

BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

BETWEEN

THE CITY OF WICHITA, KANSAS

AND

YES2NO, LLC

A MASSACHUETTS LIMITED LIABILITY COMPANY

Authorized to do business in Kansas

OCTOBER 23, 2018

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BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

This BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT (the "**Agreement**") is made to be effective as of the 23rd day of October, 2018 (the "**Effective Date**"), by and among the City of Wichita, a Kansas municipal corporation (the "**City**") and Yes2No, LLC, a Massachusetts limited liability company authorized to business in Kansas (the "**Team**").

RECITALS

WHEREAS, Team is the owner of a Triple-A Minor League Baseball franchise granted by Minor League Baseball ("**MiLB**") and the corresponding interests in the Pacific Coast League of Professional Baseball Clubs. Inc. (the "**PCL**"); and

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

WHEREAS, the City and the Team have entered into that certain separate Memorandum of Understanding, dated as of September 19, 2018, concerning the development of a new ballpark and related amenities (the "**Ballpark**"), including a Hall of Fame Museum and Exhibition, and the management of the Ballpark, with Hall of Fame Museum and Exhibition to be managed by Team's affiliated charitable foundation (the "**Ballpark MOU**"). and

WHEREAS, pursuant to the Ballpark MOU, the City will fund the construction of a Ballpark, inclusive of the Hall of Fame Museum and Exhibition established to chronicle the history of baseball in Wichita within the Stadium, in accordance with MiLB and PCL standards, up to a cost of Seventy Five Million Dollars (\$75,000,000), and the Team will make capital investments for such items as concessions equipment, office equipment, club house equipment and premium seating furnishings (collectively, "**FF&E**") in an amount up to Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

WHEREAS, following completion of the Ballpark and related amenities in accordance with its terms, the Team will manage the Ballpark facility indicated on Exhibit A for the City and play home games in the Ballpark, relocate its headquarters and home games to the site (the "**Ballpark Site**"), pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City intends to enter into this Agreement with the Team, covering the use and management of the Ballpark. Site (estimated at approximately _____ square feet), on a tract of land located in West Wichita and Payne's Park Additions to the City of Wichita, Sedgwick County, Kansas, described as follows:

[add legal]

Said tract containing _____ square feet or ___ acres, more or less, and subject to all easements and restrictions of record.

NOW THEREFORE, in consideration of the mutual covenants and conditions described herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Unless the context shall expressly require capitalized otherwise, terms used in this Agreement shall have the following meanings:

"Action or Proceeding" means any legal action, lawsuit, proceeding, arbitration, and 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.

"Agreement" has the meaning given to that term in the introductory paragraph of this Agreement.

"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 Federal, State or local statute, ordinance or regulation.

"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 this Agreement, the specific approval of such item or matter by Team or Team Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Team or 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 Events" has the meaning given to that term in Section 5.1 hereof.

"Ballpark Standards" means the continuous operation, maintenance and repair of the Ballpark on a full-service basis in a manner consistent with the standards of operations, maintenance and operating and maintenance plans that an Operator, in accordance with MiLB and PCL requirements, would reasonably be expected to undertake and follow for the operation, maintenance and repair of a comparable property. Standards of operations, maintenance and operating and maintenance plans shall specifically include a reference to or requirement to comply with Minor League Facility Standards under MLB Rule 58 and any other requirements imposed by MLB, MiLB and/or the PCL as applicable to the Ballpark as currently in effect and as may be amended from time to time currently as attached hereto as Exhibit B.

"Baseball Authorities" means the MiLB, PCL or Baseball Office of the Commissioner ("BOC").

"Baseball Season" means each annual baseball season during the Term running from March 1st through September 30th of the applicable calendar year and includes, and may be modified from time to time by Team to include, all pre-season games, regular season games and playoff games.

"Business Day" means 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.

"Capital Repairs & Improvements" means any work (including all design, architectural, engineering and construction work, together with all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) that is customarily capitalized under GAAP and is reasonably necessary to repair, restore, refurbish, replace or improve (in each case, in a manner that extends the useful life thereof and is performed to ensure that the Ballpark remains a safe, attractive and first class facility comparable to the comparable properties, ordinary wear and tear excepted) any facility or structure. Applicable Capital repairs and improvements is work performed if necessitated by:

- (i) any material defects in design, construction or installation of the Ballpark;

- (ii) Physical Obsolescence;
- (iii) requirements imposed by Major League Baseball ("MLB"), MiLB and/or the PCL as applicable to the Ballpark;
- (iv) requirements imposed by Applicable Laws;
- (v) requirements or recommendations of any insurance carrier insuring any portion of the Ballpark;
- (vi) requirements of any manufacturer, supplier or installer of any component, system or equipment at the Ballpark stipulated in the operating manuals therefor;
- (vii) the Capital Improvements Plan approved jointly by the City's Governing Body and the Team; or
- (viii) any other Capital Improvements mutually agreed upon by City and Team.

The term Capital improvements shall not include any Routine Maintenance.

"Capital Reserve Fund" means the capital repair, replacement and improvement reserve fund established and funded in accordance with Section 8.2 hereof to assist City in the performance of its obligations regarding Capital Improvements.

"Casualty" means, with respect to the Ballpark, physical damage, physical destruction or other property casualty resulting from any fire, any other Force Majeure Event or sudden, unexpected or unusual cause.

"City Default" has the meaning given to that term in Section 13.3 hereof.

"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 given to that term in Section 2.1 hereof.

"City Sponsored Events" has the meaning given to that term in Section 5.4(a) hereof.

"Commencement Date" means the date of the latest to occur of: (i) City's issuance of a certificate of occupancy with respect to the Ballpark or (ii) possession of the Management and Occupancy License tendered to Team by City.

"**Concessions**" means any and all food and beverage items sold anywhere at the Ballpark or on the Ballpark Site, including, without limitation, (i) by Team or (ii) in accordance with any Concessions Agreement between Team and any third party (without regard to whether such party has entered into a written Concessions Agreement).

"**Concessions Agreement**" means any written agreement for the management, operation and sale of Concessions that may be entered into by Team from time to time during the term of this Agreement.

"**Confidential Information**" has the meaning given to that term in Section 21.20 hereof.

"**Default Rate**" means the "prime rate" as published in the "Money Rates" section of The Wall Street Journal, plus one (1) percentage point; however, if such rate is, at any time during the Term, no longer so published, the "Default 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," plus one (1) percentage point. In no event shall the Default Rate be in excess of the maximum interest rate allowed by applicable law.

"**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**" means any Ballpark Event or City Sponsored Event.

"**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 arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

"**Excusable Team Delay**" means any Team delay that 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 arises directly from, and is based upon, another event or circumstance which is an Excusable Team Delay.

"**FF&E**" is defined in the Recitals.

"**Financing**" means the issuance, by City, of one or more series of bonds or other debt obligations, the net proceeds of which are used to pay for the costs of design, construction and development of the Ballpark.

"Force Majeure Event" 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, a Force Majeure Event 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, lockouts or other labor disputes, including a strike or lockout by MiLB players or umpires; (v) fires; and (vi) title disputes, actions or omissions of 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 Application Law.

"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.

"Governing Body of City" means City Council of the City of Wichita. Kansas.

"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, imports permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor license from the Kansas Alcohol and Beverage Commission.

"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."

"Initial Term" has the meaning given to that term in Section 4.1 hereof.

"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.

"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.

"Management Privilege Fee" means the Team's obligation for annual payments as referenced in Section 4.5.

"Management and Occupancy License" shall mean the Team's right to occupy and manage the operations of the Ballpark as referenced in Section 3.1.

"Management and Occupancy License Expiration Date" means the date of termination of this Agreement at the conclusion of the Term or sooner pursuant to any applicable provision hereof.

"Merchandise" means any goods (other than food or beverage) sold anywhere at the Ballpark or on the Ballpark Site, including without limitation, (i) by Team or (ii) in accordance with any Merchandise Agreement between Team and any third party (without regard to whether such party has entered into a written Merchandise Agreement).

"MiLB" means Minor League Baseball.

"NBC Events" any events pertaining to the National Baseball Congress, a tournament comprised of amateur and semi-professional baseball league teams in a 32 team, 63 game 'round the clock tournament which has been held in Wichita during the month of August every year since 1934.

"Operator" has the meaning given to that term in Section 5.2 hereof.

"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 legal entity.

"Physically Obsolete" or **"Physical Obsolescence"** means any City Personal Property or other facility, component, structure or surface of the Ballpark that does not comply with Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of Team's failure to perform its maintenance obligations under this Agreement. For purposes of determining Physical Obsolescence or Physically Obsolete, any City Personal Property or other facility, component, structure or surface of the Ballpark shall be deemed dysfunctional if such has deteriorated to a degree that it cannot be remedied through Routine Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).

"Prohibited Use" has the meaning given to that term in Section 5.6 hereof.

"Real Property" has the meaning given to that term in the Recitals. 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 Parties" means with respect to any Person, such Person's partners, directors, officers, shareholders, members, agents, employees, consultants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sub licensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, and Affiliates.

"Representative" means each of City Representative and Team Representative or both collectively if used in the plural.

"Reservations" has the meaning given to that term in Section 3.3 hereof.

"Routine Maintenance" means all work (including all labor, supplies, materials and equipment) that is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance and repair for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and components that form any part of the Ballpark in a manner reasonably consistent with the standards at other comparable facilities; provided however, Routine Maintenance shall not include Capital Improvements. Routine Maintenance shall include the following, together with such other Routine Maintenance described in Section 7.1 hereof: (i) preventative or routine maintenance that is stipulated in the operating manuals for the Ballpark; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash and snow removal; (iv) routine maintenance procedures for heating, ventilation and air- conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) cleaning prior to, during and following, and necessary as a direct result of, all Events (other than any work required to be performed by City

for any City Sponsored Events) at the Ballpark; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use.

"Security Interest" means any form of pledge, hypothecation, chattel mortgage, collateral assignment, security agreement or other instrument in the nature thereof which encumbers any of the Team's rights and interests under this Agreement or in and to the occupancy, use or management of the Ballpark (but not City's real property interest in the Ballpark), including, without limiting the generality of the foregoing, its right to use and occupy the Ballpark and all of its rights, titles and interests. if any, in and to any and all improvements to the Ballpark.

"Tax Proceeding" means any audit, examination, investigation, action, suit, claim, assessment, appeal, request for adjustment, or other administrative or judicial proceeding relating to the payment of any taxes described in this Agreement.

"Team" means the Person holding all rights, title and interest, including franchise rights, in the Triple-A Minor League Professional Baseball franchise granted by MiLB and the corresponding interests in the PCL and is the signatory to this agreement.

"Team Default" has the meaning given to that term in Section 13.1 hereof.

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

"Team Representative" has the meaning given to that term in Section 2.2 hereof.

"Term" means the Initial Term and any and all Renewal Option Periods exercised by Team as provided in Section 4.1.

"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 or on the Ballpark Site 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 then remaining Term.

ARTICLE II CITY AND TEAM REPRESENTATIVES

2.1 City Representative. The City Governing Body hereby designates the Mayor of the City of Wichita or his/her designee to be the representative of City (the "City Representative"),

and City shall have the right, from time to time, to change the Person who is City Representative by giving at least ten (10) days prior written notice to Team thereof. The only functions of City Representative under this Agreement shall be as expressly specified herein. Any Person 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. The owner of the Team hereby designates its current Managing Member 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 Team Representative by giving at least ten (10) days prior written notice to City thereof. Team shall designate a new or renewed authorized representative whenever Team's owner shall undergo a change in organizational structure or charter. Any written approval, decision, confirmation or determination hereunder by Team Representative shall be binding on Team; provided, however, that notwithstanding anything in this Agreement to the contrary, Team Representative shall not have any right to modify, amend or terminate this Agreement.

ARTICLE III OCCUPANCY OF BALLPARK

3.1 Certificate of Occupancy Permit. The City shall not impede the Team's satisfaction of all the conditions for issuance of a temporary and permanent Certificate of Occupancy from the Metropolitan Area Building and Construction Department (MABCD) a joint City-County agency, covering the Ballpark and the Ballpark Site (estimated at approximately _____ square feet), on a tract of land located in West Wichita and Payne's Park Additions to the City of Wichita, Sedgwick County, Kansas, described in Exhibit A.

3.2 Delivery of Possession. On the Commencement Date, City will permit the Team to begin occupancy and management of the Ballpark and the Ballpark Site subject only to (i) the Permitted Exceptions, (ii) the rights and reservations of City under this Agreement including the Reservations set forth in Section 3.3 below and (iii) all Applicable Laws. Subject to Team's rights to access the Ballpark and the Ballpark Site pursuant to the Development Agreement, Team shall not have the right to use or occupy any part of the Real Property, the Ballpark or the Ballpark Site prior to the issuance of the Certificate of Occupancy.

3.3 Reservations. Notwithstanding anything in this Agreement to the contrary, City hereby reserves (and the Management and Occupancy License shall not extend to) the following with respect to the Ballpark or the Ballpark Site (the "Reservation"):

(a) the right of City to install on, under, over or below the Ballpark or the Ballpark Site any and all utilities and appurtenances related thereto that it deems necessary; provided, however, that (i) the location and construction of same shall not materially interfere with the operation of the Ballpark or the Ballpark Site by Team pursuant to the terms of this Agreement, or materially change the aesthetics of the Ballpark or Ballpark Site and (ii) Team shall have no obligation to maintain same after construction by City; and

(b) for the benefit of City, the exclusive right to any natural resources in on and under the Ballpark and the Ballpark Site, including all oil, coal, natural gas and other hydrocarbons, minerals, aggregates and geothermal resources as well as a right to grant leases or to conduct and undertake surface or subsurface extraction of same; provided, however, that no extraction of such natural resources shall (i) be inconsistent or incompatible with the rights or privileges of Team under this Agreement, (ii) be permitted on the playing surface of the Ballpark or (iii) adversely affect the use or surface of, or undermine the support of, the Ballpark and the Ballpark Site.

ARTICLE IV TERM OF AGREEMENT AND MANAGEMENT PRIVILEGE FEE

4.1 Term. The initial term of this Agreement shall be for a period of twenty (20) years. Team shall have the exclusive option to renew this Agreement for two five-year (5-year) extensions on the same terms and conditions as set forth in this Agreement. Team may exercise any such option by giving the City written notice of its intent to renew this Agreement at least twelve (12) months prior to the end of any existing term or renewal thereof.

4.2 Compliance with Baseball Rules.

(a) City hereby acknowledges and agrees that all rights and entitlements granted under this Agreement to Team are expressly subject to, and must conform with, all Baseball Rules. The term "Baseball Rules" means and includes (i) the constitution, bylaws, and other rules and regulations of the PCL of which the Team is a Member; (ii) the articles of incorporation, bylaws, and other rules and regulations of MiLB, of which the Team is a member; (iii) the Professional Baseball Agreement (which incorporates by reference the Major League Rules), which is an agreement between the MiLB and Major League Baseball on behalf of its clubs. The term "Baseball Rules" includes, without limitation, any rule, regulation, restriction, guideline, resolution, or other requirement issued from time to time by an authority (e.g., the League President, the MiLB President, or the BOC under any Baseball Rule including, without limitation, the annual MiLB Gambling Guidelines (the "Gambling Guidelines"). A copy of the current Gambling Guidelines are attached as Exhibit C. The Team shall thereafter keep City apprised of any material change made to any of the Baseball Rules that could reasonably affect the rights or benefits of City under this Agreement. The PCL, MiLB and BOC are hereinafter referred to as the "Baseball Authorities".

(b) The parties mutually acknowledge that this Ballpark Facility Use and Management Agreement constitutes "Regulated Transactions" under Rule 54(a)(3)(C) of the Major League Rules and, to be effective, must be disclosed to the Baseball Authorities and comply with the Baseball Rules. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall not be effective until disclosed in accordance with Rule 54(a)(3)(C) and found to be in compliance with the Baseball Rules in all aspects.

4.3 Baseball Approval. The Parties acknowledge and agree that this Agreement and any renewal thereof, including all amendments or revisions thereto, is subject to the prior written approval of the PCL and MiLB in accordance with applicable rules, see Section 4.2 above.

4.4 Initial Term Management Privilege Fee. The Team will pay all relocation related costs and fees including, but not limited to, MiLB and PCL relocation fees, any MiLB and PCL mandated start-up and pre-opening staff and marketing fees, and any mandated third-party relocation consulting fees. Until the Team's relocation for the 2020 baseball season, the Team will assume the negative economic impact of operating the Team in its current home market that will occur once the Team's relocation is announced publicly. The Team will also pay all costs and expenses associated with the termination of the Team's current contractual commitments in its home market, including sponsorships, ballpark lease, concessionaire and merchandising agreement(s), etc.

4.5 Management Privilege Fee. Beginning with the first year of the Initial Term, the Team will pay annual fees of Three Hundred Fifty Thousand Dollars (\$350,000) per year, with an increase to be determined every five (5) years based on the average increase in the Consumer Price Index for All Urban Consumers over the previous five (5) years. The Management Privilege Fee for the first full season of operation shall be paid by the Team to the City in full on April 15th in each year during the Term. The Management Privilege Fee for each subsequent year of the term, including any renewal thereof, shall be paid by the Team to the City in full no later than April 15th of such year. In the event the Ballpark is not completed in time for the Team to play home baseball games during the 2020 PCL season, Team shall still take occupancy of the Ballpark for all other uses allowed pursuant to this Agreement, and the commencement of the Term and payment of the first year's Management Privilege Fee shall be adjusted to coincide with the date of occupancy and the ability of Team to generate revenue production events in the Ballpark.

ARTICLE V USE OF THE BALLPARK

5.1 Use of Ballpark and Ballpark Site. The Ballpark and the Ballpark Site shall be controlled and managed by the Team and used for professional MiLB events and other professional and amateur sporting events, including but not limited to, MLB games, soccer, boxing, high school and college baseball, high school and college football, high school and college soccer, plus non-sporting events, including but not limited to, concerts, festivals, car shows, festivals, road races, trade shows, community events and charitable events at the Ballpark and on the Ballpark Site (collectively, the "Ballpark Events"). The Hall of Fame Museum and Exhibition

will be operated by the Team's affiliated charitable foundation to provide cultural and educational opportunities to residents of the City and the public at large.

5.2 Operator. During the Term, Team shall be the Person who, on a day-to-day basis, is responsible for the operation and policies of the Ballpark and who operates the Ballpark in accordance with the Ballpark Standards (the "Operator").

5.3 Scheduling.

(a) Prior to each calendar year during the Term, Team shall provide City with a schedule of all the dates on which Team intends to use the Ballpark for Ballpark Events during such calendar year and a range of dates to be reserved for potential preseason and playoff games, which range shall be reasonable in light of the recent playoff schedules for the league in which the Team then plays. Both the City and Team agree that the scheduling of Triple-A games will take priority over all other events at the Ballpark. The terms of this subsection shall in no way prevent or prohibit Team from adding additional events throughout the calendar year provided they do not conflict with City Sponsored Events.

(b) It is understood by the Parties that the PCL typically publishes the final baseball schedule for each calendar year during the month of December of the preceding calendar year. Team shall distribute to City the final schedule within five (5) Business Days after it is received by Team.

(c) Minor League Baseball Home Games. The Team agrees to play its regularly scheduled home games as scheduled by the PCL and MiLB at the Ballpark. In the event the Team elects to play any of its regularly scheduled PCL home games at a site other than the Ballpark, except for Exhibition games or neutral site games where the Team may be designated as the home team, the Team shall be required to pay the City a fee of Five Thousand Dollars (\$5,000) for each such game, unless said fee is waived by the City. This fee shall be in addition to the Management Privilege Fee set forth in Section 4.5 above. City acknowledges that the Team may be required by the Baseball Authorities to play Exhibition and non-regularly scheduled games at locations other than Ballpark and no fee will be assessed or paid in such events.

5.4 City Sponsored Events.

(a) Subject to scheduling of Triple-A games and other events at the Ballpark, and with the understanding that scheduling of Triple-A games will take priority over all other events at the Ballpark, the City will have the right to hold up to ten (10) City community and charitable events per year, the dates and types of which, together with the allocation of resulting costs and revenues between the Parties shall be mutually agreed upon between the Team and the City.

(b) During any City Sponsored Event, Team shall, in its sole discretion, have the exclusive option of selling Concessions and/or Merchandise in the Ballpark and on the Ballpark Site, including through the use of a Concessions Agreement, Merchandise Agreement or otherwise, and Team shall be entitled to receive and retain all revenue generated therefrom as described in Section 5.4 hereof. If Team does not exercise such option, and City wishes to provide for the sale and provision of Concessions and/or Merchandise at the Ballpark for City Sponsored Events, City must negotiate an agreement for the sale of Concessions and/or Merchandise, as applicable, at City Sponsored Events with the Team's then-existing concessionaire and/or merchandiser under contract, or arrange for Concessions and Merchandise to be sold by third parties on Ballpark parking areas, but shall not sell nor permit to be sold Concessions and/or Merchandise inside the Ballpark. Receipts from such Concessions and Merchandise sales shall not be deemed Revenue under Section 6.1.

(c) After each City Sponsored Event, City shall re-deliver the Ballpark to Team in full compliance with the Ballpark Standards. Without limiting the foregoing, after each City Sponsored Event, City shall be responsible for the timely restoration of all portions of the Ballpark, including the playing field, and the Ballpark Site to their original state prior to the City Sponsored Event, i.e., the official standards of MiLB as may be amended from time to time. City and Team shall, from time to time as appropriate during the Term, cooperate and confer in good faith to develop and modify procedures and standards to be implemented by City for City Sponsored Events to ensure that all portions of the Ballpark, including the field, and the Ballpark Site, are adequately protected during the preparation for, and the holding of, City Sponsored Events so that the Ballpark, including the playing field meets, or can be timely restored to, the official standards of MiLB, as may be amended from time to time, after each City Sponsored Event including the Ballpark Standards. In the event that Team is unable to play a PCL game as a result of a City sponsored event, or is unable to hold any scheduled event, due to the City's failure to comply with the provisions of this subsection, it shall pay Team the sum of Twenty-Five Thousand Dollars (\$25,000) for the loss of each home game or team sponsored event.

(d) City shall be entitled to the "rent-free" use of the Ballpark for City Sponsored Events; provided, however, that for any City Sponsored Event, City shall be solely responsible for all costs and expenses associated with such event that are over and above the costs to maintain and operate the Ballpark had there been no such City Sponsored Event. City and Team shall cooperate and confer in good faith to agree upon the costs and expenses for which the City will be responsible after a City Event, and shall do so at least thirty (30) days prior to the date scheduled for the City Event. City shall pay Team for the additional costs associated with such a City Sponsored Event within thirty (30) days after receipt of a reasonably detailed invoice from Team, including reasonable back-up documentation as requested.

5.5 NBC Baseball Event. The Team is aware of the history and importance of the National Baseball Congress ("NBC") to Wichita and the fact such history will be documented in the Hall of Fame Museum and Exhibition which will be part of the new Ballpark construction. Further, the Team fully appreciates the long history and connection with the Wichita community that the annual NBC tournament represents. Therefore, Team agrees to use commercially

reasonable efforts to make available the use of the Ballpark for the NBC annual tournament for up to one week each season, scheduling to be subject to approval by the PCL, with the understanding that PCL and MiLB games will have scheduling priority over the NBC annual tournament and all other events held at the Ballpark.

5.6 Compliance and Prohibited Uses. The Team shall, in its use of the Ballpark Site, be required to comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the property or to any adjoining public ways, as to the manner of the use or the condition of the property or of adjoining public ways. The Team shall also be required to comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Agreement. The Team shall be required to pay all costs, expenses, claims, fines, penalties or damages that may in any manner arise out of, or be imposed as a result of, its election to engage in the following activities (collectively, the "Prohibited Uses"):

- (a) Create, cause, maintain or permit any public or private nuisance in, on or about the Ballpark;
- (b) Use or allow the Ballpark to be used for any purpose that is in violation of Applicable Laws;
- (c) No other Person, including any guest or patron of the Ballpark, shall have any right to enforce the prohibitions as to the Prohibited Uses.

5.7 Ballpark Events. After each Ballpark Event, Team shall, as quickly as reasonably possible, restore the Ballpark, including the playing field, to the Ballpark Standards. City and Team shall, from time to time, as appropriate during the Term, cooperate and confer in good faith to develop and modify procedures and standards to be implemented by Team for any Ballpark Events to ensure that all portions of the Ballpark, including the playing field, are adequately protected during the preparation for, and the holding of, Ballpark Events so that the field meets, or can be timely restored to, the Ballpark Standards, as may be amended from time to time, as quickly as reasonably possible after each Ballpark Event.

ARTICLE VI REVENUE AND REVENUE SHARING

6.1 Revenue.

(a) Revenue. Except as otherwise expressly provided by the terms of this Agreement including Section 6.1(c) below, the Team shall be entitled to receive and retain all revenues generated by the Team and/or at the Ballpark and on the Ballpark Site, including, without limitation, all revenues from Ballpark Events, ticket sales, parking, Concessions.

Merchandise, suite, interior and exterior Ballpark advertising and signage, sponsorships, print advertisement, sales of broadcast and telecast rights, internet rights, including BIRCO, streaming, league expansion fees, team fundraising, and any and all other sources of revenue.

(b) Sponsorships and Advertising. Team shall have the exclusive right to (a) all sponsorship revenues of every kind throughout the Term, and (b) may sell, contract for, and retain all revenues throughout the Term from advertising, promotional, and pouring rights of every kind in, on or about the Ballpark and the Ballpark Site, and to install permanent signage and displays related thereto in, on and about any portion of the Ballpark and the Ballpark Site, including, without limitation, outfield fences and walls, structures erected above fences and walls, Ballpark façade, scoreboards, video boards, pedestrian walkway and concourse areas outside and inside the Ballpark and concession and catering areas and other areas within the Ballpark and on the Ballpark Site.

(c) Parking. Unless otherwise agreed between Team and City on a case-by-case basis, Team shall retain one hundred percent (100%) of all parking revenues from all Ballpark Events held at the Ballpark and Ballpark Site during the Term. Team will ensure that all parking areas are adequately staffed (at Team's expense) and include (at Team's expense) adequate security and cleaning for all events held at the Ballpark during the Term. The rates charged for use of the Ballpark parking lots shall be as determined from time to time by Team in its sole and absolute discretion. City, subject to the reasonable consent of Team, may continue to use the parking adjacent to the Ballpark for satellite parking and shuttle service to other event venues during all dates and times that do not conflict with Ballpark Events.

(d) Naming Rights Revenue Sharing. The Team and the City will work jointly to secure a naming rights sponsor for the Ballpark for a term to be mutually agreed upon by the parties. The proceeds of the naming rights revenue received each year by the Team will be applied and shared as follows: First, to the soft and hard costs (as defined and determined by the Team) incurred to fulfill the obligations of the Team under the naming rights agreement (e.g., including but not limited to signage, print and radio sponsorship, suite, tickets to Ballpark Events, concessions, merchandise, promotions, parking, etc.); Second, pay to the City as additional Management Privilege Fee, the next Two Hundred Fifty Thousand Dollars (\$250,000) in naming rights revenue received by the Team; and Third, the balance of the annual naming rights revenue received by the Team shall be for the account of the Team. This naming rights revenue sharing agreement between the City and the Team will be applicable for the Term of the Lease and apply to any extensions, renewals or the remarketing of the naming rights agreement.

Any naming rights agreement or sponsorship relationship for the Ballpark shall not be effective unless approved by the City and according to MiLB standards, but the City's approval shall not be unreasonably withheld, so long as the names or sponsorships do not include: (i) any name of any municipality in Kansas other than the City (for example, not the "Butler County Community College Stadium"); (ii) names of tobacco or cannabinoid product manufacturers or distributors; (iii) sexually suggestive names or names of businesses that promote adult businesses, activities or entertainment; (iv) products or merchandise related to sexual activity;

or (v) names of any nature (whether explicit or implicit) that could reasonably bring disrepute or shame upon the City.

(e) Broadcasting Rights. Subject to the rights of MiLB and MLB, Team has the exclusive right to (a) all broadcasting, broadcasting revenues, media and internet related revenues of Ballpark Events or reports of Ballpark Events during the Term, including without limitation, radio, television, cable, streaming, internet and other media broadcasts, whether currently existing or developed during the Term, and (b) all revenues therefrom. Team shall not be allowed to erect cell towers, small cells, or other telecommunications devices except as necessary to comply with the broadcasting standards of MiLB and Major League Baseball to the Ballpark or on the Ballpark Site without the express, written approval of City. Revenue, as described in Section 6.1, shall exclude any revenue derived from telecommunications companies or their agents or suppliers for use of any such facilities which may be erected at the Ballpark.

(f) Premium Seating Concessions and Merchandise. The Team has the exclusive right to contract for, market, sell and retain all revenue from the sale of and fees and payments associated with (i) all seating at the Ballpark (e.g., premium luxury suites, boxes and club seats), and (ii) Concessions and Merchandise at the Ballpark and on the Ballpark Site. The City's right to use its designated premium seating shall not be impaired, limited, reduced, or subject to charge during the term of this Agreement.

ARTICLE VII OPERATION, MAINTENANCE AND UTILITIES

7.1 Team's Operation and Routine Maintenance of the Ballpark.

(a) Except as otherwise provided in this Agreement, Team shall be responsible for all aspects of operating the Ballpark and the Routine Maintenance of the Ballpark and the Hall of Fame Museum and Exhibition chronicling the history of baseball in Wichita and shall be responsible for all operating expenses and costs for the Ballpark, including all direct or indirect expenses associated with the Team or Ballpark Events, with the exception of City Sponsored Events as set forth in Section 5.4 above. Without limiting the generality of the preceding sentence, Team shall, throughout the Term, at its own expense and at no cost or expense to City, and in compliance with Applicable Laws, do the following Routine Maintenance;

(b) Interior and Exterior of Ballpark. The Team shall be required (by itself and/or through third parties employed or contracted by it) to maintain, keep and repair at its own expense the interior and exterior of the Ballpark and Hall of Fame Museum and Exhibition and all FF and E, keeping the same in proper condition, including but not limited to, replacement of all broken glass, painting and repair and maintenance of all walls, trim, floors, ceilings, pipes, wiring, plumbing, motors, fixtures, electrical and mechanical equipment, provided, however, that (except for repairs and replacement of FF and E) the City will be responsible, net of insurance

proceeds, for any single item of repair or replacement in excess of Seven Thousand Five Hundred Dollars (\$7,500) and all cumulative repair and replacement costs in excess of Seventy Five Thousand Dollars (\$75,000) in any one calendar year. The City shall not be financially responsible for repair or replacement of either personal or real property if the Team has not demonstrated compliance with reasonable maintenance procedures, measured by the periodic facility condition reviews;

(c) Heating and Air Conditioning Units. The Team will be responsible for the maintenance and repair of the heating and air conditioning units, or structural damage or defects of same caused by Team's negligence or failure to fulfill its obligations to maintain and repair same, except for damage to property or equipment covered by insurance, and except as set forth in Section 7.1(b) above. The City shall not be financially responsible for repair or replacement of HVAC equipment if the Team has not demonstrated compliance with reasonable maintenance procedures, measured by the periodic facility condition reviews.

(d) Building Condition Assessment. In order to confirm that the Team has maintained and kept in repair the Ballpark and Hall of Fame Museum and Exhibition as required to comply with new building warranties and subsequent thereto, maintained and repaired the building condition, the Team shall keep maintenance records sufficient to comply with all building and equipment warranties, with the same open for City inspection. Semi-annually, Team and City Representatives, or their designees, shall conduct a joint inspection of all facilities on the Ballpark Site using a building condition assessment form prepared by City based upon warranty requirements, facility maintenance industry standards and the Ballpark Standards.

(e) The Team shall promptly make, or cause to be made, all reasonably necessary routine repairs, interior and exterior, foreseen as well as unforeseen, to the Ballpark identified by the building condition assessment as well as those that arise between assessments, excluding those which constitute Capital Improvements, to keep the foregoing clean and in good working order and condition so that that the Ballpark may be operated in accordance with the Ballpark Standards. Should Team fail to timely make such repairs, City may enter the Ballpark and make the identified repairs, charging Team for the work performed plus an administrative charge of twelve percent (12%) of the cost of the worked performed, including that of any professional consultants needed.

(f) Team, or the concessionaires, merchandisers and/or vendors for the Ballpark, as appropriate, shall be responsible for obtaining all necessary Governmental Authorizations for operation at the Ballpark, including, but not limited to, licenses and permits to sell food, merchandise and beverages, including alcohol. Team shall also be solely responsible for obtaining all necessary Governmental Authorizations or MiLB or PCL authorizations required for the operation of the Team.

(g) Team, in its reasonable discretion, shall provide at its sole cost and expense all Ballpark Site security, emergency medical and other necessary staff at a level of service appropriate for the applicable Ballpark Event and consistent with the requirements of the Baseball Authorities and the City. The City in its reasonable discretion shall provide at its sole cost and expense (using City employees or contract services, as determined by City) all Ballpark=Site security, emergency medical and other necessary staff for City Sponsored Events. City shall also provide outside the Ballpark Site all customary police, traffic control, fire prevention, emergency medical, street cleaning, trash removal and other similar City-provided services. If City in its sole discretion determines that an emergency public safety issue exists at any Event, City shall have the right to provide additional police or emergency staffing for such Event at City's cost. Representatives of the Team and the City shall meet from time to time to update each other on staffing needs for scheduled Ballpark Events.

7.2 Utilities. All utilities and utility services including electric, gas, water, sewer, phone and internet services on or about the Ballpark shall be contracted for by the Team in its own name and the Team will have the responsibility for all costs and expense including those to procure any and all permits, licenses or authorizations necessary in connection therewith.

ARTICLE VIII CAPITAL REPAIRS AND IMPROVEMENTS

8.1 Capital Repairs and Improvements. The City will be responsible for capital repairs and improvements at the Ballpark and the Ballpark Site, and any renovations or improvements required to ensure that the Ballpark continues to meet the rules, regulations and the existing Ballpark Standards as required by MiLB and MLB throughout the term of the Lease and any extensions thereof, provided, however, that FF and E funded by the Team will not be eligible for capital repair or replacement hereunder. The City shall not be financially responsible for capital repairs and replacement if the Team has not demonstrated substantial compliance with reasonable maintenance procedures of existing facilities, measured by the periodic facility condition reviews.

The City and Team shall meet at each two-year interval, except for year twenty (20) to consider the need or requirement for capital improvements and replacements. Improvements at year twenty (20) will only be considered if an extension of this Agreement has been exercised by the Team. No capital expenditure shall be made without the mutual consent of the City and the Team, which consent or approval shall not be unreasonably withheld. Any failure of City and Team to agree on repairs and improvements shall not affect City's other obligations with respect to Capital Repairs and Improvements.

8.2 Capital Reserve Fund. From the funds received by the City in the form of Management Privilege Fees from the Team in and after the seventh (7th) year of the Initial Term, the City will place Two Hundred Fifty Thousand Dollars (\$250,000) per year in a Capital Reserve

Fund, which can be used for post construction capital repairs, replacement and improvements at the Ballpark. During the first six years of the agreement, the City will fund such projects from its annual Operating Budget and annual Capital Improvements Program. All capital repairs, replacement and improvements, and the schedule for same, shall be mutually agreed upon by the City and the Team.

Upon prior written notice to Team, City shall have the right to access and use the Ballpark throughout the Term and any extension thereof in order to fulfill its obligations with respect to Capital Repairs and Improvements; provided that such notice shall be reasonable and such activities will not unreasonably interfere with the permitted use of the Ballpark by Team and otherwise comply with the terms and conditions of this Agreement.

8.3 Improvements by Team. Team may be allowed to make additions or improvements to the Ballpark, at its expense and in the City's sole and absolute discretion as long as such additions or improvements meet the Ballpark Standards then in effect. Team shall have no obligation to make any Capital Repairs and Improvements.

8.4 Team's Personal Property. Team's Personal Property shall remain the property of Team during the Term. Team, its assignees, concessionaires, merchandises or vendors will be entitled to remove and/or replace Team's Personal Property from time to time during the Term and at the end of the Term.

ARTICLE IX TAXES

9.1 Team Payment of Taxes. Team shall be responsible for the payment of any taxes legally imposed, assessed or levied against Team's Personal Property and for the payment of any excise taxes legally imposed, assessed or levied against Team on account of tickets, parking, Concessions or Merchandise, and similar sales or transactions related to Team's use or occupancy of the Ballpark or any Ballpark Events. The City will take reasonable steps to protect the tax exempt status of the Ballpark Site.

9.2 Community Improvement District Sales Tax. The Team acknowledges and agrees that the City will assess a two percent (2%) Community Improvement District ("CID") sales tax on all transactions subject to sales tax within a CID to be known as the "Riverfront District," which will include the Ballpark Site, and that such two percent (2%) tax will be in addition to otherwise applicable state and local sales taxes, which are currently an aggregate seven and one-half percent (7.5%) within the corporate limits of the City. Revenues from the CID sales tax may be used by the City to repay bonds issued to finance Ballpark Improvements pursuant to a separate agreement between the Parties for the development and construction of the Ballpark.

ARTICLE X
EQUAL EMPLOYMENT OPPORTUNITY

10.1 Equal Employment Opportunity. The Team covenants and agrees for itself and its successors and assigns that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex, ancestry, physical handicap, marital status or national origin in its use and operation of the premises and the Team further agrees that without limitation, it shall be bound by, among others, the following duties and obligations in its use or occupancy of the premises:

(a) The Team will not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, disability, marital status or national origin. The Team will comply with all provisions of the Civil Rights Act of 1984, as amended, 42 United States Code 2000, et seq., as amended; and any ordinance of the City of Wichita presently existing or to be hereafter enacted providing for Equal Opportunity and nondiscrimination for all persons.

(b) The Team will take concrete action to insure that applicants are considered for employment, and that employees are treated during employment without regard to their race, color, religion, sex, ancestry, disability, marital status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Team agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

(c) The Team will, in all solicitation or advertisements for employees placed by or on behalf of the Team, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, ancestry, disability, marital status or national origin.

(d) The Team will send to each labor union or representative of workers in the City of Wichita, Kansas, with which the City has a collective bargaining agreement or other contract or understanding a notice to be provided advertising the labor union or worker's representative of the Team's commitments to Equal Employment Opportunity and nondiscriminatory treatment of persons or groups of persons as above defined, and the Team shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Team's maintenance, during the term of the lease, of a federally approved affirmative action program shall constitute compliance with this Section 10.1 of this Agreement; provided, however, the Team must furnish to the City evidence that the Team's affirmative action plan has been approved by the federal agency charged with administering such plan and is then operating under a certificate or is performing work under a contract for the federal government or an agency thereof. The Team will permit access to its records regarding its affirmative action plan to the City for the purpose of investigation to ascertain compliance with the provisions of this Section 10.1 of this Agreement (or the parallel provisions of the Agreement) but only in the event the Team fails to furnish City evidence of federal approval of its affirmative action plan.

ARTICLE XI INSURANCE and INDEMNITY

11.1 Insurance.

(a) Team shall, at its sole expense, obtain and maintain during the Term, a Commercial General Liability Policy and Auto Liability Policy of Insurance (for owned, hired and non-owned vehicles of Team) which will adequately and sufficiently protect City and Team, their agents, representatives and servants from losses arising directly or indirectly from Team's and City's use of the Ballpark. Team shall also obtain and maintain umbrella coverage that follows form to include City as an additional insured. Unless otherwise agreed by City Representative and Team Representative in writing, the Commercial General Liability Policy of Insurance shall include the following coverages: (i) general liability, One Million Dollars (\$1,000,000) per occurrence, including products/completed operations, advertising liability, broad form contractual liability, broad form personal injury and property damage liability, host legal liquor liability and shop liability; (ii) Ten Thousand Dollars (\$10,000) for medical payments per each occurrence; (iii) General Aggregate of Two Million Dollars (\$2,000,000), (iv) Products/Completed Operations Aggregate of Two Million Dollars (\$2,000,000) and (v) Personal and Advertising Injury Aggregate of One Million Dollars (\$1,000,000). Team shall obtain and maintain one or more commercial umbrella liability policies providing coverage of Ten Million Dollars (\$10,000,000) per occurrence/annual aggregate that follows form for the above stated coverages. Team shall provide Workers' Compensation insurance coverage in amounts sufficient to satisfy Kansas statutory requirements and employer's liability coverage, in the amounts of One Million Dollars (\$1,000,000) per employee per accident, One Million Dollars (\$1,000,000) per employee per disease and One Million Dollars (\$1,000,000) policy aggregate. Team shall be responsible for all policy deductibles and co-pays. In the event that at any time City shall determine that any such coverages are inadequate then City may require additional coverage within its reasonable discretion. This clause shall not limit the liability of Team or City existing otherwise under this Agreement, but is only to be considered as a guideline for minimum amounts of insurance that shall be carried in the coverage types required herein. If Team carries greater levels of coverage than those identified above, this Agreement shall be interpreted to require those greater coverage limits.

(b) 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 and the Ballpark Site 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 primary policies and umbrella policies and shall name Team as a non-participating additional insured.

(c) City shall cause its construction manager or general contractor constructing the Ballpark to maintain builder's risk insurance written during any period in which any Capital Improvements work being made to the Premises, the anticipated costs of which exceed One Hundred Thousand Dollars (\$100,000) in the aggregate, with no coinsurance requirement, and containing a provision granting the insured permission to complete and adding the City as the loss payee for such insurance.

(d) All insurance policies of Team or City required hereunder shall (i) be issued by insurance companies authorized to do business in the State of Kansas, and rated "A-VII" or better by A.M. Best Company (or equivalent); (ii) name the other party as an additional insured under the Commercial General Liability Policy and Umbrella policies; (iii) be in a form reasonably satisfactory to the other party; (iv) be noncontributing with, and apply only as primary and not as excess to, any other insurance available to the applicable party; (v) contain cross liability endorsements; and (vi) require the insurer to notify Team and City, in writing, not less than thirty (30) days prior to any cancellation or termination thereof, except in the event of non-payment of premium in which case the notice period shall be not less than ten (10) days, or such greater notice as is required in the policy as owing to the primary policy holder.

(e) Prior to the issuance by MABCD of the use and occupancy permit for the Ballpark, the certificates of insurance verifying the existence of the insurance coverage required in the above paragraphs shall be made available to City and Team. Each of City and Team shall from time to time upon reasonable request by the other party provide updated certificates of insurance evidencing that all insurance required hereunder is in place and fully paid for in advance. Each of Team and City shall timely pay all premiums due for all insurance policies required hereunder and shall not do anything at the Ballpark that would impair or invalidate any material obligations of any insurer thereunder. If either Team or City fails to obtain and pay for any of the insurance policies required hereunder and such failure continues for ten (10) days after written notice thereof from the non-defaulting party, then, in addition to all other rights and remedies of the non-defaulting party, the non-defaulting party shall have the right, but not the obligation, to secure the appropriate insurance policies. Any amounts paid by the non-defaulting party in connection with obtaining such insurance shall be immediately due and payable from the defaulting party, and the defaulting party shall pay all such amounts to the non-defaulting party upon demand therefor, together with a ten percent (10%) administrative charge.

11.2 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, City and Team waive all rights against each other (and against the agents, employees, representatives and/or insurers of the other) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or any losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such other party (its agents, employees and/or representatives); provided, however, that: (a) this waiver of rights shall only be applicable to the extent of insurance proceeds actually paid to the party suffering such loss or damage; and (b) to the extent that the applicable contracts of insurance allow waiver of subrogation; and (c) this waiver of rights shall in no way diminish the indemnity obligations of City or Team as set forth in Section 11.3 below. Team and City shall give written notice of the terms of this mutual waiver of rights to their respective insurers and shall have their insurance policies endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of this waiver of rights.

11.3 Indemnity.

(a) To the extent allowed by Applicable Law, Team agrees to 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 or property damage, including damage by fire or other casualty) incurred by City, Team or any other person, of 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, management, maintenance or repair of the Ballpark, and/or (ii) Team's performance under this Agreement.

(b) To the extent allowed by Applicable Law, City agrees to 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, of and from any and all claims, demands and actions in law or equity (including reasonable attorney 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.

(c) City and Team's respective obligations contained in this Section 11.3 shall survive expiration or termination of this Agreement to the extent of any applicable Statute of Limitations.

**ARTICLE XII
LOSS OF FACILITIES**

12.1 Casualty Damage to the Ballpark.

(a) If, at any time during the Term, the Ballpark or any part thereof shall be damaged or destroyed by Casualty, then Team shall promptly secure the area of damage or destruction to safeguard against injury to Persons or property.

(b) If the Ballpark or any portion thereof is damaged by Casualty but remains playable for Triple-A baseball games as determined by the PCL, MiLB and MLB, then neither Team nor City shall have the right to terminate this Agreement and City shall promptly use commercially reasonable efforts to restore and repair the Ballpark to a condition substantially similar to that which existed prior to such Casualty. To that end, City agrees to use all insurance proceeds available for such purposes.

(c) During any period that the Ballpark is unusable by Team due to damage by Casualty, the Management Privilege Fee, and any other obligations of Team hereunder, shall abate. If only a portion of the Ballpark is rendered unusable by the Casualty, the Management Privilege Fee shall be equitably reduced, as determined by the Representatives in good faith, taking into account Team's prior use of the condemned portion of the Ballpark.

(d) If the Ballpark or any portion thereof is damaged or destroyed by Casualty and such damage or destruction renders the Ballpark unplayable for Triple-A baseball games for a period that includes a total of a minimum of one-half (1/2) of Team's home season schedule of games, as determined by the PCL, MiLB and MLB, then, either (i) Team or (ii) City shall have the right to terminate this Agreement.

(e) Notwithstanding anything in this Section to the contrary, in the event any Casualty to the Ballpark is caused by the willful misconduct of Team, Operator, any Team member, any vendor, any concessionaire or any of the respective Related Parties of such Persons, Team shall be responsible for such damage (to the extent the same is not covered by insurance), the Management Privilege Fee shall not abate and Team shall promptly use commercially reasonable efforts to restore and repair the Ballpark to a condition substantially similar to that prior to such damage or destruction.

**ARTICLE XIII
DEFAULTS AND REMEDIES**

13.1 Default by Team.

(a) An event of default by Team (a "Team Default") shall be deemed to have occurred under this Agreement if:

i. Team fails to make any payment of Management Privilege Fee as it falls due and which failure is not cured within ten (10) days after written notice to Team of such failure;

ii. The failure of Team to cause the Ballpark to be operated continuously as required by this Agreement within thirty (30) days after City gives notice to Team of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such thirty (30) day period using reasonable efforts);

iii. The failure of Team to cause the Ballpark to be operated in accordance with the requirements of the Ballpark Standards or Article III of this Agreement within sixty (60) days after City gives notice to Team of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

iv. Team fails to observe or to perform any other material obligation, condition or covenant on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than sixty (60) days after Team's receipt of written notice of such failure from City (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts).

13.2 City's Remedies. Upon the occurrence of any non-cured Team Default, City may, in its sole discretion, pursue any one or more of the following remedies, in addition to any other remedies available to City at law or in equity or as otherwise specified in this Agreement, after delivery of written notice to Team:

(a) City may terminate this Agreement and upon such termination City may forthwith re-enter and repossess the Ballpark by entry, revocation of all management privileges, forcible entry or detainer suit or otherwise, without demand or further notice of any kind and be entitled to recover, as damages under this Agreement, a sum of money equal to the total of (i) the reasonable cost of recovering the Ballpark, (ii) the reasonable cost of removing and storing Team's Personal Property or any other occupant's Property, (iii) the unpaid Management Fee accelerated for the full term of the Agreement and any other sums accrued hereunder at the date of termination and, (iv) any increase in insurance premiums caused by the vacancy of the Ballpark. In the event City shall elect to terminate this Agreement, City shall at once have all the rights of reentry upon the Ballpark, without becoming liable for damages or guilty of trespass.

(b) If City terminates Team's right of occupancy, City shall make commercially reasonable efforts to use the Ballpark or any part thereof for other productive uses that would not cause damage to the facility, and apply any net proceeds for the account of Team for the remainder of the Term on such terms and conditions City, in City's sole discretion and according to the laws of the State of Kansas, deem advisable. Team shall be liable for and shall pay to City

all Management Privilege Fees payable by Team under this Agreement plus an amount equal to (i) the reasonable cost of recovering possession of the Ballpark, (ii) the reasonable cost of removing and storing any of Team's or any other occupant's property left on the Ballpark and after reentry. (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Ballpark and (iv) the reasonable cost of any repairs, changes, alterations or additions necessary for repurposing of the Ballpark, all reduced by any sums received by City through any repurposing of the Ballpark and/or any decreases in insurance premiums resulting from the termination of possession of the Ballpark; provided, however, that in no event shall Team be entitled to any excess of any sums obtained by repurposing over and above the Management Privilege Fee provided in this Agreement to be paid by Team to City. For the purpose of such repurposing, City is authorized to make any repairs, changes, alterations or additions in or to the Ballpark that may be necessary. The City shall be made whole from any net repurposing proceeds for its costs and expenses spent to improve mitigation opportunities before credit is given against Team's financial obligations. City may sue to recover any sums falling due under the terms of this Section 13.2 from time to time. No repurposing shall be construed as an election on the part of City to terminate this Agreement unless a written notice of such intention is given to Team by City. Notwithstanding any such repurposing without termination, City may at any time thereafter elect to terminate this Agreement for such Team Default and exercise any of its rights provided in the Agreement or at law or in equity.

(c) City may enter upon the Ballpark and do whatever Team is obligated to do under the terms on this Agreement, including taking all reasonable steps necessary to maintain and preserve the Ballpark; and Team agrees to reimburse City on demand for any reasonable expenses which City may incur in effecting compliance with Team's obligations under this Agreement (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate, and Team further agrees that City shall not be liable for any damages resulting to Team from such action. No action taken by City under this Section shall relieve Team from any of its obligations under this Agreement or from any consequences or liabilities arising from the non-cured failure to perform such obligations.

(d) City may exercise any and all other remedies available to City at law or in equity directly, without prior resort to the remedies provided in this Section 13.2, including enforcing specific performance of Team's obligation to continuously operate the Ballpark in accordance with the Ballpark Standards, and seeking monetary damages, including interest on the unpaid Rent at the Default Rate. If City should terminate this Agreement, Team shall assign to City any and all right, title and interest in any contracts entered into by Team for supplies, services, concessionaires, merchandisers or other vendors, or other similar agreements necessary for the daily operation of the Ballpark (other than those contracts with an Affiliate of Team).

13.3 Default by City.

(a) An event of default by City (a "City Default") shall be deemed to have occurred under this Agreement if:

i. City fails to perform or observe any material obligation or condition on its part to be performed or observed in accordance with this Agreement, including without limitation City's obligations to provide municipal services and to be responsible for Capital Repairs and Improvements, as more particularly described herein, and such failure remains uncured for more than sixty (60) days after City's receipt of written notice of such failure from Team (or such longer period as may be reasonably required to effect such cure if such cure cannot be effected within such sixty (60) day period using reasonable efforts); and/or

ii. A "City Default" or "Event of Default" as defined in the Development Agreement shall have occurred and remained uncured.

(b) Upon the occurrence of an uncured City Default, Team shall be entitled to seek all rights and remedies available to it at law or in equity, including, but not limited to, the right to: (i) seek monetary damages; (ii) terminate this Agreement; (iii) cure such default on behalf of City and bill City for all reasonable costs incurred by Team to affect such cure.

13.4 No Waivers. 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 agreements 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.

13.5 No Accord and Satisfaction. Without limiting the generality of Section 13.5 above, the receipt by City of the Management Privilege Fee 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 Fee received). The payment by Team of the Fee with knowledge of a breach by City of any covenant or obligation 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 the amount 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.

**ARTICLE XIV
DISPUTE RESOLUTION**

14.1 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 thereunder (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 Article. 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 thirty (30) 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. If a mutual resolution and settlement are not obtained at the meeting of the Representatives, either Representative may contact the City Manager directly to attempt to resolve the Dispute or Controversy, upon prior notice to the Party. If the Dispute or Controversy is not resolved after the involvement of the City Manager, then City and Team shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternative dispute resolution might be useful. At no point shall either the City or Team be required to submit any dispute for resolution by arbitration. If an alternative dispute resolution 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 sixty (60) 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 or City Manager and the Representatives takes place within the forty-five (45) day period following delivery of the initial notice, then each of the Parties may seek injunctive relief or other relief at any time thereafter from any court of competent jurisdiction in Sedgwick County, Kansas.

14.2 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, each of the Parties 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 14.1 above. Notwithstanding the fact that any court of competent jurisdiction 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 XV
ASSIGNMENT**

15.1 Assignment of Agreement by Team. The Team's interest and obligations of this Agreement may not be assigned or transferred without the prior written approval of City, which approval shall not be unreasonably withheld, provided that such a transfer or assignment shall only be to a different TRIPLE-A affiliated baseball team affiliated with and approved by MiLB, and further will require that: (i) the duties and responsibilities of the assignee of Team under this Agreement do not change, (ii) any such assignment is approved by MiLB, (iii) the Ballpark will continue to be managed and operated by a qualified operator, (iv) any such assignee must expressly assume any and all obligations of Team under this Agreement, and (v) there is no continuing Team Default hereunder. Any attempt to make an unauthorized assignment or transfer, or one which fails to meet the conditions required above shall be void and of no force and effect, and shall constitute a Default under this Agreement. Team has the right to sell the MiLB Franchise provided the new owner/operator receives all proper approvals from the PCL, MiLB and MLB. In such event, City shall agree to an assignment of this Agreement to the purchaser of the franchise.

15.2 Assignment by City. City may assign all of its rights and obligations under this Agreement to a Governmental Authority, a local government corporation or quasi-governmental entity formed by City, the State of Kansas, or any other municipality provided that City remains liable for the City's financial obligations contained herein.

**ARTICLE XVI
COVENANTS, REPRESENTATIONS AND
WARRANTIES OF TEAM AND CITY**

16.1 Team Covenants. Team, its successors or assigns, covenant that during the Term (or such shorter period as provided herein):

(a) Team shall assure that the Team plays all preseason, regular season and postseason home games at the Ballpark as directed and approved by the PCL, MiLB and/or the Commissioner of Major League Baseball, as applicable, subject to the terms of Section 5.3(c) above.

(b) Team agrees to use commercially reasonable efforts to ensure that the pricing of tickets for Team Ballpark Events will be in amounts that provide an affordable recreational activity in City;

(c) Team shall endeavor to provide attractive and meaningful programs that are designed to maintain the affordability of Team Ballpark Events for families in City, including implementing programs for seniors and minor children during each Baseball Season;

(d) Team shall not relocate the Team or the home territory of the Team outside of the City limits of Wichita, Kansas during the Term;

(e) The Team shall include the name "Wichita" as part of the Team's name;

(f) At all times during the Term and in connection with any activity under this Agreement or with respect to the Ballpark, Team agrees to comply with the requirements of Applicable Laws; and

(g) At all times during the Term, Team shall obtain and maintain all Governmental Authorizations necessary for the use and occupancy of the Ballpark in accordance with the terms of this Agreement.

16.2 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 Effective Date:

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

(b) The execution, delivery and performance of this Agreement by Team is within Team's power and has been duly authorized by all necessary action of Team.

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein contemplated nor compliance with the terms and provisions hereof 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) 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.

(e) 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 believe 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 respective 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 Team to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Ballpark).

(f) Neither Team, any Affiliate of Team nor any of their respective principals, owners, officers, employees or agents are officials, consultants or employees of City.

(g) Team is the owner of all rights (including associated franchise rights), title and interest in the Team and holds substantially all of the assets and Governmental Authorizations necessary for the operation of the Team and the Ballpark and will continue to own such Team and assets throughout the Term unless transferred pursuant to the terms of Article XV hereof. During the Term, Team shall take all necessary and appropriate actions to maintain membership of the Team in the PCL or other MiLB affiliated Triple-A league.

16.3 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 Effective Date:

(a) City is a municipal corporation 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) The execution, delivery and performance of this Agreement by City is within City's powers, respectively, and have been duly authorized by all necessary action of the Governing Body of the City;

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein contemplated nor compliance with the terms and provisions hereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City;

(d) 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, with the exception of State of Kansas approval of STAR bonds, which the parties recognize as essential to the funding of the Ballpark construction;

(e) 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, 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; and

(f) 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 (i) 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 (ii) 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.

16.4 Governmental Rule. No Approvals by City or City Representative under this Agreement shall relieve or release Team from any Applicable Laws relating to the operation or occupancy of the Ballpark (including both Applicable Laws that are procedural, as well as those which are substantive in nature). 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.

ARTICLE XVII GENERAL PROVISIONS

17.1 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.

17.2 City Council Approval. Notwithstanding anything to the contrary set forth in this Agreement, City and Team recognize and agree that any contracts or agreements or amendments thereto, contemplated to be entered into by either City or Team under the terms of this Agreement which are entered into after the date of this Agreement may be subject to the prior Approval of the City Council of Wichita and the Baseball Authorities, if applicable.

17.3 Compliance with Applicable Laws and Permitted Exceptions. Team shall, (a) throughout the Term and within the time periods permitted by Applicable Law, comply or cause compliance with all Applicable Laws applicable to the Ballpark and the Ballpark Surface Parking,

including any applicable to the manner of use or the maintenance, repair or condition of the Ballpark or any activities or operations conducted in or about the Ballpark and (b) throughout the Term, comply or cause compliance with the Permitted Exceptions, but with respect to each of the foregoing, Team shall not be responsible for any failure to comply with Applicable Law or the Permitted Exceptions to the extent caused by City. Team shall, however, have the right to contest the validity or application of any Applicable Law, and if Team promptly contests and if compliance therewith may legally be held in abeyance during such contest, Team may postpone compliance until the final determination of such contest, provided that such contest is prosecuted with due diligence and that Team shall not so postpone compliance therewith in such a manner as to, or if doing so would (i) impair the structural integrity of the Ballpark, (ii) during such contest, subject City to any fine or penalty or to prosecution for a criminal act, or expose City to any civil liability or (iii) cause the Ballpark to be condemned or vacated; provided that a Lien against the Ballpark shall not be imposed by reason of such noncompliance. Team shall give City reasonable notice (which in no event shall be less than thirty (30) days) of its intent to carry on such contest, specifying the Applicable Law that Team proposes to contest, the name of counsel representing Team in such contest and the Excusable Team Delay, if any, that such contest will cause in any repair, alteration or improvement of the Ballpark.

17.4 No City Obligations. Except for costs that City has specifically agreed to pay pursuant to the express terms of this Agreement, (i) City shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Agreement, or the operation and management of the Ballpark and (ii) it is expressly understood and agreed that this provision is completely intended to assure City the Management Privilege Fee herein is reserved and is to be calculated on an absolutely net basis, except as otherwise provided in this Agreement.

17.5 Access to Ballpark by City. Without limiting City's rights with respect to the Reservations, City shall have the right of access and entry, without charges or fees and with reasonable notice to Team, for itself and its authorized representatives, to the Ballpark at all times, for the purposes of assuring compliance with this Agreement and performing or undertaking any rights or obligations of City under this Agreement as well as showing the Ballpark to prospective teams during the last twelve (12) months of the Term: provided, however, that in all instances such access and entry shall be conducted in a manner so as to minimize interference with Team's use and operation of the Ballpark then being conducted by Team pursuant to the terms of this Agreement.

17.6 Owner Suite and Complimentary Tickets. The City shall have a permanent suite at the Ballpark and receive at least twenty (20) tickets and printed programs, provided the Team prepares printed programs, for all events at no cost (as to which, the City shall be responsible for all food and beverage costs at the Concessionaire's standard rates). The location of the City Suite shall be the same throughout the Term as agreed by the Parties. Additionally, eight (8) parking spaces for the suite will be permanently reserved adjacent to the Ballpark.

The City (or, at the City's election, a civic or non-profit entity or organization designated by the City, which may include the Visit Wichita Visitor's Bureau or Chamber of Commerce) shall have the right during two games each season to the exclusive use and occupancy of a group area within the Ballpark to accommodate no fewer than fifty persons for non-revenue generating purposes or activities (as to which, the City shall be responsible for all food and beverage costs). The Parties will meet each year to select dates for the City's use.

17.7 Game Programs/Player Appearances. All official game programs sold and distributed at Ballpark Events shall include a one full page or two half page advertisements acknowledging the City and its role in providing facilities for the Team and/or promoting the unique tourism attributes and attractions of the City. The copy for such advertisements shall be prepared by the City and supplied to Team in camera-ready form, reasonably in advance of program publication to ensure their inclusion therein. The City may periodically update that copy consistent with its obligations herein. All content shall be subject to Team's reasonable approval and shall comply with PCL, MiLB and MLB Rules and Regulations. Each City advertisement must be City-related and the City may not sell, transfer, license or sub-license any advertisements or any content to a Third Party.

Subject to scheduling and the agreement of the Team as to time, place and manner, the Team will also provide two (2) players for special appearances presented by the City, in the City, and the City shall be responsible for any expenses associated with such special appearances.

17.8 Owner Signage. Team shall make available to the City: (i) at least one sign not less than either (a) four (4) feet by twenty (20) feet, or (b) seven (7) feet by fourteen (14) feet, and located inside the Stadium at a location determined by mutual agreement of the Parties, to be available to the City for use by the City, Visit Wichita, the Chamber of Commerce, or similar non-profit municipal groups or organizations, to promote the City (provided, however, that no such sign shall include any advertising of or for a Third Party or in any way disparage Team, its Affiliates or its vendors, or violate any PCL, MiLB or MLB Rules and Regulations); (ii) one identification sign on the outside of the Stadium structure not less than one hundred and twenty (120) square feet in area and in a location reasonably approved by Team and the City; and (iii) two (2) City of Wichita logos as selected by the City, being one (1) on each side of home plate; provided, however, and notwithstanding the foregoing, Team must approve, in writing in advance, the content, design and placement of all such signage and logos; and, provided further, Team's obligations under this Paragraph are expressly conditioned upon the City's providing Team with any proposed changes to such signage and logos on or before January 1 of each calendar year during the Term, failing which Team's obligations to make such changes (but not Team's obligation to make such signs available) will be deemed waived until the following calendar year. No such City signage or advertising shall compete with or disparage the Team or any of its sponsors or advertisers.

17.9 Emergency Air Travel Fund. The City and the Team acknowledge and agree that, as a condition of the PCL and MiLB approving the relocation of the Team to Wichita, the City and the Team must establish a fund (the "Travel Fund") to be used to respond to reasonable claims presented by other teams in the PCL relating to accessibility, frequency and ease of travel into and out of Wichita. The Emergency Air Travel Fund Agreement is attached hereto as Exhibit D.

ARTICLE XVIII SURRENDER OF POSSESSION; HOLDING OVER

18.1 Surrender of Possession. Team shall, on or before the end of the Management Agreement Term, peaceably and quietly leave, surrender and yield up to City the Ballpark, and in a clean condition and free of debris or as otherwise provided for in this Agreement, subject to the terms of Article XII hereof.

(a) Team's Obligation to Remove all Team's Personal Property. Personal Property installed, placed or used in the operation of the Ballpark throughout the Term shall be deemed to be the property of Team. All such Team's Personal Property shall be removed by Team within thirty (30) calendar days after this Agreement Expiration Date, provided that Team shall promptly repair any damage to the Ballpark caused by such removal.

(b) City's Right to Remove. Any Team's Personal Property which shall remain in the Ballpark for thirty (30) days after the Agreement Expiration Date may, at the option of City, be deemed to have been abandoned by Team and may either be retained by City as its Property or be disposed of, without accountability, in such manner as City Representative may determine necessary, desirable or appropriate, and Team, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Team, together with reasonable outside counsel's fees, charges and costs.

18.2 Holding Over. In the case of any holding over or possession by Team, after the Agreement Expiration Date without the Approval of City Management, the Privilege Fee that would have been applicable during such period of time had this Agreement been in effect shall continue to accrue and become an enforceable obligation against Team. Further, in the event Team shall hold over beyond any date for surrender of the Ballpark set forth in City's written notice demanding possession thereof, Team shall reimburse City for all actual expenses and losses incurred by City by reason of City's inability to deliver possession of the Ballpark to a successor management organization or tenant, together with interest on such expenses and losses at the Default Rate from the date such expenses are incurred until reimbursed by Team, together with City's reasonable outside counsel's fees, charges and costs. The acceptance of Management Privilege Fee under this Section 18.2 by City shall not constitute an extension of the Term of this Agreement or afford Team any right to possession of the Ballpark beyond any date through which such Management Privilege Fee shall have been paid by Team and accepted by City. Such Management Privilege Fee shall be due to City for the period of such holding over,

whether or not City is seeking to evict Team; and, unless City otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of City, whether or not City has accepted any sum due pursuant to this Section 18.2.

**ARTICLE XIX
FORCE MAJEURE EVENT AND EFFECT OF DELAYS**

19.1 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 that number of days of delay in the performance by Team of its obligations hereunder actually resulting from such Excusable Team Delay, unless otherwise expressly provided in this Agreement to the contrary; provided that (i) the obligation to pay Management Privilege Fee as and when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Team Delay unless otherwise expressly provided herein to the contrary and (ii) Team complies with the requirements of this Article XX. With respect to each occurrence of Excusable Team Delay, Team shall, within fifteen (15) days of Team's knowledge of the occurrence of such event of Excusable Team Delay, give written 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 written 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 every than thirty (30) 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, 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 sends notice to Team within thirty (30) 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 usable 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 19.1).

19.2 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 that number of days of delay in the performance by City of its Obligations hereunder actually resulting from such Excusable City Delay; 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 unless otherwise expressly provided herein to the contrary and (ii) the City complies with the requirements of this Article XX. 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 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 thirty (30) days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. Team's Representative shall have the right to challenge City's assertion of the occurrence of an Excusable City Delay, or City Representatives 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 thirty (30) days after receipt by Team of such claim of 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.

19.3 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 agrees 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 XX NOTICES

20.1 Notices. All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, 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 e-mail (as evidenced by e-mail confirmation). All such notices shall be addressed to the appropriate Party as follows:

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 Floor
Wichita, Kansas 67202
Attention: City Attorney

If to Team:

Yes2No, LLC.
330 W. 2nd Street 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 Boulevard
Suite 175
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.

**ARTICLE XXI
MISCELLANEOUS**

21.1 Partial Invalidity. If any Section of this Agreement or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

21.2 Obligations of City and Team. The obligations and undertakings of City and Team under or in accordance with this Agreement are and shall be the obligations solely of City and Team. Except as otherwise expressly stated herein, no recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of City or Team in his or her individual capacity on account of any obligation or undertaking of or any act or omission by City or Team under or pursuant to this Agreement.

21.3 Time of the Essence. Time is of the essence with respect to all Sections of this Agreement.

21.4 Successors and Assigns. This Agreement and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

21.5 Entire Agreement. This Agreement (including all exhibits attached hereto), together with the Ballpark Development Agreement, constitute the entire and exclusive agreement between City and Team with respect to the subject matter contained herein. 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.

21.6 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 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 Exhibits, the text of this Agreement shall control.

21.7 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 Governing Body of City. City's failure to make an Appropriation is not a Default under this Agreement, but Team, as its sole and exclusive remedies for such failure, may terminate this Agreement as a result thereof. The parties intend by this

provision to conform to the Kansas Cash Basis and Budget Laws, and all provisions of this Agreement are to be interpreted in a manner so as to adhere to those statutory requirements.

21.8 Non-disturbance. It is understood by the Parties that City has obtained or anticipates obtaining financing for the construction costs for the Ballpark and other related City expenses. City agrees that the Ballpark shall not be disturbed by any creditors, bondholders, underwriters, trustees or other third parties related to the financing during the Term, except upon the occurrence of a Team Default.

21.9 Review by PCL, MiLB and MLB. Please see Section 4.2.

21.10 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

21.11 Governing Law. **THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KANSAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS)**. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kansas located in Sedgwick County or any Federal court whose jurisdiction includes Sedgwick County, Kansas.

21.12 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 or other real property 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 of Wichita, Kansas 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 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, except as otherwise expressly provided herein, 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.

21.13 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.

21.14 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.

21.15 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.

21.16 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.

21.17 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 Management Privilege Fee and for performance of every obligation of Team under this Agreement.

21.18 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 due hereunder 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 Team Representative.

21.19 Non-Mergers. 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 the Management and Occupancy License created hereby, 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.

21.20 Audits. The books and records of each Party pertaining to any tax obligation of such Party under the terms of this Agreement shall be available for the purpose of the other Parties undertaking reasonable examinations, from time to time, upon reasonable notice; provided however, that (a) any information shall be deemed Confidential Information reviewed as part of such examination shall be reviewed in such a manner such that it remains confidential; and (b) City shall have no right to examine any financial information of Team which does not directly related to CID Tax and other applicable taxes. The Parties' respective rights to examine such books and records shall survive termination of this Agreement for a period of one (1) year past the Agreement Expiration Date.

21.21 Survival of Existing Claims. Termination of this Agreement shall not alter any existing claim of any Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect to such existing claims shall survive termination.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY OF WICHITA, KANSAS

YES2NO, LLC

By: _____
Jeff Longwell, Mayor
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM:

PACIFIC COAST LEAGUE APPROVAL

Jennifer Magaña, City Attorney

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A

TO

BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

LEGAL DESCRIPTION

EXHIBIT B

TO

BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

BALLPARK STANDARDS

EXHIBIT C

TO

BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

GAMBLING GUIDELINES

EXHIBIT D

TO

BALLPARK FACILITY USE AND MANAGEMENT AGREEMENT

CONTINGENCY TRAVEL AGREEMENT