

USE AND OPERATING AGREEMENT

This Use and Operating Agreement ("Agreement") is made and entered into this 31st day of January, 2018 ("Effective Date"), by and among the **CITY OF HIGH POINT, NORTH CAROLINA** ("City"), a municipal corporation, incorporated under the laws of the State of North Carolina, **HIGH POINT BASEBALL, INC.** ("Team"), a non-profit corporation organized and existing under the laws of the State of North Carolina, and **HIGH POINT DOWNTOWN STADIUM FOUNDATION** ("Operator"), a non-profit corporation organized and existing under the laws of the State of North Carolina (City, Team and Operator are sometimes referred to herein individually as a "Party" and collectively as the "Parties");

WITNESSETH:

WHEREAS; City intends to construct on the Land (as defined herein) a multi-use sports and entertainment facility with fixed seating capacity for approximately 4,000 attendees for use as the home venue for a minor league professional baseball team and in connection with other sporting and entertainment events ("Stadium"), subject to the terms and conditions set forth herein. City intends for Stadium to help spur economic development in the downtown core, create new jobs, provide additional disaster relief staging areas, and to enhance the quality of life for its citizens; and

WHEREAS, Team, as a non-profit organization, intends to locate and operate a minor league professional baseball team in the City at the Stadium (as defined herein), subject to approval of the Sanctioning Association (as defined herein). Operator, as a non-profit organization, intends to manage, maintain and be responsible for the operation of the Stadium; and

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

NOW THEREFORE, in consideration of the payments herein required to be made by Operator and Team, and the covenants and agreements hereinafter contained to be kept and performed by City, Team and Operator, City agrees to authorize Team to occupy, and Operator to occupy, 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, Team 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, Team or 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 Odell Associates, Inc., or such other architect selected by the City in accordance with City's selection process, to design the Project Improvements.
- (f) "Architect's Contract" means the services contract between City and the Architect for, among other things, the preliminary design of the Project Improvements, and participation on the Design-Build Project, as the same may be amended, supplemented, modified, renewed, extended or replaced from time to time.
- (g) "Authorized Representatives" means such officers, employees or other representatives of City, Team and Operator, respectively, authorized by such party to act on its behalf under Article XIII of this Agreement as certified to the other in writing.
- (h) "Business Day" means any day which is not a Sunday, a Saturday, or a legal holiday of City.
- (i) "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.
- (j) "Capital Repair, Maintenance and Improvements" shall mean any and all design, permitting, labor, repairs, maintenance, materials or other improvements related to any structural modifications, repair or maintenance to Stadium or related to such work which is reasonably necessary to repair, restore, refurbish or replace the Premises' elevators, HVAC system, generator, and fire monitoring and suppression system, if such work is necessitated by: (a) any material defects in design, construction or installation of the Premises by or on behalf of the City; (b) Physical Obsolescence of a portion or component of the Premises (including replacement necessitated by repeated breakdown of a component of the Premises despite efforts to repair or restore it short of such replacement); (c) modifications

required by applicable Governmental Rule; or (d) any other design, permitting, labor, repairs, maintenance, materials or other improvements intended to ensure age, use, ordinary wear and tear and deterioration of the Premises do not materially adversely impact its use or the cost to maintain the Premises, and to prevent Physical Obsolescence of any asset (excluding Operational Maintenance obligations of the Operator pursuant to Section 7.1). The term "Capital Repair, Maintenance and Improvements" shall not include (i) any Operational Maintenance, (ii) any casualty repair work pursuant to Section 12.1, (iii) any condemnation repair work pursuant to Section 12.2, (iv) the portion of any contract for the performance of any of the foregoing, (v) Operator's Remedial Work, (vi) maintenance or repairs on any property, including Removables, owned by Operator or Team, or (vii) the Premises as initially constructed (as of Substantial Completion).

- (k) "City" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (l) "City Default" shall have the meaning ascribed to it in Section 11.1.
- (m) "City Event(s)" shall have the meaning ascribed to it in Section 7.16.
- (n) "City's Contribution" shall mean the City's obligation to pay up to Thirty-Six Million One Hundred Thousand Dollars (\$36,100,000.00) toward the payment of Project Costs. Notwithstanding anything herein to the contrary, the Parties understand that any City obligation for Project Costs exceeding Thirty-Six Million One Hundred Thousand Dollars (\$36,100,000.00) shall require the approval of the City.
- (o) "City's Remedial Work" shall have the meaning ascribed to it in Section 13.13.
- (p) "Commencement Date" means the first to occur of (i) the Substantial Completion date or (ii) the date on which Operator opens the 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 City's obligations hereunder to cause Substantial Completion of the Project Improvements Work to occur.
- (q) "Comparable Facilities" means 4,000-6,000 capacity minor league baseball stadiums constructed in the eight (8) years prior to the Effective Date within urban downtown neighborhoods; provided, however, that in determining compliance with any "Comparable Facilities" standard or requirement set forth in this Agreement, such stadiums shall be looked at together and no one stadium nor any individual system or component at any such stadium shall be looked at alone.
- (r) "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.

- (s) "Design-Build Contract" means the construction contract between City and the Project Contractor for the design and 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.
- (t) "Effective Date" shall have the meaning given it in the Preamble of this Agreement.
- (u) "Environmental Law" means any applicable federal, state, or local Governmental Rule relating to protection of natural resources or the environment.
- (v) "Event of Default" shall have the meaning ascribed to it in Article XI.
- (w) "Exclusive Use Areas" shall mean the areas that are identified in Exhibit "B" attached hereto and made a part hereof which are reserved for the exclusive use of the Team and Operator during the Term. "Exclusive Use Areas" shall include the "home" locker room. The City, Team and Operator intend that the City, Team and Operator will execute the Exclusive Use Lease Agreement prior to the Commencement Date.
- (x) "Exclusive Use Lease Agreement" shall mean that certain Exclusive Use Lease Agreement to be entered by and among City, Team and Operator granting Team and Operator a leasehold interest in the Exclusive Use Areas, substantially in the form attached hereto as Exhibit "C".
- (y) "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.
- (z) "Final Notice" shall have the meaning ascribed to it in Section 11.5.
- (aa) "Force Majeure" means the occurrence of any of the following, but only for the period of time, if any, that the performance of a Party's material obligations under this Agreement are actually delayed or prevented thereby: Acts of God, 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.
- (bb) "Governmental Authority" means any federal, state or local government, agency, court, commission or other body with jurisdiction over the matter in question.
- (cc) "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.

- (dd) "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.
- (ee) "Land" means the land described on Exhibit "A" attached hereto and made a part hereof.
- (ff) "Minimum Concession Improvements Requirements" means the interior and exterior improvements, build out and equipment required for food and beverage concession operations at the Stadium, as described in the Project Plans.
- (gg) "Minimum Personal Property Requirements" means all reasonable improvements, fixtures, equipment, systems, facilities, features and amenities necessary to operate, repair, and maintain the Project Improvements. Minimum Personal Property Requirements shall not include equipment intended for on-field use solely by the members of the minor league baseball team in connection with the playing of baseball games, warm-ups, practices, training rooms or weight training activities.
- (hh) "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.
- (ii) "Minimum Stadium Requirements" means all improvements, fixtures, equipment, systems, facilities, features and amenities which are described in the Project Plans.
- (jj) "Mortgage" shall have the meaning ascribed to it in Section 10.5.
- (kk) "Naming Rights" shall have the meaning ascribed to it in Section 7.10.
- (ll) "Management Commissions" shall have the meaning ascribed thereto in Section 4.3.
- (mm) "Management License Fee" shall have the meaning ascribed thereto in Section 4.3.
- (nn) "Operational Maintenance" shall have the meaning ascribed to it in Section 7.1.
- (oo) "Operator" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (pp) "Operator or Team Default" shall have the meaning ascribed to it in Section 11.3.

- (qq) "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.
- (rr) "Operator's Remedial Work" shall have the meaning ascribed to it in Section 13.12.
- (ss) "Person" means any association, individual, corporation, governmental entity, partnership, joint venture, business association, estate or any other organization or entity.
- (tt) "Physical Obsolescence" and "Physically Obsolete" means any Project Improvements (and, for the avoidance of doubt, not including Removables or any other property owned by Team or 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 Operational Maintenance obligations under the Agreement. For purposes of determining Physical Obsolescence or Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other component shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or any other component has deteriorated to a degree that cannot be remedied through Operational Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).
- (uu) "Premises" means (i) the Land; (ii) the Stadium; and (iii) any other buildings, structures, additions, improvements, equipment, fixtures and facilities directly related to the Stadium, and all appurtenances to the same, which are in the future constructed on the Land, pursuant to the terms and conditions herein.
- (vv) "Prime Rate" means the per annum rate of interest from time to time published by the *Wall Street Journal* as the "prime rate".
- (ww) "Priority Dates for City Events" shall have the meaning ascribed to it in Section 7.16.
- (xx) "Project" means the Stadium, together with all the other Project Improvements.
- (yy) "Project Change Order" shall have the meaning ascribed to it in Section 3.6.
- (zz) "Project Contractor" means Samet Corporation, or such other general contractor for the Project as may be selected by the City in accordance with City's selection process.
- (aaa) "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 Project Plans and Design-Build Contracts.
- (bbb) "Project Costs" means all of the costs incurred or to be incurred on behalf of City in order 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 approved Project Change Orders and including off-Premises allowances for upfit of Team's office space, team store and ticket office; (d) all other costs in connection with the operation and maintenance of the Land prior to the Commencement Date, including all remediation and abatement costs arising from removal of Hazardous Materials or addressing environmental conditions; (e) development costs and fees associated with the Project Improvements, (f) all finance issuance costs incurred by City, and/or on behalf of City, with respect to the Project including any reserve funds or capital or repair accounts; and (g) and all insurance premiums on all policies of insurance required to be carried by City prior to Substantial Completion. Notwithstanding anything herein to the contrary, City agrees to fund the City's Contribution toward the Project Improvements, and Operator agrees to fund the costs of Project Improvements in excess of City's Contribution, but only to the extent that Operator has initiated and consented to any such Project Improvements in accordance with Article III of this Agreement, and specifically in accordance with Sections 3.2 and 3.6 therein. 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, (iii) costs to obtain (other than those on the Premises) any necessary easements, rights of way, or other infrastructure improvements; or (iii) legal costs, accountants, and attorneys.

- (ccc) "Project Improvements" means the 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.
- (ddd) "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.
- (eee) "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) dated as of November 20, 2017 (as may be amended thereafter upon mutual agreement among Project Contractor, City and Operator) and prepared by the Project Contractor and/or Architect. The Project Plans are attached hereto and incorporated by reference herein at Exhibit D.
- (fff) "Removables" shall have the meaning ascribed thereto in Section 5.4.

- (ggg) "Sanctioning Association" means the Atlantic League of Professional Baseball, its entities or affiliates, and any other baseball association that Operator certifies to City's reasonable satisfaction is a comparable baseball association that sanctions professional baseball teams.
- (hhh) "Seat Rights" shall have the meaning ascribed thereto in Section 7.9.
- (iii) "Stadium" shall have the meaning ascribed to it in the Recitals.
- (jjj) "State" means the State of North Carolina.
- (kkk) "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 substantially all other improvements, equipment and systems included in the Project Improvements are operational as designed and scheduled, (iii) all governmental inspections and certifications required for occupancy and operation have been made and posted, (iv) the Project Contractor's instruction of Operator's designated personnel in the operation of material equipment and systems has been completed, and (v) the only Project Improvements Work that remains is minor in nature, has been identified on a punch list, and may be completed without interfering with Operator's operation of the Premises.
- (III) "Team" shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement. Team further means a minor league professional baseball club approved by the Sanctioning Association to play baseball in the Stadium beginning in 2019.
- (mmm) "Team Game(s)" shall mean all minor league professional baseball games, including, without limitation, preseason games, exhibition games, regular season games, postseason games and any all-star game.
- (nnn) "Term" shall have the meaning ascribed thereto in Section 4.2.
- (ooo) "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 Team 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, 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.

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 13.23.1.

- (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 non-profit corporation duly organized under the laws of the State of North Carolina 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 Sections 13.23.1 and 13.23.5.
- (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.

Section 2.3. Representations and Warranties by Team. Team makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) Team is a non-profit corporation duly organized under the laws of the State of North Carolina 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 Team of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Team.
- (b) Each of the agreements to which it is a party related to the subject matter of this Agreement, including this Agreement, have been duly executed and delivered by

duly authorized officers of Team, and constitute valid and binding obligations of Team, enforceable against Team in accordance with their respective terms.

- (c) There is no litigation now pending or, to Team's knowledge, threatened, challenging the corporate existence of Team and there is no pending, or to Team's knowledge, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of Team or the ability of Team to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to Team or any of its Affiliates, which violation would materially and adversely affect the ability of Team 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 Team is a party or by which Team or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Team under the term of any instrument or agreement, which conflict, breach, default or encumbrance would materially and adversely affect the ability of Team to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (iii) violate the charter, articles of incorporation or bylaws of Team. 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 Team of this Agreement or the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof, except (i) such as have been obtained and are in full force and effect, (ii) any permits required to be obtained with respect to the construction of the Project and (iii) the approvals contemplated by Sections 13.23.1 and 13.23.5.
- (e) Team has duly and validly obtained all material certificates, licenses and permits from all public authorities, both federal and state, required as of the Effective Date to enable Team to carry on its business as it is now conducted and to enter into this Agreement.
- (f) To the best of Team'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 Team under this Agreement or that could materially adversely affect the ability of Team to perform its obligations hereunder.
- (g) Team or its Affiliate has entered into a binding purchase agreement to secure the right to own and operate a member club of the Atlantic League of Professional Baseball team in City beginning in the 2019 playing season, and pursuant to such binding purchase agreement, such right shall be granted by Sanctioning

Association; Team or its Affiliate shall locate such team in City and play all Team Games and any all-star games awarded to Team by the Sanctioning Committee at the Stadium.

ARTICLE III PROJECT DEVELOPMENT

Section 3.1. Project Design. City will enter into the Design-Build Contract and, except as set forth herein, shall be solely responsible for the payment of all fees and reimbursable expenses due and payable from time to time under the Design-Build Contract, in an amount up to and not to exceed City's Contribution. 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. Team and Operator agree 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 Costs, including the Project Improvements. Moreover, should Operator require any changes to the Minimum Project Requirements or the Project Plans, or if Operator proposes a Project Change Order which is approved pursuant to this Agreement, and such changes or Project Change Order 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, including any applicable Project Change Orders. City shall enter into a Design-Build Contract for the Project Improvements Work for the Project Improvements, in accordance with the Minimum Project Requirements. The Project Plans (including detailed plans and specifications) shall be developed and prepared by the Architect at City's expense and direction. Any changes to the final Project Plans shall be subject to the prior approval of City.

Section 3.3. 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, provided Operator and all such agents, contractors, licensees, and concessionaires (i) notify City at least two Business Days in advance of such proposed entry (except in the case of tours pursuant to Section 3.3(e), herein, for which reasonable notification and documentation is required), (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 request, given the stage of the Project Improvements Work at the time of such entry; and (iv) comply with the provisions of the Design-Build 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) equipping locker room and related facilities for Team or Operator; (d) installation of any additional fixtures or equipment desired by Team or Operator; (e) tours of the Land and Project Improvements sponsored by Team or Operator; and (f) the erection and maintenance of billboards and signs during the construction period consistent with Team's or Operator's 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). Any entry, access or occupancy provided to Operator pursuant to the terms of this Section 3.3 shall not be deemed to be acceptance of the Project Improvements Work or commence the Term. Team and Operator

shall cooperate with City in all aspects of the development and construction of the Stadium and not unreasonably hinder, delay or interfere with the development and construction of the Project Improvements.

Section 3.4. Schedule for Substantial Completion. City shall use its best efforts to cause Substantial Completion of the Project Improvements Work to occur, or to obtain a temporary certificate of occupancy for the Project Improvement Work (a "Temporary CO") on or before ten (10) days prior to the first scheduled home Team Game of the 2019 ALPB season.

Section 3.5. Performance and Payment Bonds. For any construction work at Premises to be performed by or on behalf of Operator, prior to Operator commencing any construction project estimated to cost greater than Five Hundred Thousand Dollars (\$500,000), Operator (or its contractor(s)) shall provide to City for its approval a statutory form payment and performance bond for such project. The requirement to provide such bond may be waived by the City in its sole discretion.

Section 3.6. Change Orders. No changes in plans or specifications shall be made to the Project, the Project Plans or the Minimum Project Requirements unless agreed to in a written change order ("Project Change Order") approved in writing by City and Operator. 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 (and shall receive the benefit of any deduction): (i) relating to the preparation of such Project Change Order, and (ii) associated with the additional Project Improvements Work resulting from such approved Project Change Order. If a Project Change Order is submitted by Operator and approved in accordance with this Section, Operator must submit the budgeted costs of the resulting Project Improvements Work to City prior to commencement of such Project Improvement Work, as described more fully in Sections 3.1 and 3.2 herein.

ARTICLE IV ENGAGEMENT OF THE OPERATOR; TERM; FEES

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 manage, operate and promote the Premises, with the right, consistent with Operator's not-for-profit status, 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 and except as may be expressly set forth otherwise in this Agreement, City will give and deliver to Operator the exclusive right to manage, operate and promote the Premises free of all tenancies, licenses, and parties in possession of such Premises (other than those arising by, through or under Operator). City shall make the Premises available to Operator on the Commencement Date and shall ensure that the Premises are in good condition and repair.

4.1.2 City covenants for the Term that Operator, upon paying the Management License Fee and Management Commissions, 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 manage, occupy, and use the Premises on behalf of City, 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 manage and use 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, or construction or financing of the Premises or the Project Improvements Work or any portion thereof, except for lien rights of bondholders created to facilitate the financing of the Project. The foregoing does not extend to any liens, leases or encumbrances arising by, through or under Team, Operator or their respective 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 which shall expire upon the earlier of: (i) twenty (20) years thereafter, or (ii) thirty (30) days following the twentieth (20th) consecutive baseball playing season thereafter; unless earlier terminated in accordance with the terms hereof.

Section 4.3. Management License Fee; Management Commissions.

- 4.3.1 It is the intent of the Parties that City has 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 Team and Operator under the Exclusive Use Lease Agreement, as well as the Management License Fee and the Management Commissions pursuant to this Section.
- 4.3.2 The lease payments payable by Team and Operator to City pursuant to the Exclusive Use Lease Agreement shall be set forth in the Exclusive Use Lease Agreement. Operator may subtract the amount of such annual lease payments from Operator's annual payment of the Management License Fee (as defined herein).
- 4.3.3 In partial consideration of the rights granted to Operator as set forth in this Agreement, Operator shall pay to City on or before October 31st of each Agreement Year the sum of Three Hundred Thousand Dollars (\$300,000) (the "Management License Fee"), 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.
- 4.3.4 In partial consideration of the rights granted to Operator as set forth in this Agreement, Operator shall pay (or cause to be paid) to City on or before October 31st of each Agreement Year the Management Commissions, 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. "Management Commissions" shall include and shall be defined as follows:
- (a) No less than Five Hundred Thousand Dollars (\$500,000) for Naming Rights (as defined herein) for each of the first fifteen (15) Agreement Years. Such annual sum shall be payable as Management Commissions by Operator to City regardless of the identity of the parties to, or term of, any applicable naming rights sponsorship agreement, and regardless of the early termination of any applicable naming rights sponsorship. Operator may offset its obligation as set forth in this Section 4.3.4(a) to the extent that City receives sums for Naming Rights pursuant to any applicable naming rights sponsorship agreement prior to the Commencement Date;
 - (b) For Naming Rights in each of the sixteenth (16th) through the twentieth (20th) Agreement Years, fifty percent (50%) of the gross amount of annual fees from

Naming Rights; *provided, however*, that in the event that the identity of the Naming Rights sponsor differs from the Naming Rights sponsor during first fifteen (15) Agreement Years, then for the 16th Agreement Year only, the amount payable to City pursuant to this Section 4.3.4(b) shall be fifty percent (50%) of the net amount of annual fees from Naming Rights, following deduction for costs incurred by Operator in implementing such name change at Stadium. Such amounts shall be payable as Management Commissions by Operator to City regardless of the identity of the parties to, or term of, any applicable naming rights sponsorship agreement, and regardless of the early termination of any applicable naming rights sponsorship. Moreover, such amounts paid to City in each of the sixteenth (16th) through the twentieth (20th) Agreement Years shall be first applied to any outstanding debt of City which is applicable to the Premises, and if no such debt is remaining, then such amounts shall be deposited by City in the Capital Repair, Maintenance and Improvements Account;

- (c) Three Dollars for each Team Game ticket sold during the prior Agreement Year, calculated by multiplying the total number of Team Game tickets sold (at any price) during the prior Agreement Year by three; and
- (d) For all Operator Events held during the prior Agreement Year, the greater of (i) Two Dollars for each Operator Event ticket sold, or ten percent (10%) of gross ticket revenue for all Operator Events.

4.3.5 In order to reasonably preserve the benefit of the bargain struck by the parties in respect of the Management Commissions, Team and Operator agree that they shall not issue or otherwise distribute more than ten percent (10%) of tickets which would otherwise be sold at face value for Team Games or Operator Events on a complimentary basis or at a discount of more than fifty percent (50%) of the face value of any such ticket. The ten percent (10%) threshold shall be determined by tickets sold for all Team Games during each Agreement Year, as well as tickets sold for all Operator Events during each Agreement Year, and shall be subject to City's audit rights as detailed herein. For purposes of calculating the Management Commissions, any tickets issued or distributed on a complimentary basis or discounted as noted above which exceed, in the aggregate, the ten percent (10%) threshold shall be deemed to have been sold at the average price for such tickets during the Agreement Year. Separate calculations shall be made for Team Games and for Operator Events. Neither the tickets distributed to City pursuant to Section 7.20 nor a maximum of Three Thousand Five Hundred (3,500) player/coach/umpire/staff tickets for all Team Games during each Agreement Year shall be counted for purposes of the calculations noted in this Section 4.3.5.

Section 4.4. Audit. Team and Operator shall maintain books and records with respect to all receipts and expenditures relating to the sale of tickets and Naming Rights as provided in this Agreement, consistent with generally accepted accounting principles. City shall have the right, upon reasonable notice and during normal business hours, to inspect and audit those portions of Team's and Operator's books and records relating to such subject matter. Errors revealed by such inspection and audit shall be rectified by Team or Operator (as applicable) and any differences in payments shall be remitted to City by Operator within ten (10) days of notice from City. City shall bear the cost of such inspections and audits, unless a discrepancy of more than five percent (5%) of the amounts due to City is revealed, in which case Team and Operator shall bear the reasonable cost of any such inspections and audits.

Section 4.5. Permitted Uses. Throughout the Term, Team and Operator shall occupy and use the Premises for the primary purposes of conducting Team Games (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 Operator's permitted uses shall include Operator Events, including without limitation the conduct of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, baseball games other than Team Games, other sporting events, and other similar traditional baseball functions that will encourage economic development and tourism in City; and for purposes related and incidental thereto including, without limitation, operation of concession facilities in the Stadium (during games and events and at other times), sale of food and beverages (alcoholic and non-alcoholic), conducting tours, and for any other lawful purpose that is not a prohibited use described in Section 4.8.

Section 4.6. Compliance with Laws. Team and 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.

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

Section 4.8. Prohibited Uses. Operator shall not allow the Premises to be used for any of the following purposes: public nuisance (as defined by City ordinance); any use violating Governmental Rule; or use as an industrial site or waste disposal facility. City acknowledges that Team or Operator plans to utilize fireworks displays on multiple occasions throughout each Agreement Year, subject to applicable permit approvals and Governmental Rule. If conducting professional baseball games at the Stadium shall be or become prohibited uses under this Section 4.8, then Team or Operator may terminate this Agreement.

ARTICLE V BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS

Section 5.1. Beginning Condition. On the Commencement Date, City shall turn over the Premises to Operator for Operator's exclusive use, and for Operator to begin management and operation thereof with all Project Improvements Work being Substantially Complete and in good working order and condition (subject only to immaterial items which can be completed by City or the Project Contractor without interfering with Operator's operation of the Premises). In no event shall Operator's acceptance of the Premises pursuant to this Section be construed to release or waive City's obligations hereunder to cause Substantial Completion of the Project Improvements Work to occur.

Section 5.2. Alterations. Any alterations, additions, or construction of new improvements on or in the Premises subsequent to the Commencement Date must be consistent with the permitted uses of the Premises as set forth in Section 4.5 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, installation or removal of Removables or other trade fixtures and equipment; (b) temporary improvements or alterations to accommodate particular events; or (c) any other nonstructural alterations. For the avoidance of doubt, Operational 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 any structural alterations to the Stadium or Premises. 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.

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 Team or Operator and owned by Team or Operator (collectively, the "Removables"), all of which shall remain Team's or Operator's (as applicable) 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 included in the Project Improvements, or those paid for by City as part of City's Contribution or out of the Capital Repair, Maintenance and Improvements Account, shall be the property of City.

Section 5.5. City's Right of Inspection. Prior to City giving or withholding its consent to any proposed construction, alteration, addition to the Premises requiring such consent as set forth in Section 5.2, City may review Operator's conceptual design drawings and construction drawings for such construction work. Upon completion of any new construction or alteration or addition to existing improvements for which City's approval is needed under the terms of this Agreement, 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 6.1.4 herein.

ARTICLE VI OPERATION AND MANAGEMENT

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 Stadium and shall have the exclusive right and the obligation to contract for its license or use during the Term in a manner that will promote and further the purposes for which the Stadium has been constructed. Operator shall do all things and take all commercially reasonable actions necessary for the operation and maintenance of the stadium as a baseball stadium and sports and entertainment facility in accordance with this Agreement and in a manner generally consistent with the operation and maintenance of the Comparable Facilities as of the Effective Date, subject to normal wear and tear. Operator may license or permit use and occupancy of the Premises by vendors, concessionaires and others; *provided, however*, that any proposed lease of the Premises or any portion thereof must be tendered to City for approval and execution. Records, reports, invoices and receipts required to be maintained or submitted by Team or Operator for, to, or on behalf of City pursuant

to this Section 6.1 shall be maintained in accordance with North Carolina's Records Retention and Disposition Schedule for Municipalities. 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 Stadium and Premises and, in connection therewith, use all commercially reasonable efforts to obtain all fees, rents and other amounts due from licensees, concessionaires and other users of the Stadium and Premises; and shall cause notices to be served upon such licensees and other users to quit and surrender space occupied or used by them where desirable or necessary in the opinion of 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 Stadium and Premises;
- 6.1.2 commence, defend and settle in good faith such legal actions and proceedings concerning the operation of the 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 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 Stadium in accordance with Comparable Facilities subject to normal wear and tear, and maintain and operate the Stadium in compliance with all requirements necessary for the conduct of all Team Games;
- 6.1.5 prepare, coordinate, implement, revise as necessary and administer a preventative maintenance plan and program for the Stadium, its machinery and equipment, 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 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 Stadium (City and/or the Project Contractor shall be responsible for providing permanent utility services infrastructure and hook-ups for Operator's use);
- 6.1.7 maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the 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 Operational Maintenance obligations;
- (e) a detailed accounting of attendance at Team Games, Operator Events and City Events; 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 Team or Operator or payments paid by Team or Operator to City hereunder shall not preclude City from questioning the correctness thereof after such receipt and acceptance, for a period equal to the greater of three (3) years or the amount of time required for maintenance of the records supporting any such statement, as set forth in North Carolina's Records Retention and Disposition Schedule for Municipalities. In the event any errors are disclosed, either through questioning or as the result of an audit of such statements, all erroneous statements shall be rectified and any differences in payments shall be remitted to City by Team or Operator (as applicable) within ten (10) days. In the event that an audit reveals an underpayment by Team or Operator, Team or Operator (as applicable) 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 Team's or Operator's office (as applicable), 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, ticket sales records, etc.) not of Team or Operator itself (such as, without limitation, Team's or Operator's tax returns) and neither Operator nor 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; 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 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 supervision and security of Operator;
- 6.1.13 control the issuance of and issue all credentials for events at the 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 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 MAINTENANCE AND REPAIRS; ADDITIONAL COVENANTS OF CITY AND OPERATOR

Section 7.1. Maintenance of the Premises. Operator shall, at its sole cost and expense, perform all Operational 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. "Operational Maintenance" includes all work performed and expenses incurred for routine,

regular, and/or ordinary course maintenance and repairs reasonably necessary for the cleaning, upkeep and/or operation of any equipment, facility, structure (to the extent such maintenance and repairs are non-structural in nature) or other component of the Premises. Subject to City's obligations as set forth in Section 7.16 below, City has no obligation to perform or incur expenses related to Operational Maintenance. "Operational Maintenance" shall not include Capital Repair, Maintenance and Improvements. "Operational Maintenance" shall include, by way of example only and without limitation, baseball field maintenance and repair, maintenance of other natural landscaped areas of Stadium, janitorial services, performing all preventative and routine maintenance as recommended by equipment manufacturers in operating manuals or maintenance bulletins, replacing light bulbs, fuses and circuit breakers, cleaning services, seat repair, maintenance and repair of Exclusive Team Use Areas and touch-up painting.

Section 7.2. Capital Repair, Maintenance and Improvements.

- 7.2.1** Beginning with the sixth (6th) Agreement Year and then annually thereafter, on or before September 30th of each such year, Operator shall present to City 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. City shall review such Proposed Improvements, budget and schedule and respond to Operator regarding each of 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 City's Manager.
- 7.2.2** City's Manager shall not unreasonably withhold approval of the Proposed Improvements so long as (i) the Proposed Improvements are consistent in exterior appearance with the architectural theme of the Stadium, (ii) when completed, the Proposed Improvements will not have reduced the overall utility of the Stadium or weakened or impaired the structural integrity of the Stadium and (iii) there are sufficient funds in the Capital Repair, Maintenance and Improvements Account to complete such Proposed Improvements in addition to any expected Capital Repair, Maintenance and Improvements as scheduled by City to occur in subsequent years, in City's reasonable discretion; 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 future scheduled Capital Repair, Maintenance and Improvements, as determined reasonably and in good faith by City.
- 7.2.3** City or City's vendors 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 Operator, or indirectly by Operator's vendors, and Operator shall be reimbursed from the Capital Repair, Maintenance and Improvements Account for the cost of any such work. 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 City's Manager for reimbursement from the Capital Repair, Maintenance and Improvement Account.

Approval of such reimbursement shall be subject to the same standards as approval and payment of Capital Repair, Maintenance and Improvements as set forth above in this Section 7.2.

Section 7.3. Capital Maintenance and Improvement Account. On or before September 30 of each Agreement Year, City shall contribute the sum of Three Hundred Sixty Thousand Dollars (\$360,000) to the Capital Repair, Maintenance and Improvements Account, and Operator shall contribute a sum equal to one percent (1%) of Project Costs in excess of City's Contribution to the Capital Repair, Maintenance and Improvements Account. The parties agree to confirm in writing the amount of Operator's contribution on or before August 31 of the first Agreement Year. Upon written approval by City of Operator's Proposed Improvements pursuant to Section 7.2 herein, subject to appropriation by the High Point City Council, and subject to Operator's compliance with all applicable statutory requirements, City shall reimburse Operator for such approved expenditures (to the extent that Operator performs such work pursuant to Section 7.2.3) through the Capital Repair, Maintenance and Improvements Account. If City performs such work, then City may use funds available in the Capital Repair, Maintenance and Improvements Account. Moreover, notwithstanding the six-year limitation in Section 7.2.1, Operator may access immediately only those amounts which Operator has contributed to the Capital Repair, Maintenance and Improvements Account for the purpose of paying for Capital Repair, Maintenance and Improvements which have been performed by Operator and which have been approved by City pursuant to the process set forth in Section 7.2.

Section 7.4. Taxes and Other Charges. Operator shall pay prior to delinquency, in addition to the payment of Management License Fee and Management Commissions, 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 (if any) sales taxes, business and occupation taxes, occupation license taxes, electrical charges, 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 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). 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. The provisions of this paragraph shall expressly survive the expiration or sooner termination of this Agreement.

Section 7.5. Liens and Encumbrances. Team and Operator covenant and agree that, except for this Agreement, they will not create or suffer to be created by, through or under Team or Operator any lien, encumbrance or charge upon the Premises. Team and 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 Team or

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

Section 7.6. Team Liens. Team may, at any time or from time to time, grant liens upon its membership rights with Sanctioning Association or any other of its personal property (the "Team Rights"); provided, however, that (i) any such liens shall be made or granted in compliance with and subject to the requirements and obligations of Team and Operator pursuant to this Agreement, (ii) if any person, entity or combination thereof acquires the Team Rights pursuant to any foreclosure or other transaction under any such liens, such occurrence shall be an Event of Default by Team or Operator and (iii) any person, entity or combination thereof who acquires the Franchise pursuant to any foreclosure or other transaction under any such liens shall take the Team Rights strictly subject to and assume the covenants and obligations of Team and Operator (as applicable) pursuant to this Agreement. Upon any such granting of such liens, Team and 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 Team Rights that, upon foreclosure, would result in a violation hereof, Team and Operator will use good faith efforts to promptly remove such liens or material encumbrances after reasonable contest periods.

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

Section 7.8. Operation Obligation and Standards. Operator agrees to operate and maintain the Premises throughout the Term in a condition necessary to conduct the permitted uses described in Section 4.5, 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 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. Team and Operator acknowledge that use of the Premises reflects upon the image and goodwill of City, and Team and Operator agree that no Operator Event, signage at the Premises, promotion of Operator Events, or any other use of the Premises by Team or Operator or their respective agents, contractors or sublicensees shall be inconsistent with prevailing community standards. Without limiting the generality of the foregoing, and unless otherwise approved by City in writing, no signage, advertising or other promotions at the Premises shall be authorized or permitted by Team or Operator for any of the following: political candidates or matters, cigarettes, tobacco, firearms, contraceptives, adult entertainment, sports gaming/gambling, or any illegal or illicit activities of any kind or nature, nor shall Team or Operator authorize or permit any advertising or promotions which violate applicable Governmental Rules. Notwithstanding the foregoing, signage, advertising or other promotions at the Premises are authorized for the North Carolina State Lottery.

Section 7.9. Right of Operator to Revenues. Except as provided in Sections 7.10 (with respect to Naming Rights) and 7.16, and except as set forth herein with respect to City Events, Team and Operator shall be entitled to, and are 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 (but not Naming Rights), (b) all broadcast rights, (c) promotion of events at the Premises, (d) the sale of food, beverages at the Premises, (e) the sale of merchandise, programs and other goods and wares of any nature whatsoever at the Premises, and (f) all telecommunications rights. Team and 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. Team and 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. Team and Operator shall be entitled to, and are hereby granted the exclusive right to, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the sale or other distribution of Seat Rights, tickets or passes (including general admission) for any seats in the Premises. 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 scoreboard and any other video displays, print media and broadcast media. Such advertising shall be provided at City's cost and shall not replace or cover existing signage, nor shall advertising displayed by City at the Premises for a City Event conflict with promotional category exclusivities granted by Team or Operator with respect to the Premises for which Team or Operator (as applicable) has provided City a copy of the applicable sponsorship agreement which details the scope of any such exclusivities.

Section 7.10. Naming Rights. Operator and City agree to name the Stadium as determined by the Winston-Salem Foundation, with the consent of Operator and City (which consent shall not be unreasonably withheld), in accordance with the terms and conditions of that certain Charitable Grant Agreement by and among the Winston-Salem Foundation, Branch Banking and Trust Company, Operator, City and High Point Community Foundation, entered into as of January 31, 2018. The identity of any future sponsor of the name of Stadium (the "Naming Rights") shall be determined mutually by Operator and City, and any proceeds therefrom shall be apportioned in accordance with Section 4.3.4(b), herein. With regard to future fees, charitable contributions or any other gross revenue generated from a sale of or grant of Naming Rights, those amounts shall be paid to City, except as set forth expressly in Section 4.3, herein. The name of the Stadium shall be a name that is appropriate for a City-owned facility and shall not be in bad taste, offensive to City's image, a potential source of embarrassment to City or in conflict with community standards. Any advertising, documents or media information prepared by or within the control of Team or Operator describing any event at the Stadium shall identify City as the location of the Stadium. The Parties reserve the right to change the name of the Stadium from time to time subject to the provisions of Sections 4.3 and 7.10 of this Agreement. Any agreement executed by Team or Operator that sells or grants the right to name the Stadium shall provide that should the party to whom said right has been sold or granted perform or be the subject of any Act of Bankruptcy, Team and 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 Stadium. Notwithstanding anything herein to the contrary, the Naming Rights shall be subject to and subordinate to this Agreement.

Section 7.11. Sponsorship, Display and Broadcast Rights. Except as set forth herein with respect to City Events, Team and Operator have the exclusive right to enter into agreements with others whereby such others may display names, logos, trademarks, advertisements, slogans, emblems, brand names, and the like in or about the Premises. Except as set forth herein with respect to City Events, 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.

Section 7.12. Advertising Content. Team and Operator agree 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 7.13. Notification of Certain Events. Team and Operator shall promptly notify City in writing if Team or Operator becomes aware of any of the following:

- 7.13.1 Any breach or alleged breach by Team or Operator under this Agreement or the occurrence of an Event of Default specifying the details of such Event of Default and the action that Team or Operator proposes to take with respect thereto;
- 7.13.2 any litigation or potential litigation affecting the Premises or City, or any litigation or potential litigation affecting Team or Operator that could reasonably be expected to have a material and adverse effect on Team or Operator and/or its services or obligations under this Agreement;
- 7.13.3 any bankruptcy filings, whether voluntary or involuntary with respect to Team or Operator or, to the extent of Team's or Operator's actual knowledge (and without any obligation of due inquiry or investigation) any party performing any Capital Repair, Maintenance or Improvements;
- 7.13.4 any casualty, loss, injury, claim or other event relating to the Premises that might result in a claim against City or under any applicable insurance policies;
- 7.13.5 any violation or alleged violation of applicable Governmental Rules or insurance requirements; and
- 7.13.6 any involuntary lien filed against the Premises.

Section 7.14. City to Provide Signage. City shall provide and install at the Stadium, at its cost and expense and as part of Project Plans and 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 coordinate reasonably with the United States and North Carolina Departments of Transportation and other appropriate Governmental Authorities in an effort to alter or construct new directional signage on freeways and other major thoroughfares, directing vehicles to the Premises. City will reasonably assist Operator in obtaining permission and approval to hang banners within City limits (subject to reasonable restrictions) to generate interest in the Stadium and in major events to be held at the Premises.

Section 7.15. City's Right of Entry and Inspection. City retains and shall have the right, at reasonable times, upon reasonable request, or, at such time as City has reason to believe that an emergency situation exists at the Premises, to enter upon the Premises, for the purpose of inspecting the same and verifying Team's and 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 up to five (5) events at the Premises during each Agreement Year (the "City Event(s)"). City's right to City Events may be assigned to other persons or entities. City shall be responsible for all direct costs associated with a City Event, including, without limitation, maintenance and preparation of the Premises, ticket-takers, ushers, in-stadium security, scoreboard/sound and other personnel, trash removal, repairs, supplies, and all other direct event costs in connection with all City Events. City shall not be responsible for any share of Operator's indirect operational costs in conjunction with City Events, including without limitation taxes imposed on Operator, utilities, insurance, and other administrative costs, which shall be the sole responsibility of Operator. City or its assignee or 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 fifty percent (50%) of Operator's share of revenues (based on Operator's agreement for food and beverage concessions) generated by the concessions operations at the City Event. For the avoidance of doubt, Operator shall retain the remaining fifty percent (50%).

7.16.2 Throughout the Term, Operator or Team shall provide to City its preferred Team Game scheduling dates as initially submitted to the Sanctioning Association, for each upcoming baseball season during the Term. Such preferred dates shall be provided to City within ten (10) days after they are provided to Sanctioning Association. City shall have thirty (30) days, after receipt of such preferred dates, to reserve up to five (5) priority dates for City Events ("Priority Dates for City Events") during the upcoming calendar year. Priority Dates for City Events shall not be among the preferred Team Game scheduling dates received from Operator, and shall not unreasonably interfere with or otherwise materially 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 unreasonably interfere with or otherwise materially disrupt Operator's use, operation, preparation or maintenance of the Premises for Team Games, including, without limitation, the baseball playing surface.

7.16.3 If City identifies to Operator certain City Events which would potentially recur during each Agreement Year (for example and without limitation, graduations or other similar recurring civic events), then Operator agrees to use commercially reasonable efforts to (a) schedule such recurring City Events around the same dates during each Agreement Year, and (b) take such recurring City Events into consideration when scheduling future Team Games and Operator Events.

7.16.4 City Events shall not be scheduled which would be so substantially similar in nature to traditional Operator Events or Team Games such that they would compete with such Operator Events or Team Games. Moreover, City Events shall not be scheduled during the bi-annual High Point Furniture Market, and Operator shall have both the right and the obligation to schedule and promote Operator Events during the High Point Furniture Market in such a manner as to serve the economy, citizens and guests of City.

7.16.5 Notwithstanding anything to the contrary in this Section, Team and Operator shall have the exclusive right to use the Exclusive Use Areas as set forth in the Exclusive Use Lease Agreement.

Section 7.17. Obligation to Provide Professional Baseball Team. Team and Operator agree that during the Term of this Agreement they will ensure that Team continuously uses the Premises for all Team Games. All Team Games 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 Team or Operator shall lose or relinquish its minor league professional baseball team, Team Rights or league affiliation, then Team and Operator shall continue to be obligated to field a team sanctioned by a Sanctioning Association. Failure to provide said Team will be considered as an Operator or Team Default under Section 11.3.

Section 7.18. Concession Improvements; Access. City shall cause the food and beverage concession areas to be constructed at City's sole cost and expense, as part of the Project Plans, to meet the Minimum Concessions Improvements Requirements and to the extent within City's Contribution. Food and beverage concession improvements shall be of a quality generally consistent with concession improvements at Comparable Facilities. However, if Operator desires for any concessionaire to build out and upfit their own concession area, the City will not be responsible for said cost. 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, as described in Section 3.3.

Section 7.19. Security. City shall provide security for Stadium patrons as is reasonably necessary outside the Stadium, at levels determined by City's law enforcement officials, in City's sole discretion. Operator is responsible for patron security within the Premises (including Stadium), pursuant to Article VI, herein.

Section 7.20. City Tickets to Events. Operator shall provide to City thirty (30) tickets to all Team Games and Operator Events, unless otherwise notified by City. The use of such tickets shall be for economic development, tourism and other official business of City. Tickets for Team Games shall be

located in the lower seating tier of Stadium and between first and third base along the infield, if available, and shall be provided to City at no cost. Tickets for Operator Events shall be located in the seating areas of the Stadium with the highest cost tickets for such Operator Event (exclusive of suites), if available, and shall be provided to City at the greater of either (a) no cost, or (b) at Operator's purchase cost for such tickets as required by the promoter or organizer of such Operator Event.

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

Section 7.22. Parking for Team and Operator Staff. City shall make available to Operator at no cost to Operator forty-five (45) parking spaces located within one-half (1/2) mile of the Stadium for use by Team and Operator full-time employees only. Team and Operator may not accept value from Event patrons or Team/Stadium sponsors in consideration for access to such parking spaces, and City's obligation to make available such parking spaces shall extend only for so long as City continues to own the right to use such parking spaces.

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 Operational Maintenance and Capital Repair, Maintenance and Improvements and will actively seek and identify qualified local and local disadvantaged business enterprises and minority businesses and offer them the opportunity to participate in the procurement of contracts relating to Operational Maintenance and Capital Repair, Maintenance and Improvements.

Section 7.25. Membership in Recognized Professional Baseball League. Team and Operator shall at all times throughout the Term own and maintain in good standing a Team that (a) is a full-season minor league baseball team in a recognized professional baseball league, and (b) 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 Five Million Dollars (\$5,000,000) aggregate; automobile liability coverage with limits of One Million Dollar (\$1,000,000) combined covering all owned, non-owned, leased and hired vehicles; umbrella excess liability with limits of at least Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate; and workers compensation coverage to protect Operator's permanent and temporary employees. Such coverage shall be evaluated by the Parties 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 City certificates of all required insurance policies herein at least thirty (30) days prior to the Commencement Date. Insurance coverage required herein shall be placed with carriers licensed to do business in North Carolina, and have a rating in the most current edition of A.M. Best's Property Casualty Key Rating Guide that is reasonably acceptable to City. Operator shall maintain All-Risk property insurance on all assets within the Premises that are owned by Operator on a full replacement cost basis.

Section 8.2. City Insurance Policies.

8.2.1 City shall maintain property insurance on the Premises (other than for assets therein owned by Operator), 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. City shall also maintain the following insurance coverages: (a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily liability, premises and operations, personal and advertising injury; products and completed operations; contractual liability; (b) Excess Umbrella with minimum limits of \$5,000,000 per occurrence and in the aggregate; (c) 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 evidencing such coverage. Certificates of insurance shall be produced to Operator prior to the Commencement Date. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of North Carolina.

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

Section 8.3. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting City which arise out of any of the matters relating to this Agreement or otherwise, Team and Operator shall notify City promptly upon becoming aware of same and Team and Operator shall give City all pertinent information possessed by Team and 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 Team or 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 Team and 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 Team or Operator, or by Team's or Operator's respective contractors, employees, officers, directors or agents on or after the Commencement Date, (ii) Team's or Operator's failure to comply with its obligations under this Agreement or (iii) the negligence or intentional misconduct of Team or Operator, or of Team's or Operator's contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, Team and 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 intentional 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 extent permitted by law, City shall, except as otherwise provided in this Section 9.1.2, defend, protect, indemnify and hold Team and Operator and their respective officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Premises prior to the Commencement Date, (ii) City's failure to comply with its obligations under this Agreement, or (iii) the negligence or intentional misconduct 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 intentional act of Team or Operator, or their respective employees, officers, directors, contractors, agents or invitees;
- (b) Team's or 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 Team or Operator;
- (c) Any Hazardous Materials that are introduced to the Premises after the Commencement Date by Team or Operator, or any of their respective employees, officers, directors, contractors, or agents; or
- (d) Any environmental event caused by Team or Operator, or any of their respective employees, officers, directors, contractors, or agents.

The provisions of this Section 9.1 are solely for the benefit of City, Team 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, Team and Operator shall not assign their respective interests in this Agreement, in whole or in part, or any of their respective 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 Stadium or if, in City's sole judgment, such assignment is to a party that is less credit-worthy than Team or Operator.

10.1.2 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).

Section 10.2. Notice of Intent. If Team or 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, Team or Operator (as applicable) 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 Stadium.

Section 10.3. Conditions Upon City's Consent to Assignment. In the event that Team or 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 Team or Operator (as applicable) 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) Team or 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 Team or Operator (as applicable) herein shall be released herefrom with respect to obligations, covenants, and agreements to be observed and performed by the named Team or Operator under this Agreement after such date, unless otherwise agreed by the parties or unless otherwise set forth expressly in this Agreement.

Section 10.4. Assignments and Concession Arrangements. Notwithstanding the foregoing, this Section 10 shall not limit or otherwise restrict Team's or Operator's exercise of its rights or performance of its obligations hereunder, including, without limitation, Team's or 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 Team or 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 Team's or Operator's rights or obligations hereunder as a whole.

Section 10.5. Mortgages. Team and 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 Team and Operator may encumber Team's 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 Team or 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 Design-Build Contract or any of the work thereunder by City, unless pursuant to a right of termination based upon the existence of an event of default under such Design-Build 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 Team or 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 Team or 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. Team's and Operator's Remedies. If a City Default shall have occurred and be continuing, Team or Operator (as applicable) may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) Team or 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) Team or Operator may exercise any and all other remedies available to Team or Operator at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.3. Operator or Team Default. The occurrence of the following shall be an "Event of Default" by Operator or Team, or an "Operator or Team Default": (a) the failure of Team or 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 Team or Operator that such amount was not paid when due; (b) the failure of Team or Operator to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by Team or 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 or Team shall occur unless Team or 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 Team or Operator of such failure (notwithstanding Team's or Operator's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by Operator or Team hereunder; (c) the occurrence of an Act of Bankruptcy with respect to Team or Operator; (d) abandonment of Premises by Team or Operator; (e) failure to maintain location in City of the Team, as required in Section 2.2(g), Section 4.5, and Section 7.17 herein; (f) failure to maintain approval and good standing by a Sanctioning Association of the Team, as required in Section 2.2(g) and Section 7.17 herein; (g) failure to maintain the Premises commensurate with Sanctioning Association's 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 Team or Team Rights as set forth in Section 7.6(ii).

Section 11.4. City's Remedies. If any Operator or Team Default shall have occurred and be continuing, City may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) City may terminate this Agreement or Team's 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 or Team 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 Stadium; (c) City may, in its own name and for its own account, without impairing the ability of City to pursue any other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute, institute such action against Team or Operator as may appear necessary or desirable to collect such Management License Fees, Management Commissions and any other amounts then due under this Agreement, or to enforce performance and observance of such covenant, condition or obligation of Team or Operator hereunder, or to recover damages for Team's or Operator's non-payment, non-performance or non-observance of the same; (d) City may exclude Team or 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 Management License Fees, Management Commissions and any other amounts then due, to enforce performance and observance of any covenant, condition or obligation of Team or Operator hereunder, or to recover damages for Team's or 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 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 or Team 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 or Team Default, Team's or 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 Team's 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. Team and 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), Team and Operator shall continue to be liable for the payment of all amounts payable under Section 4.3 hereof and other amounts, if any, payable under this Agreement. Team 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 Team or Operator from management and possession of the Premises and re-enter same, then City shall use commercially reasonable efforts to find a new operator for the Premises for the maximum Management License Fee, Management Commissions, or other similar operating fees which it may reasonably obtain, provided, however, that City shall have no obligation to engage as a new operator for the Premises any person who will not use the Premises for the purposes set forth in Section 4.5 hereof. Any such amounts received prior to the stated termination date of this Agreement shall be applied first to the payment of reasonable expenses incurred by City in connection with finding and engaging a new operator, and second, to reimburse City for Management License Fees and Management Commissions 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, TEAM OR OPERATOR BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF CITY, TEAM 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, TEAM OR OPERATOR FOR RECOVERY OF SUCH DAMAGES PURSUANT TO ARTICLE IX TO THE EXTENT SUCH DAMAGES WERE AWARDED TO A THIRD PARTY AGAINST CITY, TEAM OR OPERATOR, AS APPLICABLE.**

Section 11.8. No Additional Waiver Implied By One Waiver; Consents to Waiver. The waiver of a party of any breach by another party of any covenant, condition or obligation under this Agreement shall

not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, condition or obligation under this Agreement, nor shall any forbearance by a non-defaulting party not breaching to seek a remedy for any breach by another party be a waiver by such non-defaulting party not breaching any of its rights and remedies with respect to such breach or any subsequent breach of the same or with respect to any other breach.

Section 11.9. 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. Any party may waive any default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedies under this Agreement. No such waiver shall extend to or affect any other existing or subsequent default or impair any rights or remedies consequent thereon.

Section 11.10. Declaratory or Injunctive Relief. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of certain of its obligations under this Agreement would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) if a breach or a threatened breach by such Party of any such obligations occurs, then, in addition to the remedies set forth in this Article XI, the Parties shall be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, and declaratory relief with respect to any matter under this Agreement.

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 Stadium. Any remaining balance after payment for such repair, rebuilding or restoration shall be deposited into the Capital Repair, Maintenance and Improvements Account, and City shall receive a corresponding credit against its future funding obligations to same, as described in Section 7.3 herein.

12.1.2 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 Management License Fees shall abate on a prorata basis 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 parties 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 parties hereto. Upon the service of such notice and the making of such payments within the foregoing time period, this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed as the expiration date of this Agreement and no parties shall have any further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

Section 12.2. Condemnation.

12.2.1 In the event that title to the Premises or the interest of Team or 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 Team or Operator created by this Agreement shall be paid to Team or Operator (as applicable) and any condemnation award attributable to the temporary use or temporary condemnation of the Premises shall be divided equitably among Operator, Team and City based on Operator's, Team's and City's scheduled use of the Premises during such period. If only a part of the Premises or interest of Team or 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 Team or Operator (as applicable) may terminate this Agreement and shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

12.2.2 City shall cooperate fully with Team and 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 Team or 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 Team's or Operator's interest, and damage to Team's or 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 Team's or Operator's interest, and damage to Team's or Operator's business without the written consent of Team or Operator (as applicable), which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if as a result of any condemnation, an Unacceptable Condition exists or if the damage caused thereby occurs during the last three (3) years of the Term, City, Team or Operator may terminate this Agreement by providing written notice to the other parties hereto to such effect whereupon this Agreement shall terminate as of the date set forth in such notice and City, Team 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 MISCELLANEOUS

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

Section 13.2. Applicable Law; Venue. The Agreement shall be governed exclusively by the provisions hereof and by the applicable Governmental Rules of the State of North Carolina, without giving effect to the principles of conflicts of law. Venue for any proceeding to enforce this Agreement shall be in Guilford 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.

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

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

To City: City of High Point
 211 South Hamilton

High Point, NC 27260
Attention: City Attorney

and

City of High Point
211 South Hamilton
High Point, NC 27260
Attention: City Manager

With copy to: Smith Moore Leatherwood, LLP
300 N. Greene Street, Suite 1400
Greensboro, NC 27401
Attention: Bruce Ashley

To Operator
or Team: 449 S. Wrenn Street
High Point, NC 27260
Attn: Coy O. Williard, Jr.

With copy to: Kilpatrick Townsend, LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
Attention: James P. Cain

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

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

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

Section 13.8. Recordation. City, Team 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 13.9. 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 13.10. Time is of the Essence. Time is expressly declared to be of the essence in this Agreement.

Section 13.11. Parties' Relationship. It is the intent of the Parties, as evidenced by this Agreement, that the relationship among City, Team and Operator is solely a contractual relationship pursuant to which Team will own and operate a professional baseball team to play its games at Stadium and 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 City and either Team or Operator of partnership, joint venture, or landlord and tenant (except to the extent set forth in the Exclusive Use Lease Agreement), but only a contractual relationship pursuant to which Team and Operator will act as third-party service providers having all the rights and obligations conferred upon and assumed by Team and Operator as herein set forth. The employees or agents of City may not be, nor be construed to be, the employees or agents of Team or Operator for any purpose, and the employees or agents of Team and Operator may not be, nor be construed to be, employees or agents of City for any purpose.

Section 13.12. 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 Team or Operator or any of their respective agents, contractors or subcontractors or (ii) environmental contamination from any Hazardous Materials that were introduced to the Premises on or after the Commencement Date by Team or Operator or their respective 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 Team or Operator (or any agent, contractor or subcontractor of Team or Operator) in, on or under the Premises, promptly furnish to City any and all reports and other information available to Team or Operator concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 13.13. City's Remedial Work. City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by City or any of its agents, contractors or subcontractors or (ii) environmental contamination from Hazardous Materials that were introduced to the Premises on or before the Commencement Date (but excluding Hazardous Materials introduced by Team or Operator or their respective 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 13.14. 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, Team 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, Team and City, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

Section 13.15. Non-Appropriation.

13.15.1 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.

13.15.2 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 13.16. Authority to Execute. Each of the Parties acknowledges that the individual who has executed this Agreement has been duly authorized to execute this Agreement. A certified copy of the required City resolution or action of Team's and Operator's board of directors has been furnished by each Party to the other Party for attachment to this Agreement.

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

Section 13.18. Limitations Regarding Premises. City does not warrant its title to the Premises. This Agreement and the rights and privileges granted 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 Team or Operator of rights in the Premises that exceed those owned by City.

Section 13.19. Non-Discrimination. Team and Operator warrant that they are and will continue to be Equal Opportunity Employers. Team and Operator covenant and agree that Team and 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 action to enforce this covenant.

Section 13.20. Not for Benefit of Third Parties. This Agreement is only for the benefit of City, Team 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, Team or Operator beyond that which may legally exist in the absence of any provision of this Agreement.

Section 13.21. Other City Ordinances. This Agreement and the ordinance that authorized the execution of this Agreement do not operate to repeal, rescind, modify, or amend any ordinances or resolutions of City relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other ordinances, resolutions, or regulations not specifically set forth in the ordinance authorizing this Agreement. Notwithstanding the foregoing, if any of such ordinances or resolutions prohibit Team or Operator from:

13.21.1 operating professional baseball games at the Stadium in accordance with the terms and conditions of this Agreement, then Team and 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; or

13.21.2 staging Operator Events at the Stadium in accordance with the terms and conditions of this Agreement, then Operator and City shall negotiate in good faith to reduce the amount of the Management License Fee to reflect the loss to Operator caused by its inability to stage such Operator Events.

Section 13.22. Surrender. Team and Operator acknowledge and understand 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 Team and Operator are without fault, excepted.

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

13.23.1 The High Point 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;

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

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

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

13.23.5 Operator or Team 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 13.25.4 above, (b) the relocation of a full season minor league baseball team High Point, North Carolina, which will be the Team, (c) the Team to play its home games at the Stadium, and (d) such other approvals as are required by the Sanctioning Association with respect to the transactions contemplated by this Agreement;

13.23.6 Operator or Team shall have demonstrated to City's reasonable satisfaction acquisition of an amount of initial operating capital necessary to begin operation of the Stadium and Team, as measured against Comparable Facilities and other minor league independent professional baseball teams; and

13.23.7 Operator or Team shall have entered into a binding agreement with BB&T Bank for Naming Rights, and such agreement shall include provisions for payment of at least Five Hundred Thousand Dollars per Agreement Year for the first fifteen (15) Agreement Years hereunder.

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 January 31, 2018, 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 13.24. 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 13.25. Survival. Articles XI and XIII 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 13.26. 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 Team or 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:

CITY OF HIGH POINT, NORTH CAROLINA

Lisa B. Vierling, City Clerk

Jay W. Wagner, Mayor

Date: _____

Date: _____

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

Jeff Moore, Financial Services Director

HIGH POINT DOWNTOWN STADIUM FOUNDATION:

By: _____
Name: Coy O. Williard, Jr.
Title: ~~President~~ Chairman

Date: _____

HIGH POINT BASEBALL, INC.:

By: _____
Name: Coy O. Williard, Jr.
Title: Chairman of the Board

Date: _____

SURVEY AND ACCURACY

[illegible]

PROFESSIONAL LAND SURVEYOR
David R. Hodge
7-5008

CERTIFICATE OF G.S. 47-30(f)(11)d

I, BRADLEY D. PHILLIPS, PLS CERTIFY TO ONE OR MORE OF THE FOLLOWING AS INDICATED

THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOGNITION OF EXISTING PARCELS, A COURT-ORDERED SURVEY OR OTHER EXEMPTION OR EXCEPTION TO THE DUTY OF SUBDIVISION.

THE PURPOSE OF THIS MAP IS TO RECOMMEND EXISTING PARCEL AND SHOWY AND
CREATE A NEW LOT

BRADLEY D. PHILLIPS, PLS. REGISTRATION NO. L-50818

I, BRADLEY D. PHILLIPS, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- (1) Class of survey: A
(2) Pass/fail accuracy: 0.07"
(3) Type of GPS field procedure: RTK
(4) Dates of survey: 11-29-2017
(5) Datum/EPOCH: NAD 83 (2011)
(6) Published/Fixed-control use: NCMS
(7) Geoid Model: T2A
(8) Combined grid factor(s): 0.9999090645
(9) Units: U.S. Feet

OWNERSHIP AND DEDICATION:

THE UNDERSIGNED HEREBY ACKNOWLEDGES OWNERSHIP OF THE PROPERTY SHOWN AND DESCRIBED HEREIN AND HEREBY ADOPTS THIS PLAT AND ALLOTMENT TO BE A FREE ACT AND DEED AND HEREBY DEDICATES THIS PLAT TO PUBLIC USE STREETS, PLAZAS, PARKS, DRIVEWAYS, DRAINAGE AND OPEN SPACE AND EXEMPTS FOREVER ALL AREA SO SHOWN OR NOTICED ON SAID PLAT AND AUTHORIZES THE CITY OF HIGH POINT TO RECORD THIS PLAT IN THE OFFICE OF THE REGISTER OF DEEDS OF GUILFORD COUNTY, NORTH CAROLINA.

OF GULFORD COUNTY, NORTH CAROLINA

SIGNED	<u>Randy E. McCarlin</u>	DATE	<u>12/31/17</u>
ATTEST	<u>Virginia L. Lindsey</u>	DATE	<u>12/31/17</u>

APPROVAL FOR RECORDATION:

APPROVED FOR RECORDATION BY THE CITY OF HIGH POINT, NORTH CAROLINA ON THE
5TH DAY OF DECEMBER, 2017 PURSUANT TO
THE CITY OF HIGH POINT DEVELOPMENT ORDINANCE.

Robert L. Rodino 12/5/17
DIRECTOR OF PLANNING & DEVELOPMENT DATE

STATEMENT THAT NO APPROVAL IS REQUIRED BY NCDOT DIVISION OF HIGHWAYS

THIS PLAN DOES NOT REQUIRE CERTIFICATE OF APPROVAL BY THE N.C. DIVISION OF HIGHWAYS AS PROVIDED IN G.S. 136-102.6 SUBSECTION (C).

GENERAL NOTES

- 1) THIS SURVEY IS OF AN EXISTING PARCEL(S) OF LAND AND IS BASED ON EXISTING CORNERS FOUND ON SITE.
- 2) THE SUBJECT PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SCALED FROM A FLOOD INSURANCE RATE MAP DATED JAN. 16, 2002, SUBJECT TO NOTIFICATION BY DETAILED FLOOD MAP STUDY. SEE CDMA 08 (2002).
- 3) ALL PLANS ARE HORIZONTAL. GROUND SURVEYING UNLESS NOTED OTHERWISE.
- 4) EXISTING BUILDINGS NOT SHOWN AT THIS TIME.
- 5) MARKET PRICES AT ALL CORNERS UNLESS OTHERWISE NOTED.
- 6) METHOD OF COMPUTATION IS BY COORDINATE CALCULATION.
- 7) THE RATIO OF PRECISION IS 1:10,000+.
- 8) THE PROPERTY IS SUBJECT TO ANY EASEMENTS, AGREEMENTS, OR RIGHTS-OF-WAY PRIOR TO THE DATE OF THIS MAP BE-
CAUSE THE PROPERTY AND RIGHT THEREON BE DISCLOSED BY AN ATTORNEY'S TITLE OPINION WHICH AS OF DATE SHOWN HEREON
DAVIS-MARTIN-POHLL ENGINEERS & SURVEYORS. THERE MAY BE EASEMENTS OR OTHER MATTERS OF RECORD AFFECTING
CORRESPONDING SHOWN ARE BASED ON THE NORTH CAROLINA GRID SYSTEM (NC2100), AND NAD83 (2011), AND NAD83 88 (2002)
USING THE TICKERS SYSTEM.
- 9) GSD FACTOR 0.999550845
- 10) ZONED: MIXED USE DOWNTOWN (MX-D)
- 11) LAND USE: GENERAL BUSINESS AND OFFICE INSTITUTIONAL
- 12) STREET ABANDONMENT CASE 17-04 (D.B. 2001, PG. 3272)
- 13) THE FOLLOWING UTILITY INFORMATION IS APPLICABLE TO ALL OF THE REQUESTED ABANDONMENTS:
1) RETENTION OF A 30-FOOT WIDE CITY OF HIGH POINT ELECTRICAL EASEMENT CENTERED OVER THE EXISTING CITY OF THE
WYNN AND CROSSING THESE HIGH-OF-WAYS
2) RETENTION OF A 30-FOOT WIDE SUTHER LINE EASEMENT CENTERED OVER EXISTING SENIOR LINES WITHIN OR CROSSING 1,
2) RETENTION OF A 30-FOOT WIDE EASEMENT CENTERED OVER EXISTING WATER LINES WITHIN OR CROSSING 1,
3) RETENTION OF A 30-FOOT WIDE STRUTHEMER LINE EASEMENT CENTERED OVER EXISTING STRUTHEMER LINES WITHIN OR
4) RETENTION OF A 30-FOOT WIDE PERMANENT NATURAL GAS EASEMENT CENTERED OVER EXISTING GAS LINES WITHIN OR C
5) RETENTION OF A 30-FOOT WIDE ENERGY EASEMENT CENTERED OVER EXISTING PIPE POWER LINES (OVERHEAD AN
RIGHT-OF-WAYS
14) THE PURPOSE OF THIS MAP IS TO RECOMBINE EXISTING PARCELS TO MAKE 6 NEW LOTS.

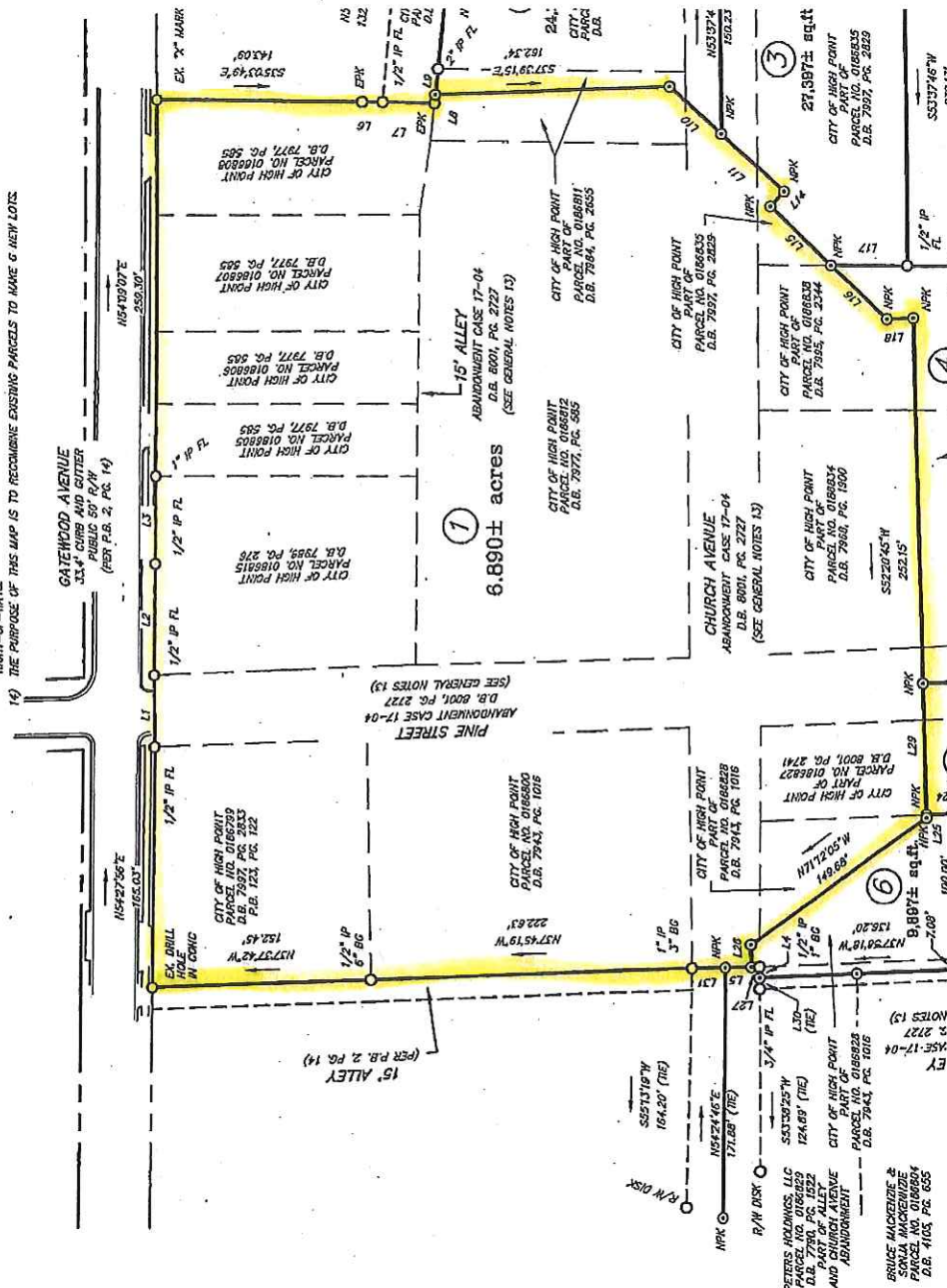
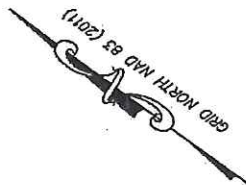


EXHIBIT B
Exclusive Use Areas

EXCLUSIVE USE AREA LEASE AGREEMENT

THIS EXCLUSIVE USE AREA LEASE AGREEMENT (the "Lease") is made and entered into as of the _____ day of _____, 2018, by and between **THE CITY OF HIGH POINT, NORTH CAROLINA** (hereinafter called "City" or "Landlord"), **HIGH POINT BASEBALL, INC.** ("Team"), a non-profit corporation organized and existing under the laws of the State of North Carolina and **HIGH POINT DOWNTOWN STADIUM FOUNDATION** ("Operator"), a non-profit corporation organized and existing under the laws of the State of North Carolina. City, Team and 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

(a) Use and Operating Agreement. The Parties have entered into a "Use and Operating Agreement" dated January 31, 2018 ("Agreement"), that governs the construction and management of a Stadium (as that term is defined in the Agreement) on certain Land (as that term is defined in the Agreement) within the City of High Point, North Carolina. The Agreement is attached to this Lease as Exhibit A and is incorporated into this Lease by reference. Defined terms used in this Lease shall have the meanings assigned to them in the Agreement.

(b) Demised Premises Defined. The Agreement states the Exclusive Use Areas are those areas of Stadium, identified in this Lease, which shall be reserved for the exclusive use of Team and Operator during the Term. The Exclusive Use Area is comprised of the following spaces, and any necessary space associated with use of such spaces:

- (i) Team Locker Room
- (ii) Showers and Toilets
- (iii) Trainer's Office
- (iv) Training Room
- (v) Equipment Manager/Storage Room
- (vi) Laundry
- (vii) Weight Room
- (viii) Coaches Locker Room
- (ix) Manager's Office and Locker Room
- (x) Coaches and Manager's Shower and Toilet Room
- (xi) Custodial
- (xii) Team Lounge/Buffer area (including kitchenette)
- (xiii) Major League Storage
- (xiv) Batboy Lockers
- (xv) Family Waiting Lounge (including toilet)
- (xvi) Circulation
- (xvii) Ticketing Room
- (xviii) Video Production Room

The Exclusive Use Area comprised of those spaces listed in this Paragraph 1(b)(i)-(xvi), shall be referred to collectively as the "Demised Premises" in this Lease.

(c) Lease of Demised Premises. Landlord hereby leases to Team and Operator, and Team and Operator hereby accept and rent from Landlord, in accordance with this Lease's terms and conditions, the "Demised Premises."

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, Landlord, Team and 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, Team 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, Team and Operator shall have the right to control, occupy, and use the Demised Premises pursuant to this Lease at all times, and Landlord shall not have the right to control, occupy, and use (and grant to others the right to control, occupy, and use) the Demised Premises. Nothing in this paragraph, however, shall affect any rights that Team, Operator or Landlord may have with respect to the Demised Premises by virtue of the Agreement.

(c) Automatic Termination. Notwithstanding anything herein to the contrary, this Lease shall terminate automatically upon the termination of the Agreement.

3. RENTAL AND OTHER TENANT PAYMENTS

(a) Rental.

(i) Initial Term Rental. During the Initial Term, on or before the Lease Commencement Date and then each year on or before the anniversary of that date, Team or 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 the 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 the 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 the Parties and the exact nature and square footage of the Exclusive Use Areas is determined, this Paragraph 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. Team or 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. Team and Operator shall further pay all taxes assessed against its respective personal property in the Demised Premises. Team and 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 expenses, including maintenance costs, with respect to the Stadium, including the Demised Premises, are set forth in the Agreement.

(d) Documentary Tax. In the event that any documentary stamp tax, sales tax or any other tax or similar charge (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 Team and Operator and shall be paid promptly and prior to same becoming past due. Team or Operator shall provide Landlord with copies of all paid receipts respecting such tax or charge promptly after payment of same.

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

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

4. DELIVERY OF POSSESSION

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

5. ALTERATIONS AND IMPROVEMENTS BY OPERATOR

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

6. USE OF DEMISED PREMISES

(a) Compliance. Team and 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. Team and 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 Stadium as a first-class facility. Team's and 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 Stadium. City acknowledges that Team or Operator plans to utilize fireworks displays on multiple occasions throughout each Agreement Year, subject to applicable permit approvals and Governmental Rule.

(b) Toxic or Hazardous Waste. 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) Due Care. Team and Operator shall exercise due care in their respective 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, Team and Operator shall deliver the Demised Premises to City in as good condition as on the Commencement Date, ordinary wear and tear and acts of God alone excepted.

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

7. TAXES

Team and Operator shall pay any taxes or assessments of any nature imposed or assessed upon this Lease or upon Team's or Operator's respective trade fixtures, equipment, machinery, inventory, merchandise or other personal property located on the Demised Premises and owned by or in the custody of Team or Operator (as applicable) 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 Stadium, including the Demised Premises, are set forth in the Agreement.

10. UTILITIES

The Agreement requires Operator to pay for the utilities of 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

Team and Operator agree, at their own expense, to comply promptly with all laws that may be in effect from time to time that are applicable to Team's and Operator's use or occupancy of the Demised Premises.

13. INDEMNIFICATION

(a) Indemnification by Team and Operator. Team and Operator shall, except as otherwise provided in this Section 13, defend, protect, indemnify and hold City and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Demised Premises by Team or Operator, or by Team's or Operator's respective contractors, employees, officers, directors, agents on or after the Commencement Date, (ii) Team's or Operator's failure to comply with its obligations under this Agreement or (iii) the gross negligence or willful misconduct of Team or Operator, or of Team's or Operator's respective contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, Team and 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 Paragraph 13(b), defend, protect, indemnify and hold Team and Operator and their respective officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Demised Premises prior to the Commencement Date, (ii) City's failure to comply with its obligations under this Agreement, or (iii) the gross negligence or willful act of City or City's contractors, employees, officers, directors or agents. Notwithstanding the provisions of the preceding paragraph, City shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with:

(i) Any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or willful act of Team or Operator, or of their respective employees, officers, directors, contractors, agents or invitees;

(ii) Team's or 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 Team or Operator, or any of their respective employees, officers, directors, contractors, or agents; or

(iv) Any environmental event caused by Team or Operator, or any of their respective employees, officers, directors, contractors, or agents.

The provisions of this Section 13 are solely for the benefit of City, Team 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 indemnitor in respect of which indemnity may be sought, such indemnitee shall promptly notify the other in writing; provided, however, that any failure so to notify shall not relieve the indemnitor of its obligations under this Paragraph 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; provided, however, that indemnitor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the indemnitee, which firm shall be designated in writing by the indemnitees). Each indemnitee shall cooperate with the indemnitor in the defense of any action or claim. The indemnitor shall not be liable for any settlement of any action or claim without its consent, but if any such action or claim is settled with the consent of the indemnitor or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, the indemnitor shall indemnify and hold harmless the indemnitees from and against any damages by reason of such settlement or judgment.

(d) Survival Right to Enforce. The provisions of this Section 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

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 Stadium. Except in the case of any emergency, Team and Operator shall have the right to have a representative of Team or Operator accompany Landlord or persons authorized by Landlord while in the Demised Premises. Further, during the last six (6) months of the Initial Term or of any Renewal Period, 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) Team's or 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) Team's or Operator's failure to perform any other of the material terms, covenants or agreements contained in this Lease to be performed by Team or Operator if not remedied within thirty (30) days after receipt of written notice thereof, or if such default cannot be remedied within such period, Team or 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) Team or Operator shall commit an Act of Bankruptcy (as such term is defined in the Agreement); or

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

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

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, Team and 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 Landlord, which Landlord may withhold in its sole discretion. Notwithstanding the foregoing, Team or Operator may assign its interest in this Lease without Landlord's consent to the same extent, and to the same assignee, that Team or Operator may assign its interest in the Agreement without Landlord's consent in accordance with Article X of the Agreement. Landlord's consent to one assignment or sublease will not waive the requirement of its consent to any subsequent assignment or sublease as required herein.

18. COVENANT OF QUIET ENJOYMENT

Landlord represents that Landlord has full right and authority to lease the Demised Premises and Team and 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 Landlord, Team or 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 Team's or Operator's knowledge, no default exists on the part of Landlord, Team or Operator, that Team and Operator are in possession, that Team or Operator has commenced the payment of Rental, that Team and Operator claim no defenses or offsets with respect to payment of Rental under this Lease, and such other matters as may reasonably be requested. Likewise, within ten (10) days after a request by Team or Operator, Landlord shall deliver to Team or Operator a similar estoppel certificate covering such matters as are reasonably required by Team or Operator.

20. PROTECTION AGAINST LIENS

Team and 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 Team or Operator. If any such lien is filed against the Demised Premises, Team and Operator shall either cause the same to be discharged of record within thirty (30) days after filing or, if Team or 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 Team or

Operator shall fail to discharge such lien within said time period or fail to furnish such security, then Landlord may at its election, in addition to any other right or remedy available to it, discharge the lien by paying the amount claimed to be due or by procuring the discharge by giving security or in such other manner as may be allowed by law. If Landlord acts to discharge or secure the lien then Team or Operator shall immediately reimburse Landlord for all sums paid and all costs and expenses (including reasonable attorneys' fees) incurred by Landlord involving such lien together with interest on the total expenses and costs at the maximum lawful rate.

21. MEMORANDUM OF LEASE

Landlord, Team and 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 Guilford County, North Carolina.

22. FORCE MAJEURE

In the event Landlord, Team or 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 Team's or 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 Landlord, Team or 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 Landlord, Team or Operator from time to time as often as the need may arise. No course of dealing among Landlord, Team and Operator or any delay or omission of Landlord, Team or 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 Team or 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 Landlord's acquiescence, Team or Operator (as applicable) shall be deemed only a tenant at will and there shall be no renewal of this Lease without a written agreement signed by both parties specifying such renewal. The annual rental payable by Team or 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 Team or Operator during any such tenancy at will period shall be two hundred percent (200%) of the Rental being paid in the most recent period. Team or Operator (as applicable) shall also remain liable for any and all damages, direct and consequential, suffered by the Landlord as a result of any holdover without Landlord's unequivocal written acquiescence.

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 13.4 of the Agreement.

26. LEASING COMMISSION

Landlord, Team and 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. Landlord, Team and 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 Landlord, Team and Operator shall furnish appropriate legal documentation evidencing the valid existence and good standing of Team and Operator and the authority of any parties signing this Lease to act for Team and Operator.

(b) Nature and Extent of Agreement. This Lease, together with the Agreement, contain the complete agreement of the parties concerning the lease by Team and 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 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]

CITY:



ATTEST:

Lisa B. Vierling
Lisa B. Vierling, City Clerk

CITY OF HIGH POINT, NORTH CAROLINA

Jay W. Wagner
Jay W. Wagner, Mayor

Date: 1-31-2018

Date: 1-31-2018

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

Jeff Moore 1/31/2018
Jeff Moore, Financial Services Director

OPERATOR:

By: Cory W. Wiggins Jr.
Date: 1-31-18

TEAM:

By: Cory W. Wiggins Jr.
Date: 1-31-18

[Add pre-audit certificate.]

EXHIBIT A
Use and Operating Agreement

CHARLOTTE 205606.5



SAMET
CORPORATION

OD ELL

Building Structures. Building Relationships.

City of High Point Multi-Use Stadium Project

Schematic Design Estimate

November 20, 2017

Samet Corporation
309 Gallimore Dairy Road, Suite 102 | Greensboro, NC 27409
Greensboro | Charlotte | Raleigh | Charleston
www.sametcorp.com