BALLPARK DEVELOPMENT AGREEMENT

By and Between

THE CITY OF WICHITA, KANSAS,

and

YES2NO, LLC
A MASSACHUSETTS LIMITED LIABILITY COMPANY

Authorized to do Business in Kansas
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BALLPARK DEVELOPMENT AGREEMENT

This BALLPARK DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into effective as of October 23, 2018 (the "Execution Date") by and between the CITY OF WICHITA, KANSAS, a Kansas municipal corporation ("City") and YES2NO, LLC, a Massachusetts limited liability company authorized to do business in Kansas ("Team"). City and Team are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Team is the owner of a Triple-A MiLB franchise granted by The National Association of Professional Baseball Leagues, Inc. doing business as Minor League Baseball (the "MiLB") and the corresponding interests in the Pacific Coast League of Professional Baseball Clubs, Inc. or any successor MiLB league (the "PCL"). The Team is willing to relocate to Wichita, Kansas upon certain terms and conditions which include the completion of a new Ballpark in conformity with MiLB and PCL standards (the "Ballpark") and the execution with Team of a Facility Use and Management Agreement for management and operation of the Ballpark;

WHEREAS, City Council of City recognizes the presence of Team and the playing of the home games of Team (as defined herein) in Wichita, especially in its downtown area, provides a unique value to City, including generating new jobs, additional revenue sources and economic development and increased tourism for City;

WHEREAS, the MiLB and the PCL have required that a new ballpark be constructed as a condition to ownership retention of Team franchise and allowing relocation of Team to Wichita, Kansas, and City has agreed to finance, design, develop, construct a new, first class, state-of-the-art, natural turf, open-air Minor League Baseball ballpark, Hall of Fame Museum and Exhibition and related facilities (the Ballpark Improvements) within Wichita's downtown area that will serve as the home venue of the Team and will also host concerts, other sporting events and community-oriented events (the "Ballpark");

WHEREAS, the City, pursuant to the laws of the State of Kansas, has previously taken certain steps to establish authority to use tax increment financing and other financing sources with a view of developing a new Ballpark and related infrastructure improvements surrounding it, and is willing to enter into cooperative arrangements for the construction and managing services of the Ballpark;
WHEREAS, in consideration of such factors, the Parties hereby declare certain duties and responsibilities of each Party with respect to the Ballpark and Ballpark Improvements as reflected in this Agreement among the Parties with respect to the Ballpark project (the "Project");

WHEREAS, City holds the title or other legal right to the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Real Property");

WHEREAS, the City Council of City has determined that the construction of the Ballpark and relocation of the Team to Wichita, Kansas will serve a public purpose and therefore has authorized the Mayor of City to sign this Agreement;

WHEREAS, concurrently with the execution of this Agreement, City and Team plan to enter into (a) Facility Use & Management Agreement whereby Team has agreed to manage and operate the Ballpark and Ballpark Improvements (except for the Hall of Fame Museum and Exhibition, which shall be managed by the Team’s affiliated charitable foundation) on behalf of the City; and

WHEREAS, the Parties desire to enter into an agreement that establishes the process and schedule for the design, development and construction of the Ballpark.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Team, each intending to be legally bound, do hereby agree as follows:

ARTICLE I
GENERAL TERMS

1.1 Definitions and Usage. Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them herein.

"Action" or "Proceedings" means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"Affiliate" means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

"Applicable Laws" means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in
question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include all City Codes, Environmental Laws and any applicable Federal wage requirements. Team acknowledges that there may be certain "Applicable Laws" that apply to the Ballpark as a result of same being owned by City or a local government corporation organized under the laws of the State of Kansas.

"Appropriation" means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

"Approval," "Approve" or "Approved" means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Team, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Team is required under the terms of the Agreement, the specific approval of such item or matter by Team or the Team Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Team or the Team Representative, as permitted pursuant to the terms of this Agreement, and delivered to City, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to City or Team, as applicable, and shall not include any implied or imputed approval.

"Ballpark Budget" has the meaning in Section 3.2.4.

"Ballpark Construction Contract" has the meaning set forth in Section 6.4.2.

"Ballpark Construction Documents" means any and all contracts, drawings, specifications, documents or other instruments entered into by or on behalf of City or any Affiliates thereof for the development, design, construction or finishing of the Ballpark Improvements, including the Ballpark Construction Contract.

"Ballpark Construction Schedule" means a schedule prepared using the critical path method relating to the Ballpark Improvements Work (Which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event),
which schedule shall include the estimated dates for (i) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (ii) issuance of all Governmental Authorizations prerequisite to commencement of the Ballpark Improvements Work and (iii) Substantial Completion of the Ballpark Improvements Work by March 15, 2020. The Ballpark Construction Schedule shall provide float as appropriate to reflect the delay in the Ballpark Improvements Work resulting from occurrences of Excusable City Delay in accordance with the provisions of this Agreement.

"Ballpark Costs" means all documented, direct costs incurred or to be incurred by City in order for City to fulfill its obligations under this Agreement with respect to the Ballpark Improvements Work and to cause Final Acceptance of the Ballpark Improvements Work, including all infrastructure, demolition, site preparation, any necessary land acquisitions, Pre-Development Expenses, Design Fees and any amounts payable to a third party under any of the Ballpark Construction Documents, but excluding costs of issuance of any Financing.

"Ballpark Improvements" means the Ballpark and related facilities on the Ballpark site, including the Improvements and the City Personal Property and Team Personal Property located on the Real Property and described in the Ballpark Plans for Ballpark Improvements and FF&E.

"Ballpark Improvements Work" means the design, development and construction of the Ballpark Improvements (including any associated infrastructure, demolition or site preparation) in accordance with the terms of this Agreement.

"Business Day" shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Wichita, Kansas.

"Business Hours" means 9:00 a.m. through 5:00 p.m. on Business Days.

"Change Orders" has the meaning set forth in Section 6.8.

"City Codes" means all ordinances, codes and policies from time to time adopted by the City of Wichita, Kansas, including, the Wichita-Sedgwick County Uniform Building and Trade Code, and any building codes, fire or life safety codes, development codes, subdivision code, and zoning ordinances, as same may be amended from time to time.

"City Default" has the meaning set forth in Section 13.1.2.

"City Delay" means any delay by City in achieving any of its deadlines for performance of obligations under this Agreement.
"City Personal Property" means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by City and located on or within the Ballpark (including trade fixtures, but not other fixtures) and can be removed from the Ballpark without material damage thereto. The term "City’s Personal Property," does not include any of Team’s Personal Property or any replacements of Team’s Personal Property.

"City Representative" has the meaning set forth in Section 2.1.

"Claims" shall mean and include any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

"Company" means YES2NO, LLC, a Massachusetts limited liability company authorized to do business in Kansas.

"Conditions to City Obligations" has the meaning set forth in Section 3.1.

"Conditions to Commencement" has the meaning set forth in Section 3.2.

"Construction Commencement Date" has the meaning set forth in Section 4.2.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"Cost Overruns" has the meaning Set forth in Section 5.1.2.
"Default Rate" means the Prime Rate plus one percent (1%) per annum, not to exceed the Maximum Lawful Rate.

"DB" means the design builder selected by City in accordance with the terms of this Agreement to construct the Ballpark Improvements.

"Design Fees" means the fees paid by City to the design professional who is part of or a subcontractor to the DB, for the preparation of plans and specifications for the Ballpark Improvements.

"Dispute or Controversy" has the meaning set forth in Section 8.4.1.

"Dispute Resolution Procedures" means the dispute resolution procedures set forth in Section 8.4.1.

"Emergency" means any circumstance in which (i) City or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard lives, property or the environment against the likelihood of injury, damage or destruction due to an identified threat or (ii) Applicable Laws require that immediate action be taken in order to safeguard lives, property or the environment.

"Encumbrances" means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Ballpark, evidenced by written instrument.

"Event of Default" has the meaning set forth in Section 13.1.1 and Section 13.1.2.

"Excusable City Delay" means any City delay that is caused by or attributable to (but only to the extent of) a Force Majeure event. No City delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself that arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

"Excusable City Delay Period" means with respect to any particular occurrence of Excusable City Delay, that number of days of delay in the performance by City of its obligations under the Agreement actually resulting from such occurrence of Excusable City Delay.

"Excusable Team Delay" means any Team Delay which is caused by or attributable to (but only to the extent of) a Force Majeure event. No Team Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Team Delay unless such failure,
inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Team Delay.

"Excusable Team Delay Period" means with respect to any particular occurrence of an Excusable Team Delay, that number of days of delay in the performance by Team of its obligations hereunder actually resulting from such occurrence of Excusable Team Delay.

"Execution Date" has the meaning set forth in the preamble to the Agreement.

"FF&E Requirements" means the specifications and requirements of Team Property to be funded by the Team and are part of the Ballpark Improvements to be supplied and accepted prior to Substantial Completion of the Ballpark Improvements. The Team will contribute to furniture, fixtures and equipment (FF&E) for the Ballpark in the approximate amount of Five Million Dollars ($5,000,000) to Seven Million Five Hundred Thousand Dollars ($7,500,000).

"Final Acceptance" means, with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, (a) the final completion of the design, development, construction, furnishing and all other aspects of such work and improvements substantially in accordance with the Project Plans or other plans therefor (all of which have been Approved pursuant to the terms of this Agreement, as and if required), all Applicable Laws and all other requirements of this Agreement, including the completion of the punch-list type items referred in Section 5.1.5, and (b) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Ballpark Improvements, in accordance with the terms of this Agreement.

"Final Notice" has the meaning set forth in Section 13.2.3.

"Financing" means financing of Seventy-Five Million Dollars ($75,000,000) through the issuance by the City of STAR Bonds and other debt obligations. STAR Bonds are to be secured by one or more of the following: Supplemental Community Improvement District ("CID") sales tax on applicable revenue generated from Team operations at the Ballpark and commercial development in the Riverfront District surrounding the Ballpark, incremental sales tax revenues from within the STAR district and available local sales tax revenues.

"Financing Proceeds" means the cash proceeds of the Financing net of all costs of issuance associated with the Financing.

"Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party's fault or negligence. Subject to the satisfaction of the conditions set
forth in (a) through (c) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes including a strike or lockout by MiLB players or umpires; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; (vii) failure of either Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include economic hardship; and (vii) failure of the Oversight or Project Committee to reach a decision within forty-eight (48) hours of submission of an issue for its consideration.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

"Governmental Authority" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

"Governmental Authorizations" means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority.

"Governmental Function" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by City of its obligations under this Agreement shall not be considered a "Governmental Function."

"Hazardous Materials" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import,
under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

"Improvements" means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, videoboards, sound systems, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

"Infrastructure Improvements" as defined in Section 6.1.3.

"Insolvency Event" means, with respect to any Person, (a) such Person’s or any of its Subsidiaries': (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its Subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such Subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its Subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

"Late Opening Charges" means fifty percent (50%) of (i) the liquidated damages (as set forth in the Ballpark Construction Contract) actually paid to City by the DB pursuant to the terms of the Ballpark Construction Contract for the DB’s failure to cause Substantial Completion of the Ballpark Improvements Work to occur on or before the Substantial Completion Deadline; and (ii) any additional amount awarded to City in connection with the DB failure to cause Substantial Completion of the Ballpark Improvements Work to be completed by the Substantial Completion
Deadline; in both cases, net of any third party expenses of City associated with collecting any such amounts.

"League" means the Pacific Coast League of Professional Baseball Clubs, Inc. ("PCL") or any successor league.

"Legal Holiday" means any day, other than a Saturday or Sunday, on which City's administrative offices are closed for business.

"Lien" means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether real or personal, tangible or intangible, now owned or hereafter acquired.

"Material Change" means (a) as to the Ballpark Improvements, any modification to the Ballpark Improvements so that the Ballpark Improvements will not conform in a material respect to the Plans for Ballpark Improvements previously Approved by Team, and (b) as to City Personal Property to be a part of the Ballpark Improvements at Substantial Completion thereof, any modification to such City Personal Property so that such City Personal Property does not conform to the FF&E Requirements previously Approved by Team.

"Maximum Lawful Rate" means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Agreement, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than Applicable Laws now allow.

"MiLB" means Minor League Baseball.

"Minimum Requirements" Minimum Requirements shall mean as defined in the Quality Standard.

"Operating Term" means the "Term" as defined in the Facility Use Management Agreement.

"Operating Term Commencement Date" means the first day of the Operating Term as defined in the Facility Use Management Agreement.

"Opinion of Team Counsel" means the opinion of legal counsel to Team and Company, in a form reasonably acceptable to City, that (i) Company and Team are each duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and
qualified to do business under the laws of the State of Kansas, (ii) Company and Team have duly authorized the execution of this Agreement and Facility Use Management Agreement and the persons signing such agreements on behalf of Team and Company have the authority to do so; (iii) Team, owns all right, title and interest (including the franchise rights) to Team, and (iv) none of Team or Company’s corporate governance documents or material agreements or contracts binding Team, Company or Team contain contingencies or conditions precedent to Team ownership or continued ownership of Team and/or the ability of Team to play its home games in Wichita, Kansas.

"Oversight Committee" has the meaning set forth in Section 2.3.1.

"Person" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

"Plans for Ballpark Improvements" means the plans and specifications for the construction of Ballpark Improvements prepared by the Project Architect and which shall include the Quality Standards as indicated in the Minor League Facility Standards attached as Exhibit C which may be amended, supplemented or revised from time to time.

"Pre-Development Expenses" means third party design, survey, site preparation and/or other pre-construction expenses of City incurred prior to Execution Date, including those of the Preliminary Architect (but excluding legal fees of the Parties).

"Pre-Existing Environmental Conditions" means the Hazardous Materials and other environmental conditions that existed on or under the Ballpark prior to the Operating Term Commencement Date to the extent such have not been caused by or contributed to by Team, its Affiliates or Related Parties.

"Preliminary Architect" means the architect engaged by City prior to the Execution Date to prepare certain preliminary documentation with respect to the Ballpark, including any programming documents and concept plan.

"Prime Rate" means the "prime rate" as published in the "Money Rates" section of The Wall Street Journal; however, if such rate is, at any time during the Term, no longer so published, the "Prime Rate" shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a "prime rate".
"Project Architect" means a Qualified Design Professional or team of Qualified Design Professionals who will be employed by the DB in connection with the Ballpark Improvements.

"Project Committee" has the meaning set forth in Section 2.3.2.

"Project Manager" has the meaning set forth in Section 3.2.1.

"Project Plans" means collectively, the Plans for Ballpark Improvements and the FF&E Requirements.

"Project Personnel" has the meaning set forth in Sections 2.3.1 and 2.3.2.

"Qualified Design Professional" means an architect that satisfies all of the following criteria: (i) licensed and otherwise in compliance with all applicable Governmental Rules to do business and act as an architect in the State of Kansas for the type of work proposed to be performed by such architect and (ii) well experienced as an architect in comparable work.

"Qualified Surety" means any surety which has been approved by City and which has an A. M. Best Company, Inc. rating of "A" or better and a financial size category of not less than "VIII" (or, if A. M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if A. M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Agreement, then the equivalent or most similar rating Lender the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

"Quality Standards" means a first-class, state-of-the-art, Triple-A caliber, multi-purpose minor league baseball ballpark, comparable, when taken as a whole that meet the requirements of the PCL, MiLB and Major League Baseball, in conformance with Exhibit C.

"Real Property" means the tract of land depicted in Exhibit A. In addition to the description of real property attached hereto as Exhibit A, the term "Real Property" shall also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Ballpark is constructed.

"Related Party" or "Related Parties" means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their
respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicenses, tenants, and subtenants.

"Responsible Officer" means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Agreement, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

"Review and Approval or Consent Rights" has the meaning set forth in Section 8.2.1.

"Reviewing Party" has the meaning set forth in Section 8.2.1.

"Submitting Party" has the meaning set forth in Section 8.2.1.

"Subsidiary" means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

"Substantial Completion" means, when used with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, the receipt of (i) a certificate of the Project Architect certifying that such Improvements have been completed in accordance with the Project Plans, and (ii) a certificate of occupancy from the Metropolitan Area Building and Construction Department, a joint City-County agency, acting in accordance with its Governmental Function that such Improvements are ready for use and occupancy for their intended purposes in accordance with Applicable Law.

"Substantial Completion Date" means the date upon which Substantial Completion of the Ballpark Improvements Work occurs.

"Substantial Completion Deadline" means March 15, 2020, as such date may be extended by (i) an Excusable City Delay Period; (ii) Section 5.2, each in accordance with the terms of this Agreement; or (iii) mutual agreement.
"Team" means all rights, title and interest, including franchise rights, in the Triple-A Minor League Professional Baseball franchise granted by the PCL and the corresponding interests in the PCL and known as of the Execution Date as the New Orleans Baby Cakes.

"Team Contribution of Furniture, Fixtures & Equipment (FF&E)" has the meaning in Section 6.1.4.

"Team Default" has the meaning set forth in Section 13.1.1.

"Team Delay" means any delay by Team in achieving performance of its obligations under this Agreement.

"Team Representative" has the meaning set forth in Section 2.2.

"Team’s Personal Property" means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by Team or its licensees and located on or within the Ballpark or Ballpark Site (including office equipment, concessions equipment, baseball equipment, suite furnishings, trade fixtures, but not other fixtures) and can be removed from the Ballpark without material damage thereto. The term "Team’s Personal Property" does not include any of the City Personal Property.

"Term" has the meaning set forth in Section 4.1.

"Transfer" has the meaning set forth in Section 11.1.

"Transfer of Majority Interest" means, with respect to Team or Company, any direct or indirect transfer, sale or other transaction (or related transactions) that results in any Person (other than a current Control Person of Team or Company, as applicable) becoming the beneficial owner, directly or indirectly, of fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of managers, directors or other comparable Controlling body of Team or Company, as applicable.

"Use Agreement" means a use, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Ballpark for any permitted use, but shall not include any of the foregoing for all or substantially all of the Ballpark or for a period greater than the "Initial Term".
ARTICLE II
REPRESENTATIVES

2.1 City Representative. City hereby designates the Mayor of City or his or her designee to be the representative of City (the "City Representative"), and shall have the right, from time to time, to change the Person who is the City Representative by giving at least five (5) Business Days prior written notice to Team thereof. The only functions under this Agreement of City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as City Representative shall have the power to bind City in those instances in which this Agreement specifically provides for the Approval, decision, confirmation or determination of City Representative and in no other instances; provided, however, that notwithstanding anything in this Agreement to the contrary, City Representative shall not have any right to modify, amend or terminate this Agreement.

2.2 Team Representative. Team hereby designates Lou Schwechheimer, or his designee or successor, to be the representative of Team (the "Team Representative"), who shall be authorized to act on behalf of Team under this Agreement. Team shall have the right, from time to time, to change the Person who is the Team Representative by giving at least five (5) Business Days prior written notice to City thereof. Any written Approval, decision, confirmation or determination hereunder by the Team Representative shall be binding on Team; provided, however, that notwithstanding anything in this Agreement to the contrary, the Team Representative shall not have any right to modify, amend or terminate this Agreement.

2.3 Collaborative and Cooperative Process.

2.3.1 Oversight Committee. The City and Team will mutually determine and agree upon a development process for the Ballpark, which will include the establishment of an Oversight Committee which will be involved in major issues and decision making regarding this Project (herein defined "Oversight Committee"). This Committee shall include and be limited to (a) the City Representative or his designee, (b) a representative of the Team, and (c) four other persons, two of whom shall be designated by the City Representative and two of whom shall be designated by the Team. It is the expectation of the Parties that the Oversight Committee will determine, approve and oversee the major elements of the development process of the Project as identified in the critical path method schedule. The Committee will participate as part of the City’s staff screening and selection committee to select from the qualified proposers a DB Person or team of Persons to undertake the progressive design build of the Project. This Committee will also approve the seating configuration, the Ballpark Budget, Ballpark Construction Schedule and approval of any value engineering or change orders to stay within budget, if applicable.

2.3.2 Project Committee. To facilitate the effective participation of the Parties, the City and Team will form a Project Committee that will provide day to day oversight of the Project Plan and administer the design and construction of the Ballpark Improvements including
the installation of furniture, fixtures and equipment (FF&E) (herein defined the "Project Committee"). This Committee will report directly to the Oversight Committee and shall include and be limited to (a) the City Representative or his designee, (b) a representative of the Team, and (c) four other persons, two of whom shall be designated by the City Representative and two of whom shall be designated by the Team. This Committee will provide directions and recommendations to the City, Team and Oversight Committee concerning all material aspects of the Ballpark Improvements and installation of FF&E. The Project Committee will meet on such schedule and at such location(s) as agreed to by the Parties until such time as the Ballpark Improvements and FF&E are completed and installed and the Team takes possession of the Ballpark; provided, one hundred twenty (120) days following Team's acceptance of possession, the Project Committee shall be dissolved without requirement of further act by or of, or notice from or to, the Parties. Meetings may be conducted in whole or in part by telephone or Internet communication.

2.3.3 Process. For purposes of participating in the Project Plan and managing construction and soft costs as well as continuing to be involved and informed during the design and construction of the Ballpark, each Party including members of the Oversight Committee and Project Committee will be given a reasonable opportunity to be present at all meetings and briefings with the Project Personnel and other Persons engaged with regard to the design, development, construction and furnishing of the Ballpark. The City acknowledges that it is appropriate for the Team to provide detailed input into the Ballpark Improvements, including procurement of all third party services, selection of Project Personnel, and the development and implementation of all design specifications and plans as well as all other aspects of the Ballpark Improvements and FF&E. Team agrees that this input must be in a form complying with state law, city ordinance and city purchasing policy.

ARTICLE III
CONDITIONS TO CITY OBLIGATIONS AND COMMENCEMENT OF CONSTRUCTION

3.1 Conditions to City Obligations. This Agreement shall not be effective with respect to any City obligation hereunder and City shall not be obligated to move forward with any of the terms of this Agreement until the conditions in Section 3.1.1 and Section 3.1.2 (the "Conditions to City Obligations") are satisfied. City shall provide written notice to Team when the Conditions to City Obligations are satisfied.

3.1.1 League Approvals. On or before October 23, 2018, Team shall have obtained any required PCL, MiLB and/or any other baseball required approval or review of the Facility Use Management Agreement and have provided the conditional written confirmation of Team Representative affirming that such approvals or reviews have been obtained and no other MiLB approval is required with respect to Facility Use Management Agreement.
3.1.2 **Facility Use Management Agreement Execution.** On or before October 23, 2018 Team and City shall have signed the Facility Use Management Agreement.

3.2 **Conditions to Commencement of Construction.** City shall not be obligated to commence the Ballpark Improvements Work until the conditions in Section 3.2.1 through Section 3.2.6 (the "Conditions to Commencement") are satisfied or waived, such conditions to be satisfied on or before the respective dates set forth below. City shall provide written notice to Team when the Conditions to Commencement are satisfied and specify such date as the "Construction Commencement Date." City and Team acknowledge and agree that the timeframes within which each of the Conditions to Commencement are to be satisfied shall be implemented in a manner that assures, to the extent commercially reasonable and in accordance with Applicable Law, that City achieves Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may be extended by an Excusable City Delay Period).

3.2.1 **Project Manager.** As soon as commercially reasonable after the Conditions to City Obligations are satisfied and in accordance with all Applicable Laws, the Ballpark Project is to have a project manager acceptable to both the Team and the City through the Oversight Committee (the "Project Manager"). The Ballpark Project Manager will be responsible to the Project Committee and the Oversight Committee. The Project Manager will act as both the City's and Team's lead point of contact to coordinate all scheduling, budget, design and construction matters related to the Ballpark with the DB.

3.2.2 **Design Builder.** As soon as commercially reasonable after the Conditions to City Obligations are satisfied, City shall have selected the DB in accordance with any requirements of Applicable Law, using the Oversight Committee members as part of the Staff Screening and Selection Committee.

3.2.3 **Ballpark Construction Contract.** As soon as commercially reasonable after the selection of the DB and in accordance with all Applicable Laws, City and the DB shall have entered into the Ballpark Construction Contract (including the Team Personal Property). Prior to the submission of the Ballpark Construction Contract to the DB, City and Team shall have mutually agreed on the form thereof.

3.2.4 **Ballpark Budget Submittals.** The DB shall complete thirty percent (30%) of the plans for the approval of the Oversight Committee, and in conjunction with those plans, prepare a critical path method Ballpark Construction schedule and a Ballpark Budget. This Ballpark Budget will include hard and soft costs categories, including separate line items for the amount payable under each of the Ballpark Construction Documents and allowances and contingencies, together with any amendments thereto up to the Substantial Completion Date. The DB will subsequently and timely update the plans at sixty percent (60%), ninety percent (90%)
and one hundred percent (100%) completion and update the Ballpark Construction Schedule and the Ballpark Budget in conjunction with plan submissions accordingly.

3.2.5 **Financing.** By June 1, 2019 or as soon thereafter as commercially reasonable and in accordance with all Applicable Laws, the Financing shall have been secured and the proceeds thereof shall be available to City to pay the costs of issuance thereof (which are not a part of Ballpark Costs) and the Ballpark Costs.

3.2.6 **Governmental Authorizations.** As soon as commercially reasonable, DB shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the Ballpark, including building permits and engineering and land use approvals necessary for the commencement of development and construction of the Ballpark Improvements.

3.3 **Agreement to Consult and Assist.** Prior to the Construction Commencement Date, the Representatives shall meet and consult with each other and reasonably assist each other with respect to satisfaction of the Conditions to Commencement.

3.4 **Termination for Failure of Conditions to be Satisfied.**

3.4.1 **Conditions to City Obligations Not Satisfied.** If for any reason all of the Conditions to City Obligations have not been fully satisfied (or waived in writing as specifically authorized by the Controlling Body of City) by June 1, 2019, as the same may be extended by an Excusable Team Delay Period or mutual agreement, then in such event, City may, by written notice to Team, elect to terminate this Agreement.

3.4.2 **Conditions to Commencement Not Satisfied.** If for any reason all of the Conditions to Commencement have not been fully satisfied (or waived in Writing by City Representative or Team Representative as applicable) by June 1, 2019, as the same may be extended by an Excusable City Delay Period, Excusable Team Delay Period or mutual agreement as applicable and in accordance with this Agreement, then such failure shall not be construed to be an Event of Default under this Agreement, but in such event, either Team or City may, by written notice to the other Parties, elect to terminate this Agreement.

3.4.3 **Effect of Termination.** Upon any termination of this Agreement pursuant to this ARTICLE III, the Facility Use Management Agreement may also terminate and the Parties shall have no further rights, obligations or liabilities under such agreements (except pursuant to the provisions of such agreements which expressly survive termination) and the Parties automatically shall be released from any future obligations under this Agreement or the Facility Use Management Agreement that arise after the date of termination but shall not be released
from any obligations which arise or relate to occurrences prior to the date of termination.

ARTICLE IV
TERM

4.1 Term. The term under this Agreement (the "Term") shall commence at 12:00 a.m. on the day immediately following the Execution Date and shall end at 11:59 p.m. on the date Final Acceptance occurs as required in Section 5.1.6 hereof.

4.2 Commencement of Construction. The date on which all Conditions to Commencement are satisfied is the "Construction Commencement Date."

ARTICLE V
CERTAIN DEADLINES AND DELIVERABLES

5.1 Deadlines Subsequent to Commencement of Term. Subject to extension as a result of an Excusable Team Delay Period or an Excusable City Delay Period, as appropriate, in accordance with the terms of this Agreement and alter the Construction Commencement Date, the Parties shall meet the following deadlines in connection with the following matters:

5.1.1 Scheduled Ballpark Improvements Start Date Milestone. City shall cause the construction (which includes demolition and other site preparation) of the Ballpark improvements to commence on or before the day that is thirty (30) days after the Construction Commencement Date. The Parties acknowledge that demolition will be conducted by a third party.

5.1.2 Ballpark Budget. The Ballpark Budget reflects the City's maximum appropriation for the project and is capped at Seventy-Five Million Dollars ($75,000,000) which amount cannot be exceeded. The parties recognize that Change Orders or scheduled changes which would be part of the Ballpark Budget must be handled by value engineering and scope changes to accomplish net zero Ballpark Budget outcome. It is expressly understood that neither the Team nor PCL will be responsible for any portion of the Ballpark Budget. The Team will only be responsible for an unbudgeted cost arising from Ballpark construction if that unbudgeted amount is a result of an improvement or modification requested by the Team, or if the Team has expressly and mutually agreed, in writing, with the City to share in said cost. It is further agreed between the City and the Team that once the Design Builders Guaranteed Maximum Price Amendment is executed should City and Team agree, in writing, to a material change each would share equally in any increased cost.
5.1.3 **Ballpark Construction Schedule.** City will provide Team Representative with notice of any material change to the Ballpark Construction Schedule for Team’s Approval, such Approval not to be unreasonably withheld, conditioned or denied.

5.1.4 **Substantial Completion.** City shall cause Substantial Completion of the Ballpark Improvements Work to occur on or before the Substantial Completion Deadline. City and Team will jointly act, through the Oversight Committee and Project Committee to ensure Design Builder’s compliance or appropriate adjustment to the Construction Schedule to insure timely Substantial Completion.

5.1.5 **Punch-list Items.** Upon Substantial Completion, City shall provide notice thereof to Team. Team Representative and City Representative shall schedule a time to meet within ten (10) Business Days thereafter to inspect the Ballpark and for Team to prepare a "punch-list" of items that are reasonably required to be completed or repaired prior to Final Acceptance of the Ballpark. The DB shall complete, or cause to be completed, all reasonable punch-list items within thirty (30) days after the inspection or as soon as is reasonably practicable in light of the work to be performed.

5.1.6 **Final Acceptance.** Ninety (90) days after the Substantial Completion Date, City shall cause Final Acceptance of the Ballpark Improvements Work to occur (using its commercially reasonable efforts to not unreasonably interfere with Team’s business operations at the Ballpark).

5.2 **Extension of Substantial Completion Deadline.** In the event DB fails to achieve Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may have been extended by any Excusable City, Team Delay Period or mutual agreement), City shall have the continuing right and option to extend the Substantial Completion Deadline, as such Substantial Completion Deadline may be extended pursuant to the terms of this Section 5.2 so that City may cause Substantial Completion of the Ballpark Improvements. Work to occur, provided each of the following requirements is satisfied:

(a) **DB must continue to diligently and continuously prosecute the Ballpark Improvements Work (subject to Excusable City or Team Delay) after the original Substantial Completion Deadline (as the same may have been extended by Excusable City, Team Delay or the terms of this Section 5.2).**

(b) So long as this Agreement is in full force and effect and a Team Default does not remain uncured, City shall pay to Team the Late Opening Charges, as liquidated damages and not as a penalty and as Team’s sole remedy, for each day after the original Substantial Completion Deadline (as the same may have been extended by Excusable City or Team Delay Period) which
elapses before Substantial Completion of the Ballpark Improvements Work. City and Team agree that because of the difficulty or impossibility of determining Team's damages as a result of such a delay in Substantial Completion of the Ballpark Improvements Work, the difficulties of proof of loss and the inconvenience or non-feasibility of Team otherwise having a remedy for such failure to achieve Substantial Completion of the Ballpark Improvements Work by the original Substantial Completion Deadline (as the same may have been extended by any Excusable City or Team Delay Period or the terms of this Section 5.2), the Late Opening Charges are a reasonable amount to be paid for such failure.

In the event the DB fails to cause Substantial Completion of the Ballpark Improvements Work to occur on or before the date required by the Ballpark Construction Contract, City and Team hereby agree to use good faith, commercially reasonable efforts to collect from the DB the liquidated damages set forth in the Ballpark Construction Contract for such failure. City will not (i) amend or modify the provisions providing for liquidated damages in the Ballpark Construction Contract, (ii) waive, release, reduce or terminate the liquidated damages payable by the DB thereunder or (iii) waive, release, extend or terminate the DB's obligation to achieve Substantial Completion in accordance with the Ballpark Construction Schedule, without the prior Approval of the Oversight Committee, such Approval not to be unreasonably withheld, conditioned or denied.

5.3 Financing Proceeds. Team acknowledges that City intends to use Financing Proceeds to pay for the Ballpark Costs as defined in Article I.

5.3.1 Financing Proceeds Attributable to Tax Exempt Bonds. In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to tax exempt bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties; (b) second, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties; (c) third, for deposit into the debt service funds associated with the tax exempt bonds and used to pay principal on such bonds; provided however; that in all cases the use of such proceeds for such expenditures will not adversely affect the tax exempt status of such bonds in the reasonable opinion of Bond Counsel to City. If the Parties cannot so mutually agree or if such opinion of Bond Counsel cannot be obtained, then any such remaining Financing Proceeds shall be deposited into the debt service fund for the tax exempt bonds associated with the Financing and used to pay principal on such bonds.
5.3.2 Financing Proceeds Attributable to Taxable Bonds. In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to taxable bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, the first Five Hundred Thousand Dollars ($500,000) of any such remaining Financing Proceeds shall be deposited into the Capital Repairs Reserve Fund (as such term is defined in the Facility Use Management Agreement), (b) second, to purchase any items and/or to perform any work that was included in the Project Plan but later removed as a result of value engineering, as mutually determined by the Parties, and (c) third, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties. All of the above provisions shall be subject to the state statutes under which that financing is authorized.

ARTICLE VI
CONSTRUCTION OF BALLPARK IMPROVEMENTS;
GENERAL WORK REQUIREMENTS

6.1 General Provisions.

6.1.1 Ballpark Improvements. City and Team shall design, develop and construct the Ballpark in accordance with the terms and conditions of this Agreement and all Applicable Laws, and shall diligently and continuously adhere to the Ballpark Construction Schedule (subject to any Excusable City or Team Delay permitted in accordance with the terms of this Agreement).

6.1.2 Ballpark Specifications. The City and Team will develop and mutually agree to a required list of specific Ballpark Improvements which will include 15 to 18 suites, 6,500 to 7,000 fixed seats, and berm, party and group areas with a capacity of 3,000 to 3,500 people, resulting in total available capacity of 10,000 for MiLB games. The list will also include agreed upon terms for Team facility size, concession space and other improvements necessary to meet MiLB and PCL standards for Ballparks attached as Exhibit C as may be amended from time to time. It will also include the purchase and installation of a state of the art LED video scoreboard and sound system along with cables, press controls, monitors and Click Effects, which, together with a Hall of Fame Museum and all soft costs to be funded by the Financing.

6.1.3 Infrastructure Improvements. The City has agreed to spend additional monies estimated at Eight Million Dollars ($8,000,000) on the construction of a pedestrian bridge, riverfront improvements and other infrastructure improvements in the general vicinity of the Ballpark. The pedestrian bridge will be located on the Ballpark site at a location determined by the Parties (herein defined as "Infrastructure Improvements"). These improvements are not to be included in the Ballpark Construction Schedule team’s formal oversight.
6.1.4 **Team Contribution of FF&E.** In addition to the financial commitment by the City in Sections 6.1.2 and 6.1.3, the Team will agree to purchase FF&E to be contributed to the Ballpark in an amount between Five Million Dollars ($5,000,000) and Seven Million Dollars Five Hundred Thousand Dollars ($7,500,000) to include office equipment, computers, telephones, concessions equipment, refrigerators, freezers, televisions, furniture, suite fixtures and furnishings and any other items deemed important in the sole discretion of the Team.

6.1.5 **Baseball Operations & Development.** The City recognizes that the Team is the authority on all baseball related issues affecting either player development or operation of the Ballpark, including but not limited to: (i) size and design of home, visitor and auxiliary clubhouses, showers, weight room, bathrooms, equipment storage, batting cages, indoor pitcher’s mounds, umpires’ room, clubhouse kitchen laundry, video room coaches and manager’s offices; (ii) Team offices; (iii) ticket offices; (iv) concession stands; (v) Team equipment, concession storage, refrigerator and walk-in freezer replacement; (vi) trash compactor and delivery areas; and (vii) team dugouts and on-field bullpens. Consequently, without limitation of the foregoing, the City will not proceed with any material aspect of the Ballpark Improvements or with the selection of any contractor, architect or other material Project Personnel, budgetary or design element, and will not enter into any contract related to this or the Development Agreement or authorize any expenditure, under either Agreement, without the prior review and reasonable approval of a majority of the Project Committee.

6.1.6 **Quality Standards and Minimum Requirements.** City and Team covenant and agree that the scope of design and development specifications for construction, and the construction, of the Ballpark Improvements will adhere to the Quality Standards and include the Requirements of PCL and MiLB as shown in **Exhibit C.**

6.2 **Team’s Access to the Ballpark Improvements.** Prior to the Operating Term Commencement Date, Team, its agents, contractors, licensees, and concessionaires shall have the right of access, for themselves and their authorized representatives, to the Ballpark and all portions thereof for the following purposes: (a) conducting inspections for purposes of determining compliance with this Agreement; and (b) installation of any additional fixtures or equipment Approved by City and not included in the Ballpark Budget. Such access shall be without charge or the commencement of Management Privilege Fee (as defined in the Facility Use Management Agreement) under the Facility Use Management Agreement, and at normal construction hours during the construction period, provided Team and all such agents, contractors, licensees, and concessionaires (i) notify City in advance of such proposed entry by any of Team’s licensees or concessionaires, (ii) do not hinder or interfere with the construction of the Ballpark or the activities of City’s contractors and coordinate such work with such activities of City’s contractors to minimize the risk of creating Cost Overruns, (iii) pay all costs of such Work, (iv) take such reasonable protective precautions or measures as City or its contractors (including the DB) may reasonably request, given the stage of the construction of the Ballpark Improvements at the time of such entry including coordination with DB to avoid impacts to the
critical path; and (v) comply with and be subject to the provisions of the Ballpark Construction Contract relating to City’s rights to access including providing the insurance required by the terms of the Ballpark Construction Contract (or, if the DB does not specify the same, then by providing such insurance as City may reasonably request).

6.3 Pre-Existing Site Conditions. Prior to the Operating Term Commencement Date, City shall be responsible for performing or causing to be performed, and for paying the cost of performing as a part of the Ballpark Budget, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any (i) state historical landmarks present at, in, on or under the Ballpark prior to the Construction Commencement Date and (ii) any Pre-Existing Environmental Conditions in accordance with Section 9.2.

6.4 Work Performed.

6.4.1 General Requirements. City shall, at its sole cost and expense (except as otherwise provided in this Agreement), perform or cause the performance of the Ballpark Improvements Work in accordance with and subject to the terms of this Agreement, and City shall promptly and faithfully cause the DB to perform that portion of the Ballpark Improvements Work to be performed under the Ballpark Construction Contract in accordance with the terms and provisions thereof and keep and perform all of the covenants and conditions contained in the Ballpark Construction Contract to be kept and performed by City; provided, however (i) City shall not be in breach of its obligations in this sentence if its failure to so keep and perform is caused by the failure of Team or its Related Parties to perform their respective obligations under this Agreement through the efforts of the DB and (ii) so long as City is using good faith, diligent efforts to achieve Substantial Completion of the Ballpark Improvements Work, City’s liability related to any failure with respect to achieving the Ballpark Construction Schedule, including achieving Substantial Completion of the Ballpark Improvements Work by the Substantial Completion Deadline or any subsequent date, will be solely as set forth in this Agreement. City will at all times continually enforce all material obligations of all Persons under the Ballpark Construction Contract and will promptly, after City learns of the same, notify Team of any default by any Person under the Ballpark Construction Contract, and of the remedy or course of action sought by City in response to such default.

6.4.2 Ballpark Construction Contract. The DB agreement to be executed by City with respect to the construction of the Ballpark Improvements (the "Ballpark Construction Contract") shall be approved by the Oversight Committee.

6.4.3 Record Drawings and Other Documents. Upon Substantial Completion of the Ballpark Improvements Work, City shall furnish to Team (i) three (3) copies of the as-built drawings that the DB delivers to City under the Ballpark Construction Contract, and (ii) three (3)
copies of the operating and maintenance data binders supplied by the DB under the Ballpark Construction Contract.

6.4.4 Warranty Claims. City shall take commercially reasonable efforts to enforce all warranty and similar claims with respect to the Ballpark Improvements at City's cost and expense. Team shall make City aware of any defects or warranty issues which come to its attention with respect to the Ballpark Improvements. City and Team shall cooperate with each other in prosecuting any and all warranty and similar claims, at City's cost and expense, under any and all contracts or other agreements with third parties for the design or construction of the Ballpark.

6.4.5 Construction Cooperation. City will conduct the Ballpark Improvements Work, and require the DB to conduct the Ballpark Improvements Work, in accordance with the cooperative process described in Section 2.3, including the following:

(a) instructing the DB and its Project Architect to provide Team with a duplicate copy of all drawings or specifications, written notices and other documentation delivered or received by any of them contemporaneously with their delivery to City, including advance notice of any weekly progress meetings and design review meetings; and,

(b) allow Team Representative to attend all meetings with any Persons, Committees (Oversight and Project) or Governmental Authority relating to the Ballpark Improvements, including weekly progress meetings and design review meetings.

6.5 Pre-Development Expenses. All Pre-Development Expenses shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

6.6 Design Fees. All Design Fees shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

6.7 Reports; Audit Rights. City shall provide Team Representative with a monthly report showing amounts funded against the Ballpark Budget. At Final Acceptance, City shall provide Team with a final, reconciled report certified by the City Representative showing all amounts funded against the Ballpark Budget. Team, at its expense (except as provided below), shall have the right, at any time during the Term of this Agreement to audit the monthly reports and the final, reconciled report produced by City pursuant to this Section 6.7 to confirm City's compliance with the terms of this Agreement. Any such audit will be commenced and conducted with reasonable promptness, after reasonable notice to City and by an auditor whose fee for such audit is not calculated on a contingent basis.
6.8 **Change Orders.** The Parties acknowledge and agree that the Project Plan may need to be supplemented, re-ordered and/or revised from time to time during construction through the use of change orders. Either City or Team may request a construction change order by notifying the other Party of such requested modification and the details and estimated costs thereof, which costs shall (i) include, but not be limited to, associated architectural, engineering, DB and contractor’s fees for the change order and (ii) subject to Section 5.1.2, be the responsibility of the requesting Party to the extent that the requested change order results in an increase in the previously budgeted cost for such item. The proposed adjustment in scope to bring the project back within the budget. Accordingly, the Parties agree to cooperate with respect to all proposed modifications. Change Orders that have a material effect on the Ballpark Budget must be approved by the Oversight Committee. Change Orders that do not have a material effect on the Ballpark Budget can be approved by the Project Committee.

6.9 **Location of the Ballpark.** The Parties agree that the Ballpark will be located on the Real Property.

**ARTICLE VII**

**DELAYS AND EFFECT OF DELAYS**

7.1 **Excusable Team Delay.** Regardless of the existence or absence of references to Excusable Team Delay elsewhere in this Agreement, any deadline or time period within which Team must fulfill the obligations of Team elsewhere in this Agreement shall each be adjusted as appropriate to include Excusable Team Delay Periods unless otherwise expressly provided in this Agreement to the contrary; provided that (i) the obligation to pay amounts as when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Team Delay and (ii) Team complies with the requirements of this ARTICLE VII. With respect to each occurrence of Excusable Team Delay, Team shall, within fifteen (15) Business Days after Team’s knowledge of the occurrence of such event of Excusable Team Delay, give notice to City Representative of the event constituting Excusable Team Delay, Team’s good faith estimate of the Excusable Team Delay Period resulting therefrom and the basis therefor, Team’s good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If City Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, City Representative shall give notice to Team of the claimed deficiency and Team shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from Team shall be required with respect to a continuing Excusable Team Delay, except that Team shall promptly (and in no event less often than every ten (10) Business Days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. City Representative shall have the right to challenge Team’s assertion of the occurrence of an
Excusable Team Delay, or Team’s good faith estimate of the Excusable Team Delay Period or changes in the additional time for performance claimed by reason of the Excusable Team Delay if City Representative gives notice to Team within fifteen (15) Business Days after receipt by City Representative of such claim of Excusable Team Delay or notice from Team of further changes to such dates as a result of such Excusable Team Delay, as the case may be (which challenge shall be deemed to have been made if City Representative gives notice to Team of any claimed deficiency in documentation as provided for above in this Section 7.1).

7.2 **Excusable City Delay.** Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Agreement, any deadline or time period within which City must fulfill the obligations of City in this Agreement shall each be adjusted as appropriate to include Excusable City Delay Periods; provided that (i) the obligation to pay amounts when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable City Delay, and (ii) City complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable City Delay, City Representative shall, within fifteen (15) Business Days after City’s knowledge of the occurrence of such event of Excusable City Delay, give notice to Team of the event constituting Excusable City Delay, City Representative’s good faith estimate of the Excusable City Delay Period resulting therefrom and the basis therefor, City Representative’s good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Team believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Team shall give notice to City Representative of the claimed deficiency and City Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from City Representative shall be required with respect to a continuing Excusable City Delay, except that City Representative shall promptly (and in no event less often than every ten (10) Business Days) give notice to Team of any further changes in the additional time for performance claimed by reason of the continuing delay. Team shall have the right to challenge City Representative’s assertion of the occurrence of an Excusable City Delay, or City Representative’s good faith estimate of the Excusable City Delay Period, or changes in the additional time for performance claimed by reason of Excusable City Delay if Team gives notice to City Representative within fifteen (15) Business Days after receipt by Team of such claim or Excusable City Delay or notice from City Representative of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if Team gives notice to City Representative of any claimed deficiency in documentation as provided for above in this Section 7.2).

7.3 **Continued Performance: Exceptions.** Upon the occurrence of any Team Delay or City Delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Team and City each hereby agree
that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the
effect of any Team Delay or City Delay occasioned by an Excusable Team Delay or Excusable City
Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure
resumption of performance of its obligations under this Agreement after the occurrence of any
Excusable Team Delay or Excusable City Delay. The Parties shall use and continue to use all
commercially reasonable efforts to prevent, avoid, overcome and minimize any City Delay or
Team Delay.

ARTICLE VIII
APPROVALS, CONFIRMATIONS AND NOTICES; DISPUTE RESOLUTION

8.1 Approvals, Confirmations and Notices.

8.1.1 Ballpark Work. The Oversight Committee shall give prior approval of any
material change to the Plans for the Ballpark Improvements Work prior to the commencement
of any Ballpark Work that deviates in a material respect from the Plans for the Ballpark Work,
such Approval not to be unreasonably withheld, conditioned or denied.

8.1.2 Design Builder. City and Team hereby agree that the DB shall be
reasonably acceptable to both Parties. Both Parties through the Oversight Committee will
Approve the Ballpark Construction Contract prior to its execution, and City shall not subsequently
modify or amend in any material respect the Ballpark Construction Contract without prior
Approval of Team and Oversight Committee, such Approval not to be unreasonably withheld,
conditioned or denied.

8.2 Approvals; Standards.

8.2.1 Review and Approvals or Consent Rights. The provisions of this Section
8.2.1 shall be applicable with respect to all instances in which it is provided under this Agreement
that City, City Representative, Team or the Team Representative exercises Review and Approval
or Consent Rights (as defined below); provided, however, that if the provisions of this Section
8.2.1 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict
with other express provisions of this Agreement providing for time periods for exercise of
designated Review and Approval or Consent Rights, then the provisions of such other provisions
of this Agreement shall control. As used herein, the term "Review and Approval or Consent
Rights" shall include, without limiting the generality of that term, all instances in which one Party
(the "Submitting Party") is permitted or required to submit to the other Party or to the
representative of that other Party any document, notice or determination of the Submitting Party
and with respect to which the other Party or its representative (the "Reviewing Party") has a right
or duty hereunder to review, comment, confirm, Approve, disapprove, dispute or challenge the
submission or determination of the Submitting Party.

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8.2.2 **Standard for Review.** Unless this Agreement specifically provides that a Party’s Review and Approval or Consent Rights may be exercised in the sole discretion of the Reviewing Party, then in connection with exercising its Review and Approval or Consent Rights under any provision of this Agreement, and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a fair and commercially reasonable manner in its capacity as Reviewing Party with regard to each and all of its Review and Approval or Consent Rights and to not unreasonably withhold, condition or delay its Approval of, consent to or confirmation of any submission or determination. The Reviewing Party shall review the matter submitted in writing and shall give notice within two (2) Business Days to the Submitting Party of the Reviewing Party’s comments including Approval, confirmation, disapproval or failure to confirm, as applicable. Any failure to respond within such two (2) Business Day period shall be deemed to be an approval or confirmation of the matter submitted.

8.2.3 **Resubmissions.** If the Reviewing Party disapproves or fails to confirm a matter to which this Section 8.2 applies, the Submitting Party shall have the right, within ten (10) Business Days after the date the Submitting Party receives notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party’s basis for disapproval or failure to confirm. Any resubmission made pursuant to this Section 8.2.3 shall be subject to Review and Approval or Consent by the Reviewing Party in accordance with the procedures described in this Section 8.2.3, until such matter is Approved by the Reviewing Party.

8.3 **Governmental Rule.** The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Team from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Team from, any requirement hereunder for the Approval of City or City Representative.

8.4 **Dispute Resolution.**

8.4.1 **Generally.** In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "**Dispute or Controversy**"), including, but not limited to a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with this Section. In the event a Dispute or Controversy arises, either Representative shall have
the right to notify the other Representative that it has elected to implement the following procedures. Within ten (10) Business Days after delivery of any such notice by one Representative to the other Representative regarding a Dispute or Controversy, the Representatives shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. City and Team shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives and the Representatives takes place within the sixty (60) day period following delivery of the initial notice, then either Party may seek injunctive relief or other relief at any time thereafter from any court of competent jurisdiction in Sedgwick County, Kansas. At no time shall the Parties be obligated to submit to arbitration.

8.4.2 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, either Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in Sedgwick County, Kansas in the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the dispute resolution procedures outlined in Section 8.4.1 above. Notwithstanding the fact that any court of competent jurisdiction in Kansas may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that such dispute resolution procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

ARTICLE IX
ENVIRONMENTAL PROVISIONS

9.1 No Hazardous Materials. Team shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Ballpark, provided, however that Team and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Ballpark as may be reasonably necessary for Team to operate from the Ballpark pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

9.2 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 (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Pre-Existing Environmental Conditions at, in, on or under the Ballpark. Regulated
wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

9.3 **Team Release.** Without limiting Team’s indemnity obligations under this Agreement, Team hereby releases City and its Affiliates and Related parties from and against any claims, demands, actions, suits, causes or action, damages, liabilities, obligations, costs and/or expenses that Team may have with respect to the Ballpark and resulting from, arising under or related to any environmental event arising from Team’s operation of the Ballpark, including any such claim under any environmental laws, whether under any theory of strict liability or that may arise under the comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended, 42 U.S.C.A. § 9601, et. seq., and State of Kansas laws and regulations.

9.4 **City Release.** Without limiting City’s indemnity obligations under this Agreement, City hereby releases Team and its Affiliates and Related Parties from and against any claims, demands, actions, suits, causes of action, damages, liabilities, obligations, costs and/or expenses that City may have with respect to the Ballpark and resulting from, arising under or related to any Environmental Event which is not attributable to Team’s operation of the Ballpark, including any such claim under any environmental laws, whether under any theory of strict liability or that may arise under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. § 9601, et. seq., and State of Kansas laws and regulations.

**ARTICLE X**

**INSURANCE; INDEMNITY**

10.1 **Policies Required.**

10.1 **Policies Required During Construction of the Ballpark Improvements Work.** At all times during the Ballpark Improvements Work, City will use good faith, commercially reasonable efforts to cause the DB to keep and maintain the policies of insurance required by the terms and conditions of the Ballpark Construction Contract.

10.2 **City Property Insurance.** City agrees, at its sole expense, to obtain and maintain property insurance at all times during the Term of this Agreement, insuring all buildings and structures comprising the Ballpark against all risk of direct physical loss or damage to the same extent and with the same coverage as other City owned buildings. City may elect to self-insure for any deductibles in said insurance policies. Such insurance coverage may be maintained by any combination of single policies and umbrella policies and shall name Team as an additional insured. Such insurance shall include full replacement value cost coverage if it can be obtained at commercially reasonable terms acceptable to City.
10.3 **Indemnity of Team.** To the extent allowed by Applicable Law, Team shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Team or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys’ fees and litigation expenses), arising directly or indirectly out of: (i) Team’s occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) Team’s performance under this Agreement.

10.4 **Indemnity of City.** To the extent allowed by Applicable Law, City shall indemnify, hold harmless and defend Team and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Team, City or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys’ fees and litigation expenses), arising directly or indirectly out of: (i) City’s occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) City’s performance under this Agreement.

**ARTICLE XI**

**ASSIGNMENT OR TRANSFER**

11.1 **Assignment or Transfer by Team.** Except as otherwise provided in Section 11.2 below, Team shall not assign, transfer license, mortgage, pledge, encumber or otherwise hypothecate (each a "Transfer") any right, title, interest or obligation of Team under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) without the prior written Approval of City except for an assignment to an Affiliate of Team as long as no continuing Team Default exists. If Team wishes to assign this Agreement to a Person who is not an Affiliate of Team, then Team shall request City’s Approval of such assignment as long as (i) the duties and responsibilities of the assignee of Team under this Agreement do not change, (ii) any such assignment is approved by the PCL and/or MiLB, (iii) the Ballpark, when completed, will be managed and operated by Team or a “Qualified Operator”, (iv) any such assignee must expressly assume any and all obligations of Team under this Agreement, and the Facility Use Management Agreement (v) there is no continuing Team Default and such assignment would not cause a Team Default. Without limiting the foregoing, no assignment hereunder shall affect the enforceability of this Agreement and any assignee shall continue to be bound by the terms hereof. Notwithstanding anything to the contrary contained in this Agreement, Team shall not enter into any such Transfer (other than a Use Agreement as
described in Section 11.2) without also entering into the same Transfer under the Facility Use Management Agreement to the same entity unless otherwise agreed in writing by City.

11.2 Use Agreement. Notwithstanding Section 11.1 hereof, Team may enter into a Use Agreement without City’s prior written Approval provided that such Use Agreement (i) is subject and subordinate to this Agreement, and to the rights of City hereunder, and shall expressly so state and (ii) any Improvements made pursuant to such Use Agreement are made in accordance with the Quality Standards.

11.3 Transfer of Majority Interest. As long as there is no existing Team Default, the prior Approval of City will not be required with respect to any Transfer of a Majority Interest of Team or Company as long as such Transfer of Majority Interest complies with the following conditions: (i) the respective duties and responsibilities of Team or Company under this Agreement do not change, (ii) any such Transfer of Majority Interest is approved by the PCL and MiLB, (iii) the Ballpark, when completed, be managed and operated by Team or an "Operator" as defined in the Facility Use Management Agreement, (iv) Team and Company will continue to be liable for any and all of their respective obligations under this Agreement and the Facility Use Management Agreement that arise after the effective date of such Transfer of Majority Interest, (v) no Team Default is caused by any such Transfer of Majority Interest, and (vi) to the extent permitted by any applicable confidentiality agreements related to such Transfer of Majority Interest, prior notice of such Transfer of Majority Interest is given to City. All other Transfers of Majority Interest of Team or Company will require the prior Approval of City, which shall not be unreasonably withheld. To the extent that Team or Company, as applicable, have not otherwise provided notice to City of any Transfer of Majority Interest because of contractual confidentiality provisions or otherwise, Team or Company, as applicable, shall provide City with notice of any Transfer of Majority Interest in Team prior to the first to occur of: any public statement by Team or Company with respect to such transfer or the closing of such transfer.

11.4 Other Transfers of Ownership Interest. As long as there is no existing Team Default, Transfers of ownership interests in Team or Company which do not constitute a Transfer of Majority Interest will not require either City Approval or notice; provided that the aggregate of all such Transfers over the Term does not cause a Transfer of Majority Interest with respect to such entities.

11.5 Transfers by City. Except in connection with the Financing, City may not effect a Transfer of any right, title, interest or obligation of City in and to the Ballpark or under this Agreement to any Person other than a Governmental Authority or a local government corporation formed by City, without Team’s prior Approval, which Approval shall not be unreasonably withheld, conditioned or denied as long as City remains liable for City’s financial obligations contained herein.
ARTICLE XII
REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Team's Representations and Warranties. As an inducement to City to enter into this Agreement, Team represents and warrants to City that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) Organization. Team is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and qualified to do business under the laws of the State of Kansas. The business which Team carries on and which it proposes to carry on may be conducted by Team. Company is duly authorized to conduct business as a limited liability company in the State of Kansas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) Authority. The execution, delivery and performance of this Agreement by Team are within Team's powers, respectively, and have been duly authorized by all necessary action of Team.

(b) No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Team nor any Applicable Laws to which Team is subject or any judgment, decree, license, order or permit applicable to Team, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a Lien upon any of the property or assets of Team pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Team is a party or by which Team is bound, or to which Team is subject.

(d) No Consent. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Team of this Agreement.

(e) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Team, enforceable against Team in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship,
bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) **No Pending Litigation, Investigation or Inquiry.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Team, threatened against or affecting Team, which the management of Team in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Team under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Team or on the ability of to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Ballpark).

(g) **Conflict of Interest.** None of Team or any Affiliate of Team nor any of their officers, employees or agents are officials or employees of City.

(h) **Team.** Team is the owner and holds substantially all of the assets and Governmental Authorizations necessary for the operation of the Team and will continue to own such Team and assets throughout the Term. Team shall take all necessary and appropriate actions to maintain membership of the Team in the PCL.

12.2 **City’s Representations and Warranties.** As an inducement to Team to enter into this Agreement, City represents and warrants to Team that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) **Organization.** City is a city duly formed and validly existing under the laws of the State of Kansas, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(b) **Authority.** The execution, delivery and performance of this Agreement by City are within City’s powers, respectively, and have been duly authorized by all necessary action of City.

(c) **No Conflicts.** Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein
contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City.

(d) **No Consent.** Upon the execution of this Agreement by City, City will have caused all governmental proceedings required to be taken by or on behalf of City to authorize City to make and deliver this Agreement and to perform the covenants, obligations and agreements of City hereunder.

(e) **Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as limited by applicable relief, sovereign immunity, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) **No Pending Litigation, Investigation or Inquiry.** Except as previously disclosed to Team in writing, there is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, which City in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of City under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of City or on the ability of City to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(g) **Financing.** City has the legal authority and the financial capacity to proceed with its proposed Financing

**ARTICLE XIII**

**DEFAULTS AND REMEDIES**

13.1 **Events of Default.**

13.1.1 **Team Default.** The occurrence of any of the following shall be an "Event of Default" by Team or a "Team Default":

(a) the failure of Team, to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on Team's part to
be kept, performed or observed if: (1) such failure is not remedied by Team within thirty (30) days after notice from City of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Team fails to commence to cure such default within thirty (30) days after such default, or Team fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days but is otherwise reasonably susceptible of cure, the time within which Team is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; provided, however, that if such default is not cured within one hundred eighty (180) days after notice from City of such default, (notwithstanding Team's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement;

(b) the occurrence of an Insolvency Event with respect to Team; or

(c) a "Team Default" as defined in the Facility Use Management Agreement shall have occurred and remain uncured.

13.1.2 City Default. The occurrence of the following shall be an "Event of Default" by City or a "City Default":

(a) the failure of City to perform or observe any of the obligations, covenants or agreements to be performed or observed by City under this Agreement within thirty (30) days (or such longer period as may be permitted in this Agreement) after notice from Team of such failure, but if such performance or observance cannot reasonably be accomplished within such thirty (30) day period (or such longer period as may be permitted in this Agreement), then no Event of Default shall occur unless City fails to commence such performance or observance within such thirty (30) day period (or such longer period as may be permitted in this Agreement) and fails to diligently prosecute such performance or observance to conclusion thereafter; provided, however, that if such performance or observance has not been accomplished within one hundred eighty (180) days after notice from Team to City of such failure (notwithstanding City's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default hereunder; or
The occurrence of an Insolvency Event with respect to City.

A "City Default" as defined in the Facility Use Management Agreement shall have occurred and remain uncured.

13.2 Remedies. Subject to the provisions of this ARTICLE XIII:

13.2.1 City's Remedies. Subject to this ARTICLE XIII, upon the occurrence of any Team Default, City may, in its sole discretion, pursue any one or more of the following remedies, without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

(a) City may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 13.2.3.

(b) City may exercise any and all other remedies available to City at law or in equity or otherwise provided in this Agreement;

Provided that notwithstanding the foregoing or anything else herein to the contrary, City's rights under this Section 13.2 shall be subject to the terms and provisions of Section 13.3.

13.2.2 Team's Remedies. Subject to this ARTICLE XIII, upon the occurrence of any City Default, Team may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

(a) Team may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 13.2.3.

(b) Team may exercise any and all other remedies available to Team at law or in equity or otherwise provided in this Agreement provided that notwithstanding the foregoing or anything else herein to the contrary, Team's rights under this Section 13.2 shall be subject to the terms and provisions of Section 13.3.

13.2.3 Right to Terminate. Upon the occurrence of a Team Default or a City Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Agreement after the expiration of a period
of thirty (30) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) day period, if the Event of Default is not cured, this Agreement shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) 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, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding.

13.2.4 **Cumulative Remedies.** Subject to the provisions of this ARTICLE XIII, each right or remedy of City and Team provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy of City or Team provided for in this Agreement, and the exercise or the beginning of the exercise by City or Team of any one or more of the rights or remedies provided for in this Agreement shall not preclude the simultaneous or later exercise by City or Team of any or all other rights or remedies provided for in this Agreement or hereafter existing at law or in equity, by statute or otherwise.

13.3 **Right to Injunction.** In addition to the remedies set forth in this ARTICLE XIII, the Parties shall be entitled to seek injunctive relief prohibiting or mandating action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Agreement for which such remedy is available hereunder, at law or in equity. In connection with any such action by a Party, each Party (a) recognizes that City has contributed significant capital costs to the construction of the Ballpark Improvements and related infrastructure, in material part in reliance on the agreements of the other Party contained in this Agreement, and (b) acknowledges and agrees that monetary damages could not be calculated to compensate the other Party for any violation by such Party, its Affiliates or any Related Party of such Party of the covenants, duties and obligations contained in this Agreement. Accordingly, each Party agrees that (i) the other Party may restrain or enjoin any violation as provided above in this Agreement or threatened violation of any covenant, duty or obligation contained in this Agreement without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Agreement the balance of hardships would weigh in favor of entry of injunctive relief, (iii) the other Party may enforce any such covenant, duty or obligation contained in this Agreement through specific performance, and (iv) the other Party may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the applicable Dispute or Controversy in connection with this Agreement. Each Party further agrees
and irrevocably stipulates that the rights of the other Party to injunctive relief pursuant to this Section 13.3 shall not constitute a "claim" pursuant to United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving such Party.

13.4 No Waivers.

13.4.1 General. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

13.4.2 No Accord and Satisfaction. Without limiting the generality of Section 13.4.1 above, the receipt by City of any amounts due under this Agreement with knowledge of a breach by Team of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach (other than as to the amount received). The payment by Team of any amount due under this Agreement with knowledge of a breach by City of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Team of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Team may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Agreement.

13.4.3 No Waiver of Termination notice. Without limiting the effect of Section 13.4.1 above, the receipt by City of any amount due under this Agreement paid by Team after the termination in any manner of the Term, or after the giving by City of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Agreement, reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given herein by City to Team prior to the receipt of any such amount due under this Agreement or other consideration, unless so agreed to in writing and executed by City. Neither acceptance of the keys nor any other act or thing done by City or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender
of the Ballpark, excepting only an agreement in writing executed by City accepting or agreeing to accept such surrender.

13.5 **Effect of Termination.** If City or Team elects to terminate this Agreement, as provided herein (whether such termination occurs pursuant to this ARTICLE XIII or any other provision hereof), this Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Agreement shall not alter the then existing claims, if any, of either Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

**ARTICLE XIV**

**GENERAL PROVISIONS**

14.1 **No Broker’s Fees or Commissions.** Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker’s fee, broker’s or agent’s commission, finder’s fee or other fee or commission in connection with this Agreement.

14.2 **Council Approval.** Notwithstanding anything to the contrary set forth in this Agreement, Team recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by City under the terms of this Agreement which are entered into after the date of this Agreement will be subject to the prior Approval of the Controlling Body of City, but not Approvals and confirmations expressly permitted in this Agreement to be given by City Representative.

14.3 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, City’s obligation to pay any money to Team under this Agreement is contingent upon an Appropriation of the money by the Controlling Body of City. City’s failure to make an Appropriation is not a Default under this Agreement, but Team, as its sole and exclusive remedy, may terminate this Agreement as a result thereof. City retains all of its sovereign prerogatives and rights as a city under State law with respect to the planning, design, construction, development and operation of the Ballpark.

14.4 **Interest on Overdue Obligations.** In the event either Party fails to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement on or before the date which is thirty (30) days after the other Party delivers notice to such Party of such failure, then such amount shall bear interest at the Default Rate from the date due until paid. No breach of a Party’s obligation to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement shall have been cured unless and until the interest accrued thereon
under this Section 14.4 shall have been paid. All payments shall first be applied to the payment of accrued but unpaid interest.

14.5 Employment of Consultants. City shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as City may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to City by Team under this Agreement and to perform any inspection rights on behalf of City. Team covenants and agrees to reasonably cooperate with such consultants in the same manner as Team is required to cooperate with City pursuant to the terms of this Agreement. Team shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Team may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Team by City under this Agreement and to perform inspections on behalf of Team. City covenants and agrees to reasonably cooperate with such consultants in the same manner as City is required to cooperate with Team pursuant to the terms of this Agreement.

14.6 Anti-Discrimination and Diversity. In accordance with Applicable Laws, the Parties, in performing their respective obligations hereunder will not discriminate based on race, sex, religion, national or ethnic origin, age or disability. It is the intent of the Parties to encourage local participation, community involvement and diversity in the design, construction, and/or development of the Ballpark.

14.7 Accounting Terms and Determinations. Unless otherwise specified, all accounting terms used in this Agreement shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

14.8 Survival. The following terms and provisions of this Agreement shall survive any expiration or termination of this Agreement: Sections 3.4.3 and 5.2, Articles IX, Article XIII and Sections 10.3, 10.4, 14.3, 14.8, 14.12, 14.14, 14.15, and 14.23.

14.9 Severability. If any term or provision of this Agreement and the Facility Use Management Agreement or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in
any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

14.10 Entire Agreement; Amendment. This Agreement (including all exhibits attached hereto), together with the Facility Use Management Agreement, constitute the entire and exclusive agreement between City and Team with respect to the subject matter contained herein and therein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

14.11 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Definitions and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes; provided, however, that in the event of a conflict between the terms of the text of this Agreement and any Definitions or Exhibits, the text of this Agreement shall control.

14.12 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Agreement.

14.13 Counterparts. This Agreement 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 but one and the same instrument. All signatures need not be on the same counterpart.

14.14 Governing Law. This Agreement and the actions of the parties shall in all respects be governed by, and be construed in accordance with, the laws of the State of Kansas notwithstanding any choice-of-law or conflict-of-principle that might dictate a different governing law.

14.15 Court Proceedings. Any suit, action or proceeding against any Party arising out of or relating to this Agreement, any transaction contemplated hereby or any judgment entered by
any court in respect of any thereof may be brought in the Federal District Court for the District of Kansas or any state court located in the State of Kansas, and the Parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consent to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for in this Agreement. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, action or proceeding in any Federal or state court located in the State of Kansas, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby except in a Federal court whose jurisdiction includes Sedgwick County or a state court located in the State of Kansas.

14.16 Limitation to Capacity as City. The Parties acknowledge that all references to "City" herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee interest in the Ballpark) shall refer only to City in its capacity as City under this Agreement. The term "City" and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City's Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or Claims against City in its capacity as the "City" hereunder, it being acknowledged that Team's remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of City's Governmental Functions shall be governed by the laws and regulations concerning Claims against City as a Governmental Authority. In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Team to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

14.17 Capacity of Persons Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City's capacity as the "City" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City's Governmental Functions.

14.18 No Limitation on City's Governmental Functions. The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Ballpark, and that no
representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by City is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of City’s legal immunity or consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of City’s Governmental Functions.

14.19 Non-Liability of City’s Officials and Team’s Employees. No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative of City or such body or any of its Affiliates (whether acting in the performance of City’s Governmental Functions or otherwise) shall be personally liable to Team or any Person holding by, through or under Team, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Team or any Person holding by, through or under Team, or for any other obligation, under or by reason of this Agreement. No officer, director, shareholder, member, agent, employee or representative of Team or its Affiliates shall be personally liable to City or any Person holding by, through or under City, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Team, or for any amount which may become due to City or any Person holding by, through or under City, or for any other obligation, under or by reason of this Agreement.

14.20 Payment on Business Days. If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

14.21 Time. Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. All provisions in this Agreement which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Agreement to times or hours of the day shall refer to Central Standard Time.
14.22 **Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

14.23 **Attorneys’ Fees.** If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and the other Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys’ fees and costs of court. In addition to the foregoing award of attorneys’ fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys’ fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

14.24 **Joint and Several Liability.** If Team at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of amounts due under this Agreement and for performance of every obligation of Team under this Agreement.

14.25 **Relationship of the Parties; No Partnership.** The relationship of Team and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts hereunder or under the Facility Use Management Agreement nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Team and City. As such, City shall have no direct supervision of or obligation to the employees of Team and any communication of employee matters shall be through the Team Representative.

14.26 **Non-Merger of Estates.** The interests of City and Team, in the Ballpark shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Ballpark or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Ballpark shall join in the execution of a written instrument effecting such merger of estates.

14.27 **Payments by Either Party.** All payments required to be made by either Party to the other Party pursuant to the terms of this Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party’s address as set forth in Exhibit B, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of Section 14.28 below. Notwithstanding the provisions of Section 14.28 below
and for the purposes of this Agreement, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

14.28 **Notice.** All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party at the addresses set forth in Exhibit B.

**If to City:**

City of Wichita  
455 N. Main, 13th Fl.  
Wichita, Kansas 67202  
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of Wichita  
455 N. Main, 13th Fl.  
Wichita, Kansas 67202  
Attention: City Attorney

**If to Team:**

Yes2No, LLC  
330 W. 2nd St. N.  
Wichita, Kansas 67202  
Attention: Lou Schwechheimer

with copies to:

CBI-LP and Loyd E. Wright, III, APC  
P.O. Box 40010  
3991 MacArthur Blvd., Suite 175  
Providence, Rhode Island 02940  
Newport Beach, California 92660  
Attention: Loyd E. Wright III, Esq.

Each Party may from time to time supplement the current address or designate a different address for notices by giving notice to that effect to the other Parties in accordance with the terms and conditions of this Article.

*[Signature Page Follows]*
This Agreement is executed to be effective for all purposes as of the Execution Date.

CITY:

CITY OF WICHITA, KANSAS

![Signature]

Jeff Longwell, Mayor

ATTEST:

![Signature]

Karan Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer L. Magana, City Attorney and Director of Law

APPROVED AS TO CONTENT:

Robert Layton, City Manager

TEAM:

YES2NO, LLC
a Massachusetts Limited Liability Company

By:

Name:

Title:
EXHIBIT A

TO

BALLPARK DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION
Exhibit: Ballpark Site

Ballpark Site
7.04 Acres

Lawrence Dumont Stadium

Ballpark Parking
10.12 Acres
EXHIBIT B

TO
BALLPARK DEVELOPMENT AGREEMENT

NOTICES

If to City:

City of Wichita
455 N. Main, 13th Fl.
Wichita, Kansas 67202
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of Wichita
455 N. Main, 13th Fl.
Wichita, Kansas 67202
Attention: City Attorney

If to Team:

Yes2No, LLC
330 W. 2nd St. N.
Wichita, Kansas 67202
Attention: Lou Schwechheimer

with copies to:

CBI-LP
P.O. Box 40010
Providence, Rhode Island 02940

and

Loyd E. Wright, III, APC
3991 MacArthur Blvd., Suite 175
Newport Beach, California 92660
Attention: Loyd E. Wright III, Esq.
EXHIBIT C

TO
BALLPARK DEVELOPMENT AGREEMENT

FACILITY STANDARDS
Attachments 58

MINOR LEAGUE FACILITY STANDARDS AND COMPLIANCE INSPECTION PROCEDURES

Standards

Unless expressed as recommendations, these facility standards are minimum requirements for all new Minor League facilities. The standards outlined in Sections 11, 12 and 13 are applicable to both new and existing facilities.

New Facilities

Any facility that is scheduled for a construction starting date of January 1, 1991 or later shall be considered a "new facility." All plans for new facilities, including construction time schedules, must be submitted to field inspection personnel designated by the Commissioner's Office and the President of the Minor League Association, for review and approval by the field inspection personnel prior to the start of construction. Such review must be completed within 30 days after submission or the plans shall be deemed approved. If such plans meet the standards they shall be approved. Notwithstanding its facility's designation as a "new facility," a Minor League Club that can demonstrate that its new facility construction planning and approval process was at such a stage as of November 17, 1990 that requiring compliance with a minimum new facilities standard (other than those outlined in Sections 11, 12 and 13) will cause it to suffer a material hardship, may apply to the President of the Minor League Association and to the Commissioner or the Commissioner's designee for a variance from such standard.

Existing Facilities

Any facility other than a "new facility" as defined above shall be considered an "existing facility." All existing facilities must meet the standards outlined in Sections 11, 12 and 13 (playing field and other team facilities) by no later than April 1, 1995. All plans for additions, alterations or renovations of such facilities, including new turf installations, must be submitted to field inspection personnel designated by the Commissioner's Office and to the President of the Minor League Association, for review and approval by the field inspection personnel (including construction time schedules) prior to the start of construction. Such review must be completed within 30 days after submission or the plans shall be deemed approved. If such plans meet the standards they shall be approved.
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SECTION 12.0 Playing Field
12.1 Field Dimensions
SECTION 13.0 SEATING

This section establishes standards for the number, type and arrangement of seating in all facilities.

1.1 SEATING CAPACITY

Seating capacities shall be established to be appropriate for the size of the Minor League Club's market. Recommended minimum capacities are as listed below. All facilities shall conform with the seating grade, seating distribution and spacing requirements described in sections 1.2, 1.3 and 1.4.

1.1.1 Class AAA Capacity 10,000 seats
1.1.2 Class AA Capacity 6,000 seats
1.1.3 Class A Capacity 4,000 seats
1.1.4 Short-Season Class A/Rookie 2,500 seats

1.2 GRADES OF SEATING

In order to enhance the professional atmosphere of the facility, each facility shall provide a minimum of two separate and distinct grades of seating (three separate and distinct grades are recommended). This provision is intended to designate and define general types of seating and not to define pricing or ticketing structures.
MAJOR LEAGUE RULES
MLR Attachment 58

1.2.1 TYPES OF SEATING

Seating types shall be defined as in sections 1.2.2, 1.2.3, and 1.2.4.

1.2.2 BOX SEATING

Defined as Arm Chair Seats with Backs. Additional seat width and leg room is recommended, with an additional three inches of tread width to be provided as compared to the tread width in the other seating areas. Following the traditional definition of box seating, it is recommended that additional access to smaller groupings of box seats be provided.

1.2.3 RESERVED SEATING

Defined as a bench with back as a minimum requirement.

1.2.4 GENERAL ADMISSION SEATING

Defined as a bench as a minimum requirement.

1.3 SEATING DISTRIBUTION

In no event shall more than 90% of the total seating capacity be General Admission seating. Recommended seating distributions are as follows.

For two grades of seating:

- Box or Reserved: 25% of total capacity
- General Admission: 75% of total capacity

For three grades of seating:

- Box: 25% of total capacity
- Reserved: 25% of total capacity
- General Admission: 50% of total capacity

1.4 SEAT SPACING

The spacing and layout of all seating, aisles, vomitories, cross-aisles and concourses comprising the established exiting system shall conform to all applicable local, state and federal codes and regulations. (NFPA 101 for Assembly Occupancies shall...
1.5 HANDICAPPED ACCESSIBILITY

All facilities shall comply with all applicable local, state and federal codes and regulations regarding access of Handicapped patrons and employees. (ANSI A117.1 shall be considered the minimum requirements.)

SECTION 2.0 PUBLIC COMFORT STATIONS

This section determines and defines the number of plumbing fixtures and their arrangement at the facilities.

2.1 COMFORT STATION DISTRIBUTION

The distribution of the fixtures should be in accordance with the distribution of the seating locations and exiting system to allow minimal walking distances from all parts of the facility to public toilet facilities.

2.2 PLUMBING FIXTURES

The minimum plumbing fixture ratios shall be as follows:

<table>
<thead>
<tr>
<th>Fixture</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water closets</td>
<td>1:125</td>
<td>1:450</td>
</tr>
<tr>
<td>Lavatories (sinks)</td>
<td>1:150</td>
<td>1:150</td>
</tr>
<tr>
<td>Urinals</td>
<td>1:125</td>
<td></td>
</tr>
</tbody>
</table>

2.2.1 COMFORT STATION ACCESSORIES

All public restroom facilities shall provide mirrors, purse shelves (in women’s), hand drying facilities and trash cans. It is recommended that a table/platform for diaper changing be located in each restroom.
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2.3 HANDICAPPED ACCESSIBILITIES

All facilities shall comply with all applicable local, state and federal codes and regulations (ANSI, A117-1). It is recommended that all facilities provide a minimum of one, unisex h.c. toilet facility per level. This facility shall be similar to a residential bathroom, and allow a h.c. patron to use the facility with the assistance of his/her companion of the opposite sex.

2.4 DRINKING FOUNTAINS

All facilities shall provide drinking fountains per local, state and federal codes and regulations.

2.5 PUBLIC TELEPHONES

All facilities shall provide telephones per local, state and federal codes and regulations.

SECTION 3.0 CONCESSION AND VENDING

The following standards for Concessions and Vending are recommended for all facilities. Many of the conditions may be affected by an existing operational agreement between the facility and concessionaire. It is recommended that these standards be incorporated into any new operational agreement negotiated after the effective date of this PBA.

3.1 CONCESSION AREAS

It is recommended all facilities provide 5 lineal feet of counter space (with corresponding support space) per 350 seats in the total facility capacity. The distribution of the concession areas shall be commensurate with the distribution of the patrons to minimize walking distances. [Example: 12,000 seats/350 = 34.28 X 5' = 171 lineal feet of counter. Each stand averages 25' per stand. Therefore, a minimum of 7 stands, distributed throughout the facility are recommended.]

3.2 CONCESSION VENDORS

If concession vendors are provided at the facility, the following ratios are recommended: one vendor per 350 seats, with 15 sq. ft. of vending commissary space for each vendor separate from the concession areas.
3.3 CONCESSION COMPLIANCE/CODES AND REGULATIONS

Concessionaires are responsible for compliance with all local, state and federal regulations in regard to Health Standards, Fire Department regulations, power, exhaust and ventilation requirements. The agreement between the facility and concessionaire shall define which party is responsible for required modifications.

3.4 CONCESSION STORAGE AND NOVELTY STANDS

The following standards shall be minimum requirements.

3.4.1 CONCESSION STORAGE

All facilities shall provide adequate storage for concession inventory. It is recommended that the storage area be of such size to store the inventory necessary to stage the number of games in an average home stand. In the Agreement between the facility and the concessionaire, the concessionaire shall provide empirical data to determine the required amount of storage space.

3.4.2 NOVELTY STANDS

Any provided novelty stand(s) acting as a sales point for retail sales shall present products in a professional manner commensurate with standard retail sales areas.

SECTION 4.0 MISCELLANEOUS PUBLIC AREAS

4.1 STADIUM CLUB/RESTAURANT/BANQUET FACILITY

This type of facility shall be optional.

4.2 PICNIC/BEER GARDEN FACILITY

This type of facility shall be optional.

4.3 FAMILY RECREATION AREA

This type of facility shall be optional.
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SECTION 5.0 TICKET WINDOWS AND ENTRY TURNSTILES

The following Sections 5.1, 5.2, and 5.3 shall be minimum requirements.

5.1 TICKET WINDOWS

All facilities shall provide one ticket window for each 1500 seats of total capacity.

5.2 TURNSTILES/ENTRY POSITIONS

All facilities shall provide one turnstile or equivalent entry position (minimum of 30" wide) for each 1500 seats of total capacity.

5.3 HANDICAPPED ACCESSIBILITY

All facilities shall provide access per all applicable local, state and federal codes and regulations to all public and private areas of the facility. (ANSI A117.1)

SECTION 6.0 SECURITY AND FIRST AID

6.1 SECURITY COMMAND POST

All facilities shall provide a "command post" for event security forces, centrally located with provisions for removing unruly patrons from the facility.

6.2 FIRST AID STATION

All facilities shall provide a first aid station during all events. It is recommended that certified medical personnel staff the station at all events.

SECTION 7.0 PARKING AND FACILITY ACCESS

The following Sections 7.1, 7.2 and 7.3 shall be applicable to all facilities.

7.1 PARKING SPACES

It is recommended all facilities shall provide public parking spaces at a ratio of 1 space per 3 seats of total capacity. Such parking spaces shall be on-site or within a 10 minute (1/2 mile) walking distance of the stadium.
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7.2 ACCESS AND CONTROL

All facilities shall coordinate with local law enforcement officials to provide controlled on-site traffic access, so as to promote a safe and trouble-free access environment.

7.3 HANDICAPPED PARKING

All facilities shall conform with all applicable local, state and federal regulations.

SECTION 8.0 SOUND SYSTEM AND SCOREBOARD

8.1 SOUND SYSTEM

All facilities shall provide an acoustically balanced sound system integrated with the capacity to deliver clear audio messages to the press box, concourses and all public areas within the facility.

8.2 SCOREBOARD

All facilities shall provide a scoreboard that provides the following as minimum requirements. All scoreboard characters are to be large enough to be seen throughout the facility.

- Line Score
- Ball-Strike-Out
- Player at Bat

8.3 SCOREBOARD LOCATION

No part of any scoreboard and/or associated lighted advertising panels may be located within 50' of the center line of the playing field.

8.4 CLOCK

All facilities shall provide a time-of-day clock that is in full view of all field personnel from the beginning of batting practice through the close of each game.
SECTION 9.0 MEDIA FACILITIES

9.1 PRESS PARKING AND ACCESS

It is recommended that all facilities provide a parking area for all members of the media with direct access to the facility. It is also recommended that parking be provided for television vans and broadcast trucks.

9.2 PUBLIC ADDRESS/SCOREBOARD PERSONNEL

All facilities shall provide space in the press box for the public address announcer and scoreboard operator(s). It is recommended that the PA/scoreboard area have a minimum of 50 sq. ft. of floor space in addition to the floor space required for the scoreboard equipment.

9.3 RADIO BROADCAST BOOTHs

It is recommended that all facilities provide two radio broadcast booths (home and visitor) that provide a direct view of the entire field and facilitate the broadcast of the game. Each shall provide counters, chairs, power, lighting and telephone jack.

9.4 TELEVISION BROADCAST AND CAMERA BOOTH

It is recommended that all facilities provide a spare broadcast/camera booth available for local television broadcasts and local television media. The booth should have a direct view of the entire field with operable windows or closures.

9.5 PRINT MEDIA AREA

It is recommended that all facilities provide a separate area for 6 to 10 members of the print media with a direct view of the entire field. Counter, chairs, power, lighting and telephone jack shall be provided.

9.6 MEDIA TOILET FACILITIES

It is recommended that all facilities provide media restroom facilities separate from public restrooms, located with direct access to the press box.

9.7 MEDIA WORKROOM/LOUNGE

This type of facility shall be optional.
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9.8 HANDICAPPED ACCESSIBILITY TO PRESS BOX

Facilities shall conform to all applicable local, state and federal codes and regulations for accessibility to the press box. (ANSI-A117.1)

SECTION 10.0 ADMINISTRATION AREA

10.1 FACILITY ADMINISTRATION AREA

It is recommended that all facilities provide administrative space of 250-300 sq. ft. per person for facility and maintenance operations with separate toilet facilities directly adjacent.

10.2 STADIUM PERSONNEL DRESSING/LOCKER FACILITIES

It is recommended that all facilities provide separate dressing/locker facilities (separate for each sex) for all maintenance and event employees (including concession personnel) separate from the public.

10.2.1 STADIUM PERSONNEL TOILET FACILITIES

It is recommended that all facilities provide toilet facilities for stadium personnel separate from the public. Direct access to personnel locker rooms is desirable.

10.3 TEAM ADMINISTRATION AREA

If the tenant team has a permanent administration area away from the facility, an on-site game day team administration area must be provided. If the team’s permanent administration area is at the facility, it is recommended that the area provide 250-300 sq. ft. per person for team operations with adjacent toilet facilities.

SECTION 11.0 TEAM FACILITIES

The following shall be minimum requirements.

11.1 HOME CLUBHOUSE/DRESSING AREA

The number of lockers provided shall be at least five more than the Club’s active player limit for its classification of play. The minimum size of each locker shall be 24” w
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x 72" h (36" w x 72" h is recommended). A lockable storage compartment is recommended for each locker.

Minimum floorspace requirements for the team dressing area shall be as follows:

New facility: 1,000 sq. ft.
Existing facility: 800 sq. ft. (1,000 sq. ft. is recommended)

11.2 SHOWER AND TOILET FACILITIES

All facilities shall provide separate shower, drying and toilet areas with the following minimum fixture counts:

New facility:
- shower heads: 8 (10 recommended)
- water closets: 2
- urinals: 2
- lavatories: 4 (8 recommended)

Existing facilities:
- shower heads: 6 (10 recommended)
- water closets: 2
- urinals: 2
- lavatories: 2 (8 recommended)

11.3 TRAINING ROOM

All new facilities shall provide a separate training room of not less than 300 sq. ft. divided into three areas: treatment, whirlpool and rehabilitation. The training room shall have space for 1 or 2 treatment tables, a minimum of 2 whirlpools, hydroculator (4-pack minimum), scale, stationary bicycle, ice machine and an area for 2 or 3 pieces of rehabilitation/weight equipment. The training room shall contain a lockable storage area for training supplies. It is recommended that additional space be provided for a separate office/dressing area for the trainer and team physician. It is also recommended that a valuable storage box be installed in the training room.

All existing facilities shall comply with the above paragraph, with the exception that the minimum square footage requirement shall be 175 sq. ft. (300 sq. ft. is recommended).
11.4 TEAM LAUNDRY FACILITY

All facilities shall provide commercial quality laundry facilities (washer and dryer) for the home team to provide daily washing capability. This room may be combined with the Team Equipment Room.

11.5 TEAM EQUIPMENT ROOM

All facilities shall provide adequate lockable equipment storage space (minimum of 300 sq. ft. in a new facility) contiguous with the clubhouse.

11.6 COACHES' LOCKERS

All new facilities shall provide a minimum of 4 coaches lockers (6 are recommended) in addition to the players lockers. It is recommended these lockers shall be in a separate area from the players lockers. Locker size and floor space requirements (per capita) shall be the same as in the players dressing area.

Existing facilities shall comply with the above paragraph, with the exception that a minimum of 3 coaches lockers are to be provided.

11.7 FIELD MANAGER'S OFFICE

All facilities shall provide a field manager's office with direct access to the home clubhouse. It shall include a separate toilet, shower and dressing area, along with a desk and adequate meeting space for 6-8 persons. At existing facilities the separate toilet, shower and dressing area is recommended and not required.

11.8 VISITORS CLUBHOUSE/DRESSING AREA

The number of lockers provided shall be at least three more than the Club's active player limit for its classification of play. Minimum floor space requirements shall be as follows:

New facility: 750 sq. ft.
Existing facility: 500 sq. ft (750 sq. ft. is recommended)

11.9 VISITORS SHOWER AND TOILET FACILITIES

All facilities shall provide separate shower, drying and toilet facilities with minimum fixture counts as follows:
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New facility: shower heads: 6 (8 recommended)
water closets: 2
urinals: 2
lavatories: 4

Existing facility: shower heads: 4 (8 recommended)
water closets: 2
urinals: 2
lavatories: 2 (4 recommended)

11.10 VISITORS TRAINING ROOM

All new facilities shall provide a separate training room (minimum of 150 sq. ft.),
with space for one training table, one whirlpool, and a hydroculator (4-pack minimum).
In existing facilities, this area may be integrated into the players' dressing area, provided
that the dressing area is at least 650 sq. ft.

11.11 VISITING FIELD MANAGER'S OFFICE

All facilities shall provide a separate office for the visiting field manager. It shall
include a separate toilet, shower and dressing area, along with a desk and adequate
meeting space for 2-4 people. At existing facilities, the separate toilet, shower and
dressing area is recommended and not required.

11.12 TEAM STORAGE (MAJOR LEAGUE PARENT TEAM)

It is recommended that all facilities provide a minimum of 300 sq. ft. of lockable
team storage, separate from other team storage, with year round access only to the major
league team.

11.13 UMPIRE FACILITIES

All facilities shall provide a private dressing, shower, and toilet facility for umpires.
This area shall provide enough lockers (each a minimum of 36" w x 72" h) to
accommodate the number of umpires typically assigned to work in the applicable
classification of play. In new facilities, this area shall be a minimum of 200 sq. ft.
11.14 FIELD/DUGOUT ACCESS

It is required that all new facilities and recommended that all existing facilities provide a direct access route to the dugout/playing field. Similar access is to be provided for the umpires.

11.15 PLAYER PARKING

It is recommended that all facilities designate a parking area with clubhouse access for players and other uniformed team personnel.

11.16 HITTING/PITCHING TUNNELS

It is recommended that each facility provide two covered tunnels for players to practice hitting and pitching in an enclosed environment. If provided, these tunnels should be reasonably close to the home clubhouse with minimal public access.

11.17 PRE- AND POST-GAME WAITING AREA

It is recommended that all facilities provide a pre-game and post-game waiting area for families of players and other uniformed personnel.

SECTION 12.0 PLAYING FIELD

12.1 FIELD DIMENSIONS

Layouts of all new fields (and modifications to existing fields) shall be submitted for approval by the parent Major League Club and the Minor League Club. All field dimensions shall comply with the minimum dimensions specified in Section 1.04 of the Official Baseball Rules.

12.2 PLAYING SURFACE

All facilities shall provide a field surface (natural or synthetic) without defects and/or "trip-hazards" that could affect the normal play of the game or jeopardize player safety. Warning track material shall identify all zones within 15' of all walls and fences. This warning track must be of a material to provide visual and tactile notice of a significant change in surface type.
12.3 FIELD GRADE

The maximum allowable grade from the base of the pitcher's mound to the warning track in foul territory shall be 6°. The maximum allowable grade from second base to the outfield warning track shall be 20°.

12.4 FIELD WALL

The permanent outfield wall or fence in all new facilities shall be a minimum of 8' high.

12.5 BULLPENS

All facilities must provide a bullpen area for each team. These areas may be located in foul territory down the baselines or just immediately outside the field wall. Each must be visible to both dugouts and to the press box. Each shall have two regulation pitching mounds and home plates, adequate distance and clearance for each pitcher and catcher, and a bench for 10 players. If the bullpens are in foul ball areas, care shall be taken to integrate the slope of the pitcher's mound into the field so as not to create a trip hazard for fielders as they approach the bullpen. It is recommended that all facilities have phones connecting the bullpens to the dugouts.

12.6 DUGOUTS

All facilities must provide two enclosed dugouts (home and visitor). Each dugout in a new facility must accommodate 25-30 uniformed personnel on a bench with seatback. Each dugout in an existing facility shall accommodate 20-25 uniformed personnel. Each dugout shall have a helmet rack for a minimum of 15 helmets and a bat rack for a minimum of 30 bats. It is recommended that a bat swing/storage area be directly accessible to each dugout. It is recommended that each dugout include a refrigerated water cooler (drinking fountain) and provide direct access to a restroom. It is recommended that all facilities have telephones connecting the dugouts to the bullpens and to the press box. All dugouts shall provide as feasible an anti-skid surface as possible on steps and walkways.

12.7 FIELD EQUIPMENT

All facilities shall provide the following field equipment. Examples given shall serve as guidelines for equipment quality, and the equipment provided shall meet or exceed the examples specified.
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12.7.1 BATTING CAGE

All facilities shall provide a full cover batting cage. New batting cages shall have minimum dimensions of 18' wide, 14' deep and 9' high. It is recommended that the cage be portable and made of an aluminum frame to provide maximum maintainability. Existing batting cages not meeting the above standards may be approved by the parent Major League Club.

12.7.2 FIELD SCREENS

All facilities shall provide a pitching screen, first base screen, 2nd base/double play screen, and a shag protector screen. New screens shall have the following minimum dimensions:

Pitching screen: 7' h x 8' w with 4' x 4' notch in upper corner.

Double play screen: 7' h x 14' w with hinged wings.

First base and shag protector screens: 7' h x 8' w.

All existing screens not meeting the above standards may be approved by the parent Major League Club.

Periodic checks of the batting cage and all screens shall be performed to verify frame and net integrity.

12.7.3 BATTER'S EYE

All facilities shall provide a solid monochromatic batter's eye painted in a flat, dark color with minimum dimensions of 16' high and 40' wide centered in the outfield. If a centerfield camera is integrated into the batter's eye, the camera must be the same color as the batter's eye. It is recommended that all new facilities provide a batter's eye with minimum dimensions of 40' high and 80' wide. Any advertising sign abutting the batter's eye shall not include white lettering, a white background, any neon or other lighting or motion effects.

12.7.4 FOUL POLES

All facilities shall provide two foul poles of a bright color that are a minimum of 30' high (45° is recommended) with a screen to the fair side of the
pole. No white signs shall be allowed on or immediately adjacent to each side of the foul pole.

12.7.5 FLAG POLE

All facilities shall provide a flag pole for the United States Flag or Canadian Flag, as applicable, in clear view of the entire seating bowl.

12.7.6 SCOREBOARDS, VIDEO MONITORS AND MOTION SIGNS

In addition to other provisions of these Minor League Facility Standards (including, but not limited to, Section 8.3 (Scoreboard Location)), the President of the Minor League Association, in consultation with the Commissioner or the Commissioner’s designee, shall develop and distribute guidelines regarding the use and location of scoreboards, video monitors, LED boards and LED/matrix boards so as not to interfere with play.

12.8 FIELD LIGHTING

All new lighting systems shall maintain the following minimum brightness requirements after 100 hours of burning:

Class AAA and Class AA: 100 fc average in infield/70 fc average in outfield.
Class A and Rookie: 70 fc average in infield/50 fc average in outfield.

The height and location of poles in all new lighting systems shall follow IES standards.

All existing lighting systems shall maintain the following minimum brightness requirements:

Class AAA and Class AA: 70 fc average in infield/50 fc average in outfield.
Class A and Rookie: 60 fc average in infield/40 fc average in outfield.
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All lighting systems shall operate with a maximum variance ratio of 1.2/1 in the
ingfield and 2/1 in the outfield. The variance ratios shall be computed by comparing
the highest and lowest footcandle readings in the infield and the outfield.

12.9 BATTLING CAGE GATE

All new facilities shall provide a gate large enough to allow the batting cage to be freely taken to and from the playing field.

12.10 BACKSTOP

All facilities shall provide a backstop behind home plate. The configuration and
dimensions shall vary due to sight-lines for the press box and insurance requirements for
the facility. Periodic inspections shall be performed to insure the integrity of the backstop.

12.11 PLAYING FIELD TARP

All Class AAA, Class AA and full season Class A facilities shall provide a full
infield tarp and pitcher's mound, home plate, base pit, and bullpen tarps, except that this
requirement may be waived by the President of the Minor League Association in the
event that the facility is located in an area that does not experience sufficient rainfall to
justify the expense of tarps. The tarps shall be oversized to prevent water from running
under the edge to a dirt area. The tarps shall be stored in an easily accessible location but
in a way not to create a safety hazard on the playing field. Each facility is required to
provide adequate manpower to operate the placement and/or removal of the tarps.

SECTION 13.0 MAINTENANCE

This section outlines requirements and recommendations for overall maintenance of
the facility and playing field in a professional manner.

13.1 FACILITY MAINTENANCE AND CLEANLINESS

Each facility shall develop a maintenance program (both short-term and long-term)
for use by its maintenance personnel. All public areas shall be completely free of trash
and rubbish at the opening of each event, and stadium personnel shall be responsible for
cleanliness during the event.

Each facility shall follow its maintenance program for interior repairs and touch-ups
to maintain the professional atmosphere of the facility. Long-term maintenance shall be
ongoing in order to deter major facility problems and to minimize potential disruptions to the public.

13.2 FIELD MAINTENANCE

The playing field shall be maintained at the highest possible professional level. Every reasonable effort shall be made to insure the safety of the players and the smooth play of the game. The facility shall follow professional grounds-keeping practices and shall utilize proper maintenance equipment. Nail-drags, screens, tampers and rakes are recommended to maintain all dirt areas. Proper turf care equipment (mowers, tractors, etc.) shall be used, and an appropriate maintenance plan shall be developed and followed to care for the playing field.

13.2.1 PLAYING FIELD RECONDITIONING

The pitcher's mound and base pit areas shall be reconditioned prior to each game through the use of clay materials and tampers.

13.2.2 FIELD MAINTENANCE MATERIALS

All facilities are required to have a sufficient amount of drying material on hand at all times for reconditioning the infield. A chemical drying agent and/or calsonite clay may be used in combination with sand to stabilize areas affected by excessive moisture. Sand may not be the sole drying agent.

13.2.3 LAYOUT OF PLAYING FIELD

The entire playing field shall be laid out to coincide with the provisions of Sections 1.04 through 1.08 of the Official Baseball Rules.

13.2.4 IRRIGATION SYSTEM

All new facilities shall provide a full field irrigation system as well as water lines 1 1/2" or larger behind both home plate and second base for watering the infield grass and base pit areas. It is recommended that a series of water outlets 1" or larger be distributed around the playing field in order to water the field if the irrigation system should become inoperable. It is recommended that a full-field irrigation system be provided at all existing facilities.
13.2.5 FIELD DRAINAGE SYSTEM

All new facilities shall provide an underfield drainage system integrated into the subbase of the turf (natural or synthetic) surface. This system shall be a system of drain tile fields in a porous collection bed (or similar system) below the turf base.

It is recommended an optimal slope of .5% be maintained from the base of the pitcher's mound to the baselines and from second base to the outfield warning track.
In exchange for the City’s commitments, the Team agrees to the following:

- Relocate the New Orleans AAA franchise to Wichita
- Contribute approximately $5-7.5 million for furniture, fixtures and equipment (FF&E) in the ballpark
- Approve a CID for applicable revenue generated by the Team’s operations at the Ballpark. The CID will start upon the completion of the ballpark improvements

Both the Team and City agree to the following:

- That ballpark improvements will include
  - 15-18 Suites
  - 6,500-7,000 fixed seats
  - A berm
  - Party and group areas with a capacity of 3,000-3,500 people resulting in total available seating of 10,000 for MiLB games
  - Additional terms for Team facility size, concession space and other improvements such as necessary to meet MiLB and PCL standards

- A joint development process for the ballpark improvements including the establishment of a Ballpark Oversight Committee and a Project Committee of which both the Team and City will have appropriate representation. The Oversight Committee is responsible for the selection of the design team, lead contractor, consultants, ballpark specifications, seating, and budget. The Project Committee will be responsible for the administration of the design and construction of the ballpark improvements.

Under the Ballpark Facility Management Use Agreement the City and the Team agree to the following:

- Team is aware of the history and importance of the NBC Hall of Fame and tournament
- Team agrees, subject to PCL scheduling which shall take priority, to make available the use of the Ballpark for the NBC tournament for up to one week each season
- Initial management agreement term of twenty (20) years with two, five (5) year extensions
- Initial management agreement fee that the Team will pay each year will be $350,000. At each five year interval, the fee will increase by the average CPI increase over the past five years
- Team will pay all utilities
- Team will keep and maintain ballpark site and fixtures
  - Includes interior and exterior of the ballpark site
- Team responsible for the cost of general maintenance, staffing and repairs at the ballpark site, including the playing field. Team solely responsible for any field maintenance except for any maintenance required as a result of City use
- Team cannot sublease, assign or encumber its management agreement interest without approval from the City
- With the exception of City-sponsored events, the Team will retain revenues for all other events such as tickets, concessions, sponsorships, parking, merchandise and media.
- The Team and City will jointly secure a naming rights agreement for the ballpark. Proceeds will be applied to first, hard and soft costs, second, up to $250,000 to the City and third, the balance to the Team
- Team must play regular season MiLB games at the ballpark.
Team will support the establishment of a CID to cover the ballpark but that it shall not become effective until after completion of the ballpark.

Team will provide security for the ballpark.

City will have the right to hold up to ten (10) city community and charitable events per year, together with the allocation of resulting costs and revenues.

Twenty (20) year management agreement term.

The City is responsible for capital repairs, replacement and improvements required to ensure the ballpark continues to meet the rules and standards of PCL and MiLB.

The City and Team shall meet every 2 years to consider the need or requirement for capital improvements and or replacements. No capital expenditure shall be made without mutual agreement.

The City will set aside from funds received from the Team after the seventh year, $250,000 annually into a Capital Reserve Fund to be utilized for capital repairs, replacements or improvements.

An Emergency Air Travel Fund of $200,000 will be established jointly and if necessary, replenished annually, to address MiLB and PCL concerns about accessibility and frequency of air travel into and out of Wichita.

Financial Considerations: The City’s $81 million dollar investment into the stadium and surrounding improvements will be funded through a combination of STAR bonds, Tax Incremental Financing, a Community Investment District (CID), and general obligation funds. The State has previously approved STAR bonds for the project and the City has previously established a TIF district that encompasses the stadium area. The City will need to establish a CID as part of this project.

Legal Considerations: The attached Agreements and ordinance have been reviewed by the Law Department and approved as to form.

Recommendations/Actions No Action is requested at this time. It is anticipated that the final agreements will return to Council on October 23, 2018 for Council action.

Attachments: Ballpark Development Agreement
Ballpark Facility Use Management Agreement