

# CITY OF HIGH POINT

## AGENDA ITEM



### **Title: Resolution – Stadium Exclusive Use Area Lease**

**From:** Randy Hemann, Assistant City Manager

**Meeting Date:** March 19, 2018

**Public Hearing:** No

**Advertising Date:** February 17, 2018

**Advertised By:** High Point Enterprise

**Attachments:** Resolution  
Lease Agreement

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### **Purpose:**

Adoption of a Resolution authorizing staff to enter into an Exclusive Use Area Lease Agreement with High Point Baseball, Inc. (“Team”) and High Point Downtown Stadium Foundation (“Operator”) for a ten-year lease term.

### **Background:**

The City entered into a Use and Operating Agreement (“Agreement”) on January 31, 2018 that governs the construction and management of the Stadium. The Agreement states that the Exclusive Use Areas are those areas of the Stadium reserved for the exclusive use of the Team and the Operator for the locker rooms and management operations.

The term of the lease will be ten years and the for the annual rental of \$14.00 per square foot on areas of the Stadium set aside for the exclusive use of the Team and the Operator.

### **Recommendation:**

Staff recommends adoption of a resolution approving an Exclusive Use Area Lease Agreement between the City of High Point and High Point Baseball, Inc. and High Point Downtown Stadium Foundation.

**RESOLUTION OF HIGH POINT CITY COUNCIL  
APPROVING AN EXCLUSIVE USE AREA LEASE AGREEMENT BETWEEN THE  
CITY OF HIGH POINT AND HIGH POINT BASEBALL, INC. AND HIGH POINT  
DOWNTOWN STADIUM FOUNDATION**

**WHEREAS**, North Carolina General Statutes § 160A-272 authorizes the City to enter into lease agreements for not longer than ten years, pursuant to a resolution of City Council authorizing the execution of the lease, adopted at a regular meeting; and

**WHEREAS**, the City Council is convened in regular meeting on the date so noted below;  
and

**WHEREAS**, the City intends to construct a multi-use sports and entertainment facility for the use as the home venue for a minor league professional baseball team (“Stadium”) located in the Church Avenue and Pine Street area 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**, the High Point Baseball Team (“Team”) intends to locate and operate a minor league professional baseball team in the City at the Stadium; and

**WHEREAS**, the High Point Downtown Stadium Foundation (“Operator”) intends to manage, maintain and be responsible for the operation of the Stadium; and

**WHEREAS**, the Parties the entered into a Use and Operating Agreement dated January 31, 2018 for the Exclusive Use Area (“Property”), which is comprised of the home locker room and necessary space associated with the use of the locker room; and

**WHEREAS**, the Parties desire to enter into an Exclusive Use Area Lease Agreement (“Lease”) for the Property to begin on the Commencement Date under the Use and Operating Agreement and to continue for a period of ten (10) years for an annual rental payment agreed to by the parties to be an amount equal to a market rate lease payment based on the square footage of the Property; and

**WHEREAS**, the City Council has determined that the Property will not be needed by the City for term of the Lease; and

**NOW THEREFORE BE IT RESOLVED** that the City Council hereby approves the Exclusive Use Area Lease Agreement for the Property to the Team and the Operator, beginning on the Commencement Date under Use and Operating Agreement for a period of ten (10) years, in consideration of an annual rental payment agreed to by the parties to be an amount equal to a market rate lease payment based on the square footage of the Property.

Adopted this the 19th day of March 2018.

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Mayor Jay W. Wagner

ATTEST:

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## **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."

### **W I T N E S S E T H:**

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 indemnitee in respect of which indemnity may be sought, such indemnitee shall promptly notify the other in writing; provided, however, that any failure so to notify shall not relieve the indemnitor of its obligations under this 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:**

**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

**OPERATOR:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**TEAM:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

[Add pre-audit certificate.]

**EXHIBIT A**  
**Use and Operating Agreement**

CHARLOTTE 205606.5