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AGREEMENT OF LEASE

between

CITY OF MYRTLE BEACH, SOUTH CAROLINA,

as Landlord

and

MYRTLE BEACH PELICANS LP,

as Tenant.

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Dated as of [April] \_\_, 2025

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## **AGREEMENT OF LEASE**

THIS AGREEMENT OF LEASE (this “Lease”) is made and entered into this \_\_\_ day of [April] 2025, by and between the CITY OF MYRTLE BEACH (the “City”, or “Landlord”) on the one hand, and MYRTLE BEACH PELICANS LP, a Pennsylvania limited partnership (hereinafter, together with any successors and assigns, referred to as the “Tenant”) on the other hand.

### **WITNESSETH:**

**WHEREAS**, the City and the County of Horry, as landlord (“Initial Landlord”), and the Durham Bulls Baseball Club, Inc. (“DBBC”), as tenant, entered into that certain Agreement of Lease dated as of September 1, 1998 (the “Initial Lease”) for that certain ballpark (hereinafter the “Ballpark”) located on the property more particularly described in Exhibit “A” (the “Real Property”); and

**WHEREAS**, DBBC assigned the Initial Lease to Myrtle Beach Baseball Club, Inc. (“MBBC”) pursuant to an Assignment of Lease Agreement dated July 31, 2001, and MBBC assigned the Initial Lease to the Tenant pursuant to an Assignment of Lease Agreement dated May 31, 2006; and

**WHEREAS**, the Initial Landlord and the Tenant amended the Initial Lease pursuant to the First Amendment to Agreement of Lease dated September 25, 2018 (the “First Amendment”), the Second Amendment to Agreement of Lease dated May 25, 2021 (the “Second Amendment”) and the Third Amendment to Agreement of Lease dated September 26, 2023 (the “Third Amendment”) and the Fourth Amendment to Agreement of Lease dated October 22, 2024 (the “Fourth Amendment”, and together with the Initial Lease, the First Amendment, the Second Amendment, and the Third Amendment, the “Current Lease”); and

**WHEREAS**, the Tenant owns and operates a professional baseball club currently known as the “Myrtle Beach Pelicans” (the “Club”) as part of the Professional Development League System (as hereinafter defined); and

**WHEREAS**, the Club currently participates in the Carolina League and is currently affiliated with the Chicago Cubs Major League Baseball Club; and

**WHEREAS**, the term of the Current Lease expires 30 days after the end of the 2025 Baseball Season (the “Current Expiration Date”); and

**WHEREAS**, providing the public with an opportunity to attend and view professional baseball games and other events in the Ballpark serves the recreational and cultural needs and general welfare of the public and is in the best interests of the City and their citizens; and

**WHEREAS**, pursuant to the PDL Rules and Regulations (as hereinafter defined), certain improvements are required to be made to the Ballpark to bring it into compliance with PDL Facility Standards (as hereinafter defined); and

**WHEREAS**, the Landlord and the Tenant desire to enter into this Lease in order to, among other things, (i) set forth the parties’ agreements with respect to the funding and implementation

of certain improvements to the Ballpark, including improvements required to bring the Ballpark into compliance with PDL Facility Standards, (ii) provide for the leasing of the Ballpark to Tenant for an additional 30 years beyond the Current Expiration Date, and (iii) make other agreements with respect to the Ballpark, all pursuant to the terms contained in this Lease.

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the terms, conditions, covenants and undertakings contained in this Lease, the Landlord and the Tenant mutually agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** For the purposes of this Lease, the following terms shall have the meanings specified in this Section.

**“Approved Working Drawings”** shall have the meaning set forth in Section 3.1.

**“Architect”** means EwingCole and any successor or alternate architect of the Improvements approved by the Landlord pursuant to Section 3.1.

**“Ballpark”** means the facility and related improvements primarily designed for baseball and suitable for other athletic, cultural and recreational activities, together with the adjacent parking lots on the Premises.

**“Base Rent”** shall have the meaning set forth in Section 4.1.

**“Baseball Season”** means the period commencing one day prior to league play during each year during the Term and ending on the date during the same calendar year when the Tenant’s last home game is played including any postseason games thereof.

**“Bonds”** shall have the meaning set forth in Section 3.3.

**“Charges”** shall have the meaning set forth in Section 19.1.

**“City” or “Landlord”** shall mean the City of Myrtle Beach, South Carolina.

**“Club”** shall have the meaning set forth in the recitals hereto.

**“Commencement Conditions”** means each of the following, collectively and individually: (i) Tenant shall not be in default of the Current Lease, (ii) Tenant and Landlord shall have agreed upon the Approved Working Drawings, (iii) Landlord shall have approved of the Contractor, (iv) Landlord and Tenant shall have agreed upon a schedule for the construction of the Improvements, and (v) MLB PDL shall have provided written confirmation that the Improvements as shown on the Approved Working Drawings would cause the Ballpark to be in compliance with the PDL Facility Standards; provided that the Ballpark’s compliance with the PDL Facility Standards shall only be confirmed after an official audit has been completed of the Ballpark and the Improvements.

**“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.

**“Concessions”** means food, beverages, merchandise and other items customarily sold or provided to patrons at venues such as the Ballpark.

**“Construction Manager”** means the person or firm selected by the Tenant and approved by Landlord pursuant to Section 3.1 to act in such capacity for the Improvements.



**“Contract”** shall have the meaning set forth in Section 3.2.

**“Contractor”** shall have the meaning set forth in Section 3.2.

**“Current Expiration Date”** shall have the meaning set forth in the recitals hereto.

**“Current Lease”** shall have the meaning set forth in the recitals hereto.

**“Current Term”** means the period from the effective date of this Lease until the Current Expiration Date.

**“Event”** means any and all events and activities held in the Ballpark.

**“Event of Default”** means one or more events of default as set forth in Article 21.

**“Final Costs”** shall have the meaning set forth in Section 3.2.

**“Final Retention”** shall have the meaning set forth in Section 3.3.

**“Force Majeure”** means without limitation, the following: acts of God; strikes, lockouts, other industrial disturbances or suspension of play of baseball by PDL Clubs generally; acts of public enemies; pandemics or epidemics; orders of restraints of any kind of the government of the United States of America or of the State of South Carolina or any of their departments, agencies or officials, or any other governmental, civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the reasonable control of the Landlord or Tenant but not due to the Landlord’s or Tenant’s negligence.

**“Governmental Approval”** shall have the meaning set forth in Section 3.1.

**“Governmental Authorities”** shall mean the United States, the State of South Carolina, the County of Horry, the City of Myrtle Beach, and any political subdivision of any thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

**“Improvements”** shall have the meaning set forth in Section 3.1.

**“Indemnitees”** shall have the meaning set forth in Section 19.1.

**“Indemnitors”** shall have the meaning set forth in Section 19.1.

**“Injunctive Relief”** shall have the meaning set forth in Section 6.7.

**“Landlord’s Representative”** means [\_\_\_\_], or such other person Landlord may designate in writing to Tenant from time to time, to act in such capacity for the Improvements.

**“Lease”** means this Lease between the Landlord and the Tenant, as may be amended from time to time.

**“Lease Commencement Date”** shall have the meaning set forth in Section 2.2.

**“Lease Termination Date”** means the date upon which this Lease termination pursuant to Section 2.2 hereunder or is otherwise terminated pursuant to the terms herein.

**“Legal Requirement”** or **“Legal Requirements”** shall mean all federal, state and local laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, health, safety, building, environmental and other requirements of all Governmental Authorities including, but not limited to, governmental departments, commissions, boards, courts, authorities and agencies, which now or at any time hereafter may be applicable to the Improvements, the Ballpark or the Premises or any part thereof or interest therein.

**“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.

**“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.

**“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. **“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.

**“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.

**“Myrtle Beach Pelicans PDL License Agreement”** means that certain player development license agreement entered into between the Tenant and MLB PDL pursuant to which the Club has been granted the right to participate in the Professional Development League System.

**“Naming Rights”** shall have the meaning associated to it in Section 8.1 hereof.

**“Non-Relocation Default”** shall have the meaning set forth in Section 6.7.

**“Other Event”** means any Event other than Tenant Home Games.

**“Over-Allowance Amount”** shall have the meaning set forth in Section 3.2.

**“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.

**“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.

**“PDL Facility Standards”** means those PDL Rules and Regulations that set forth rules, regulations, standards and requirements for the ballpark facilities of PDL Clubs.

**“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.

**“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.

**“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 Myrtle Beach Pelicans PDL License Agreement.

**“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.

**“PDL Termination”** shall have the meaning set forth in Section 6.3.

**“Permits and Approvals”** shall have the meaning set forth in Section 3.1.

**“Permitted Encumbrances”** means the liens and encumbrances set forth in Exhibit B” hereto[, together with any future mortgages or similar encumbrances placed on the Real Property in accordance with Section 24.14].

**“Premises”** means the Ballpark and Real Property.

**“Prime Rate”** means the per annum rate published by the Wall Street Journal as its prime rate.

**“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.

**“Prohibited Person”** means: (i) any person that is in default or in breach of its obligations under any written agreement with the Landlord, unless the default or breach has been waived in writing by the Landlord; or (ii) any person that has been convicted in a criminal proceeding of a felony; (iii) any person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; or (iv) any person that directly or indirectly controls, is controlled by, or is under common control with any of the foregoing persons. The determination as to whether any person is a Prohibited Person shall be made by the Landlord.

**“Real Property”** means that certain real property as described in Exhibit “A” attached to and made a part of this Lease.

**“Rent”** shall have the meaning set forth in Article 4.1 and shall include any other sums due Landlord from Tenant.

**“Risk Manager”** means the City Risk Manager.

**“SKA Report”** shall have the meaning set forth in Section 3.5.

**“Tenant”** shall mean the Myrtle Beach Pelicans LP, a Pennsylvania limited partnership, together with any successors and assigns.

**“Tenant Home Game”** means any professional home baseball game played by the Club, including exhibition, preseason, regular season and postseason games. The term shall also include the All-Star game of any league in which the Tenant plays as a member, if the Tenant is entitled to have such game played in the Ballpark.

**“Tenant Improvement Allowance”** shall have the meaning set forth in Section 3.3.

**“Tenant Improvement Allowance Items”** shall have the meaning set forth in Section 3.3.

**“Tenant’s Agents”** shall have the meaning set forth in Section 3.2.

**“Term”** means the term of this Lease, as set forth in Section 2.2.

**“Transfer”** shall have the meaning set forth in Section 22.2.

**“Working Drawings”** shall have the meaning set forth in Section 3.1.

## **ARTICLE 2**

### **DEMISE OF PREMISES; TERM**

**Section 2.1. Demise of Premises.** The Landlord hereby leases the Premises to the Tenant, and the Tenant hereby leases the Premises from the Landlord, to have and to hold for the uses and purposes, upon the terms, conditions, covenants and undertakings, and to the extent set forth in this Lease. Subject to the terms of this Lease, the Tenant shall have the exclusive control over, and the exclusive right to exhibit, promote and stage Events at, the Ballpark during the Term, and to retain all revenue from such Events. The Tenant shall have the sole and exclusive right to market, sell and set prices for tickets to all Events, provided that, with respect to any Other Events staged by Tenant on behalf of the City in accordance with the other terms of this Lease, Tenant shall not charge more for tickets than the price set by the City. The Tenant shall use its commercially reasonable efforts and work collaboratively with the Landlord to maximize the usage of the Ballpark for the benefit of the community. The Landlord and the Tenant acknowledge and agree that the Tenant is already in possession of the Premises pursuant to the Current Lease and that no act of the Landlord or the Tenant shall be necessary to tender possession of the Premises to the Tenant hereunder. The Premises and the Ballpark are being leased to the Tenant in their existing “as-is, where-is” condition, and Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises except as expressly provided for in this Lease, including, without limitation, in Article 3 and Article 15. Neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises or the Ballpark or with respect to the suitability for the conduct of the Tenant’s business, except as expressly set forth in this Lease or described in the SKA Report.

**Section 2.2. Term.** This Lease shall become effective upon execution and delivery by the Landlord and Tenant. The Term shall commence (the “Lease Commencement Date”) upon the later of (i) the day immediately following the Current Expiration Date, and (ii) the date that all of the Commencement Conditions have been satisfied, and shall continue until the date which is 30 days after the end of the 2055 Baseball Season (the “Lease Termination Date”).

## **ARTICLE 3**

### **BALLPARK IMPROVEMENTS**

**Section 3.1. Improvements.**

(a) Attached to this Lease as Exhibit “C” is a list of certain additions, alterations and improvements to the Ballpark (the “Improvements”) which the Tenant desires to make to the Ballpark, and to which Landlord has agreed in concept. The Improvements include additions, alterations and improvements that are required to bring the Ballpark into compliance with PDL Facility Standards. Promptly following the date of this Lease, the Landlord and the Tenant shall work together expeditiously to develop a mutually agreeable timeline for the completion of the Improvements. Tenant shall retain the Architect and Construction Manager for the design and construction of the Improvements. As soon as practicable following completion of the foregoing, Tenant shall cause the Architect to prepare all plans and engineering working drawings relating to the Improvements. All

Working Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's approval, not to be unreasonably withheld, delayed or conditioned. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the Ballpark plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Working Drawings as set forth in this Article 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, code compliance or other like matters. Further, notwithstanding that any Working Drawings are reviewed by Landlord's Representative, Landlord, or its architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord's Representative, Landlord or Landlord's architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Working Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Working Drawings.

(b) Tenant shall promptly cause the Architect to complete the architectural and engineering drawings for the Improvements, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable Permits and Approvals (collectively, the "Working Drawings") and shall submit the same to Landlord for Landlord's approval (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant shall supply Landlord with four (4) copies signed by Tenant of such Working Drawings. Landlord shall advise Tenant as soon as reasonably practical, and in all events, within ten (10) business days after Landlord's receipt of the Working Drawings for the Improvements if the same are unsatisfactory or incomplete in any respect in Landlord's commercially reasonable discretion. If Tenant is so advised, Tenant shall promptly revise the Working Drawings in accordance with such review and any such disapproval of Landlord in connection therewith.

(c) The Working Drawings shall be approved by Landlord (the "Approved Working Drawings") prior to the commencement of construction of the Improvements by Tenant. After approval by Landlord of the Working Drawings, Tenant may submit the same to the appropriate Governmental Authorities for all applicable building permits and approvals (the "Permits and Approvals"). Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit, certificate of occupancy or other required Governmental Approval for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit, certificate of occupancy or other Governmental Approval. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed.

(d) Notwithstanding anything in this Lease to the contrary, approval by the City of any matter for purposes of this Lease, as Landlord, or on behalf of Landlord by Landlord's Representative, shall not constitute the approval by the City or any of its departments of the matter in the City's capacity as a Governmental Authority.

**Section 3.2. Construction of the Improvements.**

(a) Prior to Tenant's execution of the construction contract (the "Contract") with a general contractor to be selected by Tenant and approved by Landlord ("Contractor"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall advise Tenant as soon as reasonably practical, and in all events, within ten (10) business days after Landlord's receipt of the Contract if the same is unsatisfactory or incomplete in any respect in Landlord's commercially reasonable discretion. If Tenant is so advised, Tenant shall promptly revise the Contract in accordance with such review and any such disapproval of Landlord in connection therewith. Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred in connection with the design and construction of the Improvements to be performed by or at the direction of Contractor, Tenant or the Construction Manager, which costs form a basis for the amount of the Contract and any other architectural, engineering, design, construction or procurement contracts entered into by or on behalf of Tenant for the design, construction or fit-out of any portion of the Improvements (the "Final Costs"). Prior to the commencement of construction of the Improvements, Tenant shall supply Landlord with cash, an irrevocable letter of credit, or such other financial assurance that is satisfactory to the Landlord in an amount (the "Over-Allowance Amount") equal to the difference between the amount of the Final Costs and the amount of the Tenant Improvement Allowance. The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any of the then remaining portion of the Tenant Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Tenant Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Improvements shall change, unless, even with such change, the Final Costs are less than the amount of the Tenant Improvement Allowance, any additional costs necessary to such design and construction in excess of the Final Costs, shall be paid by Tenant to Landlord immediately as an addition to the Over-Allowance Amount or at Landlord's option, Tenant shall make payments for such additional costs out of its own funds, but Tenant shall continue to provide Landlord with the documents described in Section 3.3 below, for Landlord's approval, prior to Tenant paying such costs. If the total actual costs relating to the design and construction of the Improvements shall be less than the sum of the Tenant Improvement Allowance and the Over-Allowance Amount, and if the Tenant delivered the Over-Allowance Amount in cash, then the Landlord shall reimburse the Tenant for the amount of such difference, but not more than the Over-Allowance Amount. Notwithstanding anything set forth in this Section 3 to the contrary, construction of the Improvements shall not commence until (a) Landlord has approved the Contract, (b) Tenant has procured and delivered to Landlord a copy of all Permits and Approvals, (c) Tenant has delivered to Landlord the Over-Allowance Amount, and (d) MLB PDL shall have provided

written confirmation that the Improvements as shown on the Approved Working Drawings would cause the Ballpark to be in compliance with the PDL Facility Standards; provided that the Ballpark's compliance with the PDL Facility Standards shall only be confirmed after an official audit has been completed of the Ballpark and the Improvements.

(b) The parties agree that, for the purpose of achieving cost savings, except for structural alterations to the Ballpark, Tenant may seek bids for and procure the Improvements listed on Exhibit D directly rather than under the Contract through the Contractor and involving the Architect.

(c) Tenant's Construction Manager, Contractor, and all subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor and Construction Manager to be known collectively as "Tenant's Agents") shall construct the Improvements in strict accordance with the Approved Working Drawings. Tenant shall exercise commercially reasonable efforts to cause the Improvements to be completed prior to the 2026 Baseball Season. The Improvements shall comply in all respects with the following: (i) all applicable building codes, and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractors. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the Ballpark that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

(d) Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

(e) Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount



arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

(f) The Tenant shall consult with the Landlord on a regular basis and keep the Landlord reasonably informed of its progress in the construction of the Improvements. Landlord shall have the right to enter onto the Premises and inspect the Improvements at all reasonable times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's or any Governmental Authority's approval of the same. Any defects or deviations in the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists in connection with any portion of the Improvements and such defect or deviation might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Ballpark, or the structure or exterior appearance of the Ballpark, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect or deviation, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect or deviation is corrected to Landlord's reasonable satisfaction.

(g) At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

(h) The Tenant agrees that it will maintain or cause the general contractor to maintain in full force and effect Builder's Risk Completed Value Form insurance insuring the Ballpark and Improvements against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State of South Carolina to the full insurable value of the Ballpark and Improvements. Such policy or policies of insurance shall name the Landlord and the Tenant as insureds, as their respective interests may appear. The Tenant shall cause the general contractor at all times during the construction of the Improvements to maintain general liability insurance in an amount not less than that required to be maintained by the Tenant under Section 18.1 hereof, and the Tenant shall cause the general contractor to maintain worker's compensation insurance as required by law. To the extent possible, said insurance policy or policies shall contain a provision that such insurance may not be canceled by the issuer thereof without at least thirty (30) days'

advance written notice to the Landlord and the Tenant. All such policies or copies thereof or certificates that such insurance is in full force and effect shall be delivered to the Landlord and the Tenant at or prior to commencement of construction of the Improvements.

**Section 3.3. Costs and Financing of Improvements.**

(a) Upon written confirmation from MLB PDL that the Improvements, if built as shown on the Approved Working Drawings would cause the Ballpark to be in compliance with PDL Facility Standards, Tenant shall be entitled to a tenant improvement allowance (the “Tenant Improvement Allowance”) in the amount of \$20,000,000 for the costs relating to the design and construction of the Improvements, a portion of which will be financed by bonds issued by the City (“Bonds”). In no event shall Landlord be obligated to make disbursements pursuant to this Article 3 in a total amount which exceeds the Tenant Improvement Allowance. In the event that the Tenant Improvement Allowance is not fully utilized by Tenant for completion of the Improvements, then such unused amounts shall be held by Landlord and applied toward any future, mutually agreed upon improvements to the Ballpark; provided that such unused amounts shall not be applied toward the repairs and improvements to be made by Landlord pursuant to Section 3.5 or repairs and maintenance required to be performed by Landlord or Tenant pursuant to Article 15. All Improvements for which the Tenant Improvement Allowance has been made available shall be deemed Landlord’s property under the terms of the Lease. All removable Improvements, the cost of which is paid fully, directly and out of pocket by Tenant without reimbursement from Landlord, shall be deemed Tenant’s property under the terms of the Lease until Tenant has fully depreciated such Improvements. The Tenant Improvement Allowance shall be disbursed by Landlord for all third-party hard and soft costs relating to the design and construction of the Improvements (collectively, the “Tenant Improvement Allowance Items”), including, without limitation, the following items and costs: (i) payment of the fees of the Architect (including the reimbursement of Landlord for amounts advanced to pay architectural fees), and payment of the fees incurred by, and the cost of documents and materials supplied by Landlord and Landlord’s consultants in connection with the preparation and review of the Working Drawings; (ii) the payment of plan check, permit and license fees relating to the construction of the Improvements; (iii) the cost of procuring and constructing the Improvements; and (iv) sales and use taxes.

(b) During the construction of the Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows.

(i) On or before the first day of each calendar month during the construction of the Improvements (or such other date as Landlord may reasonably designate), Tenant shall deliver to Landlord: (A) a request for payment of the Contractor, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Improvements, detailing the portion of the work completed and the portion not completed; (B) a request for payment by Tenant for any of Tenant’s Agents that Tenant contracted with directly, together with a certification from Tenant that all sums included in such request

either (1) are due and payable for work and services provided, or (2) were previously expended by Tenant for such work and services, and in either case, related to the Improvements, and containing a summary of the cumulative amounts spent for the Improvements directly by Tenant, (C) invoices from all of Tenant's Agents for labor rendered and materials delivered to the Premises; (D) executed conditional mechanic's lien releases from Tenant and all of Tenant's Agents who are to be paid from the requested amounts in a form reasonably approved by Landlord; (E) unconditional lien waivers from Tenant and all of Tenant's Agents who were to be paid with the sums advanced in the immediately prior payment request (or, with respect to the Final Retention payment pursuant to Section 3.3(b)(ii) below, for all payments owed under the Contract or any applicable subcontract other than the Final Retention payment; and (F) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, upon Landlord's Representative's certification to Landlord of the foregoing, Landlord shall deliver a check to Tenant in payment of the lesser of: (x) the amounts so requested by Tenant, as set forth in this Section 3.3(b)(i), above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "Final Retention"), and (y) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on non-compliance of any work with the Approved Working Drawings, or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

(ii) Subject to the provisions of this Article 3, a check for the Final Retention shall be delivered by Landlord to Tenant following the completion of construction of the Improvements, provided that (i) Tenant delivers to Landlord properly executed mechanics lien releases in a form reasonably approved by Landlord, (ii) Landlord has reasonably determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Ballpark, or the structure or exterior appearance of the Ballpark, (iii) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements has been substantially completed, and (iv) Tenant delivers a copy of a permanent or temporary certificate of occupancy or "right to occupy" statement for the Improvements that permits Tenant to use and occupy the Ballpark for the permitted use.

(iii) Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items. All Tenant Improvement Allowance Items for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of this Lease.

**Section 3.4. Landlord and Tenant Representatives.** Landlord has designated Landlord's Representative as its sole representative for the matters set forth in this Article 3, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required under this Article 3. Tenant shall designate in writing to Landlord a representative of Tenant with respect to the matters set forth in this Article 3, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required under this Article 3.

**Section 3.5. Other Repairs and Improvements.** Landlord and Tenant acknowledge and agree that certain needed structural and other repairs and improvements to the Ballpark have been identified in a Visual Condition Assessment and Soil Testing Report dated October 10, 2024 by SKA Consulting Engineers (the "SKA Report"). A portion of the repairs and improvements identified within the SKA Report will need to be made contemporaneously with the Improvements. As soon as reasonably practical, Landlord and Tenant shall confer, together with Architect, and agree upon the (i) the scope of the repairs and improvements that are identified in the SKA Report that will need to be completed contemporaneously with the Improvements and those that will be completed following the completion of the Improvements (collectively, the "SKA Repairs"), and (ii) a timeline for the completion of the SKA Repairs. Notwithstanding anything to the contrary set forth in this Lease, including Article 15 hereof, the cost and expense of making the SKA Repairs shall be borne by the Landlord.

## **ARTICLE 4**

### **RENT**

**Section 4.1.**     **Rent.** Commencing on the Commencement Date, the Tenant shall pay, without prior notice or demand, base rent (“Base Rent”) in the amount of (a) for the first ten (10) years after the Lease Commencement Date, \$750,000 per year, (b) for the second ten (10) years after the Lease Commencement Date, \$850,000 per year, and (c) for the third ten (10) years after the Lease Commencement Date, \$950,000 per year. Yearly Base Rent shall be payable in six equal installments on or before the first day of each and every April, May, June, July, August and September during the Term, without any setoff, defense or deduction whatsoever. Base Rent, together with all sums payable by the Tenant under this Lease shall be deemed “Rent.” Rent shall be paid in cash or immediately available funds to the Landlord at [\_\_\_\_\_]. This is a Lease with Rent payable to Landlord net of all costs and expenses, except as expressly provided to the contrary in this Lease

**Section 4.2.**     **Late Charges.** Rent due from the Tenant, if not received within ten (10) days of the due date, shall accrue interest from the due date until paid at a late charge rate equal to the Prime Rate plus five percent (5%) per year, provided that such amount will not exceed the maximum rate permitted by law.

**Section 4.3.**     **Parking Revenues.** Tenant shall have sole and exclusive control over the parking lots at the Premises and shall have the right in its sole discretion to determine whether there will be any charges for parking and in what amount. To the extent that Tenant permits parking charges, Tenant shall be responsible for the administration and collection of such charges, shall retain any such revenues and shall pay for any and all expenses related to operations and activities associated with generating such parking revenue (e.g., parking attendants, security, and the like).

**Section 4.4.**     **Landlord Tickets.** The Landlord shall be entitled to a reasonable number of tickets per game (e.g. ten per game), subject to availability.

## **ARTICLE 5**

### **UTILITIES**

**Section 5.1. Utility Charges.** The Tenant shall contract directly with the providers thereof and pay for utilities serving the Premises, including water, sewer, electricity, gas, solid waste and recycling, and internet, but not including telephone. Landlord shall contract with the provider for telephone service and pay directly for such service, and Tenant shall reimburse Landlord for all charges incurred by Tenant with respect to Tenant's usage thereof, including, without limitation, charges for long-distance calls. Landlord reserves the right to require Tenant to directly contract with a telephone service provider upon 30 days prior written notice.

**Section 5.2. Energy Efficiency and Water Conservation Program.** The Tenant shall develop and follow a resource conservation program to manage and use all Ballpark utilities in an energy efficient and water-conserving manner. Tenant and the Landlord shall renew and update this program on a periodic basis, not less frequently than biannually.

## **ARTICLE 6**

### **USE OF PREMISES BY TENANT**

**Section 6.1. Permitted Use.** Throughout the Term, Tenant shall occupy and use the Premises for the primary purpose of playing Tenant Home Games in the Ballpark during each Baseball Season during the Term in accordance with PDL Rules and Regulations, together with such ancillary uses thereto, such as administrative offices of the Club. In addition to the foregoing, Tenant's permitted uses shall include Other Events, including, without limitation, the conduct of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, baseball games other than Tenant Home Games, other sporting events, and other similar traditional baseball functions that, among other things, will encourage economic development and tourism in the City. Tenant shall provide notice to Landlord of all Other Events sufficiently in advance for the City to plan for the public safety resources that may be needed for such Other Events. Other Events shall not unreasonably cause embarrassment to or impair the reputation of the City, shall not put an undue burden on the City's public safety assets, and shall not conflict with other major city-wide events, each as determined by the City in its reasonable discretion. If the City reasonably determines any planned Other Event does not comply with the foregoing, it shall promptly inform Tenant, and the planned Other Event shall not be held. Tenant shall not allow the Premises to violate any Permitted Encumbrance or to be used for any public nuisance, any use violating applicable law, or as an industrial site or waste disposal facility.

**Section 6.2. Covenant to Play in Ballpark.** Subject to Force Majeure, the PDL Rules and Regulations and PDL scheduling requirements and as otherwise provided in this Agreement, and provided there is no Landlord Event of Default, Tenant hereby covenants and agrees to play all Tenant Home Games in the Ballpark from and after the Commencement Date and continuing throughout the Term.

**Section 6.3. Level of Play.** Tenant shall exercise its commercially reasonable efforts to maintain the Myrtle Beach Pelicans PDL License Agreement. If the Myrtle Beach Pelicans PDL License Agreement shall be terminated or the Tenant shall or shall otherwise cease to have the right to own and operate a PDL Club (a "PDL Termination"), then, if such PDL Termination is the result of Landlord selling the Ballpark to a third party with whom Tenant is prohibited from having a contractual relationship under then existing PDL Rules and Regulations as uniformly applied to all PDL Clubs, then Tenant may give written notice to the Landlord stating that this Lease shall expire and terminate on the date specified in such notice, otherwise the Tenant shall continue to be bound by this Lease and use its reasonable commercial efforts to enter into another PDL License Agreement and/or own and operate another PDL Club with the right to play its home games at the Ballpark. If it is unable to do so, the Tenant shall nonetheless continue to be bound by this Lease and obligated to field a team at the Ballpark for professional or amateur home baseball games. If Tenant has not entered into another PDL License Agreement and/or does not own and operate another PDL Club with the right to play its home games at the Ballpark within 18 months after the PDL Termination, Landlord may give written notice to the Tenant stating that this Lease shall expire and terminate on the date specified in such notice, which date shall be not less than three (3) months after the giving of such notice; provided that if such date is during the then current baseball season of the team playing at the Ballpark, then such date shall be extended to the end of such baseball season. Upon any termination of this Lease pursuant to this Section 6.3, this Lease

and all rights of the Tenant under this Lease shall expire and terminate on the date specified in the notice as if that date were the date definitely fixed in this Lease for the expiration of the Term, and the Tenant shall immediately quit and surrender the Premises. Following such surrender of the Premises, neither Landlord nor Tenant shall have any further rights or obligations under this Lease, except as set forth in Section 23.1.

**Section 6.4. Exclusive Right to Use Ballpark.** Subject to the terms of this Lease, the Tenant shall have the right to exclusive use of the Ballpark, including without limitation, the field, the clubhouses, the press box, the Tenant administrative offices, Club storage areas, Concessions areas, skyboxes, the Tenant souvenir store and parking lots, on a year-round basis.

**Section 6.5. Solid Waste Reduction Program.** The Tenant shall develop and follow a solid waste reduction program to reduce the volume of solid waste generated from the Tenant's use and occupancy of the Premises including, but not limited to, Concessions and Tenant administrative offices. This program shall include, but is not limited to, recycling. The Tenant and the Landlord shall review and update this program on a periodic basis, not less frequently than biannually.

**Section 6.6. Non-Relocation.** Without limiting or impairing the obligations of this Article 6, and subject to PDL Rules and Regulations, Force Majeure and PDL scheduling requirements, during the Term, provided there is no Event of Default by Landlord, Tenant shall not (i) transfer, assign or surrender the Myrtle Beach Pelicans PDL License Agreement (or any replacement license agreement) in a manner that results in Tenant playing any of its Tenant Home Games outside of the Ballpark in violation of Section 6.2 or (ii) transfer, assign or surrender the Myrtle Beach Pelicans PDL License Agreement (or any replacement license agreement) in a manner that results in Tenant not playing Tenant Home Games in the Ballpark. Provided there is no Event of Default by Landlord, Tenant shall not, during the Term, either directly or indirectly, apply for or seek PDL Approval for, or otherwise engage in conduct relating to, the relocation of the Club outside the limits of the City.

**Section 6.7. Non-Relocation Defaults and Remedies.**

(a) The failure of Tenant to perform or observe any of the obligations, covenants or agreements to be performed or observed by Tenant under Section 6.2 and 6.6 above shall be a "Non-Relocation Default" by Tenant. Upon the occurrence of any Non-Relocation Default, the Landlord 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: (i) the Landlord may seek and obtain injunctive or declaratory relief pursuant to Section 21.6 hereof, including, without limitation, specific performance; or (ii) Landlord may declare to be due and payable immediately the Base Rent due for the remainder of the Term (or which would have become due had this Lease not been terminated, as the case may be), it being agreed that accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Rent in advance, and (iii) the Landlord may terminate this Lease.



(b) Tenant acknowledges and agrees that: (i) in reliance on Tenant's commitment to play its home Tenant Home Games in the Ballpark during the Term as provided by this Article 6, the Landlord is financing the Improvements at a cost to the Landlord of approximately Twenty Million Dollars (\$20,000,000), the majority of which will be funded with public debt; (ii) but for Tenant's commitment to play its Tenant Home Games in the Ballpark throughout the Term as provided by this Lease, the Landlord would not have gone forward with Improvements as herein provided; (iii) having Tenant play its Tenant Home Games in the Ballpark throughout the Term provides a unique value to the Landlord in terms of generating new jobs, additional revenue sources and economic development and increased tourism for the City; (iv) the Landlord would suffer immediate and irreparable harm if a Non-Relocation Default were to occur, including the material loss Landlord would incur upon having a Ballpark with no resident home baseball team, thus bearing all losses from operation of the Ballpark that are likely to occur if a Non-Relocation Default occurred; and (v) monetary damages cannot adequately compensate the Landlord for the damage it would incur if a Non-Relocation Default were to occur. Therefore, the Landlord shall be entitled to obtain injunctive relief prohibiting action, directly or indirectly, by the 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 the Tenant hereby consents to the entry of an order granting such Injunctive Relief by any court of competent jurisdiction. The Landlord shall further be entitled to seek declaratory relief with respect to any matter under this Article 6. The Tenant acknowledges and agrees that in the event of a Non-Relocation Default (A) the Landlord may restrain or enjoin any breach by the Tenant or threatened breach of any covenant, duty, or obligation of Tenant contained in this Article 6 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 (B) 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 6, the balance of hardships would weigh in favor of entry of injunctive relief; and (C) the Landlord may enforce any such covenant, duty or obligation of the Tenant through specific performance. The Parties hereby agree and irrevocably stipulate that (1) the rights of the Landlord to Injunctive Relief pursuant to this Article 6 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 6 are not an "executory contract" as contemplated by Section 365 of the Bankruptcy Code.

**Section 6.8.**     **Ticket Fee.** Notwithstanding any other provision of this Lease, for each ticket sold for Events (including, without limitation, Tenant Home Games), Tenant shall collect and pay to the City a ticketing fee as follows:

Event Type	Fee per Ticket
Other Events	Years 1-5: \$2.00 Years 6-10: \$2.50 Years 11-30: \$3.00
Tenant Home Games	Years 1-5: \$0

	Years 6-10: \$1.00
	Years 11-15: \$1.50
	Years 16-30: \$2.00

Notwithstanding the foregoing, the ticketing fee shall not apply to the sale of season tickets for Tenant Home Games. All revenue from the ticketing fee shall go into a capital expenditures fund to be used by the Landlord for capital repairs, maintenance and improvements at the Premises.

## **ARTICLE 7**

### **USE OF PREMISES BY LANDLORD**

**Section 7.1.**     **Use of Premises by Landlord.** The Landlord shall not have the right to use and occupy, or authorize the use and occupancy of, the Premises for any purpose or to schedule any Event of any nature or kind, without the prior written approval of the Tenant. Notwithstanding the foregoing, the Tenant shall permit the Landlord and its agents to enter into and upon the Premises at all reasonable times, and with not less than 24 hours advance notice given verbally or via email (except in cases of emergency when no notice shall be required), for the purpose of inspecting the same, for the purpose of maintaining any portion of the Premises in accordance with the terms of this Lease, or for the purpose of making repairs, alterations or additions to any other portion of the Premises in accordance with the terms of this Lease. Except in the event of an emergency, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's operations in connection with such entries into the Premises.

**Section 7.2.**     **Other Landlord Facilities.** To the extent permitted by applicable law, the Landlord agrees that during the Term, the Landlord shall not, directly or indirectly, lease any other facilities owned or controlled by the Landlord to a professional baseball team for the primary purpose of playing professional baseball games. The Landlord makes no covenant, warranty or representation as to whether applicable law permits such agreement.

**Section 7.3.**     **Ancillary Development.** In the event of the potential development of property adjacent to the Ballpark, subject to any implied or actual confidentiality agreements of either party, Landlord and Tenant agree to use commercially reasonable efforts to communicate with one another with respect to such development so that the interests of the Ballpark, as well as their mutual and individual interests, are taken into consideration when planning and carrying out such development. The parties acknowledge and agree that this Section 7.3 does not in any way commit the City in any manner with respect to such future development.

## **ARTICLE 8**

### **NAMING RIGHTS**

**Section 8.1.**     **Name of Ballpark.** The Tenant shall have the sole and exclusive rights to market and sell the naming rights during the Term of the Lease to the Ballpark and all facilities located in the Ballpark or on the Premises (the “Naming Rights”). The Naming Rights shall include the right to sell to a third party the right to affix its name to the Ballpark, and Landlord shall abide by any such name, provided that the name of the Ballpark shall be consistent with PDL Rules and Regulations and shall not (i) violate any applicable Legal Requirement, (ii) use the name of a Governmental Authority other than the City, or (iii) reasonably cause embarrassment or disparagement to the City (including names containing slang, barbarisms, racial epithets, obscenities or profanity, names relating to tobacco, marijuana or illegal drugs or paraphernalia or any sexually-oriented business or enterprise, or containing any overt political reference). The Tenant shall retain any and all revenues generated from the sale of the Naming Rights. Subject to the terms of this Section, the Tenant shall be entitled to change any names previously given.

## **ARTICLE 9**

### **BROADCAST RIGHTS**

**Section 9.1.**     **Broadcasting.** The Tenant shall have the exclusive right to broadcast, by any means now or hereafter developed, all Events held in the Ballpark during the Term, to sell or assign all or any portion of the rights thereof and to retain all revenues related thereto.

## **ARTICLE 10**

### **CONCESSIONS**

**Section 10.1. Concessions by Tenant.** The Tenant shall have the exclusive right to operate and sell Concessions at all Events and to retain all revenues generated by the sale of Concessions. Tenant shall have freedom to choose its own vendors and to grant exclusive vendor rights. The Tenant shall be entitled, at the sole expense of the Tenant, to operate a souvenir store and sell Concessions at the Ballpark during standard commercial business hours on a year round basis.

**Section 10.2. Concessions Equipment.** Except for certain permanent fixtures and structures which are part of the physical structure of the Ballpark, the Tenant shall be responsible for and bear the sole expense of installation, maintenance, repair and replacement of all furnishings, fixtures and equipment used to operate and sell Concessions. All such items shall become the property of the Landlord upon the earlier of the termination of the Lease or the date on which the Tenant has fully depreciated such items, but only Tenant or Tenant's concessionaire shall be entitled to use the furnishings, fixtures and equipment or the concession spaces. Tenant shall deliver an inventory of the furnishings, fixtures and equipment at the Premises to Landlord upon request, but not more often than once per year.

**Section 10.3. Engagement of Sub-concessionaire.** The Tenant shall be entitled to engage one or more qualified and reputable sub-concessionaires to assist the Tenant in providing Concessions.

**Section 10.4. Concessions, Requirements and Performance Standards.**

(a) The Tenant shall order, maintain and furnish Concessions so as to provide adequate, efficient and first-class levels of service to persons attending Events at which the Tenant is providing Concessions. The Tenant shall have the exclusive right to determine the brands and prices of all Concessions sold at the Ballpark.

(b) The Tenant shall apply for and take any necessary steps to procure and maintain all licenses and permits required for the Tenant's operation and sale of Concessions. Without limiting the generality of the foregoing, the Tenant shall obtain a permit from the Department of Agriculture for all areas of the Ballpark subject to inspection by such department in connection with the provision of Concessions by the Tenant. The Tenant shall thereafter use its commercially reasonable efforts to maintain at all times a reasonable sanitation rating for all such areas.

(c) The Tenant shall operate and maintain all Concessions areas (including the commissary), equipment, machinery, fixtures and facilities in a neat, clean, sanitary and safe condition.

(d) The Tenant shall provide fresh, sanitary and wholesome food and beverages meeting an excellent standard of quality and purity.

(e) The Tenant agrees to not give any glass bottles to purchasers of beverages. In the Skyboxes, Tenant may sell beverages in glass bottles if the Tenant takes sufficient security measures to assure that patrons do not remove any such bottles from the Skyboxes to any other portions of the Ballpark

(f) To the extent practicable, the Tenant shall use biodegradable containers and minimize the amount of packaging in the Tenant's furnishing of Concessions.

(g) The Tenant shall properly, promptly and courteously process and endeavor to resolve all claims, problems and complaints arising from the provisions of Concessions.

## **ARTICLE 11**

### **EXPENSES RELATING TO EVENTS**

**Section 11.1.** **Event Expenses.** Subject to Section 14.2, Tenant shall be responsible for all costs associated with the staging or promotion of Events and Landlord shall not bear any costs with respect thereto.



## **ARTICLE 12**

### **SPONSORSHIPS, ADVERTISING AND SCOREBOARD**

**Section 12.1. Sponsorships and Advertising by Tenant.** The Tenant shall have the sole and exclusive right, in compliance with the requirements of Section 24.2, to (i) market and sell sponsorship rights within and about the Ballpark and/or in conjunction with Events, (ii) sell and display all advertising within and about the Ballpark and (iii) retain all revenues generated thereby. The Tenant shall also have the exclusive right to sell all program and publication advertising as to operations of the Tenant. The Tenant shall bear all expenses associated with advertising sold and displayed by or on behalf of the Tenant including, without limitation, the cost of erection, maintenance, repair and replacement of all advertising signs and devices. All advertising sold or displayed by or on behalf of the Tenant shall be in good taste and consistent with the overall goals of the Landlord and the Tenant to provide wholesome family entertainment through Events at the Ballpark.

**Section 12.2. Scoreboard.** The Tenant shall, at Tenant expense, install, maintain, repair, and replace as necessary, one or more electronic scoreboards reasonably acceptable to the Landlord. For the avoidance of doubt, the installation of a scoreboard is included in the Improvements. The Tenant shall have the exclusive right to sell and retain the revenues from advertising on the scoreboard(s) during all Events. The Tenant shall operate the scoreboard(s) for all Events. Upon the expiration or earlier termination of this Lease, the scoreboard(s) shall become the property of the Landlord.

**Section 12.3. Ballpark Sign.** Tenant shall, at Tenant's sole cost and expense, be entitled to place signage on the existing marquee-type sign that is adjacent to the public thoroughfare. All signage on the marquee-type sign must conform with the City's sign ordinance and shall be consistent with the standards set forth in Section 8.1(i)-(iv). Landlord shall have the right, at its sole cost and expense, to include the Landlord's name and logo or seal on the marquee-type sign. The size and placement of such name and logo shall not impede Tenant's ability to maximize the terms of its naming rights agreement. Tenant's signage on the marquee-type sign shall be designed, constructed, installed, insured, maintained, repaired and removed from the marquee-type sign at Tenant's sole risk, cost and expense.

## **ARTICLE 13**

### **SUFFICIENT TENANT PERSONNEL**

**Section 13.1.**    **Sufficient Tenant Personnel.** At all times during the Term, the Tenant shall furnish, employ, engage, retain, train, compensate and manage, at Tenant expense, sufficient personnel and other persons to perform all duties, obligations and functions of the Tenant pursuant to this Lease. Without limiting the generality of the foregoing, the Tenant shall provide qualified public address announcers, scoreboard operators, ticket sellers and takers, Concessions personnel, ushers, umpires, first aid personnel, and other personnel and persons appropriate for the proper and safe use of the Premises for Events.

## **ARTICLE 14**

### **SECURITY**

**Section 14.1 Tenant Responsibility.** For all Events at the Ballpark, the Tenant shall, at Tenant expense, provide such security personnel and traffic control both on the Premises (including the parking areas adjacent to the Ballpark) and inside the Ballpark as are necessary to maintain order and protect the Premises and the safety of players, officials, performers, employees, contractors, spectators and customers. At all times during the Term, the Tenant shall be responsible for security at the Premises and in the Ballpark. To the extent Events require special in Ballpark staffing from police, fire or EMS personnel, Tenant shall pay the City for the cost for such personnel. To the extent Other Events require special City public safety personnel outside of the Premises, Tenant shall pay the City for the cost for such personnel.

## **ARTICLE 15**

### **REPAIRS AND MAINTENANCE**

**Section 15.1.**    **By Tenant.** In addition to the other duties and responsibilities of Tenant under this Lease, Tenant shall, at Tenant's sole cost and expense:

(a)    Keep, maintain, and prepare the playing field in a good, first-class condition suitable for Tenant Home Games. The Tenant shall provide such field maintenance equipment (including a tarp) and grounds keeping and other field maintenance services as are appropriate to maintain a quality playing surface for Tenant Home Games. Subject to Section 15.2(d), the Tenant shall perform and pay all costs of field restoration required as a result of damage to the playing field caused by, during, and in connection with any Event.

(b)    Keep and maintain in good repair and condition the sprinkler heads of the irrigation system.

(c)    Keep and maintain in good repair and condition the hitting screen, batting cage and all other on-field baseball equipment such as foul ball screens.

(d)    Provide or cause to be provided all furnishings, fixtures and equipment for the Premises, including without limitation, Tenant administrative office areas, Tenant souvenir store, concession stands, Team storage areas, skyboxes.

(e)    Provide for janitorial and housekeeping services and supplies, and collection of trash and debris, as necessary to keep and maintain the Ballpark and the Premises in a neat, clean, sanitary and safe condition. The Tenant shall provide for collection of trash and debris from the Ballpark and the Premises following each Event and its removal from the Premises.

(f)    Clean and re-aim the lighting fixtures in the lighting towers annually, or more often if necessary,

(g)    Perform routine maintenance such as cleaning of the HVAC system.

(h)    Maintain the sound system and the scoreboard system.

(i)    Paint or stain, the case may be, the interior walls of the administrative offices, of the Ballpark souvenir store, of the concession areas, of the Skyboxes, and of any other area of the Ballpark exclusively occupied by Tenant. Tenant shall not modify the color or colors of any paint or stain that it intends to use without Landlord's written consent, which consent shall not be unreasonably withheld.

(j)    Repair or replace as necessary any furniture installed in the Ballpark including any stadium seats.

(k)    Clean and maintain the concessions areas after all events for which the concessions areas are used.

(l) Repair or replace as necessary all field wall pads and the outfield fence.

(m) Perform and pay for all costs of repairs and replacements to the Premises, including but not limited to the furnishings, fixtures and equipment contained or located on or in the Premises, arising out of or in connection with the acts or omissions of Tenant, the home and visiting teams at Tenant Home Games, umpires, players, employees, agents, contractors, concessionaires and licensees of Tenant (including, without limitation, their subcontractors and sublicensees), and attendees of Tenant Home Games and Other Events.

Tenant shall cause all of the foregoing to be of a quality that maintains the Ballpark to be at least equal quality to first class professional ballparks in similarly situated markets, taking into account the age and design of such ballparks; provided, however, the foregoing shall not require Tenant to upgrade equipment and systems (such as scoreboards, video boards, public address systems, telecommunications facilities, etc.) in order to remain state of the art with other ballparks.

**Section 15.2. By Landlord.** In addition to the other duties and responsibilities of Landlord under this Lease, Landlord shall, at Landlord's sole cost and expense, be responsible for the following:

(a) Repair and maintain the physical structure of the Ballpark and the Premises, and repair and maintain the operating systems of the Ballpark except as provided in Section 15.1. By way of illustration but not limitation, Landlord shall be responsible for maintaining and repairing the electrical, plumbing and fire protection systems, and for repairing and replacing the HVAC systems. For the purposes of this paragraph, the physical structure shall include but shall not be limited to the roof, concrete slab, concrete walls, the materials that form the parking areas, the roof of the Ballpark or of any other buildings, caulking, seals, and joints, lavatories and their fixtures, and ceilings. Landlord shall be responsible for any damage caused by flooding or leaking.

(b) Maintain the lighting towers and fixtures in accordance with the performance specifications.

(c) Repair and maintain the playing field drainage system and the playing field irrigation system, except as provided in Section 15.1(b). Landlord also shall be responsible for any damage caused to the playing field surface, the drainage system, or the irrigation system caused by changes in subterranean conditions. If a quality playing field may no longer be maintained despite appropriate and regular field maintenance practices by Tenant pursuant to Section 15.1(a), then Landlord shall be responsible for field restoration.

(d) Paint or stain, as necessary, the Ballpark or portions of the Ballpark in order to restore the appearance of the Ballpark. Landlord shall not modify the color or colors of any paint or stain that it intends to use without Tenant's written consent, which consent shall not be unreasonably withheld.

(e) Make any repairs made necessary by an event of casualty not caused by Tenant or any repairs to furniture, fixtures, or equipment that is under warranty.

- (f) Repair and replace, as necessary, any portion of the Ballpark, its furniture, fixtures, or equipment that is damaged or destroyed by Landlord.

Landlord shall cause all of the foregoing, as well as the SKA Repairs, to be of a quality that maintains the Ballpark to be at least equal quality to first class professional ballparks in similarly situated markets, taking into account the age and design of such ballparks; provided, however, the foregoing shall not require Landlord to upgrade equipment and systems (such as scoreboards, video boards, public address systems, telecommunications facilities, etc.) in order to remain state of the art with other ballparks.

In furtherance of the above, commencing in the second lease year, and then annually thereafter on or before January 1 of each year, Landlord and Tenant shall confer in good faith to agree upon a list of proposed repairs and replacements pursuant to this Section 15.2 that are capital items, together with a proposed schedule for and estimated budget for such repairs, such that these will be maintained throughout the Term as a rolling five-year plan for Landlord's repairs (the "Capital Maintenance Plan"). The Capital Maintenance Plan is intended to assist Landlord and Tenant in planning and budgeting for the repairs required under this Section 15.2, but shall not limit the generality of the obligations of this Section 15.2. For the avoidance of doubt, the SKA Repairs shall be incorporated into the Capital Maintenance Plan.

**Section 15.3.** **Specific Items.** Attached hereto as Exhibit "E" is a list of specific items relating to repair and maintenance of the Ballpark. This Exhibit "E" assigns responsibilities for the repair or maintenance of specific items to Landlord and Tenant. To the extent that Exhibit "E" is in conflict with any other section of this Lease, Exhibit "E" shall control. For clarity, the provisions of this Article 15 and Exhibit F shall not apply to the Improvements to be made to the Ballpark pursuant to Section 3.1 or the SKA Repairs to be made to the Ballpark pursuant to Section 3.5.

**Section 15.4.** **Self-Help.** In the event the Landlord or the Tenant fails to maintain or repair all or any of the portions of the Ballpark or furnishings, fixtures and equipment in or on the Ballpark as otherwise required by this Lease, the other party shall be entitled, in its sole discretion, but not obligated, to undertake such maintenance or repairs pursuant to this Section 15.4.

(a) **Landlord Self-Help.** The right of self-help of the Landlord as to the collection of trash and debris shall be exercisable immediately upon the failure of the Tenant to collect such trash and debris in a timely manner as provided in this Lease. The right of self-help of the Landlord as to any other maintenance or repairs that are the obligation of Tenant shall be contingent upon (i) Landlord delivering written notice to Tenant specifying with particularity the condition requiring maintenance or repair and of the intention of Landlord to exercise the right of self-help with respect to such condition, and (ii) the failure of the Tenant to complete such maintenance or repairs within ten (10) business days after receiving such written notice from Landlord, unless the maintenance or repairs are of a nature that ten (10) business days are not sufficient time in which to reasonably complete the maintenance or repairs, in which case, the Landlord may nonetheless undertake such action unless the Tenant initiates maintenance or repair efforts within the ten (10) business day period and thereafter diligently carries out to completion the required maintenance or repairs. If Landlord exercises its rights of self-help under this Section, Landlord shall submit to Tenant an invoice for such work, together with reasonable

documentation evidencing such work, and Tenant shall reimburse Landlord in an amount equal to the reasonable costs incurred by Landlord for such repairs or maintenance, including out-of-pocket and labor costs, if any. Notwithstanding anything in this Lease which may be to the contrary, if Landlord determines in its sole discretion to exercise the self-help provisions of this Section, it shall, upon reimbursement for reasonable costs incurred, be entitled to no other remedy arising from the failure of the Tenant to perform the maintenance or repairs required by this Lease that were subject to such remedy of self-help.

(b) Tenant Self-Help. If Tenant delivers written notice to Landlord specifying with particularity any condition requiring maintenance or repair that is Landlord's obligation to so repair or maintain, and of the intention of Tenant to exercise the right of self-help with respect to such condition, Landlord shall respond in writing within ten (10) business days after receipt of such notice to inform Tenant that (i) Landlord is proceeding, and will proceed, with all due diligence to undertake and prosecute such repairs and maintenance to their completion, (ii) Landlord is undertaking such repairs, but that such repairs or maintenance reasonably will take more than ten (10) business days to commence, and setting forth a proposed timeline for such repairs, or (iii) Landlord does not currently have sufficient funds appropriated for such repairs or maintenance. If Landlord does not respond within such 10-business day period, Tenant shall send a second notice to Landlord, containing the substance of the first notice and stating that Tenant will undertake such repairs or maintenance if Landlord does not respond within five (5) business days following such second notice. If Landlord either responds in accordance with (iii) above or fails to respond to the second notice from Tenant, then Tenant may undertake such repairs or maintenance on behalf of Landlord and deduct the actual and reasonable out of pocket costs incurred by Tenant in performing such repairs or maintenance from the next installments of Base Rent then becoming due until Tenant has been reimbursed therefor. Upon completion of such repairs or maintenance, Tenant shall deliver to Landlord reasonable documentation of its out-of-pocket costs incurred with respect thereto. Notwithstanding anything in this Lease which may be to the contrary, if Tenant determines in its sole discretion to exercise the self-help provisions of this Section, it shall, subject to its offset rights contained in this Section, be entitled to no other remedy arising from the failure of the Landlord to perform the maintenance or repairs required by this Lease that were subject to such remedy of self-help.

## **ARTICLE 16**

### **ALTERATIONS AND IMPROVEMENTS**

**Section 16.1. Alterations.** The Tenant may make alterations and improvements to the Premises, subject to the prior written approval of the Landlord, which shall not be unreasonably withheld, conditioned or delayed, and a written agreement between the Landlord and Tenant as to the manner in which the alterations and improvements shall be accomplished. In the absence of such approval and agreement, the Tenant shall make no alterations or improvements to the Premises. Except as otherwise expressly provided for in this Lease, all alterations and improvements shall be at the sole cost and expense of Tenant unless Landlord agrees, in its sole discretion, to any allocation of the expense of such alterations and improvements between the parties in such written agreement. Tenant shall construct any permitted alterations or improvements in a good and workmanlike manner, in conformance with any and all applicable laws, rules and regulations, and pursuant to a valid building permit issued by the City and other required Governmental Approvals. All such alterations and improvements shall become the sole property of the Landlord on the termination or expiration of this Lease. Any alterations or improvements made solely or in part at Landlord expense or contribution shall be the property of the Landlord.

**Section 16.2. Covenant Against Liens.** Tenant shall keep the Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any work on the Premises which may give rise to a lien on the Premises or Ballpark (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within ten (10) business days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed additional rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease.

**Section 16.3. PDL Facility Standards** The Tenant shall provide written notice to the Landlord of any alterations and improvements to the Ballpark required to meet new PDL Facility Standards adopted after the date of this Lease. Subject to the other terms of this Article 16, the Tenant shall make such required alterations and improvements within the time period required by MLB PDL and the cost thereof up to a maximum amount of \$5,000,000 in the aggregate shall be paid by Landlord and reimbursed to Landlord by Tenant by an increase in Base Rent for the remainder of the Lease in an amount necessary to amortize (at prime rate or Landlord's financing costs, whichever is less) such cost over the remaining Term of the Lease. Landlord shall not unreasonably withhold consent for any alterations or improvements required to meet new PDL Facility Standards adopted after the date of this Lease, provided, subject to the terms of this Section 16.3, Landlord may reasonably consider the conformance of such alterations and improvements with applicable laws and regulations, whether such alterations and improvements would damage,



endanger or change the nature or character of the Ballpark, and Tenant's funding therefor in its determination, which Tenant shall document to Landlord at the time Tenant requests any such alterations or improvements. To the extent any required alterations and improvements to the Ballpark required to meet new PDL Facility Standards adopted after the date of this Lease (i) exceed \$5,000,000 in the aggregate, the portion in excess of \$5,000,000 shall be at Tenant's sole cost and expense or (ii) occur during the last five years of the Term, Landlord may, in its sole determination, require Tenant to directly fund all or any portion of such alterations and improvements without Landlord's financing of any such costs as provided for above.

**ARTICLE 17**

**[INTENTIONALLY OMITTED]**

## **ARTICLE 18**

### **INSURANCE**

**Section 18.1.** **By Tenant.** In addition to the requirements of Section 3.1 hereof, at all times during the Term, the Tenant shall, at Tenant's expense, procure and thereafter maintain the insurance specified in this Article with insurance companies rated A- or better, acceptable to the Landlord and licensed to do business in the State of South Carolina. The terms, conditions and amount of all such insurance shall be subject to the prior review and approval of the Risk Manager. A copy of each such policy, together with a receipt and certificate of insurance indicating payment by the Tenant of the insurance premium on the policy, shall be promptly submitted to the Risk Manager. In the event of a loss which may be covered by any policy of insurance, the Tenant shall submit to the Risk Manager a copy of the proof of claim at the time the Tenant submits the claim to the insurance carrier. All such insurance shall contain an endorsement giving the Landlord not less than sixty (60) days' prior written notice of any cancellation or material alteration (to the extent the insurance provider is willing to provide such prior notice to Landlord) and, with the exception of workers' compensation insurance, shall include the Landlord as an additional insured. Without limiting the generality of the foregoing:

(a) *Workers' Compensation Insurance.* The Tenant shall procure and maintain workers' compensation insurance providing statutory limits regardless of the number of employees.

(b) *Commercial General Liability Insurance.* The Tenant shall procure and maintain commercial general liability insurance, including but not limited to the following coverage parts: premises/operations; products and completed operations; contractual; fireworks liability; automobile liability; independent contractors; broad form property damage; liquor liability; host liquor liability; abuse and molestation; and personal and advertising injury, including coverage for false arrest, false imprisonment, malicious prosecution, libel, slander, and defamation. Such insurance shall contain limits approved from time to time by the Risk Manager but in no event less than a combined single limit of One Million Dollars (\$1,000,000) per person and Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage liability, Five Hundred Thousand Dollars (\$500,000) per person for personal and advertising injury, and Five Thousand Dollars (\$5,000) per person for medical payments coverage. The Landlord shall be named as an additional insured in connection with the operations of Tenant. Primary, excess, and umbrella policies may be used to obtain these coverage limits. As to those commercial general liability insurance coverage parts for independent contractors and liquor liability and host liquor liability, the Tenant may cause its independent contractors to procure and maintain such coverage on behalf of the Tenant and the Landlord.

(c) *Business Interruption Insurance.* The Tenant shall procure and maintain business interruption insurance in minimum amounts of not less than the Base Rent for a period of [eighteen (18)] months.

(d) *Other Insurance.* At the Landlord's request, the Tenant shall procure and maintain such other insurance that is or may become customary or available for protection

against claims, liabilities and losses connected with the Tenant's use or occupancy of the Premises.

**Section 18.2. By Landlord.** Except as otherwise provided by Section 18.3, the Landlord shall at all times during the Term, at Landlord's expense, procure and thereafter maintain a policy or policies of fire and extended coverage insurance on the Ballpark, and other Landlord-owned insurable facilities located on the Premises and having replacement values in excess of Fifty Thousand Dollars (\$50,000). Such insurance shall be on an actual cash value basis, and with insurance companies rated A- or better, and licensed to do business in the State of South Carolina. A copy of each such policy, together with a receipt and certificate of insurance indicating payment by the Landlord of the insurance premium on the policy, shall be promptly submitted to the Tenant. All such insurance shall contain an endorsement giving the Tenant not less than sixty (60) days' prior written notice of any cancellation or material alteration (to the extent the insurance provider is willing to provide such prior notice to Tenant). The Landlord shall not be required to insure: any contents of the Ballpark; furnishings, fixtures or equipment; or personal property of the Landlord or the Tenant.

**Section 18.3. Landlord Risk Retention Program.** In lieu of the insurance otherwise required pursuant to Section 18.2, the Landlord may utilize an alternative risk management, risk retention or self-insurance program for the Ballpark. Such program shall be bona fide and funded in a financially sound manner so as to constitute reasonable and appropriate risk management by the Landlord. Such program may be individually established by the Landlord or part of a mutual or collective program with other units of local government, other institutions or captive insurance companies. Should the Landlord determine to utilize any such program for the Ballpark, then on an annual basis during the period such program is being utilized, the Landlord shall provide to the Tenant documentation, reasonably satisfactory to the Tenant, of compliance by the Landlord with the provisions of this Section.

## **ARTICLE 19**

### **INDEMNIFICATION**

**Section 19.1. Obligation of Tenant to Indemnify.** To the fullest extent permitted by law, the Tenant shall defend, indemnify and hold harmless the Landlord and the Landlord's officers, employees, agents and contractors (hereinafter "Indemnitees") against and from all liabilities, suits, obligations, fines, damages, penalties, losses, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and disbursements (hereinafter collectively referred to as "Charges"), which may be suffered by, imposed upon or asserted against or reasonably incurred by the Indemnitees arising as a result of or in connection with (i) the acts or omissions of the Tenant or the Tenant's officers, employees, players, agents, assigns, subleasees, contractors, concessionaires, sub-concessionaires, licensees and guests (other than members of the public attending, as a spectator, Events staged by the Tenant) (hereinafter the "Indemnitors"), (ii) any accident, injury or damage whatsoever caused to any person or to the property of any person, occurring in or about the Premises, (iii) any breach of this Lease by Tenant; provided, however, that this obligation shall not extend to Charges which may be suffered by, imposed upon or asserted against or reasonably incurred by the Indemnitees arising as a result of or in connection with the negligence or willful misconduct of the Indemnitees.

**Section 19.2. Obligation to Defend.** If any claim, action or proceeding is made or brought against any Indemnitee by reason of any event as to which the Tenant is required to indemnify any Indemnitee pursuant to this Article 19, then, upon demand by such Indemnitee, the Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in such Indemnitee's name, if necessary, by the attorneys for the Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), and otherwise by such attorneys as the Landlord shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. The Landlord agrees that in the event the Landlord is named as a party to the action, the Landlord will reasonably cooperate with the Tenant in the conduct of the proceedings. Any one or more Indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnitee unless (i) the employment of such counsel has been specifically authorized in writing by the Indemnitor, (ii) the named parties to any such action (including any impleaded parties) include the Indemnitor and such Indemnitee and representation of the Indemnitor and Indemnitee by the same counsel would be inappropriate due to actual or potential differing interests between them, or (iii) the Indemnitor or Indemnitee have been advised by counsel reasonably acceptable to the Indemnitor that one or more legal defenses may be available to any or all of them which may not be available to the Indemnitor in which case the Indemnitor shall not be entitled to assume the defense of such suit. The Indemnitees shall not be bound by any compromise or settlement of any such claim, action or proceeding without the prior written consent of such Indemnitees, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 19.3. Tenant's Risk.** Tenant agrees that its use and occupancy of the Premises and the Ballpark is at Tenant's own risk. Unless covered by the insurance policies or risk retention program required to be maintained by Landlord pursuant to Sections 18.2 and 18.3, the Landlord and Landlord's officers and employees shall not be liable to the Indemnitors for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or

loss to an Indemnitor's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, repairs to any portion of the Premises or the Ballpark, any fire, robbery, theft, mysterious disappearance, or any other crime or casualty, any cyber attack affecting the Ballpark systems or any computer systems in the Premises or the Ballpark, the actions of any member of the public attending any Event, or of any other person or persons, or any leakage in any part or portion of the Premises or the Ballpark, or from water, rain or snow that may leak into, or flow from any part of the Premises or the Ballpark, or from drains, pipes or plumbing fixtures in the Premises or the Ballpark. The foregoing shall not excuse a Landlord Event of Default or Tenant's right to exercise its remedies hereunder. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk of the Indemnitor, and except to the extent covered by the insurance policies or risk retention program required to be maintained by Landlord pursuant to Sections 18.2 and 18.3, neither the Indemnitees nor their insurers shall in any manner be held responsible therefor. Except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's officers or employees, Landlord and Landlord's officers and employees shall not be responsible or liable to a Indemnitor, or to those claiming by, through or under an Indemnitor, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining property or any part of the properties adjacent to or connecting with the Premises or any part of the Ballpark or otherwise. The provisions of this section shall be applicable to the fullest extent permitted by law.

**Section 19.4.** **Survival.** The provisions of this Article shall survive the termination or expiration of this Lease.

**Section 19.5.** **Notice.** Landlord shall provide detailed written notice to Tenant immediately whenever Landlord learns of any possible charges which could require Tenant to indemnify Landlord under the provisions of Article 19 including any litigation which could involve Landlord regarding the Ballpark. Failure to give notice shall not relieve Tenant of any obligation under this Article 19 except to the extent Tenant shall be prejudiced by such failure..

**Section 19.6.** **Sovereign Immunity.** Nothing shall be construed in this Lease as waving governmental sovereign immunity.

## **ARTICLE 20**

### **CASUALTY LOSS; CONDEMNATION**

**Section 20.1. Loss.** If the Ballpark or any part thereof shall be damaged or destroyed by fire or other casualty not due to the negligence of Tenant or any Indemnitor, the Landlord, at Landlord expense, shall repair the damage out of the proceeds of insurance under Section 18.2 or alternatively, if the Landlord has determined to utilize a risk management, risk retention or self-insurance program under Section 18.3 rather than obtain the insurance policy or policies under Section 18.2, the proceeds of the program under Section 18.3. The Landlord shall use such proceeds to restore the Ballpark so much as such proceeds allow to substantially the condition existing immediately prior to such fire or other casualty. In undertaking any such work of repair and restoration, the Landlord shall proceed promptly and diligently to completion, subject to reasonable delays beyond the Landlord's control. Following the occurrence of any such casualty, Landlord shall reasonably determine the time that is necessary for the repairs to restore the Ballpark, which determination shall be delivered to Tenant no later than 120 days after the occurrence of such casualty. Notwithstanding the foregoing, (A) if (i) the Ballpark is totally damaged or destroyed by fire or other casualty, or (ii) Landlord reasonably determines that repairs cannot reasonably be completed within 18 months following such casualty, then Landlord may terminate this Lease in its entirety by written notice to Tenant, or (B) if (i) Landlord elects not to rebuild the Ballpark, or (ii) Landlord reasonably determines that repairs cannot be completed within 36 months following such casualty, then Tenant may terminate this Lease in its entirety by written notice to Landlord, and in either event, each party's liability to the other shall cease from and after the date that is 18 months after the date of such casualty, except for any liability hereunder that expressly survives the termination of this Lease.

**Section 20.2. Rent Adjustment During Repair Period.** Beginning with the occurrence of any damage or destruction by fire or other casualty which renders the Ballpark unfit or unusable for Tenant Home Games and ending upon completion of the work or repair and restoration, Rent shall not abate during any period for which Tenant is required to maintain business interruption insurance coverage, but the other obligations of the Landlord and the Tenant under this Lease shall be suspended to the extent appropriate in the light of the extent of the fire or casualty and the remaining part, if any, of the Premises being used by the Tenant. Following any period for which Tenant is required to maintain business interruption insurance coverage hereunder, if Tenant is still unable to occupy and use all or any portion of the Ballpark for Tenant Home Games, Rent shall be abated equitably until the repairs are completed.

**Section 20.3. Condemnation.** In the event that all or any material portion of the Ballpark is taken by the exercise of the right of eminent domain exercised by a governmental entity or pursuant to any other governmental order and such taking renders the Ballpark unfit or unusable for Tenant Home Games, then this Lease shall terminate and expire on the date of such taking. In such event, the Tenant shall pay Rent for the period of time up until the date of taking; any obligation of the Tenant to pay Rent for use of the Ballpark for the period of time commencing as of the date of taking shall cease. The Tenant shall have no right to any portion of any award granted with respect to such taking, except that the Tenant shall have the independent right to make a claim, to the extent such claim may be then allowed by applicable law, against the condemnor for and retain any award based on the reasonable value of its leasehold interest in the Ballpark and of any

improvements made to the Ballpark by the Tenant and for the expenses incidental to relocating from the Ballpark. For purposes of this Section, the “date of taking” means the date title to the Ballpark or the material portion taken is permanently vested in such governmental entity.



## **ARTICLE 21**

### **EVENTS OF DEFAULT**

**Section 21.1.** **By Tenant.** Each of the following events shall constitute an Event of Default under this Lease:

(a) if the Tenant shall fail to pay any installment of Rent and such failure shall continue for ten (10) days after written notice from the Landlord to the Tenant, other than any portions of Rent subject to a good faith dispute between the Landlord and the Tenant during the pendency of such dispute;

(b) if the Tenant shall fail to make payment of rent under the Current Lease or any other payment required to be paid by the Tenant under this Lease for a period of fifteen (15) days after written notice from the Landlord to the Tenant specifying such failure, other than any portions of such payment subject to a good faith dispute between the Landlord and the Tenant during the pendency of such dispute;

(c) if there is an understatement of Rent or other sums due from the Tenant to the Landlord due to an intentional discrepancy by the Tenant;

(d) except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be an Event of Default under this Section 21.1, if the Tenant shall fail to observe or perform one or more of the other provisions of this Lease or any representation of the Tenant set forth in this Lease, and such failure or misrepresentation shall continue for a period of thirty (30) days after written notice by the Landlord to the Tenant specifying in detail such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty-day period, in which case the Tenant may have such additional period of time as may be necessary to effectuate such performance by diligently prosecuting the same to completion, but in any event not longer than 12 months);

(e) if the Tenant shall admit, in writing, that it is unable to pay its debts as such become due or shall make an assignment for the benefit of creditors;

(f) if the Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Tenant or of all or any substantial part of its properties or of any interest of the Tenant in the Premises;

(g) If within ninety (90) days after the commencement of any proceeding against the Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy

act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of the Tenant or of all or any substantial part of its properties or of any interest of the Tenant in the Premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(h) subject to Force Majeure, casualty, condemnation and/or alterations, if the Tenant shall abandon the Premises and such abandonment shall continue for a period of fifteen (15) days;

(i) if this Lease or the estate of the Tenant hereunder shall be assigned, leased, transferred, or encumbered without an approval of the Landlord required by this Lease or without compliance with the applicable provisions of this Lease; or

(j) if a levy under execution or attachment shall be made against the Tenant or its property (that would have an impact on its ability to perform under the Lease) and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days.

**Section 21.2. By Landlord.** It shall constitute an Event of Default under this Lease if the Landlord shall fail to observe or perform one or more of the provisions of this Lease, and such failure shall continue for a period of thirty (30) days after written notice by the Tenant to the Landlord specifying in detail such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty-day period, in which case the Landlord may have such additional period of time as may be necessary to effectuate such performance by diligently prosecuting the same to completion, but in any event not longer than 12 months). Upon any such default by Landlord under this Lease, Tenant may (a) give written notice to the Landlord stating that this Lease shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice with respect to any Event of Default and/or (b) exercise any of its rights provided at law or equity.

**Section 21.3. Termination Of Lease in Event of Default by Tenant.** If an Event of Default by the Tenant shall occur and be continuing, the Landlord, at its option, may declare to be due and payable immediately the Base Rent due for the remainder of the Term (or which would have become due had this Lease not been terminated, as the case may be), it being agreed that accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Rent in advance, and give written notice to the Tenant stating that this Lease shall expire and terminate on the date specified in such notice, which date shall not be during any Baseball Season. Thereafter, this Lease and all rights of the Tenant under this Lease shall expire and terminate on the date specified in the notice as if that date were the date definitely fixed in this Lease for the expiration of the Term, and the Tenant shall immediately quit and surrender the Premises.

**Section 21.4. Re-entry by Landlord on Termination.** If this Lease shall be terminated as provided in this Article 21 or by summary proceedings, or otherwise, the Landlord may reenter and repossess the Premises pursuant to applicable law.

**Section 21.5. No Reinstatement of Term.** No receipt of monies by the Landlord from the Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease (unless such receipt is before the termination date set forth in the notice and cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice previously given to the Tenant or operate as a waiver of the right of the Landlord to recover possession of the Premises.

**Section 21.6. Alternate Remedies of the Landlord.** Unless the remedies provided in Section 15.4 are being pursued, in the event of any Event of Default or threatened breach of any of the provisions of this Lease, the Landlord shall be entitled to enjoin such Event of Default or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity (including specific performance) or by statute or otherwise as though reentry, summary proceedings, and other remedies were not provided for in this Lease. Notwithstanding any provision to the contrary contained in this Lease, if an Event of Default occurs at any time on or before substantial completion of the Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease construction of the Improvements, and (ii) all other obligations of Landlord under Article 3 shall be forgiven until such time as such Event of Default is cured pursuant to the terms of this Lease.

**Section 21.7. Alternate Remedies of Tenant.** Unless the remedies provided in Section 15.4 are being pursued, in the event of any Event of Default or threatened breach of any of the provisions of this Lease, the Tenant shall be entitled to enjoin such Event of Default or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity (including specific performance) or by statute or otherwise.

**Section 21.8. Rights and Are Cumulative.** Unless the remedies provided in Section 15.4 are being pursued, and except to the extent provided in Section 21.11 below, each right and remedy of the Landlord and the Tenant provided for in this Lease shall be cumulative and not exclusive and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity (including specific performance) or by statute or otherwise. Unless the remedies provided in Section 15.4 are being pursued, and except to the extent provided in Section 21.11 below, the exercise or beginning of the exercise by the Landlord or the Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Landlord or the Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

**Section 21.9. Landlord Protection for Tenant Bankruptcy.** If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of the Tenant or the Tenant's interest in this Lease in any proceeding which is commenced by or against the Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable

federal, state or other statute or law, the Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of the Tenant's obligations under this Lease.

## **ARTICLE 22**

### **TRANSFER OF TENANT'S INTEREST**

**Section 22.1. Tenant Right of Assignment.** The Tenant shall be entitled to assign this Lease to any third party that receives PDL Approval to become the owner of the Club, so long as such owner: (a) agrees to assume all of the rights and obligations of the Tenant under this Lease, (b) demonstrates to the reasonable satisfaction of the Landlord that the owner is financially capable of assuming all of the rights and obligations of this Lease and (c) is not a Prohibited Person. Tenant shall provide written notice to Landlord of its intent to assign this Lease, and within sixty (60) calendar days thereafter Landlord must accept or reject Tenant's request. Unless Landlord reasonably objects to the assignment within sixty (60) calendar days (time is of the essence), consent to assignment shall be deemed given and Tenant may assign this Lease. Other than as set forth in this Section, the Tenant shall not be entitled to assign this Lease without the express written consent of the Landlord, which may be withheld for any reason. No assignment shall in any way relieve or excuse the Tenant from any of the Tenant's obligations under this Lease prior to the effective date of the assignment. Following the assignment, the Tenant shall thereafter be released of any liability arising under this Lease after the date of such assignment, unless such liability is based on events, activities, circumstances, acts or omissions occurring prior to the date of such assignment.

**Section 22.2. Prohibited Transfers.** Except as explicitly authorized in Sections 10.3 and 22.1, the Tenant shall not permit, suffer or enter into an assignment, sublease, transfer, sale, conveyance, syndication or other disposition of any kind whatsoever (hereinafter collectively referred to as a "Transfer") of any of the Tenant's interest in this Lease or the leasehold estate established in this Lease, without the prior written approval of the Landlord. Such approval of the Landlord to a Transfer shall be in the sole discretion of the Landlord. All provisions of this Lease shall be binding upon the person to whom or to which an approved Transfer is made. Except as explicitly provided in Section 22.1, no Transfer shall in any way relieve or excuse the Tenant from any of the Tenant's duties, obligations, responsibilities, covenants and requirements under this Lease.

**Section 22.3. Draft of Tenant Territory.** Except as expressly authorized in Section 22.1, the Tenant shall use best efforts in good faith to oppose within, and only to the extent allowed by, the PDL Governing Documents, any attempt by any PDL Club to draft the Tenant's territory.

## **ARTICLE 23**

### **MLB PDL PROVISIONS**

**Section 23.1. MLB PDL Provisions.** Any contrary provisions contained herein notwithstanding:

(a) This Lease and any rights granted to Landlord or Tenant hereunder shall in all respects be subordinate to the PDL Rules and Regulations, as long as Tenant is party to the Myrtle Beach Pelicans 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 Landlord is granted rights under this Lease is limited to, and nothing herein shall be construed as conferring on Landlord rights in areas outside of, the PDL Club Marketing Territory (as defined in the Myrtle Beach Pelicans 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 Lease except as are specifically approved in writing by MLB PDL.

(b) Landlord agrees that if the date upon which any termination or suspension of this Lease 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 Landlord terminate or suspend Tenant's rights under this Lease during any regular season or postseason.

(c) If, at any time prior to the expiration of the Term of this Lease, this Lease is terminated by Landlord for any reason (and any legal action challenging the right of Landlord to terminate this Lease 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 Myrtle Beach Pelicans PDL License Agreement has been terminated, Landlord agrees to enter into a lease with substantially similar terms to this Lease with any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to Landlord. To the extent that such lease is not entered into, Landlord 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, Landlord shall offer to lease the Ballpark to such PDL Club. For the avoidance of doubt, this Section 23.1(c) shall survive the termination of this Lease.

(d) As long as Tenant is party to the Myrtle Beach Pelicans PDL License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 23.1 and each other provision in this Lease that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 23.1, 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.

(e) Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 23.1 (other than for fraudulent acts or willful misconduct with respect to this Section 23.1 by MLB PDL), and Landlord 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 Lease shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person

## **ARTICLE 24**

### **MISCELLANEOUS**

**Section 24.1. Nondiscrimination.** The Tenant shall not discriminate on the basis of race, creed, color, sex, age, religion, handicapped status or national origin with respect to use and occupancy of the Premises.

**Section 24.2. Compliance with Applicable Law.** In connection with the occupancy and use of the Premises, the Tenant shall, at Tenant expense, comply with all present and future laws, ordinances, codes, orders and regulations of any lawful authority having jurisdiction over the Premises. The Tenant shall not use or occupy, nor permit or suffer the Premises to be used or occupied: (i) for any unauthorized, unlawful, illegal, disreputable, dangerous, noxious or hazardous business, use or purpose; (ii) in such manner as to constitute a nuisance of any kind (public or private); (iii) in violation of any licenses or permits pertaining to the Premises or activities and events on the Premises (iv) in a manner which causes or results in any waste on the Premises; (v) for any purpose or in any way in violation of the certificates of occupancy or of any laws, ordinances, orders or regulations of any lawful authority having jurisdiction over the Premises; or (vi) in a manner which may make void or voidable any insurance then in force on the Premises. Upon the discovery of any such unauthorized, unlawful, illegal, disreputable, dangerous, noxious, hazardous or other improper use, the Tenant shall immediately take all necessary steps, legal and equitable, compel the discontinuance of such use.

**Section 24.3. Cooperative Efforts.** This Lease shall be liberally construed in order to promote a harmonious relationship between the parties with regard to the construction, occupancy and use of the Ballpark. The Tenant accepts the relationship of trust and confidence established between the Tenant and the Landlord by this Lease. The Tenant covenants with the Landlord to furnish its best skill and judgment and to fully and effectively cooperate with the Landlord to accomplish the purposes and objectives of this Lease. If a problem arises that this Lease does not directly or indirectly address, the Tenant and the Landlord agree to work with one another to determine a mutually satisfactory solution. The Landlord and the Tenant agree to meet from time to time during the Term upon written request of either party to review the provisions of this Lease.

**Section 24.4. Amendment.** No alteration, amendment, change or addition to this Lease shall be binding on either party unless (i) reduced to writing and signed by each party and (ii) all necessary PDL Approvals have been obtained in advance thereof.

**Section 24.5. Waiver.** No failure by the Landlord or the Tenant to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy upon a breach of such provision, and no acceptance of full or partial rental payment by the Landlord during the continuance of any such breach, shall constitute a waiver of any such breach or of such provision. No provision of this Lease to be performed or complied with by the Tenant or the city, and no breach of such provision, shall be waived, altered or modified except by a written instrument executed by the Landlord or the Tenant, as applicable. No waiver of any breach shall affect or alter this Lease, but each and every provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.



**Section 24.6. Agency.** Nothing in this Lease is intended or shall be interpreted to create a joint venture or partnership between the Landlord and the Tenant or make the Landlord the partner of the Tenant or constitute either the agent of the other, or make either party in any way responsible for the debts, losses, duties, obligations, responsibilities or liabilities of the other party. Without limiting the generality of the foregoing, the Landlord and the Tenant agree that in respect to use and occupancy of the Premises by the Tenant, the operation of Concessions, and all other activities and services of the Tenant pursuant to this Lease, the Tenant shall be acting as a lessee and independent contractor on the Tenant's behalf. The Tenant agrees that it will not represent to anyone that its relationship to the Landlord under this Lease is other than as a lessee and independent contractor.

**Section 24.7. No Third Party Beneficiaries.** The Landlord and the Tenant acknowledge and agree that, except as expressly provided in Section 23.1, neither intends this Lease to confer direct benefits upon any persons other than themselves (and their permitted successors and assigns), that any benefits other persons may receive are purely incidental, and that neither intends to confer any contractual or other rights, including the right to enforce all or any portion of this Lease, upon any such persons.

**Section 24.8. Encumbrances.** The Tenant shall not permit any mechanics' liens or other encumbrances or liens to exist against the Premises or the leasehold interest of the Tenant. The Tenant or the Landlord, as applicable, within thirty (30) days of any such lien or encumbrance being asserted against the Premises or the leasehold interest of the Tenant, shall either cause the same to be released of record or obtain title insurance coverage satisfactory to the other in the respect to such lien or encumbrance and proceed diligently to contest the same in good faith.

**Section 24.9. Public Address Announcements.** The Tenant agrees to make a reasonable number of public address announcements, at no cost to the Landlord, as to other events and activities to be held at other public facilities.

**Section 24.10. Fireworks.** The parties recognize that firework displays are customary outdoor entertainment in conjunction with professional baseball games and other Ballpark events. The parties also recognize that firework displays within the Ballpark require and are subject to the prior approval of the Landlord on a case-by-case basis. Subject to such approval and compliance with Section 24.2, firework displays may be held in the Ballpark prior to 10:30 p.m.

**Section 24.11. Inspection and Right of Entry.** The Landlord shall have the unrestricted right to enter upon the Premises, including any and all portions used or occupied by the Tenant. For any portion of the Premises being used or occupied by the Tenant pursuant to this Lease at the time of such entry, the Landlord shall provide reasonable prior oral notice to the Tenant.

**Section 24.12. Cost of Compliance.** Except where otherwise explicitly provided in this Lease, the Tenant shall bear the sole cost and expense of complying with and performing all of the duties and obligations of the Tenant under this Lease, and the Landlord shall bear the sole cost and expense of complying with and performing all of the duties and obligations of the Landlord under this Lease.

**Section 24.13. Exercise Of Landlord's Rights.** All rights, privileges, duties and obligations of the Landlord pursuant to this Lease may be performed or exercised, as the case may be, either by the Landlord (and the officers and employees of the Landlord) directly, or by any designees, agents, independent contractors, assignees, successors, or other persons or entities selected by the Landlord.

**Section 24.14. Landlord's Sale of Premises.** Landlord may sell, mortgage, or otherwise dispose of the Ballpark, provided that any such disposition must be subject to the terms of this Lease.

**Section 24.15. Performance of Government Functions.** Notwithstanding anything in this Lease which may be to the contrary, nothing contained in this Lease shall in any way estop, limit or impair the Landlord from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions with respect to the Premises or otherwise, including, by way of illustration but not limitation, inspection of the Premises in the performance of such functions and exercise of the power of eminent domain with respect to the Premises.

**Section 24.16. Severability.** If any provision of this Lease or its application to any person or circumstances shall, to any extent be or become invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. The Landlord and the Tenant agree to substitute such provision of this Lease or the application thereof determined to be invalid or unenforceable, such other provision as most closely approximates, in a lawful manner, such invalid, illegal or unenforceable provision. If the Landlord and the Tenant cannot agree, they shall apply to a court of competent jurisdiction to substitute such provision as the court deems reasonable and judicially valid, legal and enforceable. Such provision determined by the court shall automatically be deemed part of this Lease as of the date the provision of this Lease or application thereof which such provision replaces was determined to be invalid or unenforceable.

**Section 24.17. Choice of Law.** This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina. Any litigation arising out of this Lease shall be brought in courts sitting in Horry County, South Carolina.

**Section 24.18. Binding Effect.** All benefits, privileges, burdens, obligations and duties created by this Lease shall bind, attach and inure to the benefit and burden of the successors and assigns of the Landlord and the Tenant. This Section shall not be interpreted so as to confer any independent right in the Tenant to convey, transfer or assign any such benefits, privileges, burdens, obligations and duties.

**Section 24.19. Notice.** Except where oral notice has been explicitly provided for in this Lease, any notice required to the Landlord or the Tenant by the terms of this Lease shall be in writing and be deemed given when received, whether personally, by overnight courier that provides for receipted delivery, by certified or registered mail, return receipt requested, postage prepaid), and addressed to the party due such notice as shown, together, in the case of delivery by overnight courier or registered or certified mail, with a copy sent by email to the email addresses below:

To the City: City of Myrtle Beach  
Attention: City Manager  
Post Office Drawer 2468  
Myrtle Beach, South Carolina 29577  
Email:

To the Tenant: Myrtle Beach Pelicans LP  
1251 21<sup>st</sup> Avenue, N  
Myrtle Beach, SC 29577  
Attn: Chuck Greenberg  
Email: chuck@gsg-sports.com

with a copy to: Sherrard, German & Kelly, P.C.  
535 Smithfield St., Ste. 300  
Pittsburgh, PA 15222  
Attention: David J. Lowe  
David.Lowe@sgkpc.com

The parties shall, by written notice to the other party, each have the right to change the person and address to which notices are to be sent.

**Section 24.20. Headings.** The table of contents and all headings that appear after article and section numbers in this Lease are included for convenience only and shall not affect the construction or interpretation of the provisions of this Lease.

**Section 24.21. Entire Agreement.** This Lease contains and represents the entire and integrated agreement between the Landlord and the Tenant and supersedes all prior negotiations, representations or agreements, whether written or oral. There are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, express or implied, between the parties other than as set forth or referenced in this Lease.

**Section 24.22. Controlling Document.** To the extent that this Lease is inconsistent with any other agreement between Landlord and Tenant, this Lease shall control.

**Section 24.23. Non-Jury Trial.** Any dispute between Landlord and Tenant regarding Articles 22 or 23 hereunder shall be considered to be non-jury questions or non-jury issues whether such issues are fact based or law based and such hearings or trials shall be heard in front of the appropriate judge or master in equity in the controlling jurisdiction.

**Section 24.24. Force Majeure.** No party shall be liable to any other party under this Lease for a failure or delay in performing all or part of a party's obligations hereunder to the extent that such delays or failures result, directly or indirectly, from Force Majeure causes. Subject to Section 20.2, no event of Force Majeure shall excuse Tenant's obligations to pay Rent and other charges due pursuant to this Lease or excuse Tenant's obligations to comply with Legal Requirements.

**Section 24.25. Source of Landlord Funding.** Except for the payment of the Tenant Improvement Allowance in accordance with the terms and conditions contained herein, all payments and other performances by Landlord under this Lease are subject to such approvals by the Landlord as may be expressly set forth herein, including in their capacities as Governmental Authorities, the availability of funds, and annual discretionary appropriations by the City Council of the City of Myrtle Beach (the "City Council"). The undertakings by Landlord to make payments under this Lease constitute neither a debt of the City within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of the City beyond any fiscal year for which the City Council has appropriated moneys for the purposes of this Lease. Any failure to appropriate by the City Council, and Landlord's resulting failure to comply with such other provisions hereunder will not constitute a Landlord Event of Default hereunder; provided, that with respect to any such failure, (i) Tenant shall have the right of self-help as set forth in Section 15.4 with respect to any maintenance or repair obligations of Landlord, including the obligation to make the SKA Repairs, for which funds have not been appropriated to Landlord in accordance with the foregoing, or (ii) if sufficient funds are not appropriated to Landlord and Landlord does not commence to cure such failure within 60 days after written notice from Tenant that Tenant intends to terminate this Lease as a result of such failure, then Tenant shall have the right to terminate this Lease by delivering written notice to Landlord of such termination, which shall be effective no sooner than 60 days from the date of such termination notice.

**Section 24.26. Recording.** Recording of this Lease is prohibited except as allowed in this section. At the request of any party, the parties shall promptly execute and record, at the cost of the requesting party, a short form memorandum describing the Real Property and stating this Lease's Term, its Completion and Ending Dates, and other information the parties agree to include.

IN WITNESS WHEREOF, the Landlord and the Tenant have respectively signed this Lease as of the date indicated on the first page of this Lease.

WITNESSES:

**CITY OF MYRTLE BEACH, SOUTH  
CAROLINA**

\_\_\_\_\_  
By \_\_\_\_\_  
Jonathan "Fox" Simons, Jr., City Manager

**ACKNOWLEDGMENT**

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF HORRY            )

PERSONALLY appeared before me, the undersigned witness, and made oath that s/he saw the within-named CITY OF MYRTLE BEACH, SOUTH CAROLINA, by JONATHAN "FOX" SIMONS, JR., its City Manager, sign, seal and as its act and deed, deliver the within-written Agreement of Lease for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

\_\_\_\_\_  
1st witness

SWORN to and subscribed before me  
this \_\_ day of \_\_\_\_\_ 2025.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

*Signature Page to Agreement of Lease between  
City of Myrtle Beach and Myrtle Beach Pelicans LP*

**TENANT**

WITNESSES:

MYRTLE BEACH PELICANS LP  
By: Greensons Baseball II Inc., its  
General Partner

\_\_\_\_\_  
  
\_\_\_\_\_

By \_\_\_\_\_  
Chuck Greenberg, President

**ACKNOWLEDGMENT**

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF HORRY            )

PERSONALLY appeared before me, the undersigned witness, and made oath that s/he saw the within-named MYRTLE BEACH PELICANS LP by CHUCK GREEBERG, the President of its General Partner, Greensons Baseball II Inc., sign, seal and as its act and deed, deliver the within-written Agreement of Lease for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

\_\_\_\_\_  
1st witness

SWORN to and subscribed before me  
this \_\_ day of \_\_\_\_\_ 2025.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

*Signature Page to Agreement of Lease between  
City of Myrtle Beach and Myrtle Beach Pelicans LP*

**REAL PROPERTY**

ALL that certain piece, parcel or tract of land, situate, lying and being in Horry County, South Carolina, measuring and containing 871,202 square feet or 20.00 acres, more or less, more fully shown and designated on that certain plat entitled "SURVEY OF 20.00 ACRES LOCATED ON 21ST AVENUE NORTH MYRTLE BEACH HORRY COUNTY, S.C. PREPARED FOR: MYRTLE BEACH FARMS COMPANY, INC., dated February 11, 1998, last revised September 9, 1998 prepared by Associated Land Surveyors, which Plat is recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 157 at page 142.

SAID PARCEL having such size, shape, mees and courses and distances as will by reference to said Plat more fully and at large appear, reference to which is craved for a more full and complete description.

**PERMITTED ENCUMBRANCES**

Rights, encumbrances restrictions and limitations shown in Exhibit B to the Title to Real Estate dated September 10, 1998, from Myrtle Beach Farms Company, Inc. to the City of Myrtle Beach and the County of Horry conveying the Real Property described in Exhibit A.

[TO BE UPDATED]



**IMPROVEMENTS**

<b>Pelicans Ballpark Renovation Cost Estimate</b>	
<b>Via Design/Construction Process</b>	
Home Clubhouse & Performance Center	8,845,545
Performance Center	In Above
Visiting Clubhouse	1,802,365
Umpires/Security/Maintenance	In Visitors
Move Fence	237,666
Bullpens	201,936
Foul Poles	126,210
Batter's Eye	210,139
Press Box	191,712
Control Room	105,780
Replace Lost Suite	465,083
<b>Subtotal</b>	<b>12,186,436</b>
Pricing Contingency (10%) <i>(due to 1 yr delay)</i>	1,218,643
Architectural/Design Costs (10%)	1,340,508
Other Design Soft Costs <i>(survey, civil engineer, design coordination)</i>	200,000
<b>Via Design/Construction Process Total</b>	<b>14,945,586</b>
<b>Direct from Vendors</b>	
Wall Padding/Dugout/Misc.	250,000
Lighting	500,000
Video Board, Electronics, & Sound	2,176,921
Seats	1,443,000
Netting	225,000
<b>Subtotal</b>	<b>4,594,921</b>
Pricing Contingency (10%) <i>(due to 1 yr delay)</i>	459,492
<b>Direct from Vendors Total</b>	<b>5,054,413</b>
<b>GRAND TOTAL</b>	<b>20,000,000</b>

**DIRECT FROM VENDORS IMPROVEMENTS**

**Item:**

Video Board, Electronics & Sound

Wall Padding/Dugout/Misc.

Lighting

Netting

Seats

**ASSIGNMENT OF RESPONSIBILITIES FOR  
REPAIR/MAINTENANCE OF SPECIFIC ITEMS**

Specific Items	Landlord	Tenant
Field Preparation for Games		X
Cutting/Sod Replacement		X
Settling of Field (other than normal wear and tear)	X	
Drainage System	X	
Irrigation System	X	
Heads/Surface Components of Irrigation System		X
Field Wall Repairs Concrete	X	
Field Wall Repairs - Pads		X
Broken Seats		X
Broken Cup Holders		X
Concrete Slab Repairs	X	
Re-aim/Clean Field Lights/Replace Field Light Bulbs		X
Replace Field Light Fixtures/Light Poles	X	
Utility Charges		X
Clean-up after Events	X	
Structural Repairs	X	
Repairs of furniture available for fans/general public		X
Concessions Furniture		X
Concessions Equipment		X
Roof Leaks	X	
Roof Repairs	X	
Flooding/Leaking/Caulking	X	
Foul Ball Screen		X
Speaker System Repairs		X
Speaker System Tuning		X
Scoreboard		X
Electric Message Centers	X	
Plumbing Systems		X
in Concessions Stands		X
Electrical System	X	
in Concessions Stands		X
Concessions Exhaust/Hoods		X
Concessions Air Curtains		X
Ventilation System	X	
HVAC System	X	
HVAC Cleaning/Day-to-Day Maintenance		X
Fire Protection System	X	
Clubhouses		
Toilets/Showers	X	

HVAC	X	
Specific Items	Landlord	Tenant
Electrical	X	
Lockers, Trainer's Equipment		X
Cabinetry/Millwork		X
Laundry Facilities		X
Baseball Equipment		X
Dugouts Cleaning		X
Dugout Benches		X
Alarm Systems		
Fire	X	
Burglar		X
Tents/Canopies		X
Playground Equipment		X
Elevator	X	
Window Cleaning		X
Pest Control		X
Offices		
Toilets	X	
HVAC	X	
Electrical	X	
Cabinetry/Millwork		X
Furniture/Equipment		X
Press Box		
Furniture/Equipment		X
Broadcast Wiring		X
Cabinetry/Millwork		X
Window Repairs		X
Telephone Lines		X
Skyboxes		
Furniture/Equipment		X
Sound System		X
Cabinetry/Millwork		X
Window Repairs		X
Telephone lines/Cable TV		X
Landscaping	X	

# EXHIBIT "E"