord shall 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 paragraph, however, shall affect any rights that Operator 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.

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, the Operator shall pay to Landlord, without notice, demand, reduction, setoff or any defense in accordance with the payment instructions set forth in Paragraph 3(f) below, an annual rental (the "Initial Term Rental") equal to a market rate lease payment calculated and agreed to by both parties for the Exclusive Use Areas based on the square footage of the Exclusive Use Areas to be determined after final plans and construction drawings for the Project are agreed to by both Parties and the exact nature and square footage of the Exclusive Use Areas is determined. It is the Parties' intention that after final plans and construction drawings for the Project are agreed to by both Parties and the exact nature and square footage of the Exclusive Use Areas is determined, this Section 3(a)(i) will be amended to reflect the actual amount of the Initial Term Rental.

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

(b) Taxes. The Operator 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. The Operator shall further pay all taxes assessed against its personal property in the Demised Premises. The Operator 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 and maintenance costs with respect to the Baseball 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 (exclusive of any income tax payable by the Landlord as a result hereof) 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 the Operator and shall be paid promptly and prior to same becoming past due. The Operator shall provide the 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 the Operator to the 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 the Landlord of any payment from the Operator hereunder in an amount less than that which is currently due shall in no way affect the Landlord's rights under this Lease and shall in no way constitute an accord and satisfaction.

(f) Payment Instructions. All rental and other payments required of the Operator hereunder shall be made payable to the Landlord and mailed or hand delivered to the Landlord at the address for

notices set forth in Section 14.4 of the Agreement or at such other address as shall be designated in writing by the Landlord.

4. DELIVERY OF POSSESSION

Landlord will deliver the Demised Premises to the Operator on or before the Lease Commencement Date with the Landlord's work on the Baseball Stadium completed as and to the extent required by the Agreement.

5. ALTERATIONS AND IMPROVEMENTS BY OPERATOR

Except as set forth in the Agreement, the Operator shall make no permanent changes or other alterations, additions, or improvements to the Demised Premises without the prior written consent of the City.

6. USE OF DEMISED PREMISES

(a) The Operator 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. The Operator 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 the Baseball Stadium as a first-class facility. The Operator'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 Baseball Stadium.

(b) Without limiting the generality of (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) The Operator shall exercise due care in its use and occupancy of the Demised Premises and shall not 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 Paragraph 3(c) hereof, the Operator shall deliver the Demised Premises to the City in as good condition as on the Commencement Date, ordinary wear and tear and acts of God alone excepted.

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

7. TAXES

The Operator shall pay any taxes or assessments of any nature imposed or assessed upon this Lease or upon the Operator's trade fixtures, equipment, machinery, inventory, merchandise or other personal property located on the Demised Premises and owned by or in the custody of the Operator as promptly as all such taxes or assessments may become due and payable without any delinquency.

8. INSURANCE COVERAGE

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

9. REPAIRS AND MAINTENANCE

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

10. UTILITIES

The Agreement requires the Operator to pay for the utilities of the Baseball Stadium, which includes the Demised Premises.

11. DAMAGE OR DESTRUCTION OF DEMISED PREMISES

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

12. COMPLIANCE WITH LAWS

The Operator agrees, at its own expense, to comply promptly with all laws that may be in effect from time to time that area applicable to the Operator's use or occupancy of the Demised Premises.

13. INDEMNIFICATION

(a) Indemnification by Operator. Operator shall, except as otherwise provided in this Section 13(a), 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 the Operator or Operator's contractors, employees, officers, directors, agents on or after the Commencement Date, (ii) Operator's failure to comply with its obligations under this Agreement or (iii) the gross negligence or willful misconduct of Operator or Operator's contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, Operator 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) The existence of any Hazardous Materials in, on or under the Demised Premises prior to the Commencement Date; or

(iv) Any environmental event caused by City or any of its employees, officers,

directors, contractors, agents or invitees.

(b) Indemnification by City. To the maximum extent permitted by applicable Governmental Rule, City shall, except as otherwise provided in this Section 13(b), defend, protect, indemnify and hold Operator 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 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 Operator, its employees, officers, directors, contractors, agents or invitees;
- (ii) Operator'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 Operator;
- (iii) Any Hazardous Materials that are introduced to the Demised Premises after the Commencement Date by Operator, or any of its employees, officers, directors, contractors, or agents; or
- (iv) Any environmental event caused by Operator or any of its employees, officers, directors, contractors, or agents.

The provisions of this Section 13 are solely for the benefit of City and Operator 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 Section 13(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; 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.

(d) Survival Right to Enforce. The provisions of this Section 13 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 13, 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 13. Except as otherwise provided herein, the obligations of the parties under this Section 13 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.

14. LANDLORD'S RIGHT OF ENTRY

The Landlord, and those persons authorized by it, shall have the right to enter the Demised Premises at all reasonable times and upon reasonable 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 Baseball Stadium. Except in the case of any emergency, Operator shall have the right to have a representative of Operator accompany the Landlord or persons authorized by the Landlord while in the Demised Premises. Further, during the last six (6) months of the Initial Term or of any Renewal Period, the 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.

15. 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) Operator'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) Operator's failure to perform any other of the material terms, covenants or agreements contained in this Lease to be performed by Operator if not remedied within thirty (30) days after receipt of written notice thereof, or if such default cannot be remedied within such period, Operator 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) The Operator shall commit an Act of Bankruptcy (as such term is defined in the Agreement); or

(iv) There is an Operator Default under the Agreement.

(b) Upon the occurrence and during the continuation of any Event of Default by the Operator

hereunder, the City shall have the following rights and remedies, it being understood that, notwithstanding anything to the contrary in this Lease, the City shall not have any right to terminate this Lease as a result of an Event of Default by the Operator 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 the Operator under this Lease, and any and all amounts necessary to compensate the City for all the damage proximately caused by the Operator'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 the Operator'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 the Operator 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, the 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 the Operator, and the Operator shall reimburse the Landlord upon demand for any sums paid or costs incurred by the Landlord in curing such Event of Default, including interest thereon at the Default Rate and reasonable attorneys' fees and other legal expenses.

16. PRIORITY OF LIEN OF LEASE

This Lease and any permitted or approved subleases shall at all times be superior and senior in lien to the lien of any and all mortgages or deeds of trust now or hereafter placed on the property of which the Demised Premises are a part.

17. ASSIGNING AND SUBLETTING

Except to the extent authorized by this paragraph, the Operator 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 the Landlord, which the Landlord may withhold in its sole discretion. Notwithstanding the foregoing, the Operator may assign its interest in this Lease without the Landlord's consent to the same extent, and to the same assignee, that the Operator may assign its interest in the Agreement without the Landlord's consent in accordance with Article X of the Agreement. The 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.

18. COVENANT OF QUIET ENJOYMENT

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

19. ESTOPPEL CERTIFICATES

Within ten (10) days after a request by the Landlord, the Operator 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 the Operator's knowledge, no default exists on the part of the Landlord or the Operator, that the Operator is in possession, that the Operator has commenced the payment of Rental, that the Operator 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 the Operator, the Landlord shall deliver to the Operator a similar estoppel certificate covering such matters as are reasonably required by the Operator.

20. PROTECTION AGAINST LIENS

The Operator shall do all things necessary to prevent the filing of any mechanics, 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 the Operator. If any such lien is filed against the Demised Premises, the Operator shall either cause the same to be discharged of record within thirty (30) days after filing or, if the Operator 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 the Operator shall fail to discharge such lien within said time period or fail to furnish such security, then the 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 the Landlord acts to discharge or secure the lien then the Operator shall immediately reimburse the Landlord for all sums paid and all costs and expenses (including reasonable attorneys' fees) incurred by the Landlord involving such lien together with interest on the total expenses and costs at the maximum lawful rate.

21. MEMORANDUM OF LEASE

The Landlord and the Operator 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 Cumberland County, North Carolina.

22. FORCE MAJEURE

In the event the Landlord or the Operator shall be delayed, hindered or prevented from the performance of any act required hereunder, by reason of Force Majeure (as defined in the Agreement), the performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended as necessary to complete performance after the delay period. However, the provisions of this paragraph shall in no way be applicable to the Operator's obligations to pay Rental or any other sums, monies, costs, charges or expenses required by this Lease.

23. REMEDIES CUMULATIVE – NONWAIVER

Unless otherwise specified in this Lease, no remedy of the Landlord or the Operator 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 the Landlord or the Operator from time to time as often as the need may arise. No course of dealing between the Landlord and the Operator or any delay or omission of the Landlord or the Operator 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.

24. HOLDING OVER

If the Operator remains in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease, whether with or without the Landlord's acquiescence, the Operator 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 the Operator 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 the Operator during any such tenancy at will period shall be two hundred percent (200%) of the Rental being paid in the most recent period. The Operator shall also remain liable for any and all damages, direct and consequential, suffered by the Landlord as a result of any holdover without the Landlord's unequivocal written acquiescence.

25. 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 14.4 of the Agreement.

26. LEASING COMMISSION

The Landlord and the Operator represent and warrant each to the other that they have not dealt with any broker(s) or any other person claiming any entitlement to any commission in connection with this transaction. The Landlord and the Operator 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.

27. MISCELLANEOUS

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

(b) Nature and Extent of Agreement. This Lease, together with the Agreement, contain the complete agreement of the parties concerning the lease by the Operator 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 the 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 by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one instrument. All signatures need not be on the same counterpart.

(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]

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

CITY:

ATTEST:

Pamela Megill
PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE, NORTH CAROLINA

NAT ROBERTSON, Mayor

Date: 12/13/2016

Date: 12/13/2016

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

Cheryl Spivey
CHERYL SPIVEY, Chief Financial Officer



OPERATOR:

FAYETTEVILLE BASEBALL CLUB LLC

By: [Signature]
Name: Reid Ryan
Title: President, Business Operations

Date: 12/13/2016

EXHIBIT A
Use and Operating Agreement

EXHIBIT H

See attached.

Guaranty Agreement

Houston Baseball Partners, LLC. (together with its permitted successors and assigns referred to in this Guaranty Agreement as the "Guarantor"), a limited liability corporation organized and existing under the laws of the State of Texas, and an affiliate of Fayetteville Baseball Club LLC, a limited liability corporation organized and existing under the laws of the State of North Carolina (the "Company") hereby absolutely, unconditionally and irrevocably guarantees the full, faithful and punctual payment by the Company of each and every one of the Company's covenants, duties and obligations of every nature whatsoever under Section 4.3 of the Use and Operating Agreement dated as of ___ day of December, 2016 (the "Agreement") between the Company and the City of Fayetteville, North Carolina, a municipal corporation organized and existing under the laws of the State of North Carolina (together with its successors and permitted assigns, "Fayetteville"), as and when required to be performed under the Agreement; including the full, faithful and punctual payment when due of each and every sum due or to become due from the Company under or in connection with Section 4.3 of the Agreement and the Company's covenants, duties and obligations of every nature whatsoever under Section 4.3 of the Agreement (collectively, the "*Obligations*").

In connection with the Obligations, Guarantor hereby agrees that:

(a) In the event of the failure of the Company to pay any Obligations owed when due, which failure is not timely cured (if a right to cure is afforded), the obligations of Guarantor hereunder with respect to the Obligations shall, upon demand by Fayetteville, become immediately due and payable to Fayetteville by the Guarantor. This guaranty is a guaranty of payment and not of collectability and is no way conditioned or contingent upon any attempt to collect from the Company or any other person liable for the payment of the Obligations. The liability of Guarantor for the Obligations is primary, and Fayetteville may proceed against Guarantor with respect to such Obligations without first proceeding against the Company, or any other person primarily or secondarily liable on any of the Obligations. Guarantor hereby waives any statutory or common law right to require Fayetteville to take action against the Company with respect to the Obligations.

(b) Unless and until the Obligations are paid in full, the Guarantor waives any and all claims and rights (whether arising in equity, at common law, or under a statute or agreement) of subrogation, contribution, indemnity and exoneration against the Company or any other person liable for payment of all or any part of the Obligations.

(c) For so long as Guarantor or any affiliate of Guarantor has a direct or an indirect controlling interest in the Company, Guarantor hereby authorizes the Company and Fayetteville, without notice and without affecting Guarantor's liability hereunder, to modify and amend the Agreement from time to time. At such time as Guarantor and each affiliate of Guarantor ceases to have a direct or an indirect controlling interest in the Company, and provided that Guarantor has informed Fayetteville that it no longer has a direct or an indirect controlling interest in the Company, the terms of this subparagraph (b) shall cease to apply and no material modifications or amendments to the Agreement may occur absent consent of Guarantor, such consent not to be unreasonably withheld.

(d) The rights provided for in this Guaranty Agreement are cumulative and are not exclusive of other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

(e) The Guarantor agrees to pay costs and expenses, including reasonable attorneys' fees, actually incurred by Fayetteville in connection with the collection by Fayetteville from the Guarantor of the Obligations.

(f) Unless otherwise set forth herein, the rights and obligations of the Guarantor and Fayetteville under this Guaranty Agreement may not be assigned by either party except as is allowed pursuant to Article X of the Agreement. In the event such an assignment is made and consented to (if such consent is required), the assigning party shall be released (except as specified below) and discharged from all obligations to the other party hereunder thereafter arising, and such assignee shall be substituted in place of the assigning party herein. Notwithstanding the foregoing, Fayetteville may unilaterally assign this Guaranty Agreement to any person to whom the Agreement is assigned in accordance with the terms of the Agreement.

(g) This Guaranty Agreement is binding upon the successors and assigns of Guarantor.

(h) This Guaranty Agreement shall in all respects be governed by, and construed in accordance with, the laws (excluding principles of conflict of laws) of the State of North Carolina applicable to such agreements made and to be performed entirely within this State or other jurisdiction, including all matters of construction, validity and performance.

(i) All notices required to be given by a Party under this Agreement shall be in writing and sent by national, traceable overnight courier, or sent by registered or certified U.S. mail, return receipt requested to the other Party at the address specified below:

If to the Fayetteville:

City of Fayetteville, North Carolina
433 Hay Street
Fayetteville, NC 28301-5537
Attention: City Attorney

and

City of Fayetteville
433 Hay Street
Fayetteville, NC 28301-5537
Attention: City Manager

or to such other person or place as Fayetteville may designate in writing.

If to Guarantor:

Houston Baseball Partners, LLC
501 Crawford, Suite 500
Houston, Texas 77002
Attn: Giles Kibbe, Legal Counsel

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, Guarantor and Fayetteville have executed this Guaranty Agreement by their duly authorized officers, as of this 34 day of December, 2016.

GUARANTOR:

HOUSTON BASEBALL PARTNERS, LLC

By: _____

Name: Reid Ryan

Its: President, Business Operations

FAYETTEVILLE:

ATTEST:

Pamela Megill
PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE, NORTH CAROLINA

NAT ROBERTSON, Mayor

Date: 12/13/2016

Date: 12/13/2016

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

Cheryl Spivey
CHERYL SPIVEY, Chief Financial Officer

