

STADIUM LEASE

This Stadium Lease (“Agreement”) is made and entered into this ___ day of _____, 2024 (“Effective Date”), by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (“EDA”), a political subdivision of the Commonwealth of Virginia (“EDA”), and **NAVIGATORS BASEBALL, LP** (“Tenant”), a limited partnership organized and existing under the laws of the State of Delaware (EDA and Tenant are sometimes referred to herein individually as a “Party” and collectively as the “Parties”);

WITNESSETH:

WHEREAS, EDA intends to develop a multi-purpose sports and entertainment venue (the “Stadium”) on approximately 10.37 acres of land located at 2929 N. Arthur Ashe Boulevard in Richmond, Virginia, as generally depicted in the diagram attached as Exhibit A-1 and more particularly described in the legal description attached as Exhibit A-2 (the “Land”). EDA has engaged Tenant (or its Affiliate) to design and construct the Stadium pursuant to the Stadium Development Agreement (defined herein) (in such capacity, the “Developer”). The Stadium’s development is part of the first phase of a larger economic development project by City identified as the “Diamond District”, encompassing approximately 67 acres surrounding and including the Land (collectively, the “Diamond District”).

WHEREAS, Tenant owns and operates a minor league professional baseball team known currently as the *Richmond Flying Squirrels* (as defined further herein, the “Team”). Tenant desires to lease the Stadium as its home venue for Tenant’s minor league professional baseball games and to use the Stadium for the other purposes described herein.

WHEREAS, EDA desires for Tenant to lease and use the Stadium as its home venue and to use the Stadium for the other purposes described herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, Tenant and EDA agree as follows.

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. In addition to terms defined elsewhere in this Agreement, the following terms, for the purposes of this Agreement, shall have the meanings set forth below:

- (a) “Abandonment of Premises” means that the Premises become vacant or deserted for a continuous period of ninety (90) days, except by reason of Force Majeure, condemnation, casualty, Unacceptable Condition or EDA Default.
- (b) “Act of Bankruptcy” means the commencement of a bankruptcy or similar proceeding by or against EDA or Tenant, including, but not limited to, the following: the making of a general assignment for the benefit of creditors, the commencing of a voluntary or involuntary case under the Federal Bankruptcy Code or the filing of a petition thereunder, petitioning or applying to any tribunal for the appointment of, or the appointment of, a receiver, or any trustee for a substantial part of the assets of such person, commencing any proceeding under any bankruptcy, reorganization, dissolution or liquidation law or statute of any

jurisdiction, whether now or hereafter in effect; provided, however, that with respect to the filing of an involuntary petition in bankruptcy or other involuntary commencement of a bankruptcy or similar proceeding, such petition or proceeding shall fail to be dismissed within ninety (90) days of its filing or commencement.

- (c) “Affiliate” means a Person who directly or indirectly controls, is controlled by or under common control with, Tenant. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.
- (d) “Agreement” shall have the meaning ascribed to it in the Preamble.
- (e) “Annual Rent” shall mean the sum of the Base Rent and the Supplemental Rent for a given Lease Year, as further set forth in Section 4.3.
- (f) “Authorized Representatives” means such officers, employees or other representatives of EDA and Tenant, respectively, authorized by such party to act on its behalf under Article XIV of this Agreement as certified to the other in writing. The Chair of EDA or a designee thereof shall be EDA’s Authorized Representative. The Chair of EDA or a designee thereof will be the primary officer for EDA responsible for administering this Agreement for EDA.
- (g) “Base Rent” shall have the meaning ascribed to it in Section 4.3.
- (h) “Bonds” means any bonds issued by the EDA, the CDA or City to finance the costs of developing the Stadium.
- (i) “Business Day” means any day which is not a Sunday, a Saturday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.
- (j) “Capital Improvements” means all 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 any facility, structure, or other component of the Stadium in a manner that extends the useful life thereof, is performed to ensure that the Stadium remains safe to players and spectators and can continue to be operated without significant disruption, or is performed to maintain the Stadium as an attractive and first class facility comparable to the Comparable Facilities; provided, however, that the term “Capital Improvements” shall not include (i) any Operational Maintenance, (ii) any casualty repair work pursuant to Section 12.1, (iii) any condemnation repair work pursuant to Section 12.2, (iv) the portion of any contract for the performance of any work described in the foregoing clauses (i), (ii) or (iii), (v) Tenant’s Remedial Work or (vi) maintenance or repairs on any property, including Removables, owned by Tenant.

- (k) “Capital Improvements Account” shall mean the account held by EDA for Capital Improvements and Emergency Repairs on the Premises and funded and disbursed pursuant to Section 7.3.
- (l) “Capital Improvements Plan” shall have the meaning ascribed to it in Section 7.2.2.
- (m) “CDA” means the Diamond District Community Development Authority which was formed by the City to provide funding support for the design, construction, equipping, operation and maintenance of improvements supporting the Diamond District redevelopment project.
- (n) “City” means the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia.
- (o) “Commencement Date” means the date on which Completion occurs.
- (p) “Commissioner” means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.
- (q) “Comparable Facilities” means Double-A and Triple-A minor league baseball stadiums constructed in the eight (8) years prior to the Effective Date of similar design and quality to Stadium; *provided, however*, that in determining compliance with any “Comparable Facilities” standard or requirement set forth in this Agreement, such stadiums shall be looked at together and no one stadium nor any individual system or component or manner of operation or service of any such stadium shall be considered individually.
- (r) “Completion” shall have the meaning set forth in Section 1.3 of the Stadium Development Agreement.
- (s) “Consumer Purchase Surcharge” means a 0.25% surcharge to be imposed by the CDA on purchases within the CDA district.
- (t) “Default Rate” means the lesser of (i) the Prime Rate plus three percent (3%) and (ii) the maximum per annum rate of interest permitted to be charged either party by applicable Governmental Rule.
- (u) “Developer” shall have the meaning ascribed to it in the Preamble.
- (v) “Diamond District” shall have the meaning ascribed to it in the Recitals.
- (w) “EDA” shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (x) “EDA/City Event(s)” shall have the meaning ascribed to it in Section 7.16.
- (y) “EDA Default” shall have the meaning ascribed to it in Section 11.1.
- (z) “EDA’s Remedial Work” shall have the meaning ascribed to it in Section 7.23.

- (aa) “Effective Date” shall have the meaning given it in the Preamble of this Agreement.
- (bb) “Emergency Repair” means any repair to the Stadium and related infrastructure that is necessary to address a condition that: (i) does or could reasonably be expected to jeopardize the health, safety and welfare of attendees of events at the Stadium, (ii) does or could reasonably be expected to render the critical infrastructure or major systems of the Stadium inoperable, or (iii) materially impairs the fundamental use for which the Stadium was intended.
- (cc) “Environmental Law” means any Governmental Rule applicable to the Land and Stadium regulating or imposing liability or standards of conduct concerning or relating to the regulation or use of Hazardous Substances or protection of human health or the environment relating to Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1251 *et seq.*, and the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.
- (dd) “Event of Default” shall have the meaning ascribed to it in Article XI.
- (ee) “Final Notice” shall have the meaning ascribed to it in Section 11.5.
- (ff) “Force Majeure” means any act of nature, fire, explosion or any named wind storm, flooding, earthquake or other natural disaster, or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; requisition, laws or orders of governmental or quasi-governmental bodies or of civil, military or naval authority; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by a Party or its respective affiliates and representatives, in each case that is not due to the fault or negligence or willful misconduct of, as applicable, such Party or its respective affiliates, representatives or contractors; *provided, however*, that Force Majeure does not include any violation of applicable Governmental Rule by any of the relevant parties.
- (gg) “GAAP” means the generally accepted accounting principles established by the Governmental Accounting Standards Board or any successor or replacement accounting standards applicable to the EDA.
- (hh) “Governmental Authority” means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but shall not include EDA.
- (ii) “Governmental Rule” means (1) any statute, law, treaty, rule, code, ordinance, regulation, permit, authorization, interpretation, certificate, requirement or order of any Governmental Authority, (2) any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, or (3) any consent or approval, regulatory or otherwise, required by any applicable Governmental Authority.

- (jj) “Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Governmental Rules or which is classified as hazardous or toxic under Governmental Rules.
- (kk) “Hazardous Waste” means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Governmental Rule.
- (ll) “Land” shall have the meaning ascribed to it in the Preamble, and shall also include such additional land on such additional terms and conditions as the Parties may agree in the future.
- (mm) “Lease Year” means each calendar year during the Term, except that the first Lease Year shall begin on the Commencement Date and end on the last day of such calendar year.
- (nn) “Major League Baseball” or “MLB” means, depending on the context, any or all of (a) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof and/or (b) the Major League Clubs acting collectively.
- (oo) “Major League Baseball Club” or “Major League Club” means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.
- (pp) “Major League Constitution” means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.
- (qq) “MLB PDL” means, depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.
- (rr) “MLB PDL Entity” means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.
- (ss) “Mortgage” shall have the meaning ascribed to it in Section 10.5.
- (tt) “Naming Rights” shall have the meaning ascribed to it in Section 7.10.
- (uu) “Non-Relocation Default” shall have the meaning ascribed thereto in Section 4.11.1

- (vv) “Non-Relocation Period” shall mean the period of time that begins on the Commencement Date and extends through the end of the tenth (10th) MLB PDL playing season thereafter, concomitant with the period of the Term during which Tenant is paying a higher amount of Annual Rent to offset upfront Stadium development costs.
- (ww) “Operational Maintenance” means all maintenance and repair necessary to, at, or upon the Premises that would be operating expenses in accordance with GAAP including (i) preventative or routine maintenance that is stipulated in the operating manuals for the Premises; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) routine maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) normal cleaning prior to, during and following, and necessary as a direct result of events at the Stadium; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use. Operational Maintenance shall not include Capital Improvements.
- (xx) “PDL Approval” means, any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.
- (yy) “PDL Club” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.
- (zz) “PDL Governance Agreement” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.
- (aaa) “PDL Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.
- (bbb) “PDL License Agreement” means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the Richmond Flying Squirrels PDL License Agreement.
- (ccc) “PDL Rules and Regulations” means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically related to or generally applicable to the Professional

Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

- (ddd) “Permitted Liens” shall mean liens for (i) nondelinquent impositions, (ii) liens caused by any actions of City, EDA or Developer or created by or on behalf of City, EDA or Developer during the Term, (iii) liens for taxes not yet due and payable or that are being contested in good faith by appropriate proceeding, (iv) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due and (v) utility and other easements that do not unreasonably interfere with the use of the Premises.
- (eee) “Person” means any association, individual, corporation, governmental entity, partnership, joint venture, business association, estate or any other organization or entity.
- (fff) “Premises” means the Land and the Stadium.
- (ggg) “Prime Rate” means the per annum rate of interest from time to time published by the *Wall Street Journal* as the “prime rate”.
- (hhh) “Priority Dates for EDA/City Event(s)” shall have the meaning ascribed to it in Section 7.16.
- (iii) “Professional Development League System” means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball Clubs.
- (jjj) “Removables” shall have the meaning ascribed thereto in Section 5.4.
- (kkk) “Richmond Flying Squirrels PDL License Agreement” means that certain player development license agreement entered into between Navigators Baseball LP and MLB PDL pursuant to which Tenant has been granted the right to have Team participate in the Professional Development League System.
- (lll) “Stadium” shall have the meaning ascribed to it in the Recitals.
- (mmm) “Stadium Development Agreement” means the Stadium Development Agreement dated _____ between EDA and the Developer providing for development of the Stadium.
- (nnn) “State” means the Commonwealth of Virginia.
- (ooo) “Supplemental Rent” shall have the meaning ascribed to it in Section 4.3.2.

- (ppp) “Team” means the minor league professional baseball club owned and operated by Tenant, known as of the Effective Date as the “*Richmond Flying Squirrels*,” and which is a party to a PDL License Agreement.
- (qqq) “Team Game(s)” shall mean all home Team games at Stadium, including, without limitation, preseason games, exhibition games, regular season games, and postseason games.
- (rrr) “Tenant” shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (sss) “Tenant Default” shall have the meaning ascribed to it in Section 11.3.
- (ttt) “Tenant Event(s)” shall mean any event that is conducted or sponsored, organized or scheduled by Tenant, its licensee or designee, but not including Team Games, VCU Games, or EDA/City Events.
- (uuu) “Tenant’s Remedial Work” shall have the meaning ascribed to it in Section 7.22.
- (vvv) “Term” shall have the meaning ascribed thereto in Section 4.2.
- (www) “Unacceptable Condition” shall mean the existence of any one of the following conditions but only to the extent the same is not the result of the failure of Tenant to perform its obligations as required under this Agreement:
- (i) The use or occupancy of the Stadium for MLB PDL games is not possible because the Stadium is in a condition such that, pursuant to the PDL Rules and Regulations, the Tenant is prohibited from playing MLB PDL games;
 - (ii) The use or occupancy of Stadium for baseball games is not permitted under applicable Governmental Rule or is restricted in any material respect under applicable Governmental Rule, including, but not limited to, denial of access;
 - (iii) The use or occupancy of twenty five percent (25%) or more of any of the public seating areas, or other public areas, collectively, within the Stadium is materially restricted by EDA or are unusable (and not replaced by suitable temporary accommodations); or
 - (iv) The use or occupancy of twenty five percent (25%) or more of the food and beverage concession areas within the Stadium is materially restricted by EDA or unusable during the MLB PDL playing season.
- (xxx) “VCU” shall mean Virginia Commonwealth University.
- (yyy) “VCU Games” shall mean all home NCAA Division I (or equivalent/successor thereof) regularly-scheduled baseball games in which VCU’s baseball team is a participant.
- (zzz) “VCU Lease” shall have the meaning ascribed to it in Section 4.1.3.

(aaaa) “VCU Use Agreement” shall have the meaning ascribed to it in Section 4.1.3.

ARTICLE II REPRESENTATIONS AND WARRANTIES

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

- (a) EDA is a political subdivision of the Commonwealth of Virginia, existing and in good standing under the laws of the State and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by EDA of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of EDA.
- (b) Each of the agreements related to the subject matter of this Agreement to which EDA is a party, including this Agreement, has been duly executed and delivered by duly authorized representatives of EDA, and constitutes a valid and binding obligation of EDA, enforceable against EDA in accordance with its terms.
- (c) There is no litigation now pending or, to EDA’s knowledge, threatened challenging the powers of EDA with respect to this Agreement or that is expected to have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to EDA, which violation would materially and adversely affect the ability of EDA to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (ii) conflict with or would result in the breach of, or constitute a default under, this Agreement or the transactions or documents contemplated hereby or thereby or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which EDA is a party or by which EDA or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of EDA under the term of any instrument or agreement which conflict, breach, default or encumbrance would materially and adversely affect the ability of EDA to perform its obligations under this Agreement or any of the transactions or documents contemplated hereby or thereby. No consent, approval, authorization or order of any Governmental Authority or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by EDA of this Agreement or the transactions or documents contemplated hereby or thereby, or compliance with the terms and provisions hereof or thereof, except such as have been obtained and are in full force and effect.

- (e) To the best of EDA's knowledge, no event has occurred, and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default, breach, or default with respect to or on the part of EDA under this Agreement, or that could materially adversely affect the ability of EDA to perform its obligations hereunder.
- (f) There are no zoning, title or other recorded restrictions which in any way prohibit or limit the use of the Premises for the uses permitted hereunder, and such uses are permitted at the Premises under applicable zoning regulations.
- (g) EDA is not aware of and has not received notice of any newly enacted, pending, proposed or threatened Governmental Rules, condemnation proceeding or litigation which would in any way prevent or inhibit the use of the Premises by Tenant as contemplated by this Agreement.
- (h) EDA is not aware of and has not received notice that the Premises are not in compliance with Governmental Rules.

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

- (a) Tenant is a limited partnership duly organized under the laws of the State of Delaware and duly qualified to do business in the State, is in good standing in the State and has power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by Tenant of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Tenant.
- (b) Each of the agreements to which it is a party related to the subject matter of this Agreement, including this Agreement, has been duly executed and delivered by duly authorized officers of Tenant, and constitutes a valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.
- (c) There is no litigation now pending or, to Tenant's knowledge, threatened, challenging the corporate existence of Tenant and there is no pending, or to Tenant's knowledge, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of Tenant or the ability of Tenant to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to Tenant or any of its Affiliates, which violation would materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; (ii) conflict with or would result in the breach of, or constitute a default under, this Agreement, or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or

instrument to which Tenant is a party or by which Tenant or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Tenant under the term of any instrument or agreement, which conflict, breach, default or encumbrance would materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (iii) violate the charter, articles of incorporation or bylaws of Tenant. No consent, approval authorization or order of any Governmental Authority or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by Tenant of this Agreement or the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof, except (i) such as have been obtained and are in full force and effect, (ii) any permits required to be obtained with respect to the construction of the Stadium, and (iii) the approvals contemplated by Section 14.18.3.

- (e) To the best of Tenant's knowledge, no event has occurred, and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default with respect to or on the part of Tenant under this Agreement or that could materially adversely affect the ability of Tenant to perform its obligations hereunder.
- (f) Tenant is a party to the Richmond Flying Squirrels PDL License Agreement, which secures to Tenant the right to own and operate a PDL Club in the Richmond, Virginia market.

ARTICLE III PROJECT DEVELOPMENT

Section 3.1 Separate Agreements. The Parties intend that the obligations of the Parties pursuant to the Stadium Development Agreement and pursuant to this Agreement be separate legal obligations as though Developer and Tenant were unrelated parties, such that (a) the rights and obligations of Developer and the remedies related thereto under the Stadium Development Agreement will be limited to those expressly set forth in the Stadium Development Agreement and (b) the rights and obligations of Tenant and the remedies related thereto under this Agreement will be limited to those expressly set forth in this Agreement. For the avoidance of doubt, (i) Developer is responsible for developing the Stadium pursuant to the Stadium Development Agreement, (ii) Tenant shall not have any responsibility pursuant to the terms of this Agreement for the performance of the Developer's obligations under the Stadium Development Agreement, (iii) a default or breach by Developer pursuant to the Stadium Development Agreement shall not be considered a default or breach by Tenant pursuant to this Agreement and (iv) nothing herein shall be deemed to prevent EDA from exercising remedies against the Developer under the Stadium Development Agreement in connection with the performance of EDA's obligations under this Agreement.

ARTICLE IV TENANCY AND OCCUPANCY; TERM; RENT

Section 4.1 Tenancy and Occupancy.

- 4.1.1** In consideration of and pursuant to the covenants, agreements, and conditions set forth herein EDA does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby rent and lease from EDA, on and subject to the terms, conditions and provisions of this

Agreement, the Premises. On the Commencement Date, subject to the terms and conditions of this Agreement and except as may be expressly set forth otherwise in this Agreement, EDA will give and deliver to Tenant possession of the Premises and the exclusive right to manage, occupy, and operate the Premises free of all tenancies, licenses, and parties in possession of such Premises (other than those arising by, through or under Tenant). EDA shall make the Premises available to Tenant on the Commencement Date and shall ensure that the Premises are in good condition and repair.

- 4.1.2** EDA covenants that Tenant, upon keeping, observing and performing the terms, covenants and conditions of this Agreement to be kept, observed and performed by Tenant, shall and may (except as otherwise expressly provided in this Agreement) peaceably possess the Premises, on an exclusive basis, and enjoy the Premises without interruption or disturbance by or from any person.
- 4.1.3** Tenant agrees and acknowledges that EDA and VCU are negotiating to enter into a separate lease of the Stadium (the “VCU Lease”) to allow for VCU to conduct VCU Games and VCU baseball team practices at the Stadium. In the event that EDA and VCU enter into the VCU Lease, Tenant agrees to negotiate in good faith with VCU to enter into a separate operating and use agreement with VCU (the “VCU Use Agreement”) describing (i) the arrangement between VCU and Tenant to accommodate the conduct of VCU Games and VCU baseball team practices at the Stadium, (ii) the services to be provided by Tenant to VCU, and (iii) VCU’s obligation to pay Tenant fair value for such services, in each case subject to the PDL Rules and Regulations. Tenant hereby consents to the VCU Lease so long as it is subject to, and otherwise consistent with, the terms of this Agreement and the PDL Rules and Regulations and that Tenant and VCU enter into the VCU Use Agreement. EDA shall ensure that the VCU Lease is consistent with the foregoing conditions and shall provide a copy of the VCU Lease to Tenant promptly following its execution. EDA hereby consents to the VCU Use Agreement, so long as it is subject to, and otherwise consistent with, the terms of this Agreement. Tenant shall provide a copy of the VCU Use Agreement to EDA promptly following its execution.
- 4.1.4** Tenant’s rights under this Agreement shall be junior and subordinate to any existing lien, lease or other encumbrance heretofore existing relating to the Premises. Furthermore, Tenant hereby further agrees to subordinate Tenant’s rights under this Agreement (and to execute and deliver such instruments, agreements or other items of evidence necessary to evidence such subordination) to any future lien or other encumbrance that may hereafter be created or arise relating to the acquisition, development, construction, financing or refinancing of the Land and Stadium or any future improvements to the Premises, so long as such lien or other encumbrance is subject to a subordination, non-disturbance and attornment agreement from the holder of the lien or encumbrance that is reasonably acceptable to Tenant.
- 4.1.5** EDA shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Tenant, any lien, security interest, or encumbrance (including any easement other than as contemplated by Section 4.1.4) on the Premises, other than (a) such liens, security interests, and encumbrances existing as of the Effective Date (including those contemplated by Section 12.1 of the Stadium Development Agreement), (b) this Agreement and the Stadium Development Agreement, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of EDA), (d) liens caused by any act or omission of Tenant or any of its contractors, agents or Affiliates. The

immediately preceding sentence does not apply to liens created by EDA on its personal property.

Section 4.2 Term. Unless earlier terminated in accordance with the terms hereof, the term (the “Term”) of this Agreement shall commence upon the Commencement Date and shall continue for a period which shall expire upon the date that is thirty (30) days following Team’s final scheduled Team Game (including any scheduled postseason games if applicable) in the thirtieth (30th) Lease Year.

Section 4.3 Annual Rent. In partial consideration of the rights granted to Tenant as set forth in this Agreement, Tenant shall pay to EDA “Annual Rent” as follows:

- 4.3.1** Tenant shall pay a base annual rent (“Base Rent”) as follows: (i) during each of the first ten (10) Lease Years, Tenant shall pay a fixed base annual rent to EDA of One Million Dollars (\$1,000,000); and (ii) beginning with the eleventh (11th) Lease Year, such base rent shall increase to One Million Three Hundred Forty Three Thousand Nine Hundred and Sixteen Dollars (\$1,343,916), and thereafter throughout the Term, such base annual rent shall escalate by three percent (3%) over the immediately preceding Lease Year for each Lease Year thereafter.
- 4.3.2** During each of the first ten (10) Lease Years only, Tenant shall pay additional rent (“Supplemental Rent”) to EDA of Two Million Two Hundred Thousand Dollars (\$2,200,000). After the tenth (10th) Lease Year, Tenant shall no longer be required to pay Supplemental Rent.
- 4.3.3** Annual Rent shall commence on the Commencement Date. Annual Rent shall be payable in advance on a quarterly basis, with one quarter of the Annual Rent being payable on the first Business Day of February, April, July and October. In the first Lease Year, Annual Rent shall be prorated; the first quarterly payment shall be prorated on a per diem basis based on the number of days remaining in the calendar quarter in which the Commencement Date occurs, and the remaining quarterly payments shall be one quarter of Annual Rent for such Lease Year. The first quarterly Annual Rent payment shall be payable within thirty (30) days following the Commencement Date.
- 4.3.4** Annual Rent shall abate after an Unacceptable Condition has existed for a period of sixty (60) consecutive days or ninety (90) days out of any consecutive one hundred eighty (180) day period, and for as long as an Unacceptable Condition exists. Notwithstanding the foregoing, if the Stadium is being used during such period for Team Games and Tenant Events, then the amount of abatement shall be proportionate to the percentage loss of seating capacity or food and beverage concession areas that give rise to the Unacceptable Condition.
- 4.3.5** Payment of Annual Rent shall be made without deduction or setoff (except as otherwise expressly provided in this Agreement). Such Annual Rent shall be paid in the manner described herein and to the account from time to time specified by EDA in writing.
- 4.3.6** Each Lease Year’s Annual Rent shall abate in an amount equal to the annual leasehold real estate taxes applicable to Tenant’s leasehold hereunder, and which are actually paid by Tenant during the Lease Year in which such Annual Rent is due, whether pursuant to Section 58.1-3203 of the Virginia Code (1950), as amended, or otherwise. Such abatement shall be applied against the quarterly installment of Annual Rent next coming due after the real estate taxes are paid. For example, if real estate taxes are paid on January 14, the

Annual Rent payable on February 1 shall abate by the amount of real estate taxes paid on January 14.

- 4.3.7** In the event this Agreement terminates or expires, except in the case of a Tenant Default, Tenant shall be entitled to a reimbursement from EDA for any pre-paid Annual Rent, prorated to the date of such termination or expiration.

Section 4.4 Permitted Uses.

- 4.4.1** Throughout the Term, Tenant shall occupy and use the Premises for the primary purposes of conducting Team Games (including radio and television broadcasting or other transmission of same) in accordance with PDL Rules and Regulations. In addition to the foregoing, Tenant's permitted uses shall include Tenant Events, including without limitation the conduct of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, baseball games other than Team Games, other sporting events, and other similar traditional baseball functions that, among other things, will encourage economic development and tourism in Richmond; and for purposes related and incidental thereto including, without limitation, operation of concession facilities in the Stadium (during games and events and at other times), sale of food and beverages (alcoholic and non-alcoholic), conducting tours, and for any other lawful purpose that is not a prohibited use described in Section 4.8.

- 4.4.2** Tenant shall use commercially reasonable efforts to foster facility activation with the goal of reaching one hundred sixty (160) events (including events of Tenant, VCU, EDA and City) per year at the Stadium during the third (3rd) Lease Year hereunder. In the event that VCU has not entered into the VCU Lease, the goal shall be reduced by thirty. Should Tenant fail to achieve such goal by such time (other than as a result of an Unacceptable Condition or Force Majeure), then beginning in the fourth (4th) Lease Year and extended for the remainder of the Term, EDA shall have the right to increase the number of EDA/City Event(s) pursuant to Section 7.16.1 from ten (10) events per Lease Year to fifty (50) events per Lease Year in order to increase facility activation.

Section 4.5 Compliance with Laws. Tenant shall, throughout the Term, and at no expense to EDA, promptly comply or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements of duly constituted Governmental Authorities, which may be applicable from time to time to its use, operation, and occupancy of the Premises. Notwithstanding the generality of the foregoing, should compliance with any such law, ordinance, rule, regulation or requirement require Capital Improvements, such Capital Improvements shall be performed and paid for pursuant to Section 7.2.

Section 4.6 Permits. Tenant shall duly and validly obtain all material certificates, licenses and permits from all public authorities, both federal and state, required as of the Effective Date and throughout the Term to enable Tenant to carry on its business as it is now conducted and to enter into this Agreement, including the maintenance of its status as a business entity qualified to do business in Virginia.

Section 4.7 Prohibited Uses. Tenant shall not allow the Premises to be used for any of the following purposes: public nuisance (as defined by Governmental Rule of City); any use violating Governmental Rule; or use as an industrial site or waste disposal facility. EDA acknowledges that Tenant plans to utilize fireworks displays on multiple occasions throughout each Lease Year, subject to applicable permit approvals and Governmental Rule.

Section 4.8 Covenant to Play in Stadium. Subject to Force Majeure and PDL Rules and Regulations and as otherwise provided in this Agreement, Tenant hereby covenants and agrees to play all Team Games in the Stadium from and after the Commencement Date and continuing throughout the Non-Relocation Period; provided, however, that Team may play up to two home baseball games per season at neutral sites with PDL Approval and such additional Team Games as may be required by MLB PDL.

Section 4.9 Untenantability of the Stadium. Notwithstanding the provisions of Section 4.8 to the contrary, if (i) MLB prohibits the playing of MLB PDL games in the Stadium, (ii) the use or occupancy of Stadium for baseball games is not permitted by, or Tenant is denied access to the Stadium under, applicable Governmental Rule, or (iii) the use or occupancy of the Stadium is materially impaired due to a condemnation or casualty and is subject to repair pursuant to Article XII, then the Parties agree that Team may, with PDL Approval, play its Team Games at an alternate site, but only during the period of time during which the applicable condition described in clauses (i) through (iii) above is in effect. If such condition is due solely to an EDA Default, then EDA shall be responsible for all costs and expenses related to Team's relocation of its Team Games to an alternate site.

Section 4.10 Non-Relocation.

4.10.1 Without limiting or impairing the obligations of this Article IV, during the Non-Relocation Period, Tenant shall not (i) transfer, assign or surrender the Richmond Flying Squirrels PDL License Agreement in a manner that results in Team playing any of its Team Games outside of the Stadium in violation of Section 4.8 or (ii) transfer, assign or surrender the Richmond Flying Squirrels PDL License Agreement in a manner that results in Team not playing Team Games in the Stadium.

4.10.2 Tenant shall not, during the Non-Relocation Period and either directly or indirectly, apply for or seek PDL Approval for, or otherwise engage in conduct relating to, the relocation of the Team outside the boundaries of the City.

Section 4.11 Non-Relocation Defaults and Remedies.

4.11.1 Provided that EDA Default has not occurred and is not continuing and this Agreement has not otherwise been terminated, the failure of Tenant to perform or observe any of the obligations, covenants or agreements to be performed or observed by Tenant under Sections 4.8 and 4.10 above shall be a "Non-Relocation Default" by Tenant.

4.11.2 Upon the occurrence of any Non-Relocation Default, EDA shall have the option to pursue any one or more of the following remedies in its sole discretion without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

- (a) EDA may seek and obtain injunctive or declaratory relief pursuant to Section 4.11.3 hereof, including, without limitation, specific performance; or
- (b) EDA may recover liquidated damages pursuant to Section 4.11.4 hereof, but only in the event that EDA is unable to obtain specific performance or Injunctive Relief under Section 4.11.3 hereof; or
- (c) EDA may terminate this Agreement.

The remedies as set forth in this Section 4.11.2 shall be EDA's sole and exclusive remedies for a Non-Relocation Default.

4.11.3 Tenant acknowledges and agrees that:

- (a) In reliance on Tenant's commitment to cause Team to play its home Team Games in the Stadium during the Non-Relocation Period as provided by this Article IV, the EDA is financing the development and construction of the Stadium at a cost to the EDA and City in excess of One Hundred Ten Million Dollars (\$110,000,000), most of which will be funded with public debt;
- (b) But for Tenant's commitment to cause Team to play its home Team Games in the Stadium throughout the Non-Relocation Period as provided by this Agreement, the EDA would not have gone forward with development and construction of the Stadium as provided in the Stadium Development Agreement;
- (c) Having Team play its home Team Games in the Stadium throughout the Non-Relocation Period provides a unique value to the EDA in terms of generating new jobs, additional revenue sources and economic development and increased tourism for the EDA and City;
- (d) EDA would suffer immediate and irreparable harm if a Non-Relocation Default were to occur, including the material loss EDA would incur upon having a Stadium with no resident home baseball team, thus bearing all losses from operation of the Stadium that are likely to occur if a Non-Relocation Default occurred; and
- (e) Monetary damages cannot adequately compensate EDA for the damage they would incur if a Non-Relocation Default were to occur.

Therefore, EDA shall be entitled to obtain injunctive relief prohibiting action, directly or indirectly, by Tenant that causes or would reasonably be expected to cause a Non-Relocation Default or mandating action that averts or will avert such Non-Relocation Default ("Injunctive Relief"), and Tenant hereby consents to the entry of an order granting such Injunctive Relief by any court of competent jurisdiction. EDA shall further be entitled to seek declaratory relief with respect to any matter under this Article IV. Tenant acknowledges and agrees that (i) EDA may restrain or enjoin any breach by Tenant or threatened breach of any covenant, duty, or obligation of Tenant contained in this Article IV without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, and (ii) the administration of an order for Injunctive Relief would not be impractical and, in the event of any breach of any covenant, duty or obligation contained in this Article IV, the balance of hardships would weigh in favor of entry of injunctive relief; and (iii) EDA may enforce any such covenant, duty or obligation of Tenant through specific performance. The Parties hereby agree and irrevocably stipulate that (1) the rights of EDA to Injunctive Relief pursuant to this Article IV shall not constitute a "claim" pursuant to Section 101(5) of the Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Tenant, and (2) the provisions of this Article IV are not an "executory contract" as contemplated by Section 365 of the Bankruptcy Code.

4.11.4 The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to EDA and City from the presence of Team and the playing of its Team Games in the City, to the extent provided in this Agreement, are great, but that the precise value of those benefits is difficult to quantify. Additionally, the Parties recognize and acknowledge that

if Team ceases playing its home Team Games in the Stadium, and Tenant ceases providing the management and operational services provided in this Agreement, the EDA would be required to operate the Stadium and bear all losses that are likely to occur as a result of Team’s failure to play its home Team Games in the Stadium. Further, the Parties agree that the effects of such failures on the success of the Diamond District would be exacerbated during the first ten (10) Lease Years, as the anticipated tax gains from a fully-built-out Diamond District would not be realized. EDA will incur indebtedness to finance public infrastructure within the Diamond District that is to be repaid from the Annual Rent payable pursuant to this Agreement, and the Parties agree that EDA should be able to recover sums that bear some relationship to the stranded debt that EDA will have in the event of a Non-Relocation Default. Accordingly, the magnitude of the damages that would result from the occurrence of a Non-Relocation Default would be very significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of EDA and/or City. Therefore, the Parties agree that in the event of a Non-Relocation Default including, without limitation, any breach arising pursuant to the provisions of Section 365(g) of the Bankruptcy Code or similar provision of any successor thereto, and only if EDA is unable to obtain specific performance or Injunctive Relief of Tenant’s obligations set forth in Sections 4.11.2 and 4.11.3 hereof, EDA shall be entitled to recover from Tenant and any Affiliate of Tenant engaged primarily in business activities related to the operation of Team or the Stadium the following sums, which are stipulated to be reasonable estimated damages in the event of a Non-Relocation Default occurring during the Non-Relocation Period, as reasonable liquidated damages and not as a penalty:

<u>Lease Year of Default</u>	<u>Liquidated Damages</u>
Lease Year 1	\$25,000,000
Lease Year 2	\$22,500,000
Lease Year 3	\$20,000,000
Lease Year 4	\$17,500,000
Lease Year 5	\$15,000,000
Lease Year 6	\$12,500,000
Lease Year 7	\$10,000,000
Lease Year 8	\$ 7,500,000
Lease Year 9	\$ 5,000,000
Lease Year 10	\$ 2,500,000

The Parties hereby acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort in quantifying the amount of damages due to a Non-Relocation Default despite the difficulty in making such determination. Accordingly, in the event EDA collects the above referenced liquidated damages, such damages shall be the sole and exclusive remedy of EDA, and EDA hereby waives any right to collect additional monetary damages including lost or prospective profits, or for any other special, indirect, incidental, consequential or punitive damages arising directly or indirectly, from a Non-Relocation Default or any termination of this Agreement.

ARTICLE V
BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS

Section 5.1 Beginning Condition. On the Commencement Date, EDA shall turn over the Premises to Tenant for Tenant's use, and for Tenant to begin its obligations hereunder, in a condition consistent with the achievement of Completion.

Section 5.2 Alterations. Any alterations, additions, or construction of new improvements on or in the Premises subsequent to the Commencement Date must be (a) consistent with the permitted uses of the Premises as set forth in Section 4.4; (b) consistent with the then appearance of the Premises and the uses being made thereof; and (c) consistent with the facility standards required by PDL Rules and Regulations as then in effect. Tenant is not required to obtain EDA's prior approval for (x) non-structural remodeling, non-structural alterations, or installation or removal of Removables; (y) temporary improvements or alterations to accommodate particular events or (z) Operational Maintenance. Tenant may not construct new improvements upon the Land or make any structural alterations or additions to the Stadium without the consent of EDA. For work requiring EDA's approval, Tenant shall submit the plans, specifications and construction drawings to EDA with Tenant's request for approval.

Section 5.3 Compliance with Regulatory Requirements. Tenant agrees that all approved additions and alterations on or to the Premises constructed by it shall be constructed in accordance with all applicable ordinances and statutes of Governmental Authority, including without limitation City building codes. Tenant shall, at its sole cost and expense, procure or cause to be procured all necessary building permits, other permits, licenses and other authorizations required for the lawful and proper addition to or alteration, use, and occupation of the Premises other than permits, licenses or other authorizations necessary solely with respect to the use of the Premises for any specific EDA/City Event(s) or any VCU Games.

Section 5.4 Ownership of Improvements; Lien Waiver.

5.4.1 Title to and ownership of the Premises during the Term of this Agreement shall be and remain in EDA, except for removable fixtures, furniture, equipment, furnishings and other personal property installed in or affixed to the Premises by or on behalf of Tenant and owned by Tenant (collectively, the "Removables"), all of which shall remain Tenant's sole property. In no event (including a default under this Agreement) shall EDA have any lien or other security interest in any of the Removables, and EDA hereby expressly waives and releases any lien or other security interest however created or arising. EDA shall, at Tenant's request and cost, execute a reasonable lien waiver and access agreement, the form of which shall be subject to EDA's reasonable approval, requested by a lender providing financing for any of the Removables. For the avoidance of doubt, notwithstanding the definition of Removables in this section, any removable fixtures, furniture, equipment, furnishings and items of personal property which are purchased with funding provided by EDA for development of the Stadium pursuant to the Stadium Development Agreement, or out of the Capital Improvements Account, shall be the property of EDA. For the avoidance of doubt, any removable fixtures, furniture, equipment, furnishings and items of personal property purchased on or after the Commencement Date other than from funds out of the Capital Improvements Account are (or will be deemed to be) Removables.

5.4.2 At the expiration or other termination of the Agreement, all alterations, additions, and improvements to the Premises (except for the Removables) must remain upon and be surrendered with the Premises.

Section 5.5 EDA's Right of Inspection. Prior to EDA giving or withholding its consent to any proposed construction, alteration, addition to the Premises requiring such consent as set forth in Section 5.2, EDA may review Tenant's conceptual design drawings and construction drawings for such construction work, and Tenant must demonstrate to EDA's reasonable satisfaction that any such proposed construction, alteration, or addition meets or exceeds the applicable facility standards required by PDL Rules and Regulations. Upon completion of any new construction or alteration or addition to existing improvements for which EDA's approval is needed under the terms of this Agreement, Tenant shall obtain a written certification addressed to EDA from a licensed architect or engineer reasonably acceptable to EDA stating that the construction has been completed substantially in accordance with the construction drawings and that, to the best of each professional's knowledge, the completed improvements are in compliance with all applicable ordinances, statutes, and the requirements of all Governmental Authority. Additionally, EDA may, at its sole discretion, cost and expense, have the Premises inspected by a qualified inspector in order to determine whether or not (i) Tenant is maintaining the Premises in accordance with PDL Rules and Regulations, or (ii) Tenant is maintaining the Premises at a level generally consistent with the Comparable Facilities, as required in Section 6.1 herein.

ARTICLE VI OPERATION AND MANAGEMENT; REPORTING

Section 6.1 Operation and Management. Subject to (i) Tenant's obligation to host EDA/City Event(s) and (ii) VCU's rights to schedule VCU Games and practices in accordance with the VCU Lease and VCU Use Agreement, each to the extent set forth in Section 7.16, Tenant shall be the exclusive tenant and manager of the Stadium and shall have the exclusive right and obligation to contract for its license or use during the Term. Tenant shall take all commercially reasonable actions necessary for the operation and maintenance of the Stadium as a minor league baseball stadium and sports and entertainment facility as required by this Agreement. Tenant shall operate and manage the Stadium in a manner generally consistent with the operation and management of the Comparable Facilities. Tenant may license or permit use and occupancy of the Premises by vendors, concessionaires and others. Without limiting the generality of the foregoing, Tenant is authorized to and shall:

- 6.1.1** perform or cause to be performed all Operational Maintenance to maintain the Stadium in compliance with all requirements necessary for the conduct of all Team Games, including without limitation PDL Rules and Regulations;
- 6.1.2** prepare, coordinate, implement, revise as necessary and administer a preventative maintenance plan and program for the Stadium, its machinery and equipment, and provide a maintenance log for each prior Lease Year;
- 6.1.3** from and after the Commencement Date, arrange for and provide all utility and other services for the Stadium and pay or cause to be paid when due all charges for water, stormwater, solid waste, sewer, gas, light, heat, telephone, electricity, broadband/internet, and other utilities and services rendered to or used on or about the Stadium;
- 6.1.4** maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Stadium;
- 6.1.5** contract for, or otherwise provide and operate, food and beverage concession and catering services at the Stadium in a manner generally consistent with food and beverage concession and catering operations at Comparable Facilities; and

- 6.1.6** provide supervision and security in a manner that is usual and customary for Comparable Facilities and shall strictly enforce all rules, regulations, and safety procedures that are required by Governmental Rule or otherwise usual and customary for Comparable Facilities, and that are required in general for the safe and orderly use of the Premises. At all times the Premises shall be under the supervision and security of Tenant.

Section 6.2 Reporting. Tenant acknowledges the need of EDA to have the information regarding the performance of Stadium as a driver for economic activity in the Diamond District area. Accordingly, Tenant shall perform and observe the following reporting requirements with respect to its operation of the Stadium.

- 6.2.1** Tenant shall provide EDA with the following reports for each Lease Year, to be delivered by January 31 of the following Lease Year:
- (a) user summary and use activity report;
 - (b) expenses charged by Tenant, and receipts collected by Tenant, for all EDA/City Event(s);
 - (c) all expenditures by Tenant with respect to Tenant's Operational Maintenance obligations (including third party expenditures and Tenant's estimated allocation of internal expenses attributable to Operational Maintenance); and
 - (d) a reasonably detailed accounting of attendance at Team Games and an estimate of attendance at VCU Games and ticketed EDA/City Event(s).

Records and reports required to be maintained or submitted to EDA by Tenant pursuant to this section shall be maintained in accordance with State's rules and policies for its political subdivisions regarding records retention and disposition.

- 6.2.2** For so long as any Bonds remain outstanding, Tenant shall make the following monthly reports to the City's Director of Finance, with a copy to the EDA, setting forth:
- (a) the sales taxes remitted to the Commonwealth of Virginia attributable to the activities at the Stadium;
 - (b) the amount of admission taxes remitted to the City attributable to each event at the Stadium;
 - (c) the amount of meals taxes remitted to the City attributable to the activities at the Stadium; and
 - (d) the amounts generated from the collection of the Consumer Purchase Surcharge on activities at the Stadium.

Such reports shall be submitted on a monthly basis within ten (10) Business Days after such amounts are remitted to the applicable authority. A copy of the applicable filing, correspondence or evidence of electronic payment shall be deemed sufficient reports as long as the applicable tax, date of payment and amount are identified therein.

- 6.2.3 For so long as any Bonds remain outstanding, Tenant shall make the following annual report to the City's Director of Finance, with a copy to the EDA, setting forth the amount of business, professional, and occupational license taxes paid to the City attributable to Tenant's activities at the Stadium. Such report shall be submitted within ten (10) Business Days after such amounts are remitted to the City. A copy of the applicable filing, correspondence or evidence of electronic payment shall be deemed a sufficient report as long as the applicable tax, date of payment and amount are identified therein.
- 6.2.4 Tenant shall also promptly provide such additional information as the EDA may reasonably request to satisfy any tax, disclosure or other covenants that the EDA may make in connection with the issuance of the Bonds.

Section 6.3 Records. For a period of five (5) years after the end of the Lease Year to which they pertain, Tenant shall keep and maintain the following books, records and documents at Tenant's office at the Premises and, upon expiration or termination of this Agreement, Tenant shall provide EDA with a complete and accurate copy of such books and records for immediate access and use by EDA:

- 6.3.1 Insurance policies and insurance certificates, which may be maintained by Tenant in electronic form;
- 6.3.2 maintenance and repair files;
- 6.3.3 operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;
- 6.3.4 service contracts, including cleaning, maintenance, landscaping, trash removal, etc.; and
- 6.3.5 permits and licenses.

ARTICLE VII MAINTENANCE AND REPAIRS; ADDITIONAL COVENANTS OF EDA AND TEAM

Section 7.1 Maintenance of the Premises. Tenant shall, at its sole cost and expense, perform all Operational Maintenance in compliance with all applicable Governmental Rules of any Governmental Authority applicable to the Premises from time to time, and generally consistent with the operation and maintenance practices of the Comparable Facilities, subject to ordinary wear and tear, Force Majeure events and condemnation or casualty. "Operational Maintenance" is intended to include all work performed and expenses incurred for routine, regular, and/or ordinary course maintenance and repairs reasonably necessary for the cleaning, upkeep and/or operation of any equipment, facility, structure or other component of the Premises to the extent such maintenance and repairs are not Capital Improvements. Subject to EDA's obligations as set forth in Section 7.2 below, EDA has no obligation to perform or incur expenses related to Operational Maintenance.

Section 7.2 Capital Improvements and Emergency Repairs.

- 7.2.1 Upon Tenant's reasonable determination that an Emergency Repair is necessary, Tenant shall advise EDA of such Emergency Repair and the estimated costs thereof, whether or not anticipated in the Capital Improvements Plan pursuant to Section 7.2.2. EDA shall be responsible for the costs of such Emergency Repair, regardless of whether funds are available in the Capital Improvements Account. EDA may, but is not required to, use funds in the Capital Improvements Account to pay for such Emergency Repairs and may use

funds from other sources for Emergency Repairs. If EDA fails to fully fund the costs of any Emergency Repair, Tenant shall have the option to (x) fund such amount itself or (y) terminate this Agreement. If Tenant funds any such amount or shortfall for an Emergency Repair, Tenant shall be entitled to reimbursement of such amount plus interest as provided in Section 7.2.4; *provided, however*, that Tenant shall not be entitled to any payment of interest if EDA reimburses Tenant for such amount or shortfall within sixty (60) days of Tenant's notice to EDA that Tenant has incurred such amount or shortfall.

7.2.2 Commencing in the Second Lease Year, and then annually thereafter, on or before September 30th of each Lease Year, Tenant shall present to EDA a list of proposed Capital Improvements, together with a proposed schedule for and estimated budget for such Capital Improvements to create and maintain a rolling five (5) year plan for Capital Improvements (the "Capital Improvements Plan"). EDA shall review the proposed Capital Improvements, budget and schedule to be added to the Capital Improvements Plan and, not later than thirty (30) days after receipt of the list of proposed Capital Improvements, shall either approve or disapprove the addition of such Capital Improvements to the Capital Improvements Plan, and in the event of a disapproval, shall set forth with reasonable specificity any objections to the Capital Improvements, or the budget, or schedule therefor. EDA shall not unreasonably withhold, condition or delay its approval of any Capital Improvements if such Capital Improvements are reasonable and there are sufficient funds available, in each case as determined by EDA in its reasonable discretion, except as otherwise set forth expressly below.

- (a) For purposes of EDA's determination of whether any particular Capital Improvement is reasonable, the following factors (among others) shall be taken into consideration by EDA: (i) the amenities and upgrades at Comparable Facilities, (ii) the Capital Improvements shall be generally consistent in exterior appearance with the architectural theme of the Stadium and the Diamond District, and (iii) when completed, the Capital Improvements will not have reduced the overall utility of the Stadium or weakened or impaired the structural integrity of the Stadium.
- (b) Exceptions to EDA's reasonable approval as described in Section 7.2.2(a) herein shall include the following: (i) with respect to any proposed new structures or any improvements that require material structural alterations to the Stadium, EDA's approval shall be at its sole discretion, (ii) EDA shall not be required to make any Capital Improvements necessitated by the failure of the Stadium to comply with PDL Rules and Regulations as of the Commencement Date (other than Emergency Repairs as provided in Section 7.2.1) or as a result of changes in PDL Rules and Regulations after the Commencement Date to the extent EDA determines that such Capital Improvement is unreasonable, (iii) it shall be deemed reasonable for EDA to refuse to approve a Capital Improvement based on a moral objection consistent with community standards, (iv) replacing/refurbishing worn out items such as carpets and other items that are no longer in a condition consistent with Comparable Facilities due to ordinary wear and tear or functional obsolescence shall be deemed reasonable, (v) Capital Improvements that were part of the initial Stadium development plan but were removed solely as a result of value engineering as contemplated by Section 4.6(e)(iv)(D) of the Stadium Development Agreement shall be deemed reasonable and (vi) Capital Improvements that are necessary to comply with any Governmental Rule shall be deemed reasonable.

- (c) The determination regarding sufficiency of funds available shall be made by EDA in its reasonable discretion taking into consideration the funds available in the Capital Improvements Account and the budgets (including budgeted future contributions) and scheduling for all such Capital Improvements and Emergency Repairs that are in the Capital Improvements Plan and such additional Capital Improvements and Emergency Repairs that are reasonably expected and not in the Capital Improvements Plan.

Once a Capital Improvement is approved as a part of the Capital Improvement Plan, it shall not be subject to additional approval rights at a later date. If a proposed Capital Improvement is determined to be reasonable or otherwise approved by EDA, but EDA determines that the funds in the Capital Improvements Account are not sufficient to complete such Capital Improvement at the time such Capital Improvement is requested by Tenant, then EDA shall have the option to (x) agree to fund such deficiency from other sources or (y) give notice to Tenant that it will not fund the deficiency relating to such Capital Improvement. If EDA gives notice to Tenant that it will not fund the deficiency attributable to such Capital Improvement, Tenant shall have the option to fund such deficiency itself, or defer the Capital Improvement. If Tenant funds such deficiency, Tenant shall be entitled to reimbursement of such amount plus interest as provided in Section 7.2.4. Tenant shall not be entitled to any payment of interest if EDA reimburses Tenant for such amount or shortfall within sixty (60) days of Tenant's notice to EDA that Tenant has incurred such amount or shortfall. If Tenant proposes a Capital Improvement that EDA has determined to be unreasonable and disapproved pursuant to this Section 7.2.2, and Tenant funds such Capital Improvement, Tenant shall not be entitled to reimbursement of such amount unless EDA has approved such reimbursement in advance and in writing or the Capital Improvement is subsequently determined to be reasonable pursuant to this Section 7.2.2.

7.2.3 No more than once per Lease Year, Tenant shall have the right to present to EDA a revised Capital Improvements Plan on a date other than the date scheduled above in Section 7.2.2, and the parties shall go through the same review and approval process described above with respect to revising or altering the Capital Improvements Plan.

7.2.4 Except as otherwise set forth in this Section 7.2, EDA shall reimburse Tenant for amounts funded by Tenant pursuant to this Section 7.2 with interest at a rate per annum equal to the greater of (i) the Secured Overnight Financing Rate (SOFR) plus 335 basis points (3.35%) or (ii) ten percent (10%), as soon as sufficient funds are available in the Capital Improvements Account (as provided in Section 7.2.2); provided, however, that in no case shall such interest rate exceed fifteen percent (15%). If such funds have not been fully reimbursed to Tenant with any applicable interest on or before the date that is twelve (12) months after Tenant's notice to EDA that Tenant has incurred costs for Capital Improvements, then Tenant shall be entitled to set off such amount against annual Base Rent that next becomes due.

7.2.5 Tenant or Tenant's vendors shall have the right, but not the obligation, to perform any or all Capital Improvements and Emergency Repairs approved pursuant to this Section 7.2, provided that prior to commencing such work Tenant uses reasonable efforts to obtain at least three (3) bids from unaffiliated third parties for completion of such work and submits such bids, along with Tenant's recommendation of which vendor to select, to EDA for approval, which vendor approval shall not to be unreasonably withheld or delayed. Such selection shall also be subject to Section 7.8 of this Agreement. Tenant shall be reimbursed from the Capital Improvements Account or by EDA as provided in Sections 7.2.1 and 7.2.2 for the costs of any such work. If, in Tenant's reasonable discretion, it is necessary to

immediately perform any Emergency Repair to protect the safety of fans, players and/or operate the Premises without interruption, Tenant may perform such repairs without the approvals required hereunder. Notwithstanding Tenant's rights pursuant to this Section 7.2.5, Tenant shall have no obligation to make any Capital Improvements. If Tenant elects not to perform the Capital Improvements approved pursuant to this Section 7.2, EDA and EDA's vendors shall perform the Capital Improvements approved pursuant to this Section 7.2 on the schedule provided for in the Capital Improvement Plan.

- 7.2.6** If EDA, as part of the process described in Section 7.2.2, determines that any Capital Improvement necessitated by (i) the failure of the Stadium to comply with PDL Rules and Regulations as of the Commencement Date, or (ii) as a result of changes in PDL Rules and Regulations after the Commencement Date is unreasonable, EDA shall send notice of such determination to Tenant. Upon receipt of such notice, Tenant shall have the right to terminate this Agreement in the manner set forth in Section 11.5.1 herein. Tenant must initiate the action to terminate this Agreement no later than sixty (60) days from the later of (A) the end of the PDL season during which such Capital Improvement is requested and (B) the date notice is received from EDA. If Tenant has not initiated such termination process within the sixty (60)-day period, then Tenant's right to terminate with respect to such specific Capital Improvement request shall be waived. Such waiver shall not apply to requests for Capital Improvements relating to any subsequent changes in the PDL Rules and Regulations, in which case Tenant may submit additional requests that include the Capital Improvements required to address the subsequent changes and the Capital Improvements previously requested and rejected by EDA, which requests will be subject to this Section 7.2.6 without regard to any waiver by Tenant. In addition, without giving regard to any waiver of Tenant's rights under this Section 7.2.6, Tenant may also issue a new request as part of the annual process described in Section 7.2.2 if MLB PDL subsequently gives notice to Tenant of significant additional consequences arising from the failure to make the Capital Improvements previously rejected by EDA, including notice of termination of Tenant's PDL License Agreement, restrictions on the ability of the Team to play Team Games at the Stadium or material fines or penalties. Nothing in this Section 7.2.6 shall be deemed a waiver of any rights EDA may have against Developer pursuant to the Stadium Development Agreement.

Section 7.3 Capital Improvements Account. On or before the Commencement Date, EDA shall establish the Capital Improvements Account, which shall be an interest-bearing account and shall be used solely for the funding of the Capital Improvements and Emergency Repairs as provided herein and paid as provided in Section 7.2. All interest earned on the Capital Improvements Account shall become a part of the Capital Improvements Account. Beginning on the date that is one (1) year after the Commencement Date (the "Deposit Date"), and continuing on every one (1) year anniversary of the Deposit Date for the first ten (10) Lease Years of the Term, EDA shall contribute or arrange for the deposit of not less than Five Hundred Thousand Dollars (\$500,000.00) to the Capital Improvements Account. EDA shall use good faith efforts (which shall include regional cooperation and solicitation of contributions from neighboring counties) to increase the amount of such deposit following each of the first ten (10) Lease Years to One Million Dollars (\$1,000,000). For the remaining twenty (20) Lease Years under the Term, continuing on every one (1) year anniversary of the Deposit Date, EDA shall contribute or arrange for the deposit of not less than One Million Dollars (\$1,000,000.00) to the Capital Improvements Account; provided, however, that (i) EDA shall not be required to contribute more than Twenty Five Million Dollars (\$25,000,000.00) total to the Capital Improvements Account over the Term, and (ii) if in a given year, EDA contributes more than the required minimum amount listed above to the Capital Improvements Account, it shall receive a credit against future amounts owed to such account in the amount of such excess contribution, and the timing of any such credit(s) shall be in EDA's reasonable discretion.

Section 7.4 Taxes and Other Charges. Tenant shall pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all taxes (including, but by no means limited to, real estate taxes; tangible personal property taxes; and taxes on gross receipts, meals, admission and ticket sales); special and general assessments, payments in lieu of taxation; stormwater fees; water rents, rates and charges; sewer rents and other governmental impositions and charges of every kind and nature whatsoever affecting the Premises. Tenant shall, during the Term, pay or ensure payment of and shall discharge punctually, as and when the same shall become due and payable, all charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, coaxial or fiber optic cable, satellite, internet access and other services and utilities whether public or private, furnished to the Premises for the benefit of Tenant or any other user. Tenant shall furnish to EDA promptly upon request, proof of the payment or timely contest of any such tax, assessment or other governmental or similar charge, or any utility charge which is payable by Tenant, or evidence of the deposit of such funds into a reserve account, all as set forth above. The provisions of this paragraph shall expressly survive the expiration or sooner termination of this Agreement.

Section 7.5 Liens and Encumbrances. Tenant covenants and agrees that, except for this Agreement, it will not create or suffer to be created by, through or under Tenant any lien, encumbrance or charge upon the Premises, other than Permitted Liens. Tenant shall satisfy or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same occurs, all such claims and demands for labor, materials, supplies or other items which, if not satisfied, might by law become a lien upon the Premises or any part thereof. If any such lien is filed or asserted against Tenant or the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Tenant or the Premises at the request or with the permission of Tenant or of anyone claiming under them, Tenant shall, within sixty (60) days after receipt of notice of the filing thereof or the assertion thereof against the Premises, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof, by contest, payment, deposit, bond, order of court or otherwise.

Section 7.6 Tenant Liens. Tenant may, at any time or from time to time, grant liens upon its ownership rights to Team, the Richmond Flying Squirrels PDL License Agreement, or any other of its personal property (the "Team Rights"); provided, however, that (i) any such liens shall be made or granted in compliance with and subject to the requirements and obligations of Tenant pursuant to this Agreement, (ii) if any person, entity or combination thereof acquires the Team Rights pursuant to any foreclosure or other transaction under any such liens that has not received PDL Approval or has not otherwise provided a replacement team in accordance with Section 7.17, such occurrence shall be an Event of Default by Tenant and (iii) any person, entity or combination thereof who acquires the Team or the Richmond Flying Squirrels PDL License Agreement pursuant to any foreclosure or other transaction under any such liens shall take the Team Rights strictly subject to and assume the covenants and obligations of Tenant pursuant to this Agreement. Upon any such granting of such liens, Tenant shall obtain from each such lien holder a written acknowledgment and acceptance of the terms, provisions, and restrictions contained herein and shall provide an executed copy thereof to EDA and shall state in the instruments creating and perfecting such lien that any transfer is subject to the terms herein. In the event involuntary liens or material encumbrances are placed on the Team Rights that, upon foreclosure, would result in a violation hereof, Tenant will use good faith efforts to promptly remove such liens or material encumbrances after reasonable contest periods.

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

Section 7.8 Operation Obligation and Standards.

- 7.8.1** Tenant agrees to operate and maintain the Premises throughout the Term in a condition necessary to conduct the permitted uses described in Section 4.5, generally consistent with the quality of operations at Comparable Facilities. Except as provided herein, Tenant may not make a general assignment of its rights, duties and obligations to operate and maintain the Premises throughout the Term to any party without the prior written consent of EDA. EDA acknowledges that the foregoing does not prohibit Tenant from hiring employees or contracting with third parties to provide services such as concessions, security, janitorial and similar services.
- 7.8.2** Tenant acknowledges and agrees that one of the primary reasons for EDA's financial and other commitments to build the Stadium and enter into this Agreement is to provide for the betterment of the community. Tenant will make good faith efforts to provide opportunities for local and regional charities and non-profits to utilize and gain exposure through the Premises. In consultation with City's Office of Minority Business Development, Tenant will make a good faith effort to contract with Emerging Small Businesses ("ESB") and Minority Business Enterprises ("MBE") that perform third-party operational services with a goal of forty percent (40%) MBE and ESB participation in provision of all such services. The foregoing shall not apply to food and beverage suppliers or to food and beverage concession and catering services provided for the Premises as a whole by Tenant, an Affiliate of Tenant, or a third party contractor of Tenant, but shall include sub-contracted specialty food and beverage service providers selling via carts, kiosks, and similar outlets.
- 7.8.3** Tenant acknowledges that use of the Premises reflects upon the image and goodwill of EDA and City, and Tenant agrees that no Tenant Event, signage at the Premises, promotion of Tenant Events, or any other use of the Premises by Tenant or its respective agents, contractors or licensees shall be inconsistent with prevailing standards applicable to other Comparable Facilities. Without limiting the generality of the foregoing, and unless otherwise approved by EDA in writing, no signage, advertising or other promotions at the Premises shall be authorized or permitted by Tenant for any of the following: political candidates, cigarettes, tobacco, vaping products, firearms or other weapons, contraceptives, adult entertainment, or any illegal or illicit activities of any kind or nature, nor shall Tenant authorize or permit any advertising or promotions which violate applicable Governmental Rules; provided, however, that casinos, gaming and gambling sites and activities shall be permitted.

Section 7.9 Right of Tenant to Revenues. Except as otherwise provided expressly herein, Tenant shall be entitled to, and is hereby granted the exclusive right to, contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the Premises, including, without limitation, all gross revenues, royalties, license fees, concession fees and income and receipts of any nature, including, without limitation, those arising from (a) all advertising rights (including Naming Rights), (b) all broadcast rights, (c) promotion of events at the Premises, (d) the sale of food and beverages at the Premises, (e) the sale of merchandise, programs and other goods and wares of any nature whatsoever at the Premises, and (f) all telecommunications rights. Except as otherwise provided expressly herein, Tenant shall be entitled to, and is hereby granted the exclusive right to, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the sale or other distribution of tickets or passes (including general admission) for any seats in the Premises. EDA shall have the right to sell and retain revenue generated from the sale of advertising associated with EDA/City Event(s), including temporary signage and advertising on the scoreboard and any other video displays during the EDA/City

Event(s), as well as print media and broadcast media with respect to such EDA/City Event(s). Such advertising shall be provided at EDA's cost. VCU shall have the right to revenues from ticket sales for VCU Games and such other revenues generated in conjunction with VCU Games to the extent set forth in the VCU Use Agreement.

Section 7.10 Naming Rights. Tenant and EDA agree that Tenant shall have the right and authority to market and sell Naming Rights for the Stadium, and to retain the revenue therefrom. The identity of any future sponsor of the name of Stadium (the "Naming Rights") shall be subject to the reasonable prior approval of EDA. The name of the Stadium shall be a name that is appropriate for a publicly-owned facility and shall not be in bad taste, offensive to EDA's or City's image, a potential source of embarrassment to EDA or City, or in conflict with City's community standards. Tenant shall use good faith efforts to ensure that any significant public-facing, written advertising, documents or media information prepared by or on behalf of Tenant describing any event at the Stadium shall identify City as the location of the Stadium. Any agreement executed by Tenant that sells or grants the right to name the Stadium shall provide that should the party to whom said right has been sold or granted perform or be the subject of any Act of Bankruptcy, Tenant shall have the right to immediately terminate such agreement and have the right to seek a new agreement with respect to the Naming Rights for the Stadium. Notwithstanding anything herein to the contrary, the Naming Rights shall be subject to and subordinate to this Agreement.

Section 7.11 Sponsorship, Display and Broadcast Rights. Except as set forth herein with respect to EDA/City Event(s) and VCU Games, Tenant has the exclusive right to enter into agreements with others whereby such others may display names, logos, trademarks, advertisements, slogans, emblems, brand names, and the like in or about the Premises. Except as set forth herein with respect to EDA/City Event(s) and VCU Games, Tenant also retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom. As between EDA and Tenant, EDA retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises with respect to EDA/City Event(s) and VCU Games, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom.

Section 7.12 EDA Signage. EDA shall have the right, on its own behalf or that of City, to one permanent signage display within the Stadium, to be agreed upon by EDA and Tenant. Such display shall be provided to EDA at no cost to EDA. Any such EDA display shall be for promoting City and shall not be utilized for commercial purposes.

Section 7.13 Notification of Certain Events. Tenant shall promptly notify EDA in writing if Tenant becomes aware of any of the following:

- 7.13.1** Any known breach by Tenant under this Agreement or the occurrence of a Tenant Default specifying the details of such Tenant Default and the action that Tenant proposes to take with respect thereto;
- 7.13.2** any litigation or potential litigation affecting the Premises or EDA, or any litigation or potential litigation affecting Tenant that could reasonably be expected to have a material and adverse effect on Tenant and/or its services or obligations under this Agreement;
- 7.13.3** any bankruptcy filings, whether voluntary or involuntary with respect to Tenant, to the extent of Tenant's actual knowledge (and without any obligation of due inquiry or investigation), or with respect to any party performing any Capital Improvements directed by Tenant;

- 7.13.4 any casualty, loss, injury, claim or other event relating to the Premises that might result in a claim against EDA or under any applicable insurance policies;
- 7.13.5 any violation or alleged violation of applicable Governmental Rules or insurance requirements by Tenant, its Affiliates, or their respective employees, agents, contractors and licensees relating to the performance of this Agreement or relating to the Stadium; and
- 7.13.6 any involuntary lien filed against the Premises.

Section 7.14 Collection of Consumer Purchase Surcharge; State Sales Tax Contribution.

- 7.14.1 Tenant shall collect the Consumer Purchase Surcharge, if imposed by the CDA, on all subject transactions in the Stadium and remit such collections to, or at the direction of, the CDA on a monthly basis and not later than the fifteenth day of the month following the month in which such amounts were collected.
- 7.14.2 Tenant shall collaborate with the EDA to facilitate the transfer of the state portion of the state sales tax revenues generated by activities in the Stadium to pay debt service on the Bonds.

Section 7.15 EDA's Right of Entry and Inspection. EDA retains and shall have the right, at reasonable times, upon reasonable request, or, at such time as EDA has reason to believe that an emergency situation exists at the Premises, to enter upon the Premises, for the purpose of inspecting the same and verifying Tenant's compliance with the terms and conditions of this Agreement.

Section 7.16 Use of Premises by EDA/City and VCU; Event Scheduling.

- 7.16.1 EDA shall have the right to schedule up to ten (10) events at the Premises during each Lease Year, which events shall not exceed ten (10) days in the aggregate (the "EDA/City Event(s)"). EDA's right to EDA/City Event(s) may be assigned to other persons or entities, including without limitation City. Without Tenant's prior written consent, EDA/City Event(s) shall not: (a) compete with Tenant's proposed revenue-generating uses of the Stadium, (b) be scheduled on the Stadium's playing surface during the Team's playing season, or (c) take place during Team Games. EDA/City Events may include, without limitation, events such as public or civic ceremonies, forums, graduations, high school athletic events, or other similar uses. EDA shall be responsible for all direct costs associated with an EDA/City Event, including, without limitation, maintenance and preparation of the Premises, ticket-takers, ushers, in-stadium security, scoreboard/sound and other personnel, trash removal, repairs, supplies, and all other direct event costs in connection with all EDA/City Event(s). EDA shall not be responsible for any share of Tenant's indirect operational costs in conjunction with EDA/City Event(s), including without limitation taxes imposed on Tenant, utilities, insurance, and other administrative costs, which shall be the sole responsibility of Tenant. EDA or its assignee or designee shall retain all revenue generated from EDA/City Event(s), including, without limitation, ticket, sponsorship, merchandising and other sales revenue; provided, however, that Tenant shall operate all food and beverage concessions at the Premises during EDA/City Event(s). Such food and beverage concessions shall be at standard rates and Tenant shall be entitled to all profits therefrom. In addition to such ten (10) EDA/City Events, EDA (on its own behalf or on behalf of City) may request use of Stadium's meeting/conference spaces from time to time, and Tenant agrees to cooperate reasonably to allow EDA or City such use, so long as such use does not unreasonably interfere with Tenant's use of the Premises. Such

meeting/conference use by EDA or City shall be at no cost to EDA or City (as applicable), other than a pass-through of Tenant's direct costs in connection with such and the costs of food and beverage services supplied by Tenant at standard rates; provided that if Tenant provides similar food and beverage services for similar meetings/conferences to a non-affiliated third party at a discounted rate, EDA or City shall be entitled to receive the same discounted rate for its meetings/conferences.

- 7.16.2** After each EDA/City Event, or other use of the Premises by EDA or City, EDA shall re-deliver the Premises to Tenant with any waste, damage, breakage, wear, theft, littering or other harm caused by EDA/City, its contractors or invitees, as a result of such EDA/City Event or other use, having been repaired, normal wear and tear excepted. Without limiting the foregoing, after each EDA/City Event or other use of the Premises by EDA or City, EDA shall be responsible for the timely restoration of all portions of the field at the Stadium to the official standards required by PDL Rules and Regulations. EDA and Tenant, 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 EDA/City for such events to ensure that all portions of the field at the Stadium are adequately protected during the preparation for, and the holding of, such events so that the field meets, or can be timely restored no later than the earlier of (i) forty-eight (48) hours after such event and (ii) twenty-four (24) hours prior to the next Team Game, to the official standards required by PDL Rules and Regulations.
- 7.16.3** In the event that VCU enters into the VCU Lease, VCU shall have the right to schedule VCU Games and practices at the Premises during each Lease Year in accordance with and subject to the VCU Use Agreement.
- 7.16.4** Tenant shall provide to EDA its preferred Team Game and scheduling dates as initially submitted to MLB PDL for each upcoming baseball season during the Term, as well as preferred scheduling dates for VCU Games (in the event that VCU has entered into the VCU Lease and VCU Use Agreement). Such preferred dates shall be provided to EDA within ten (10) days after they are provided to MLB PDL. EDA shall have thirty (30) days following receipt of such preferred dates to request from Tenant up to ten (10) priority dates for EDA/City Event(s) ("Priority Dates for EDA/City Event(s)") during the upcoming Lease Year. Priority Dates for EDA/City Event(s) shall not be among the preferred Team Game and VCU Game preferred scheduling dates received from Tenant. Tenant shall give EDA prompt notice upon receipt of its final schedule of Team Games from MLB PDL and VCU Games from VCU. After the dates for Team Games and VCU Games have been set, Tenant and EDA shall cooperate in good faith to fairly allocate the scheduling of EDA/City Events and other Tenant Events. The selection of dates for such events shall in all respects be subject to the schedule of Team Games issued by MLB PDL and the agreed schedule for VCU Games. Rights to use the Premises shall be in accordance with the following order of priority: (a) Team Games; (b) VCU Games; (c) Priority Dates for EDA/City Event(s); (d) other Tenant Events; and (e) other EDA/City Events as set forth in Section 7.16.7. Except with respect to Team Games (including, without limitation, tentative postseason home games), which take priority over all other events, once an event is approved and scheduled, that event cannot be cancelled as a result of a subsequently requested event without the express written approval of the entity that scheduled the currently scheduled event, which permission may be granted or denied in the sole and absolute discretion of that entity.

- 7.16.5** Tenant shall maintain a master event schedule for the Stadium and shall provide access to such schedule to EDA.
- 7.16.6** If EDA identifies to Tenant certain EDA/City Event(s) which would potentially recur during each Lease Year (for example and without limitation, graduations or other similar recurring civic events), then, subject to scheduling and PDL Approval, Tenant agrees to use commercially reasonable efforts to (a) schedule such recurring EDA/City Event(s) around the same dates during each Lease Year, and (b) take such recurring EDA/City Event(s) into consideration when requesting MLB PDL to schedule future Team Games.
- 7.16.7** Subject to Section 7.16.1 above and Tenant's consent as provided below, after Team Games, VCU Games, and EDA/City Events have been scheduled for a Lease Year, EDA shall have the right to request additional dates for events at the Stadium during such Lease Year, including revenue-generating events and in addition to the ten (10) EDA/City Events noted in Section 7.16.1. If such event is outside of the Team's baseball season, EDA shall request such additional events not less than ten (10) days or more than ninety (90) days in advance of such event. If such event is during the Team's baseball season, EDA/City shall request such additional events not less than three (3) days or more than fourteen (14) days in advance of such event. Subject to the foregoing and Section 7.16.1 above, Tenant's consent to such additional event shall not to be unreasonably withheld, delayed, or conditioned if Tenant has not previously scheduled an event for such date.
- 7.16.8** Up to four (4) Priority Dates for EDA/City Event(s) may be utilized for baseball games by City high school(s).
- 7.16.9** Notwithstanding anything to the contrary in this Section, the scheduling of all events hereunder shall be subject to the process designated by PDL Rules and Regulations (as the same may be modified or revised throughout the Term).

Section 7.17 Obligation to Provide Professional Baseball Team; Good Standing in MLB PDL League.

- 7.17.1** Subject to Sections 4.8, 4.9, 7.17.2 and 7.17.3, and as otherwise provided in this Agreement, Tenant agrees that during the Term of this Agreement it will ensure that Team continuously uses the Premises for all Team Games. Subject to the terms of this Section 7.17, Tenant shall at all times throughout the Term own, operate, and maintain in good standing a professional baseball team that is a full-season MLB PDL club.
- 7.17.2** If MLB PDL terminates Tenant's PDL License Agreement during the first ten (10) Lease Years other than as a result of Tenant's breach thereof, then Tenant shall replace Team with a full-season professional baseball team which is not an MLB PDL club (including, without limitation, an independent league or MLB Partner League team) and have such team play its home games at the Stadium pursuant to the terms of this Agreement. Tenant shall use commercially reasonable efforts to have such replacement team play its home games at the Stadium as soon as reasonably practicable and without missing more than one full baseball season at the Stadium. Tenant's obligation to pay Supplemental Rent shall be suspended from the date of termination of the PDL License Agreement until a replacement team plays its first home game at the Stadium. If Tenant is able to replace the Team and have such replacement team play its home games at the Stadium, then the Parties shall renegotiate Supplemental Rent in good faith taking into consideration the revenues Tenant is able to generate from stadium naming rights thereafter. If MLB PDL terminates Tenant's

PDL License Agreement during the first ten (10) Lease Years other than as a result of Tenant's breach thereof, Tenant shall have the option to terminate this Agreement at the end of the tenth (10th) Lease Year, by giving written notice of termination to EDA within sixty (60) days after the end of the tenth (10th) Lease Year, failing which Tenant's right of termination pursuant to this Section 7.17.2 shall be waived.

7.17.3 If MLB PDL terminates Tenant's PDL License Agreement after the first ten (10) Lease Years other than as a result of Tenant's breach thereof, Tenant shall have the option to either (i) replace Team with a full-season professional baseball team which is not an MLB PDL club and have such team play its home games at the Stadium pursuant to the terms of this Agreement or (ii) terminate this Agreement. Tenant shall give written notice to EDA of Tenant's intent to find a replacement team or terminate this Agreement within sixty (60) days after the date of termination of the PDL License Agreement. If Tenant fails to provide such notice within sixty (60) days after the date of termination of the PDL License Agreement, this Agreement shall terminate on the date that is sixty (60) days after the date of termination of the PDL License Agreement. If Tenant gives written notice of its intent to find a replacement team, Tenant shall use good faith efforts to find a replacement team and have such replacement team play its home games at the Stadium. If Tenant is unable to find a replacement team and have such replacement team play its home games at the Stadium before the end of the second season after the date of termination of the PDL License Agreement, this Agreement shall terminate at the end of such season.

Section 7.18 EDA Suite. EDA shall have use of the same designated suite at the Stadium for all ticketed Stadium events, the location of such suite to be reasonably determined by EDA and Tenant during the Stadium design process, and on the same general terms and conditions as all other suite users, including, without limitation, food and beverage costs. EDA shall not be required to pay any rental or recurring fee for such suite (nor will EDA be required to pay for the standard allotment of tickets for such suite for each ticketed Stadium event). Such EDA use of a suite would be for promotional and economic development activities and for other public and civic purposes, and EDA's right to such suite use may be exercised by City. Such suite may not be leased, subleased, licensed, or rented out by EDA or City.

Section 7.19 EDA/City Employee Games. Each Lease Year, Tenant shall provide EDA with five hundred (500) tickets to three (3) Team Games, such Team Games to be agreed upon by Tenant and EDA prior to the start of the playing season during which such Team Games are scheduled. Such tickets shall be provided at no cost to EDA, and such tickets shall be distributed solely for the use of EDA or City employees, their families, and guests. Neither EDA nor City shall sell such tickets.

Section 7.20 Discounted Community Tickets for Team Games. Tenant shall make a limited number of tickets available for each Team Game that are reasonably affordable for all members of the community.

Section 7.21 Permits. EDA and City shall reasonably assist Tenant in the procurement of all licenses, permits and clearance from all public authorities, both federal and state, required to enable Tenant to carry on its business as required or permitted hereunder, including, without limitation, the acquisition of a liquor license(s) and rights to use and display fireworks shows.

Section 7.22 Tenant's Remedial Work. Subject to any rights Developer may have against EDA pursuant to the Stadium Development Agreement, Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by Tenant or any of its respective agents, contractors or subcontractors after the Commencement Date or (ii) environmental contamination from any Hazardous Substances that were introduced to the

Premises on or after the Commencement Date by Tenant or its respective agents, contractors or subcontractors at any time (“Tenant’s Remedial Work”). Tenant shall promptly inform EDA and, to the extent required by applicable law, all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Substances discovered by Tenant (or any agent, contractor or subcontractor of Tenant) after the Commencement Date in, on or under the Premises, promptly furnish to EDA any and all reports and other information available to Tenant concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 7.23 EDA’s Remedial Work. Subject to any rights EDA may have against Developer pursuant to the Stadium Development Agreement, EDA shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by EDA or any of its agents, contractors or subcontractors or (ii) environmental contamination from Hazardous Substances that were introduced to the Premises on or before the Commencement Date (but excluding Hazardous Substances introduced by Tenant or its respective agents, contractors or subcontractors after the Commencement Date) (“EDA’s Remedial Work”). EDA shall promptly inform Tenant and, to the extent required by applicable law, all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Substances discovered by EDA (or any agent, contractor or subcontractor of EDA) in, on or under the Premises, promptly furnish to Tenant any and all reports and other information available to EDA concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 7.24 EDA to Provide Signage. EDA shall during the Term use commercially reasonable efforts to cause the Virginia Department of Highways to provide and install wayfinding signage and other signage on I-95 in the vicinity of the Stadium and stadium exits.

Section 7.25 Parking. The Stadium’s development is part of the first phase of a larger economic development project of the Diamond District by City. The Diamond District will be developed over a period of years, in subsequent phases. During development of such subsequent phases, it is anticipated that Tenant shall not have use of all two thousand three hundred (2,300) of the surface parking spaces adjacent to the ballpark utilized by Tenant for Team Games as of the Effective Date and before completion of the Stadium (“Existing Diamond Parking”). Accordingly, and to assure that Stadium patrons have adequate access to parking for Team Games, Tenant Events, VCU Games, and EDA/City Events throughout the Term , the Parties agree as follows:

7.25.1 During the Term, EDA shall provide Tenant with access to no less than two thousand three hundred (2300) parking spaces for use by patrons of Stadium events. Such access may be provided through a combination of surface parking spaces within the Existing Diamond Parking, additional surface parking spaces elsewhere within the Diamond District (to be delivered by EDA utilizing crushed stone (or reasonable equivalent or better), without striping), and structured parking within the Diamond District, once such structured parking is developed. If at any time during the Term there are not sufficient parking spaces in the foregoing areas to meet the minimum threshold, then EDA shall make up any such shortfall by providing Tenant with access to patron parking spaces within a five-minute walk of an entry point into the Stadium.

7.25.2 Tenant shall control surface parking spaces within the Diamond District that are provided to satisfy EDA’s obligations pursuant to Section 7.25.1, including responsibility for operating expenses and entitlement to revenues relating thereto. EDA shall maintain such surface parking spaces in a commercially reasonable manner, at its sole cost and expense, following initial delivery of such spaces by EDA pursuant to Section 7.25.1. EDA (or its

designee) shall control structured parking within the Diamond District and any additional surface parking spaces within the Diamond District (other than Existing Diamond Parking) that have not been provided to satisfy EDA's obligations pursuant to Section 7.25.1, including responsibility for expenses and entitlement to revenues relating thereto. Tenant shall control the surface parking spaces within the Diamond District that are provided to satisfy EDA's obligations pursuant to Section 7.25.1 until such surface parking spaces have been eliminated by development of the Diamond District and sufficient additional spaces have been made available to comply with Section 7.25.1.

- 7.25.3** For structured parking within the Diamond District, EDA shall ensure that parking charges for patrons attending events at the Stadium are reasonably equivalent to charges for use of such parking facilities by other users in the ordinary course of business for other purposes. For structured parking outside of the Diamond District which is operated by parties other than EDA, EDA shall use commercially reasonable efforts to ensure that parking charges for patrons attending events at the Stadium are reasonably equivalent to charge for use of such parking facilities by other users in the ordinary course of business for other purposes.

ARTICLE VIII INSURANCE

Section 8.1 Tenant Insurance Policies. Tenant shall, effective as of the date that Tenant is permitted to occupy the Premises pursuant hereto, obtain and maintain throughout the Term Commercial General Liability coverage including bodily injury, personal injury, property damage, and contractual liability in combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; automobile liability coverage with a combined single limit of One Million Dollars (\$1,000,000) covering all owned, non-owned, leased and hired vehicles; umbrella excess liability with limits of at least Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate; and workers compensation coverage to protect Tenant's permanent and temporary employees. Such coverage shall be evaluated by the Parties every fifth (5th) Lease Year during the Term and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Tenant will name EDA as additional insured in connection with the operations of Tenant on the commercial general liability and umbrella policies and will provide EDA certificates of all required insurance policies herein at least thirty (30) days prior to the Commencement Date, and provide updated certificates prior to the expiration of each required insurance policy. Insurance coverage required herein shall be placed with carriers licensed to do business in Virginia, and have a rating in the most current edition of A.M Best's Property Casualty Key Rating Guide that is reasonably acceptable to EDA (it being understood and agreed that A-VII will be considered reasonably acceptable to EDA). Tenant shall maintain All-Risk property insurance on all assets within the Premises that are owned by Tenant on a full replacement cost basis.

Section 8.2 EDA Insurance Policies.

- 8.2.1** EDA shall maintain property insurance on the Premises (other than for assets therein owned by Tenant), against damage or destruction by fire, flood, hurricanes, tornados, terrorism or other casualty under a standard "all risk" policy ("Damage"). Insurance shall be for one hundred percent (100%) replacement cost value. EDA shall be responsible for paying deductible costs, except that in the event the damage by fire or by other casualty is due to any fault or neglect of Tenant, then Tenant shall be responsible for paying a reasonable deductible, not to exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. EDA shall also maintain the following insurance coverages: (a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily liability, premises and operations, personal and advertising injury; products and

completed operations; contractual liability; (b) Excess Umbrella with minimum limits of \$5,000,000 per occurrence and in the aggregate; (c) Workers' Compensation covering EDA's permanent and temporary employees meeting statutory limits in compliance with the applicable state and federal laws. Tenant will be named as additional insured in connection with the operations of EDA on the commercial general liability and umbrella policies and EDA will provide to Tenant certificates of insurance evidencing such coverage. Certificates of insurance shall be produced to Tenant prior to the Commencement Date. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State.

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

Section 8.3 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting EDA which arise out of any of the matters relating to this Agreement or otherwise, Tenant shall notify EDA promptly upon becoming aware of same and Tenant shall give EDA all pertinent information possessed by Tenant and reasonable assistance in the defense or other disposition thereof. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting Tenant which arise out of any of the matters relating to this Agreement or otherwise, EDA shall notify Tenant promptly upon becoming aware of same and EDA shall give Tenant all pertinent information possessed by EDA and reasonable assistance in the defense or other disposition thereof.

Section 8.4 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, Tenant and EDA hereby mutually waive any and all rights of recovery against the other party (and against the agents, employees, representatives and/or insurers of the other) for injury, damage, or loss due to hazards covered by policies of insurance required by this Agreement or otherwise carried by Tenant or EDA in connection with this Agreement, to the extent of the injury, damage, or loss covered thereby. To that end, Tenant and EDA shall not seek to recover damages against the other party hereunder to the extent that the loss covered thereby is recovered or recoverable under any policy of insurance carried by such party. All insurance policies carried by Tenant and EDA in connection with this Agreement shall include a clause or endorsement waiving any rights of subrogation against the other party (and against the agents, employees, representatives and/or insurers of the other).

ARTICLE IX INDEMNIFICATION

Section 9.1 Tenant Indemnification. Tenant shall, except as otherwise provided in this Section 9.1, defend, protect, indemnify and hold EDA and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Premises by Tenant, or by Tenant's respective contractors, employees, officers, directors or agents on or after the Commencement Date, (ii) Tenant's failure to comply with its obligations under this Agreement or (iii) the negligence or intentional misconduct of Tenant, or of Tenant's contractors, employees, officers, directors or agents within the Premises. Notwithstanding the provisions of the preceding paragraph, Tenant shall not be liable for any liabilities, damages, suits, claims and judgments of

any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with:

- 9.1.1 Any injury to or death of a person or any damage to property (including loss of use) to the extent of the negligence or intentional misconduct of EDA, its employees, officers, directors, contractors, agents or invitees;
- 9.1.2 EDA's violation of any provisions of this Agreement or any applicable Governmental Authority or deed restriction or insurance policy, now or hereafter in effect and applicable to EDA;
- 9.1.3 The existence of any Hazardous Substance in, on or under the Premises prior to the Commencement Date; or
- 9.1.4 Any environmental event not caused by Tenant or any of its employees, officers, directors, contractors, agents or invitees.

The provisions of this Section 9.1 are solely for the benefit of EDA and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

Section 9.2 Indemnification Procedures. In case any claim shall be brought or, to the knowledge of EDA, threatened against EDA in respect of which indemnity may be sought, EDA shall promptly notify Tenant in writing; provided, however, that any failure so to notify shall not relieve Tenant of its obligations under Section 9.1, unless (i) such failure so to notify precludes investigation and defense of such claims as a matter of law, and (ii) Tenant does not otherwise have knowledge, either actual or constructive, of such claim. Tenant shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel, reasonably acceptable to EDA, and the payment of all expenses. EDA shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by EDA unless (i) the employment of such counsel has been specifically authorized by Tenant, in writing, (ii) Tenant has failed after receipt of notice of such claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both parties, and EDA, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to Tenant (in which case, if EDA notifies Tenant in writing that it elects to employ separate counsel at EDA's expense, Tenant shall not have the right to assume the defense of the action on behalf of EDA; provided, however, that Tenant shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for EDA, which firm shall be designated in writing by EDA). EDA shall cooperate with Tenant in the defense of any action or claim. Tenant shall not be liable for any settlement of any action or claim without its consent, but if any such action or claim is settled with the consent of Tenant or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, Tenant shall indemnify and hold harmless EDA from and against any damages by reason of such settlement or judgment.

Section 9.3 Survival Right to Enforce. The provisions of this Article IX shall survive the termination of this Agreement for three years. In the event of failure by Tenant to observe the covenants, conditions and agreements contained in this Article IX, EDA may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Tenant under this Article IX. Except as otherwise provided in Article X below, the obligations of the parties under this Article IX shall not be affected by any assignment or other transfer

of its rights, titles or interests under this Agreement and will continue to inure to the benefit of EDA after any such transfer.

ARTICLE X ASSIGNMENTS; MORTGAGES

Section 10.1 Assignment.

10.1.1 Except as otherwise provided herein, Tenant shall not assign its interests in this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of EDA.

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

Section 10.2 Notice of Intent. If Tenant shall, at any time during the Term, desire to assign this Agreement or make a general assignment of its rights to operate the Stadium under this Agreement, Tenant shall (unless otherwise provided herein) give notice thereof to EDA, which notice shall be accompanied by: (a) a conformed or photo static copy of the proposed assignment and (b) a statement setting forth, in reasonable detail, the identity of the proposed assignee and the nature of its business. If the proposed assignment involves the assignment of the right to play baseball games at the Stadium, such notice shall also include evidence satisfactory to EDA that the proposed assignee has received PDL Approval to own and operate a PDL Club and have such team's home games played at the Stadium.

Section 10.3 Conditions Upon EDA's Consent to Assignment. In the event that Tenant complies with all of the provisions of Sections 10.1 and 10.2 and provided no Event of Default then exists, EDA's consent to a proposed assignment shall not be unreasonably withheld, conditioned or delayed, so long as the proposed assignee has been approved by MLB PDL. The proposed assignment shall be in a form reasonably satisfactory to EDA and shall comply with the provisions of this Agreement. Tenant shall reimburse EDA on demand for any costs that may be incurred and substantiated by EDA in connection with said assignment, including reasonable legal costs incurred in connection with the granting or withholding of any requested consent. If the foregoing conditions to an assignment are satisfied and the assignment is made, then upon such assignment the named Tenant herein shall be released herefrom with respect to obligations, covenants, and agreements to be observed and performed by the named Tenant under this Agreement after such date, unless otherwise agreed by the parties or unless otherwise set forth expressly in this Agreement.

Section 10.4 Assignments and Concession Arrangements. Notwithstanding the foregoing, this Section 10 shall not limit or otherwise restrict Tenant's exercise of its rights or performance of its obligations hereunder, including, without limitation, Tenant's right to enter into or grant certain contractual rights, subcontracts, sublicenses, and other arrangements for concessions, retail, security, services and other providers as Tenant may desire, all without consent from EDA except to the extent such contracts, subcontracts, sublicenses and other arrangements do not circumvent any prohibition or restriction on the assignment of Tenant's rights or obligations hereunder as a whole.

Section 10.5 Subleases. Tenant shall not sublease its leasehold interest hereunder (or any portion thereof) without the prior written consent of EDA.

Section 10.6 Mortgages. Tenant shall have no right to encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof (collectively, a "Mortgage") or otherwise to encumber or affect in any way the titles, interests, or estates of EDA in or to the Land or the Premises, but Tenant

may encumber Tenant's receivables, accounts, or Tenant's revenue streams from the Premises, and Removables, all without the need for obtaining EDA's consent. EDA will reasonably cooperate with Tenant and any of its lenders in connection with any such permitted financing, including the provision of access agreements as may be required by Tenant's lenders.

Section 10.7 Permitted Transfers. Notwithstanding anything else in this Agreement to the contrary, Tenant shall have the right to assign, sublease, transfer, or license its interests in this Agreement, in whole or in part, or any of its rights or obligations hereunder, upon notice to EDA (as provided below), but without the need for EDA's consent: (i) to an Affiliate; or (ii) in connection with a change of control of Tenant, including a change of control effectuated pursuant to a transfer of partnership or membership interests, or to a successor entity into which Tenant is merged or consolidated or which acquires substantially all of Tenant's assets or property; provided that with respect to the foregoing items (i) and (ii), such transaction has received PDL Approval and such Affiliate or transferee assumes all of the obligations and liabilities of Tenant hereunder arising from and after the date of such transfer. Prior to submitting any proposed transfer for PDL Approval, Tenant shall provide no less than sixty (60) days' prior notice to EDA of its intent to engage in such transfer and give EDA the opportunity to (i) meet with representatives from the proposed transferee, and (ii) register any comments or concerns regarding the proposed transferee with Tenant and/or MLB PDL.

ARTICLE XI DEFAULT

Section 11.1 EDA Default. Subject to Force Majeure and the provisions of Section 14.17 of this Agreement, the occurrence of any of the following shall be an "Event of Default" by EDA or a "EDA Default": (a) the failure of EDA to pay any of its monetary obligations under this Agreement when due and payable under this Agreement if such failure continues for thirty (30) days after Tenant gives notice to EDA that such amount was not paid when due; (b) the failure of EDA to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by EDA under this Agreement within thirty (30) days after notice from Tenant of such failure; *provided, however,* that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by EDA shall occur unless EDA fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; provided further, however, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from Tenant to EDA of such failure (notwithstanding EDA's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by EDA hereunder; or (c) the occurrence of an Act of Bankruptcy with respect to EDA.

Section 11.2 Tenant's Remedies. If a EDA Default shall have occurred and be continuing, Tenant may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) terminate this Agreement, as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to EDA Default specified in Section 11.1(c) above); (b) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means; and (c) exercise any and all other remedies available to Tenant at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.3 Tenant Default. Subject to Force Majeure (except as set forth expressly herein), the occurrence of the following shall be an "Event of Default" by Tenant, or a "Tenant Default": (a) the failure of Tenant to pay any of its monetary obligations to EDA under this Agreement when due and payable if such failure continues for ten (10) days after EDA gives notice to Tenant that such amount was not paid when due; (b) the failure of Tenant to substantially perform or substantially observe any of the obligations,

covenants or agreements to be performed or observed by Tenant under this Agreement within thirty (30) days after notice from EDA of such failure, including without limitation Sections 6.1 (Operation and Management), 7.1 (Maintenance of the Premises) and 7.6 (Tenant Liens); *provided, however*, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by Tenant shall occur unless Tenant fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided further, however*, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from EDA to Tenant of such failure (notwithstanding Tenant's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by Tenant hereunder; (c) Tenant's loss of its Team or Team Rights as a result of a breach by Tenant of its PDL License Agreement (other than as a result of the failure of the EDA to make Capital Improvements necessitated by changes in PDL Rules and Regulations after the Commencement Date); (d) Tenant's loss of its Team or Team Rights other than as a result of a breach by Tenant of its PDL License Agreement during the first ten (10) Lease Years and failure to have a replacement full-season professional baseball team play its home team games at the Stadium for more than one full season after the loss of its Team or Team Rights; (e) the occurrence of an Act of Bankruptcy with respect to Tenant; and (f) Abandonment of Premises by Tenant. Tenant Defaults under subsection (a) of this Section 11.3 shall not be subject to Force Majeure.

Section 11.4 EDA's Remedies. If any Tenant Default shall have occurred and be continuing, EDA may, at its sole discretion, but subject at all times to Section 13.1, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) EDA may terminate this Agreement or Tenant's right of possession of the Premises as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to the Tenant Default specified in Section 11.3(c) above); (b) seek another professional or amateur (including collegiate) baseball team(s) to conduct its regularly scheduled home games at the Stadium; (c) EDA may, in its own name and for its own account, without impairing the ability of EDA to pursue any other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute, institute such action against Tenant as may appear necessary or desirable to collect Annual Rents and any other amounts then due under this Agreement, or to enforce performance and observance of such covenant, condition or obligation of Tenant hereunder, or to recover damages for Tenant's non-payment, non-performance or non-observance of the same; (d) EDA may exclude Tenant from possession of the Premises and reenter the same and take whatever action at law or in equity as may appear necessary or desirable to collect Annual Rents and any other amounts then due, to enforce performance and observance of any covenant, condition or obligation of Tenant hereunder, or to recover damages for Tenant's non-payment, non-performance or non-observance of the same; provided that EDA shall be required to use commercially reasonable efforts to mitigate its damages; (e) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means except that specific performance shall not be an available remedy where specific performance would result in Tenant's noncompliance with the PDL Rules and Regulations; and (f) exercise any and all other remedies available to EDA at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.5 Termination.

11.5.1 Upon the occurrence of a EDA Default as described in Section 11.1 or a Tenant Default as described in Section 11.3, the non-defaulting Party, in addition to its other remedies hereunder or at law or in equity, shall have the right to give to the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Agreement or, in the event of a Tenant Default, Tenant's right of possession of the Premises, after the expiration of a period of ninety (90) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such ninety (90) day period, if

the Event of Default is not cured, this Agreement shall terminate and/or Tenant's possessory interest shall terminate, as applicable, without liability to the non-defaulting Party. If, however, within such ninety (90) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, no Final Notice shall be required and the non-defaulting Party may declare this Agreement immediately terminated if the Event of Default with respect to the defaulting Party is an Act of Bankruptcy. In the event of a termination of this Agreement by either Party under this Section 11.5, then notwithstanding anything to the contrary set forth in this Agreement, but subject at all times to Section 13.1, all obligations of the Parties hereunder automatically shall terminate also, without liability to the other Party except for those obligations which, by their terms, are intended to survive termination of the Agreement.

11.5.2 In addition, Tenant may, by written notice to EDA, terminate this Agreement if (i) conducting professional baseball games at the Stadium shall be or become prohibited uses, (ii) any failure of City to appropriate funds as provided in Section 14.17 results in the failure of EDA to comply with any of its obligations under this Agreement (it being understood that failure to appropriate by City will not, by itself, constitute an EDA Default under this Agreement), (iii) an Unacceptable Condition continues for the duration of an entire MLB PDL playing season (whether a single MLB PDL playing season or the equivalent of a full MLB PDL playing season which includes parts of two consecutive MLB PDL playing seasons), (iv) the Stadium Development Agreement is terminated, (v) the failure of the Stadium to comply with facility standards required by PDL Rules and Regulations at any time after the Commencement Date gives Tenant a right of termination as provided in Section 7.2.6, (vi) EDA elects to cause the Stadium to be brought into compliance pursuant to Section 7.2.4, but Stadium is not brought into compliance within one year from the date of MLB PDL's notice, or (vii) the Team's PDL License Agreement is terminated by MLB PDL other than as a result of a breach of Tenant's obligations under the PDL License Agreement and Tenant elects to terminate this Agreement as provided in Section 7.17.

11.5.3 Notwithstanding anything to the contrary in this Agreement, unless otherwise agreed by the Parties, this Agreement shall terminate if Completion is not achieved by the Completion Date (as defined in the Stadium Development Agreement).

Section 11.6 Tenant to Remain Liable for Payments; Replacement of Tenant.

11.6.1 Notwithstanding the exercise by EDA of its remedies pursuant to Section 11.4 hereof (other than termination), Tenant shall continue to be liable for the payment of all amounts payable under Section 4.3 hereof and other amounts, if any, payable under this Agreement. Tenant shall make such payments at the same times and in the same manner as provided in this Agreement.

11.6.2 In the event EDA elects to exclude Tenant from management and possession of the Premises and re-enter same, then EDA shall, subject to Section 13.1, use commercially reasonable efforts to find a new tenant for the Premises for the maximum Annual Rent, or other similar operating fees which it may reasonably obtain, provided, however, that EDA shall have no obligation to engage as a new tenant for the Premises any person who will not use the Premises for the purposes set forth in Section 4.4 hereof. Any such amounts received prior to the stated termination date of this Agreement shall be applied first to the

payment of reasonable expenses incurred by EDA in connection with finding and engaging a new tenant, and second, to reimburse EDA for Annual Rents due hereunder.

Section 11.7 No Remedy Exclusive. Except as may be otherwise set forth expressly in this Agreement, no remedy herein conferred upon either party is intended to be exclusive of any other available remedy or remedies, and each such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default granted under this Agreement shall impair any right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient, and the exercise of any one right or remedy shall not impair the right to any or all other remedies under this Agreement. **NOTWITHSTANDING ANY CONTRARY PROVISIONS HEREOF IN NO EVENT SHALL EDA OR TENANT BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF EDA AND TENANT OR ANY OF THEIR AFFILIATES OR RELATED PARTIES. WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EDA OR TENANT FOR RECOVERY OF SUCH DAMAGES PURSUANT TO ARTICLE IX TO THE EXTENT SUCH DAMAGES WERE AWARDED TO A THIRD PARTY AGAINST EDA OR TENANT, AS APPLICABLE.**

Section 11.8 No Additional Waiver Implied By One Waiver; Consents to Waiver. The waiver of a party of any breach by another party of any covenant, condition or obligation under this Agreement shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, condition or obligation under this Agreement, nor shall any forbearance by a non-defaulting party not breaching to seek a remedy for any breach by another party be a waiver by such non-defaulting party not breaching any of its rights and remedies with respect to such breach or any subsequent breach of the same or with respect to any other breach.

Section 11.9 Delay not a Waiver. No delay or omission in the exercise of any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient. Any party may waive any default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedies under this Agreement. No such waiver shall extend to or affect any other existing or subsequent default or impair any rights or remedies consequent thereon.

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

Section 11.11 Interest on Overdue Obligations. If any sum due hereunder is not paid on the due date thereof, the Party hereto owing such obligation to the other Party shall pay to the other Party interest thereon

at the Default Rate, concurrently with the payment of the amount from the date such amount was due until paid. Any payment of interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder.

Section 11.12 Attorney's Fees. Each Party shall pay their own attorney's fees, and all other fees and expenses, in enforcing any covenant to be observed by the defaulting Party or pursuing any remedy upon an Event of Default with respect to such Party.

ARTICLE XII DAMAGE AND CONDEMNATION; UNACCEPTABLE CONDITION

Section 12.1 Damage and Destruction.

12.1.1 If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, Tenant shall promptly give written notice thereof to EDA. All applicable insurance proceeds shall be applied by EDA either to repair, rebuild or restore the property damaged or, if the parties determine and mutually agree that it is impracticable to rebuild the Premises, subject to the provisions of Section 12.1.2, such proceeds shall be used to effect the defeasance or prior redemption of obligations issued for the construction of the Stadium. Any remaining balance after payment for such repair, rebuilding or restoration shall be deposited into the Capital Improvements Account, and EDA shall receive a corresponding credit against its future funding obligations to same, as described in Section 7.3 herein.

12.1.2 EDA will proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by EDA after approval by Tenant, which shall not be unreasonably withheld, and which will not impair productive capacity or the character of the Premises. EDA shall consider, in good faith, any requests or suggestions made by Tenant with respect to any such changes, alterations and modifications. Notwithstanding the foregoing, in the event that (a) substantially all of the improvements shall be damaged or destroyed by casualty at any time during the final five (5) years of the Term creating an Unacceptable Condition or (b) any portion of the Premises shall be damaged or destroyed by casualty at any time during the Term and the Governmental Rules then applicable to the Premises do not permit the restoration of the Premises so as to eliminate an Unacceptable Condition, then either EDA or Tenant may, at such party's option (exercised with reasonable promptness in the circumstances, but in all events within ninety (90) days after such damage or destruction), terminate this Agreement by serving upon the other parties hereto notice within such period setting forth EDA's or Tenant's, as applicable, election to terminate this Agreement as a result of such damage or destruction as of the end of the calendar month in which such notice is delivered to the other parties hereto. Upon the service of such notice and the making of such payments within the foregoing time period, this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed as the expiration date of this Agreement and no parties shall have any further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

Section 12.2 Condemnation.

12.2.1 In the event that title to the Premises or the interest of Tenant created by this Agreement or any part of either thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under Governmental Authority, or shall be conveyed in lieu thereof, this Agreement shall terminate, unless otherwise set forth in this Section. Any condemnation award attributable to any interest of Tenant created by this Agreement shall be paid to Tenant and any condemnation award attributable to the temporary use or temporary condemnation of the Premises shall be divided equitably between Tenant and EDA based on Tenant's and EDA's scheduled use of the Premises during such period. It is the intention of the parties hereto that all condemnation proceeds shall be equitably apportioned between them in accordance with their respective fee and leasehold interests, business operations and losses, and requirements to relocate those operations. If only a part of the Premises or interest of Tenant is taken, EDA will cause any proceeds received by it from any award made in such eminent domain proceedings with respect to the Premises, to be applied towards the restoration of the Premises to allow for the operation of the Premises in substantially the same manner and to the extent that it was operated prior to the exercise of the said power of eminent domain. EDA shall use good faith and reasonable diligence to restore the Premises. If EDA does not restore the Premises as set forth above, then Tenant may terminate this Agreement and shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

12.2.2 EDA shall cooperate fully with Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof and will, to the extent it may lawfully do so, permit Tenant to litigate in any such proceedings for the purpose of seeking and obtaining a separate award for damage to the Removables, the value of Tenant's interest, and damage to Tenant's business. In no event will EDA voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding, including with respect to EDA's fee interest in the Premises, without Tenant's prior approval. Notwithstanding the foregoing, if as a result of any condemnation, an Unacceptable Condition exists during the last three (3) years of the Term, EDA or Tenant may terminate this Agreement by providing written notice to the other party hereto to such effect whereupon this Agreement shall terminate as of the date set forth in such notice and EDA and Tenant shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement. The provisions of this Article XII shall survive the termination of this Agreement.

**ARTICLE XIII
MAJOR LEAGUE BASEBALL**

Section 13.1 MLB PDL Terms and Conditions. Any contrary provisions contained herein notwithstanding:

13.1.1 This Agreement and any rights granted to EDA or Tenant hereunder shall in all respects be subject and subordinate to the PDL Rules and Regulations, as long as Tenant is a party to the Richmond Flying Squirrels PDL License Agreement that is in effect. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at no cost or liability to any MLB PDL Entity or to any individual or entity related thereto. The territory within which EDA is granted rights under this Agreement is limited to, and nothing herein shall be construed as conferring on EDA rights in areas outside of,

the PDL Club Marketing Territory (as defined in the Richmond Flying Squirrels PDL License Agreement). No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Agreement, except as are specifically approved in writing by MLB PDL.

- 13.1.2** EDA agrees that if the date upon which any termination or suspension of this Agreement falls during the regular season or postseason, the effective date of such termination or suspension shall be the first day of the month following the final home game of such season, and, in no event, shall EDA terminate or suspend Tenant's rights under this Agreement during any regular season or postseason.
- 13.1.3** If, at any time prior to the expiration of the Term, this Agreement is terminated by EDA for any reason (and any legal action challenging the right of EDA to terminate this Agreement and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance) and the Richmond Flying Squirrels PDL License Agreement has been terminated, EDA agrees to offer to assign this Agreement to any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to EDA. To the extent that this Agreement is not so assigned, EDA agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, EDA shall offer to enter into an agreement for such PDL Club's use of the Stadium on such terms as may be acceptable to EDA.
- 13.1.4** As long as Tenant is party to the Richmond Flying Squirrels PDL License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 13.1 and each other provision of this Agreement that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 13.1, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.
- 13.1.5** Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 13.1 (other than for fraudulent acts or willful misconduct with respect to this Section 13.1 by MLB PDL), and EDA hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Agreement shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Amendments, Changes and Modification. No amendment, change, addition to or waiver of any of the provisions of this Agreement shall be binding upon the parties hereto unless in writing signed by an Authorized Representative of Tenant and an Authorized Representative of EDA, and all necessary PDL Approvals have been obtained in advance thereof.

Section 14.2 Applicable Law; Venue. The Agreement shall be governed exclusively by the provisions hereof and by the applicable Governmental Rules of the Commonwealth of Virginia, without giving effect

to the principles of conflicts of law. Venue for any proceeding to enforce this Agreement shall be in Richmond, Virginia, or the United States District Court for the Eastern District of Virginia. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 14.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the Term such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

Section 14.4 Notices and Demands. Any notices or other communications required or desired to be given to the other party hereto shall be given in writing and delivered by courier, overnight delivery service, facsimile transaction or through the U.S. postal service, postage prepaid and by certified mail, return receipt requested, at the following addresses:

To EDA: Economic Development Authority of the City of Richmond
Attention: Board Chair
1500 East Main Street, Suite 400
Richmond, VA 23219

With copies to: Economic Development Authority of the City of Richmond
Attention: Executive Director
1500 East Main Street, Suite 400
Richmond, VA 23219

City of Richmond
Attention: City Attorney
900 East Broad Street, Suite 400
Richmond, VA 23219

To Tenant (prior to Commencement Date):

Navigators Baseball L.P.
Attention: General Manager
The Diamond
3001 N. Arthur Ashe Blvd
Richmond, VA 23220

To Tenant (after Commencement Date):

Navigators Baseball L.P.
Attention: General Manager
at the official mailing address of Tenant's main office at the Stadium

With copies (before and after Commencement Date) to:

DiBella Entertainment
Attention: Lou DiBella
359 Sea Cliff Avenue
Sea Cliff, New York 11579

Section 14.5 References. All references in this Agreement to particular Articles or sections are references to Articles or sections of this Agreement, unless otherwise indicated. Article and section headings are furnished for convenience only and do not constitute a part of this Agreement. References in the singular number in this Agreement shall be considered to include the plural, if and when appropriate, and vice versa. Any times referred to herein shall be deemed references to City of Richmond, Virginia time.

Section 14.6 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 14.7 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 14.8 Time is of the Essence. Time is expressly declared to be of the essence in this Agreement.

Section 14.9 Parties' Relationship. It is the intent of the Parties, as evidenced by this Agreement, that the relationship between EDA and Tenant be considered that of landlord and tenant, each acting in its own best interests as independent parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, or by any third party, to create the relationship between EDA and Tenant of partnership or joint venture. The employees or agents of EDA may not be, nor be construed to be, the employees or agents of Tenant for any purpose, and the employees or agents of Tenant may not be, nor be construed to be, employees or agents of EDA for any purpose.

Section 14.10 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

Section 14.11 Non-Discrimination. Tenant warrants that it is and will continue to be an Equal Opportunity Employer. Tenant covenants and agrees that Tenant will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State. EDA hereby reserves the right to take action to enforce this covenant.

Section 14.12 Not for Benefit of Third Parties. Except as may be otherwise set forth expressly herein, this Agreement is only for the benefit of the Parties, and no third party has any rights or claims under this Agreement. No provision of this Agreement creates a third party claim against the Parties beyond that which may legally exist in the absence of any provision of this Agreement.

Section 14.13 Other City Ordinances. This Agreement and any ordinance that authorized the execution of this Agreement do not operate to repeal, rescind, modify, or amend any ordinances or resolutions of City or EDA relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other ordinances, resolutions, or regulations not specifically set forth in the ordinance authorizing this Agreement. Notwithstanding the foregoing, if any of such ordinances or resolutions prohibit Tenant from operating professional baseball games at the Stadium in accordance with the terms and conditions of this Agreement, then Tenant shall have the right to terminate this Agreement in accordance with Section 11.5, including after giving effect to any applicable cure periods.

Section 14.14 Surrender. Tenant acknowledges and understands that EDA's agreement to lease the Premises to Tenant as provided by this Agreement is expressly conditioned on the understanding that the Premises must be surrendered, upon the expiration, termination, or cancellation of this Agreement, in as good a condition as received, reasonable use and wear, Force Majeure events, acts of God, fire and flood damage or destruction where Tenant is without fault, excepted.

Section 14.15 Survival. Articles XI and XIV shall survive termination of this Agreement together with any other provisions hereof which, by their terms, are intended to survive termination of the Agreement.

Section 14.16 No Waiver of Immunity. Nothing contained in this Agreement shall be construed as any waiver of governmental immunity to the extent that it is possessed or enjoyed by EDA or City, provided that neither EDA nor City shall be entitled to assert, nor will EDA or City assert, governmental immunity as a bar to enforcement by Tenant of any of EDA's or City's obligations under this Agreement.

Section 14.17 Availability of Funds for EDA's Performance. All payments and other performances by EDA under this Agreement are subject to such approvals by the EDA as may be expressly set forth herein, the availability of funds, and annual appropriations by the City Council of the City of Richmond. It is understood and agreed that EDA shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall EDA's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement. The undertakings by EDA to make payments under this Agreement constitute neither a debt of City or EDA within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of either City or EDA beyond any fiscal year for which the City Council has appropriated moneys for the purposes of this Agreement. Any failure to appropriate by the City Council will not constitute an EDA Default hereunder. The Chairman of the EDA shall be authorized to provide EDA approvals hereunder.

Section 14.18 Conditions Precedent. This Agreement and the obligations of EDA and Tenant hereunder shall not become effective unless and until all the following conditions are met, unless otherwise waived in writing by the party against whom such condition is charged:

14.18.1 Completion of the Stadium shall have been achieved;

14.18.2 Tenant shall be a party to a PDL License Agreement that is in effect on the Commencement Date; and

14.18.3 Tenant shall have acquired all necessary PDL Approvals, in a form reasonably satisfactory to EDA, as are required with respect to the transactions contemplated by this Agreement, all of which shall be in effect on the Commencement Date, including without limitation MLB PDL's certification that the Stadium as built is in compliance with and otherwise meets all applicable PDL Rules and Regulations, including all facility standards applicable to the Stadium.

The Parties agree to work in good faith and use commercial best efforts to assure that all of the conditions set out in this Section are satisfied. If the conditions noted in Sections 14.18.2 and 14.18.3 are not satisfied on or before the Commencement Date, or as such date may be extended by mutual agreement of the Parties, either Party may terminate this Agreement upon written notice to the other, whereupon it shall be null and void and neither Party shall have any further obligations to the other under this Agreement. Upon satisfaction of the foregoing conditions either Party may request execution of a supplement to this Agreement establishing the satisfaction of the foregoing conditions.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers all as of the Effective Date.

EDA:

By: _____

Name: _____

Title: _____

TENANT:

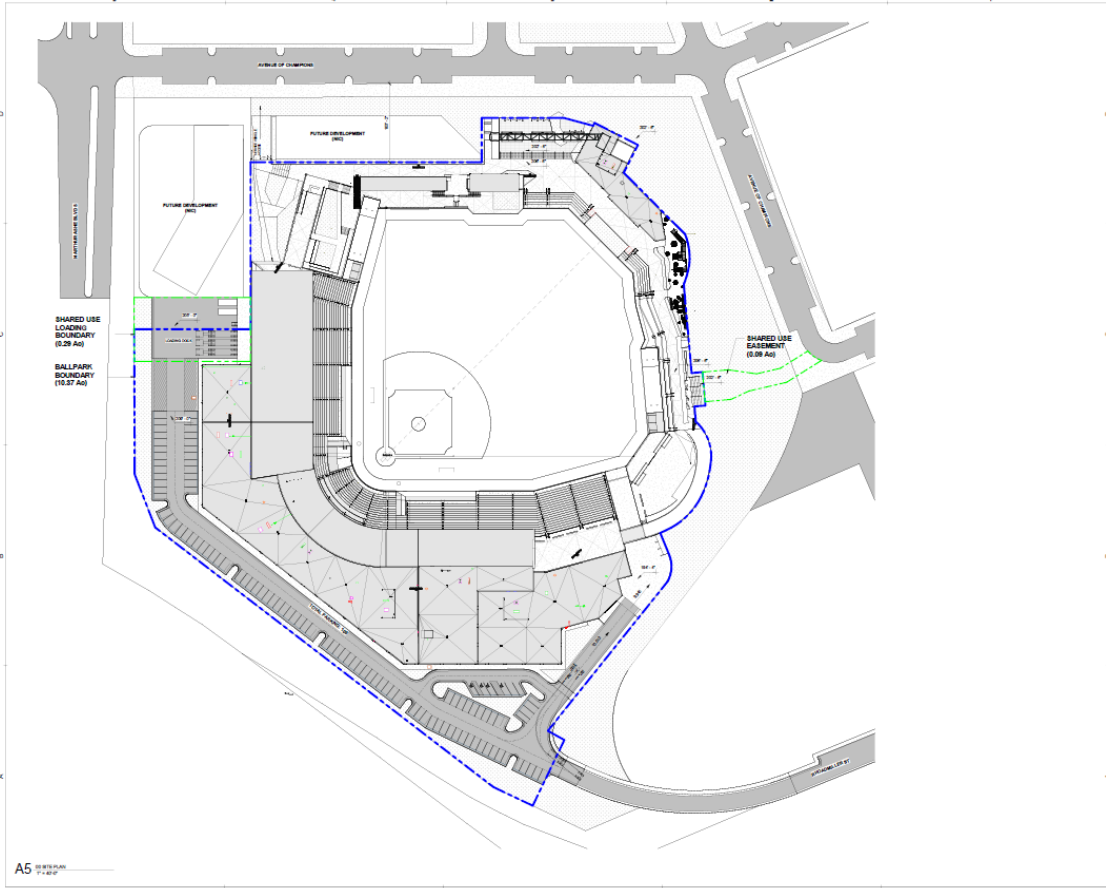
By: _____

Name: _____

Title: _____

EXHIBIT A-1

Diagram



LaBella
Powered by partnership

111 High Street, Suite 400
Richmond, VA 23261
804.271.1212
labella.com

NOT FOR CONSTRUCTION

RICHMOND FLYING SQUIRRELS

DATE PUBLISHED: 07/2018

J K L
G H I
D E F
A B C

RICHMOND BALLPARK
1001 EAST BRIDGE AVENUE
RICHMOND, VA 23219

NO.	DATE	DESCRIPTION
1	07/2018	ISSUED FOR PERMITTING
2	07/2018	ISSUED FOR CONSTRUCTION
3	07/2018	ISSUED FOR CONSTRUCTION
4	07/2018	ISSUED FOR CONSTRUCTION
5	07/2018	ISSUED FOR CONSTRUCTION

SITE PLAN

A000

EXHIBIT A-2

Legal Description

{to be inserted based upon survey}