

*Monroe County  
Clerk of the Legislature*

**Diana M. Christodaro**  
Clerk



**David Grant**  
Deputy Clerk

**MEMORANDUM**

**TO:** Legislators, Directors, Staff and Media  
**FROM:** Diana M. Christodaro, Clerk of the Legislature  
**DATE:** February 13, 2018  
**RE:** Matter of Urgency - File No. 18-0088

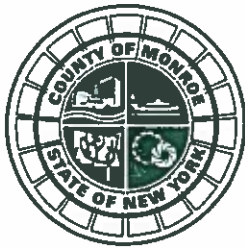
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**18-0088**     **Enact a Local Law Authorizing a Lease by Negotiation with Rochester Community Baseball, Inc., for Use of the Stadium located at One Morrie Silver Way, City of Rochester, New York - As a Matter of Urgency - County Executive Cheryl Dinolfo**

Per President Dr. Joe Carbone, the attached communication is declared to be a Matter of Urgency pursuant to Section 545-24(A)(3) of the Rules of the Monroe County Legislature and will be considered at the February 13, 2018 meeting of the Monroe County Legislature.

Attachments



# Office of the County Executive

MONROE COUNTY, NEW YORK

**Cheryl Dinolfo**  
*County Executive*

February 13, 2018

<b>OFFICIAL FILE COPY</b>
No. <u>180098</u>
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
<b>URGENT</b> -L

To The Honorable  
Monroe County Legislature  
407 County Office Building  
Rochester, New York 14614

**Subject:** Enact a Local Law Authorizing a Lease by Negotiation with Rochester Community Baseball, Inc., for Use of the Stadium located at One Morrie Silver Way, City of Rochester, New York

Honorable Legislators:

I recommend that Your Honorable Body enact a Local Law authorizing a lease by negotiation with Rochester Community Baseball, Inc., for use of the Stadium located at One Morrie Silver Way, City of Rochester, New York.

The Stadium located at One Morrie Silver Way is not needed for County purposes.

The specific legislative action required is to enact a local law authorizing the County Executive, or her designee, to execute the attached lease by negotiation, with Rochester Community Baseball, Inc., for use of the Stadium located at One Morrie Silver Way, City of Rochester, New York.

Environmental assessments were completed for this action and it was determined that there would be no significant effect on the environment.

This lease will not require any additional net County support in the current Monroe County budget.

I recommend that this matter receive favorable action by Your Honorable Body.

Sincerely,

Cheryl Dinolfo  
Monroe County Executive

CD:db

By Legislators \_\_\_\_\_ and \_\_\_\_\_

Intro. No. \_\_\_\_

LOCAL LAW NO. \_\_ OF 2018

**ENACTING LOCAL LAW ENTITLED "AUTHORIZING LEASE BY NEGOTIATION WITH ROCHESTER COMMUNITY BASEBALL INC., FOR USE OF STADIUM LOCATED AT ONE MORRIE SILVER WAY, CITY OF ROCHESTER, NEW YORK"**

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

Section 1. The County Executive, or her designee, is hereby authorized to enter into the attached lease by negotiation, with Rochester Community Baseball, Inc., for use of the Stadium located at One Morrie Silver Way, City of Rochester, New York.

Section 2. This local law shall take effect immediately upon filing in the office of the Secretary of State.

Matter of Urgency  
File No. 18-\_\_\_\_.LL

ADOPTION: Date: \_\_\_\_\_, 2018

Vote: \_\_\_\_\_

ACTION BY THE COUNTY EXECUTIVE

APPROVED: \_\_\_\_\_ VETOED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

EFFECTIVE DATE OF LOCAL LAW: \_\_\_\_\_



## Office of the County Executive

MONROE COUNTY, NEW YORK

**Cheryl Dinolfo**  
*County Executive*

February 13, 2018

Dr. Joe Carbone  
President  
Monroe County Legislature  
410 County Office Building  
Rochester, New York 14614


Subject: Enact a Local Law to Authorize a Lease by Negotiation with Rochester Community Baseball, Inc., for Use of the Stadium located at One Morrie Silver Way, City of Rochester, New York

Dear President Carbone:

I hereby certify as to the necessity of the immediate passage of the proposed Local Law entitled, Authorize a Lease by Negotiation with Rochester Community Baseball, Inc., for Use of the Stadium located at One Morrie Silver Way, City of Rochester, New York.

Thank you for your consideration of this matter.

Sincerely,

  
Cheryl Dinolfo  
Monroe County Executive

CD:db

xc: Hon. Brian Marianetti, Majority Leader  
Hon. Cynthia Kaleh, Minority Leader  
Diana Christodaro, Clerk of the Legislature  
Jamie Slocum, Majority Office  
Theresa Bertolone, Minority Office

**COUNTY OF MONROE AND  
ROCHESTER COMMUNITY BASEBALL, INC.**

**LEASE AGREEMENT**

**Dated as of \_\_\_\_\_, 2018**

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THIS LEASE AGREEMENT ("*Agreement*"), dated as of \_\_\_\_\_, 2018 (the "*Effective Date*"), is by and between the COUNTY OF MONROE, a municipal corporation duly organized and validly existing under the laws of the State of New York having an office at 38 West Main Street, Rochester, New York 14614 (the "*County*") and ROCHESTER COMMUNITY BASEBALL, INC., a corporation duly organized and validly existing under laws of the State of New York having an office at One Morrie Silver Way, Rochester, New York 14608 ("*RCB*").

## RECITALS

WHEREAS, the County is the owner of the Stadium located at One Morrie Silver Way to be used for recreation, entertainment and amusement purposes for the benefit of the citizens of the County, including but not limited to professional, semi-professional, amateur, collegiate, scholastic and juvenile sports and athletic events, and theatrical, artistic, musical or other events of civic, community and general public interest; and

WHEREAS, RCB is the owner and holder of a Class AAA professional baseball franchise and operates a professional baseball team which is a member of the International League of Professional Baseball Clubs (the "*IL*"); and

WHEREAS, pursuant to a Lease Agreement between the County and the Greater Rochester Outdoor Sports Facility Corporation ("*GROSFC*") dated as of October 1, 1994, as amended (the "*Original Lease*"), the County leased the Stadium to GROSFC, and pursuant to a Sublease Agreement between the GROSFC and RCB dated July 19, 1994, as amended (collectively, the "*Sublease*"), GROSFC subleased the Stadium to RCB; and

WHEREAS, the Original Lease and the Sublease have expired by their terms and the County and RCB wish to enter into this direct lease whereby the County leases the Stadium to RCB, and RCB leases the Stadium from the County, for the purpose of playing and exhibiting professional baseball and other uses upon the terms and conditions set forth in this Agreement; and

WHEREAS, the County has determined that the citizens of Monroe County will benefit from the use of the Stadium by RCB for the aforesaid public purposes;

NOW, THEREFORE, for good and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE I DEFINITIONS

**1.01 Definitions.** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings set forth below:

"*Affiliate*" means, with respect to RCB, any person or entity which, directly or indirectly, controls, is controlled by or is under common control with RCB and means, with respect to the County, any person or entity which, directly or indirectly, controls, is controlled by or is under common control of the County. The term "*control*" means the possession, directly or indirectly, of

the power to direct or cause the direction of the management and policies of a person or entity (as the case may be), whether through the ownership of voting stock, by investment or otherwise.

**"All Events"** means all events taking place at the Stadium.

**"Baseball Events"** has the meaning set forth in Section 3.04 of this Agreement.

**"Baseball Season"** or **"season"** means the period from the first home exhibition or regular season game of RCB to the last home baseball game of RCB (including playoffs) in any calendar year.

**"Commencement Date"** means the Effective Date.

**"County"** means the County of Monroe.

**"Effective Date"** has the meaning set forth on the first page of this Agreement.

**"Exclusive Areas"** shall mean those areas of the Stadium described in Exhibit B to this Agreement.

**"Existing Scoreboards"** means those two (2) main scoreboards located in the Stadium as of the Effective Date, and any replacements thereof.

**"Exterior Stadium Signage"** means, as of the Effective Date, the Plymouth Avenue Billboards and the Route 490 Marquee, any includes any future replacements thereof, and any similar future advertising signage located outside of the Stadium and primarily directed to Persons located outside of the Stadium.

**"Facility Use Fee"** has the meaning set forth in Section 4.04(c) hereof.

**"Firehouse"** means the brick structure located at the corner of Plymouth Avenue and Morrie Silver Way in the City of Rochester.

**"Frontier Communications"** means Frontier Communications of Rochester, Inc. and its successors and assigns.

**"Frontier Naming Rights Agreement"** has the meaning set forth in Section 4.05(b) hereof.

**"GROSFC"** has the meaning set forth in the Recitals.

**"IL"** has the meaning set forth in the Recitals.

**"In-Stadium Signage"** shall mean all current and future advertising signage located within the Stadium, and any replacements thereof, but expressly excludes Exterior Stadium Signage.

**"Other RCB Events"** has the meaning set forth in Section 3.05 of this Agreement.

**"Paid Attendee"** means an individual person who attends a Baseball Event (excluding, however, playoff and Governors' Cup championship games) or Other RCB Event at the Stadium

utilizing a ticket purchased for \$0.50 or more; and ***"Paid Attendees"*** means, collectively, every Paid Attendee.

***"Party"*** means each of the County and RCB and ***"Parties"*** means, collectively, the County and RCB.

***"Person"*** means an individual, a partnership, a corporation, an association, a joint stock company, a trust, an estate, a joint venture, a limited liability company, an unincorporated organization or a governmental entity (or any department, agency or political subdivision thereof).

***"Plymouth Avenue Billboards"*** means those billboards existing as of the Effective Date on the exterior of the Stadium and facing Plymouth Avenue, and any replacements thereof.

***"Premium Suites"*** means the premium or luxury boxes or suites now or hereafter located in the Stadium.

***"RCB"*** means Rochester Community Baseball, Inc., a business corporation organized and existing under the laws of the State of New York.

***"RCB Complimentary Tickets"*** has the meaning set forth in Section 4.04.

***"RCB Store"*** has the meaning set forth in Section 3.08.

***"Route 490 Marquee"*** means that billboard existing as of the Effective Date directed at Route 490, and any replacement thereof,

***"Stadium"*** means the stadium complex including without limitation the baseball stadium, the grandstand, other facilities and structures, and associated land and VIP Lot as more particularly shown and described on ***Exhibit A*** attached hereto and made a part hereof, but shall not include the Firehouse.

***"Stadium Naming Rights"*** means the right to name the Stadium as a whole and shall include such Stadium signage for naming rights as existing on the Effective Date.

***"Term"*** has the meaning set forth in Section 3.02.

***"VIP Lot"*** means the parking lot located immediately west of the Stadium and depicted on ***Exhibit A***.

***"Year"*** or references to an annual period means January 1 to December 31 of a calendar year, unless otherwise expressly provided in this Agreement.

## **ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS**

**2.01 Representations and Warranties of the County.** The County hereby makes the following representations and warranties to and for the benefit of RCB as of the Effective Date

(except as otherwise provided herein), which representations and warranties shall survive the Effective Date.

(a) The County is a duly organized and validly existing municipal corporation in good standing under the laws of the State of New York and has made all required filings to effect and maintain such status.

(b) The County has full power and authority to execute this Agreement, to consummate the transactions provided for herein and to perform its obligations hereunder in a full and timely manner in accordance with the provisions hereof.

(c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the County. This Agreement constitutes a valid, legal and binding obligation of the County, enforceable according to its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally, and subject to usual principles of equity.

**2.02 Representations, Warranties and Covenants of RCB.** RCB hereby makes the following representations, warranties and covenants to and for the benefit of the County as of the Effective Date (except as otherwise provided herein), which representations, warranties and covenants shall survive the Effective Date.

(a) RCB is a duly organized and validly existing business corporation in good standing under the laws of the State of New York and has all necessary permits and licenses required to conduct its business.

(b) RCB has full power and authority to execute this Agreement, to consummate the transactions provided for herein and to perform its obligations hereunder in a full and timely manner in accordance with the provisions hereof. Except with respect to consents and approvals obtained by RCB as of the date of execution of this Agreement, no consent of any other person or entity and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by RCB in connection with this Agreement or the performance of RCB's obligations hereunder. No provision of any certificate of incorporation, charter or by-law of RCB shall in any way prohibit, limit or otherwise affect the right or power of RCB to perform all of the terms and provisions of this Agreement, and RCB is not a party to any contract or agreement which would prohibit, limit or otherwise affect such performance.

(c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of RCB. This Agreement constitutes a valid, legal and binding obligation of RCB, enforceable according to its terms.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, result in a breach of, or default or loss of any benefit under, any provision of RCB's certificate of incorporation, bylaws or other governing

corporate or charter documents, or any agreement, instrument or obligation to which RCB is bound which would have an adverse effect on the County's rights and benefits pursuant to this Agreement, or give any other party thereto the right to terminate or modify any term thereof.

(e) There are no orders, judgments or decrees outstanding or any claim, action, suit or legal, administrative, arbitration or other proceeding or governmental investigation pending or, to the best of RCB's knowledge, threatened, against or affecting RCB or which would prevent the consummation of the transactions contemplated by this Agreement or which could affect RCB's ability to perform its obligations under this Agreement.

(f) RCB shall use its best efforts to maintain its status as a National Association of Professional Baseball Leagues (or any successor or replacement entity) member club, at least equivalent to the highest level of minor league baseball, in good standing and shall, subject to the terms of this Agreement, maintain, preserve and protect in full force and effect its franchise to play professional baseball games in the Stadium.

### ARTICLE III USE OF STADIUM

#### 3.01 Lease of Stadium; Use.

(a) Throughout the Term, and subject to the terms and conditions of this Agreement, the County hereby leases to RCB, and RCB hereby rents from the County, the Stadium as defined herein and described in Exhibit A hereto and made a part hereof.

(b) Throughout the Term, and subject to the terms and conditions of this Agreement, RCB shall have the exclusive right to use the Stadium for the uses and purposes described in this Agreement and for all other lawful purposes.

#### 3.02 Term.

(a) The term of this Agreement shall commence on the Commencement Date and shall expire at 11:59 p.m. on the final day of the Baseball Season in 2027 (the "*Term*"). The Parties may mutually renew the Agreement for an additional ten (10) year term upon the written consent of the County Executive and President of RCB upon the same terms and conditions as set forth in this Agreement. The renewal may be exercised by written notice tendered by each Party to the other Party no less than ninety (90) days prior to the expiration of the initial Term or upon such shorter notice as the Parties may mutually agree in writing.

(b) RCB will be permitted to reopen negotiations related to those portions of the Agreement that are materially adversely impacted by a new signed agreement between Major League Baseball and AAA Baseball following the completion of in 2020 Baseball Season. RCB shall provide reasonable documentation demonstrating and itemizing the specific, material adverse impact(s) prior to reopening any negotiations regarding the Agreement. In the event that RCB reopens negotiations as set forth above, the Parties agree to meet and negotiate in good faith with respect to any potential amendments or modifications to this Agreement to address any such adverse impact(s) on RCB. If the Parties are unable to agree upon any such potential amendments or

modifications to the Agreement, then at the request of either Party, both Parties agree, in good faith, to participate in non-binding mediation in an attempt to reach agreement. If, after such non-binding mediation, the Parties still are unable to agree upon any potential amendments or modifications to the Agreement, then RCB shall have the right and option at any time thereafter to terminate this Agreement on no less than ninety (90) days written notice to the County.

**3.03 Exclusive Areas.** Without limiting the generality of Section 3.01(b), the County agrees that the Exclusive Areas shall be used exclusively by RCB on a year-round (365-day) basis throughout the Term. RCB shall have the full right of access to and use of the Exclusive Areas at all times during the Term for its officers, directors, employees, agents and invitees. Except to the extent required by law or upon the written approval of RCB, the County will not grant access to or permit access by third parties to the Exclusive Areas; provided that the County, by exercise of its emergency or police powers, shall have the right of access at any time and may, at all other times, on reasonable notice and at reasonable times, have access to the Exclusive Areas for purposes of inspection and for performing its obligations under this Lease.

**3.04 Baseball Events.** RCB shall have the exclusive right and obligation to sponsor and conduct professional baseball games at a level at least equivalent to the highest level of minor league baseball, including regular season, exhibition, pre-season, post-season and playoff games, and the right to sponsor and conduct other baseball-related activities such as, but not limited to, high school games, Little League games and practice games ("*Baseball Events*") at the Stadium.

(a) **Home Games and Playoff Games.** Subject to Section 8.05 and any other provision of this Agreement to the contrary, RCB agrees to play all of its Rochester Red Wings home regular season and playoff games at the Stadium throughout the Term of this Agreement commencing with the 2018 Baseball Season.

(b) **Scheduling of Baseball Events.** On or before January 1 of each year of the Term, RCB will provide the County with a preliminary schedule of home exhibition, pre-season, and regular season games for the year commencing with such January 1 ("*Game Dates*"). On or before May 1 of each year during the Term, or as soon as such information is available to RCB, RCB will provide the County with a schedule of the dates established for potential playoff games for such season ("*Playoff Dates*"), together with any information RCB has received or subsequently receives regarding playoff game scheduling.

(c) **Game Day and Other RCB Event Responsibilities.** For all RCB home games and all events sponsored or conducted by RCB pursuant to Section 3.05 hereof, RCB shall provide, at its sole cost and expense, the necessary personnel to sell tickets, usher spectators to their seats and provide security within the Stadium for the safety and comfort of all spectators therein. RCB shall provide all maintenance staff necessary for RCB home games and all events sponsored or conducted by RCB pursuant to Section 3.05 hereof.

(d) **The County's Responsibilities for Baseball Events.** Except as expressly provided herein, the County shall have no responsibility for costs or obligations relating to the performance of Baseball Events or RCB operations or activities, including but not limited to RCB player and staff salaries, RCB travel expenses, RCB uniforms, dues owed to the IL, Major League

Baseball or other baseball associations, umpire fees, RCB office expenses and other related expenses.

Notwithstanding anything in this Section 3.04 or elsewhere in this Agreement to the contrary, RCB shall remain free, without restriction whatsoever, to play exhibition games in any other venue (even if such game is deemed a "home game" of RCB).

**3.05 Other RCB Events.** RCB shall have the right to schedule and conduct, on such dates as may be chosen by RCB, non-baseball related sports, entertainment, promotional, recreational or other events at the Stadium ("*Other RCB Events*"); provided that, except as otherwise provided in this Agreement to the contrary, RCB shall bear all costs of any such Other RCB Event.

**3.06 Operation of Ticket Sales Areas.** RCB shall have the exclusive right and obligation to operate, or to select or control the operation of, all ticket sales areas for the Stadium for All Events. RCB shall have sole control over the types of tickets sold, the method and location of sale and advertising, and all other aspects relating in any way to such ticket sales. RCB shall have sole control over the pricing for Baseball Events and Other RCB Events.

**3.07 Operation of Food, Beverage and Souvenir Concessions.** RCB shall have the exclusive right to operate, or to select or control the operation of, all food, beverage, amusement and souvenir concessions at the Stadium, in connection with All Events at the Stadium. RCB shall have sole control over the selection of food, beverages, amusements and souvenirs sold, the pricing, the method and location of sale and advertising, and all other aspects relating in any way to such concessions.

**3.08 Sale of Merchandise; Operation of RCB Store.**

(a) RCB shall have the exclusive right to operate, or to select or control the operation of, all apparel, merchandise and other product sales at the Stadium in connection with All Events. Without limiting the generality of the foregoing, RCB shall have the exclusive right to use the RCB Store located in the Stadium (the "*RCB Store*") for any lawful purpose.

(b) RCB shall have sole control over the selection of merchandise sold at the Stadium (including without limitation at the RCB Store) in connection with All Events, the pricing of merchandise, the method and location of sale and advertising, and all other aspects relating in any way to the sales of such items.

(c) RCB shall have sole control over the sale and content of programs, scorecards and other publications for All Events at the Stadium. RCB shall bear the entire cost and expense of such publications (including labor) and shall retain all revenues generated by the sales of such publications, including the sale of advertising in the publications.

**3.09 Sale of Advertising.**

(a) *Advertising Generally.* Except as provided in this Section 3.09 and except for the Stadium Naming Rights, RCB shall have the exclusive right to, and exclusive control over, all advertising and promotional activities at, from, upon, within or without the Stadium, and all

aspects thereof (including, without limitation, selection of advertisers, content, pricing, method and location).

(b) *In-Stadium Signage.* RCB shall bear the sole cost and expense, and shall retain all revenues, related to or generated from In-Stadium Signage.

(c) *Exterior Stadium Signage.* RCB agrees that it shall share equally with the County the net revenue (e.g., gross revenue less all costs, expenses, commissions, maintenance and repairs, overhead and administrative expenses incurred in obtaining such revenue and less any other costs and expenses incurred by RCB with respect thereto) received by RCB with respect to the sale of advertising on the Exterior Stadium Signage. RCB shall coordinate all maintenance and repairs to the Exterior Stadium Signage and shall be entitled to pay the cost of such maintenance and repairs out of the gross revenue received from the Exterior Stadium Signage. If any portion of the Exterior Stadium Signage ever requires replacement, then the County shall, at its expense, replace such portion of Exterior Stadium Signage; provided however, if the County determines that it is unable to replace same, then RCB shall have the right to replace such portion of the Exterior Stadium Signage and retain all revenues until RCB recovers its investment in such replacement. At such time as RCB recovers its investment, the equal sharing of net revenue, as described above, will resume. RCB shall be entitled to advertise on the Route 490 Marquee without charge, provided that the frequency and prominence of such advertising is done in accordance with past practice.

(d) *Scoreboards.* RCB agrees that it shall share equally with the County the net revenue (e.g., gross revenue less all costs, expenses, commissions, overhead and administrative expenses incurred in obtaining such revenue, less all costs and expenses necessary to maintain and repair the Existing Scoreboards, and less any other costs and expenses incurred by RCB with respect to the Existing Scoreboards) received by RCB with respect to the sale of advertising on three (3) of the advertising panels located on each of the two (2) Existing Scoreboards. RCB shall coordinate all maintenance and repairs to the Existing Scoreboards and shall be entitled to pay the cost of such maintenance and repairs out of the gross revenue received from sale of advertising on the Existing Scoreboards. Upon the first to occur of: (i) either of the Existing Scoreboards requiring replacement; (ii) either of the Existing Scoreboards becoming obsolete, or (iii) a material increase in the annual cost to maintain and repair the Existing Scoreboards, then the County shall, at its expense, replace the Existing Scoreboards. If either of the Existing Scoreboards are ever replaced, then the Parties shall continue to share the net revenue on three (3) advertising panels located on such replacement scoreboard in the same manner as set forth above and such replacement scoreboard shall be deemed to constitute an Existing Scoreboard for the purposes of this Agreement. If the County refuses to replace the Existing Scoreboards, then RCB shall have the right to replace such Existing Scoreboards and retain all revenues from the replacement scoreboards until RCB recovers its investment in said scoreboards. At such time as RCB recovers its investment, the equal sharing of net revenue on such three (3) advertising panels, as described above, will resume. RCB, at its sole cost and expense, will have the right to install additional in-Stadium scoreboards and to sell advertising on those scoreboards and to retain the revenue therefrom.

(e) *Other Promotions.* RCB, at its sole cost and expense, shall have the exclusive right to control all programs, promotional activities, television and radio for Baseball Events and Other RCB Events, and shall retain all revenue therefrom.



(f) New Signage. RCB shall not construct or erect any new Exterior Stadium Signage without the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. RCB shall not construct or erect any new In-Stadium Signage which shall materially and adversely affect the structural elements of the Stadium without the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) Tobacco Advertising. From time to time, following the written request of the County, RCB agrees to meet with the County to discuss advertising matters. RCB shall not advertise tobacco products within the Stadium.

(h) Public Service Announcements. RCB shall permit a reasonable number of electronic messages on the scoreboard during the Baseball Season for public service announcements and compliance with the Americans with Disabilities Act.

(i) Frontier Naming Rights Agreement. RCB recognizes the rights of Frontier Communications under the Frontier Naming Rights Agreement with respect to the location and conditions of its name and mark at the Stadium and agrees that RCB's advertising shall not conflict with Frontier Communication's rights under the Frontier Naming Rights Agreement.

**3.10 Premium Suites.** Subject to Section 4.05, RCB shall have the exclusive right to, and exclusive control over, and exclusive use of, the Premium Suites during All Events and shall have the sole and exclusive control over all aspects of the Premium Suites and the sale and use thereof, including, without limitation advertising, pricing, method of selling, and all other aspects thereof, and shall retain all revenue related thereto.

### **3.11 Scheduling of Events Suggested by County.**

(a) RCB will maintain and administer the "master calendar" for Stadium bookings and will have exclusive control of the scheduling of All Events.

(b) RCB acknowledges the County's desire to propose events at the Stadium from time-to-time for the benefit of the residents of Monroe County. RCB will welcome proposals from the County for potential non-baseball events to be hosted at the Stadium on available open dates. RCB agrees to cooperate with the County and meet if necessary to discuss the proposed event and all aspects thereof. RCB will evaluate the feasibility of hosting such an event, considering such factors as interference with other planned and/or potential activities, impact to the playing field, and financial analytics. If the event is deemed appropriate for consideration by RCB, then RCB will inform the County accordingly and: (i) RCB will negotiate a written agreement with the County, promotor and/or organizer with respect to such event outlining the terms and conditions governing such event (including, without limitation, the responsibility of the County, promotor or organizer to reimburse and/or pay RCB for all costs and expenses incurred with respect to such event); and (ii) the County, promotor or organizer shall determine the ticket price with respect thereto. If the terms of any such written agreement expressly conflict with the provisions of this Agreement, then with respect to such event only, the terms of such written agreement shall control. No such event will take place at the Stadium unless RCB enters into such written agreement with the County, promotor or organizer with respect to such event and then only pursuant to the terms of such written

agreement. RCB agrees that it will not unreasonably withhold its approval of an event suggested by the County pursuant to this Section 3.11(b). Any dispute between the Parties with respect to the provisions of this Section 3.11(b) shall be resolved by arbitration as set forth in Article IX hereof.

**3.12 Personnel Costs.** RCB will employ ticket sellers, ushers and security personnel within the Stadium, at its sole cost and expense, for Baseball Events and Other RCB Events.

**3.13 Parking.**

(a) Except for the VIP Lot, the County and its Affiliates and agents shall operate, manage and control all parking at the Stadium and shall use its best efforts, in setting rates for parking, to maximize revenues in a manner consistent with encouraging attendance at All Events at the Stadium.

(b) The County will provide RCB with free use of the VIP Lot during the Term of this Agreement. RCB shall be responsible for all security for, and supervision of, the VIP Lot for All Events.

(c) The County shall be responsible for all maintenance and repairs required for all parking lots under its control that serve the Stadium (including the VIP Lot), which shall include, without limitation, the clearing of snow and ice (and salting) from such parking lots (including the VIP Lot) and for providing security and supervision for such parking lots (except the VIP Lot). The County agrees to indemnify, defend and hold harmless RCB from all claims asserted against RCB relating to personal injury and/or property damage occurring on or about any such parking lots (including the VIP Lot with regard to maintenance and repair only). RCB shall be responsible for clearing snow and ice from and salting a portion of the sidewalk from the VIP Lot to the entrance to the Stadium and the County agrees to provide, at the County's cost, RCB with the salt and other necessary supplies related thereto.

(d) For RCB home games, complimentary parking spaces in the VIP Lot shall be provided by RCB to police, ambulances, media and employees.

(e) If land for additional parking near the Stadium becomes available for purchase or lease and if RCB wishes to purchase or lease such land, then it will first provide written notice to the County and allow the County to first purchase and/or lease such land, in which case the County shall be entitled to utilize such land for parking in accordance with the terms of this Agreement. However, if the County does not purchase and/or lease such land within 90 days after its receipt of such notice from RCB, then RCB shall be free to purchase or lease such land, in which case RCB shall be responsible for managing such additional parking and shall be entitled to the revenue therefrom.

**3.14 Loans and Indebtedness.** In exchange for the consideration received under this Agreement, as of the Effective Date, RCB hereby waives the long-term indebtedness that the County or GROSFC owes to RCB.

**3.15 Concession and Grounds-Keeping Equipment.** The County hereby transfers to RCB all of the personal property and equipment, owned by GROSFC and used in connection with Stadium operations, including concessions and grounds keeping equipment, "as is" and as the Parties

are best able to describe in *Exhibit C* attached hereto and agrees to execute any such additional documentation and other documents as is necessary to vest title in such equipment to RCB. The County agrees that, prior to the Effective Date, it will have replaced certain landscaping equipment with those items new identified on *Exhibit C*. RCB acknowledges that the replacement of all such equipment will be at its sole expense. The County agrees to continue to loan particular items of equipment owned by the County (e.g., tractor and roller), at no cost to RCB in accordance with past practice, from March 1 to September 30 of each year.

#### ARTICLE IV RENT; REVENUES; USE OF FUNDS

**4.01 Rent.** In consideration of the County's commitment to the Stadium as set forth in this Lease, RCB commits that it will pay Rent as follows: over the entire Term of this Lease, RCB shall spend on documented Stadium fan amenities (e.g., improvements to the public areas of the Stadium and/or which are designed to improve patron experience) an aggregate amount equal to \$100,000 for each calendar year during the Term. By way of example, if the Term is ten years, then RCB would be committed to spend \$1,000,000 on Stadium Fan Amenities over such ten year Term, but could spend more or less than \$100,000 in any given year. Within a reasonable period of time following the end of each of its fiscal years, and in any event within thirty (30) days after RCB's receipt of a written request from the County for same, RCB will deliver to the County an itemized list of expenditures and amounts spent by RCB on Stadium Fan Amenities during the most recently ended fiscal year. At the end of the Term, if RCB has not spent at least \$1,000,000 for Stadium Fan Amenities, RCB shall pay to the County an amount equal to the difference between \$1,000,000 and the sum of all payments made for Stadium Fan Amenities within 30 days of the expiration of the Term (provided, however, that such \$1,000,000 shall be prorated in the event that this Lease is terminated early and before the end of the 2027 Baseball Season).

#### **4.02 Capital Improvements.**

(a) Except as otherwise provided in this Agreement to the contrary, the County shall, at its sole cost and expense, maintain, repair and replace all structural elements of the Stadium, all building systems, including without limitation, mechanical, electrical, plumbing, heating, ventilation and air conditioning ("*HVAC*"), lighting, fire protection and exterior security systems, playing field, VIP parking lot, structural steel, painting, concrete, bricks and caulking (collectively, the "*Structural Elements*"). The County shall maintain the Structural Elements of the Stadium in a good condition and in a condition that meets mandatory Major League Baseball requirements and all applicable legal requirements.

(b) The parties acknowledge and agree the following reports have been performed identifying needed capital improvements at the Stadium: (i) that Frontier Field Stadium Condition Assessment dated December, 2015 and prepared for the County by CHA (the "*Stadium Condition Assessment Report*"); (ii) that Frontier Field Master Plan Study dated November 2015 and prepared for the County by CHA (the "*Master Plan Study*"); and (iii) that 2014 Ewing Cole architectural report prepared for RCB (the "*Architectural Report*") (the Stadium Condition Assessment Report, the Master Plan Study and the Architectural Report are referred to herein, collectively, as the "*Stadium Condition Reports*"). The County agrees that it shall, during the initial five (5) years of the Term, make meaningful progress towards addressing the material capital repairs/replacements to

the Stadium identified in the Stadium Condition Reports. The County commits that no less frequently than annually its appropriate personnel will meet with RCB and provide detailed information to RCB identifying capital projects completed to date and those which are planned for the Stadium and identifying the costs, the funding source (e.g., State grant, County budget, etc.), and the completion date/target completion date for each capital project.

(c) The County acknowledges and agrees that as of the Effective Date, the County has appropriated \$4,350,000 of capital funds that are dedicated to capital improvements at the Stadium, of which only \$1,226,510 has been expended to date, leaving \$3,123,490 (the "*Remaining Appropriated Funds*") of capital funds available for capital improvements at the Stadium. The County agrees on or before December 31, 2023 it will expend all of the Remaining Appropriated Funds on capital improvements to the Stadium and that, until such Remaining Appropriated Funds have been fully expended, it will expend no less than \$650,000 of such Remaining Appropriated Funds on capital improvements to the Stadium in any calendar year.

(d) The County acknowledges that the current Capital Improvement Plan for the County proposes an additional \$950,000 in new borrowings through 2023 that, if and when appropriated by the County Legislature, would be available for capital improvements to the Stadium. If such additional new borrowings are appropriated by the County Legislature, then the County agrees that it will expend such additional funds on capital improvements to the Stadium on or before December 31, 2025.

(e) On a quarterly basis and with such frequency as either Party shall reasonably request, the Parties shall meet to discuss the County's Capital Improvement Program ("CIP") and Capital Budget as they pertain to the Stadium. The County agrees that during the Term it will include in its Capital Improvement Plan sufficient moneys as are reasonably necessary to address the capital needs of the Stadium and, to the extent that any such capital funds for the Stadium are actually appropriated by the County Legislature, then the County agrees to promptly expend such funds on capital improvements to the Stadium as are required for it to comply with its obligations under Section 4.02(a).

(f) The County agrees that on or before the applicable due date for 2018 (but not before May 1, 2018): (i) it will submit a consolidated funding application with the Finger Lakes Economic Development Council/State of New York ("*FLECD/NY*") for grant funding to be used for Stadium capital improvements identified in the Architectural Report; and (ii) submit such information and materials to FLECD/NY as is reasonable required to obtain the \$1,500,000 from FLECD/NY granted in the 2015 CFA process. Upon the County's request, RCB agrees to cooperate with the County in the preparation and/or submission of such applications. If grant funds from any such applications are awarded, then the County agrees that such amounts will be promptly expended on capital improvements to the Stadium.

(g) The County agrees that before the end of 2018 (or, at RCB's election, such later date) it shall spend \$100,000 on the replacement of the Premium Suite furnishings.

(h) The County shall solicit the input and advice of RCB with respect to the capital needs of the Stadium, potential sources of funds and plans for improvements. With respect to any capital improvements that directly impact the customer experience (e.g., railings/fencing;

netting, etc.) or the playing field, RCB will have the right to review and approve the designs related to those specific components that directly impact the customer experience, which approval shall not be unreasonably withheld. The Parties agree to cooperate with each other in any reasonable efforts to seek State funding for the repairs, replacements and/or improvements described above.

(i) In consideration of the County's commitments set forth in this Section 4.02, RCB agrees that it shall, at its cost and during the Term, undertake those improvement projects at the Stadium as are identified on Exhibit D.

#### **4.03 Ticket Revenues.**

Except for Facility Use Fees identified in Section 4.04(c), RCB shall receive and retain all of the ticket revenue from All Events.

#### **4.04 Ticket Pricing, Complimentary Tickets; Facility Use Fee.**

(a) RCB shall control the pricing of all tickets for Baseball Events and Other RCB Events.

(b) RCB shall be entitled to use and distribute to media, spouses of RCB players and employees, officers, directors and employees of RCB and such other Persons or groups, an unlimited number of complimentary tickets to Baseball Events and Other RCB Events, all as determined by RCB in its sole discretion ("*RCB Complimentary Tickets*"). Except as set forth in Section 4.04(d) below, no Facility Use Fee will be due on any RCB Complimentary Tickets. Additionally, the Parties recognize that certain Baseball Events and Other RCB Events may not be ticketed events or may be ticketed events where the tickets are distributed for free, and agree that no Facility Use Fee will be due to be paid for any such events.

(c) For Baseball Events (excluding, however, Red Wings playoff and Governors' Cup championship games) and Other RCB Events, RCB shall pay to the County a fee of \$.50 for each Paid Attendee to enter the Stadium ("*Facility Use Fee*").

(d) For purposes of calculating the Facility Use Fee to be paid for Red Wings baseball games, once the threshold of 23,000 RCB Complimentary Tickets have been redeemed at Red Wings baseball games in a particular calendar year, then for the remainder of such calendar year all persons attending Red Wings baseball games utilizing a RCB Complimentary Ticket shall be subject to the Facility Use Fee.

(e) Notwithstanding Section 4.04(c) above, and with respect to Other RCB Events, if RCB and the County have agreed, in writing, to forego or reduce the Facility Use Fee for a particular Other RCB Event, then the terms of such written agreement shall control.

#### **4.05 Premium Suites.**

(a) Except as described in Section 4.05(b) below, RCB shall retain all revenue from the Premium Suites for All Events.

(b) Frontier Communications and the County are parties under a naming rights agreement with GROSFC dated November 15, 1994, as amended as of the 27<sup>th</sup> day of October, 2015 (the "*Frontier Naming Rights Agreement*"). From the Effective Date until November 15, 2025, and consistent with past practice, RCB shall permit Frontier Communications to use Premium Suite #307 without any license fee to the County or Frontier Communications for the use of such Premium Suite. If Frontier Communications requests any new furniture or upgrades to such Premium Suite, RCB shall bear no costs and expenses related thereto and the County shall address such concerns with Frontier Communications.

(c) The County shall provide WIFI to the Stadium consistent with its custom and practice for the remainder of the existing term of the Frontier Naming Rights Agreement.

**4.06 Concessions.** RCB shall exclusively operate all food, beverage, souvenir and merchandise concessions at the Stadium for All Events and shall retain all revenues from such concessions.

**4.07 Advertising.** RCB shall retain all advertising revenue from the Stadium for All Events, except as set forth Section 3.09 hereof.

**4.08 Other Revenue.**

(a) RCB shall retain all revenue from program sales, royalties, amusements and souvenirs for All Events.

(b) RCB shall retain any and all future expansion fee revenue.

**4.09 Revenue from Baseball Events and Other RCB Events.** Except as otherwise expressly provided in this Agreement to the contrary, RCB shall retain all revenue from All Events.

**4.10 Stadium Naming Rights.** The County shall control and retain 100% of the revenues derived from the sale of the Stadium Naming Rights. All costs and expenses relating to such Stadium Naming Rights (including, without limitation, the cost of maintaining, repairing and replacing signage) shall be paid by and/or reimbursed by the County.

**4.11 Firehouse.** RCB may use the Firehouse for non-revenue generating purposes (storage, changing area, and other non-revenue generating uses), subject to either Party's right to initiate the commercial development of the Firehouse. If the Parties mutually agree to the commercial development of the Firehouse, such commercial development will be conducted as a joint venture between the County and RCB with the costs and revenues to be shared by the Parties. No commercial development of the Firehouse shall occur absent the mutual agreement of the Parties. The County's parking operator will be permitted to use a portion of the Firehouse also until such time as its commercial development makes such use impractical. If for any reason the Firehouse becomes no longer available for use by RCB as a storage facility, the County will provide, at no additional cost, an alternative site for RCB's storage.

**4.12 Parking Revenues.**

(a) All parking lots owned by the Eastman Kodak Company, Carestream, MCC and their respective successors and assigns that are used for Stadium parking shall be managed by the County or its designee. RCB shall retain all revenues derived from the VIP Lot and the County shall retain all revenues from the sale of parking spaces in all lots other than the VIP Lot in the vicinity of the Stadium and all off-site parking operated or controlled by the County.

(b) During the Term, and at All Events, the County agrees that there will exist adequate parking to serve patrons of the Stadium. Without limiting the generality of the foregoing, the County agrees that: (i) during night and weekend Baseball Events that it will provide adequate parking to accommodate no less than 2085 vehicles when required for the particular Baseball Event; and (ii) during day Baseball Events that it will use its commercially reasonable efforts to provide parking at levels consistent with past practice; and (iii) for day Baseball Events, if requested by RCB, the County will use its best efforts to cooperate with RCB to identify additional parking areas for such day Baseball Events (including, without limitation, potential off-site parking areas with shuttles).

(c) Further, the County agrees that: (i) it shall maintain the current parking rates in such parking lots through the end of the 2019 Baseball Season; and (ii) at any time after the end of the 2019 Baseball Season, it may increase the current parking rate by \$1.00 per car, but after any such increase such rate will remain constant throughout the remainder of the Term.

**4.13 [intentionally omitted].**

**4.14 Walk of Fame Induction Ceremony.** The County shall continue to sponsor and fund the Frontier Field Walk of Fame induction ceremony annually if it so desires.

**4.15 Timing of Payments.** All revenues required to be shared by RCB and the County pursuant to this Agreement shall be calculated by the Party responsible for the collection of such revenues. Such revenues shall be paid as follows:

(a) All sums due from RCB to the County with respect to Facility Use Fees and advertising revenue pursuant to Section 3.09 hereof will be paid by RCB to the County on or before the fifteenth (15<sup>th</sup>) day of each calendar month (or, if a Baseball Event is conducted that day, on the first business day thereafter on which a Baseball Event is not conducted) with respect to revenues received and collected by RCB during the previous calendar month; and

(b) Any sums due from the County to RCB will be paid on or before the fifteenth (15<sup>th</sup>) day of each calendar month with respect to revenues collected during the previous calendar month.

(c) All other invoices submitted by County and RCB to the other shall be paid within thirty (30) days following rendition thereof.

**ARTICLE V  
OPERATIONS, MAINTENANCE, REPAIRS AND  
ALTERATIONS, UTILITIES, TAXES, SECURITY**

**5.01 Maintenance of Stadium.**

(a) Except to the extent provided in Section 5.01(b) to the contrary, the County will be responsible, at its cost and expense, to maintain, repair and replace, to keep in good, operating, safe and first-class condition, and to keep in compliance with Major and Minor League Baseball mandatory requirements and other applicable legal requirements, the Stadium and all components thereof, including without limitation, all building and mechanical systems, including concrete, brick, caulking, mechanical, electrical, water, plumbing, heating, ventilation and air conditioning (“*HVAC*”), lighting, fire protection and external security systems, sprinkler systems, Stadium parking areas (including the VIP Parking Lot), built in exhaust systems, painting (superstructure and buildings, including public restroom floors) and caulking. The County shall also be responsible, at its cost and expense, to replace (but not maintain or repair), when needed, the baseball playing field and to repair and replace, when needed, all infrastructure related to the baseball playing field (including, without limitation, drainage and irrigation systems).

The Parties agree that the cost and expense to maintain repair and replace the Existing Scoreboards and the Exterior Stadium Signage shall be as set forth in Section 3.09.

If the County fails to make any necessary maintenance, repairs and/or replacements required in this Section 5.01(a) after written notice by RCB to the County and after allowing for sufficient time to evaluate and repair the problem, RCB shall have the right, but not the obligation, to perform such repairs and charge the County for the cost thereof and/or to set-off the cost thereof against any Rent or other amounts due from RCB to the County under this Agreement.

(b) The parties agree that RCB shall be responsible, at its cost, for those maintenance and repair activities related to the Stadium which are identified on *Exhibit E* attached hereto, and no others.

(c) RCB shall purchase, maintain, repair and replace, as reasonably necessary, all infield tarpaulins, grounds keeping equipment, food service concession equipment (excluding exhaust hoods, ansul systems, built-in components and grease traps) and supplies necessary for Baseball Events and Other RCB Events.

**5.02 Maintenance.** RCB shall, at no cost to the County, maintain, repair and replace all furnishings, personal property and equipment owned by RCB and located at the Stadium.

**5.03 Repairing Damage.** RCB shall, at no cost to the County, repair any part of the Stadium (including the Exclusive Areas) that is damaged by the negligent or wrongful acts or omissions of RCB, its agents, invitees, employees, contractors or subcontractors, or players from any teams using the Stadium in connection with Baseball Events or Other RCB Events. If RCB fails to promptly make such repairs, the County shall have the right, but not the obligation, to perform such repairs and charge RCB for the cost thereof or to set-off the cost thereof against any other amounts due from the County to RCB under this Agreement.



**5.04 Alterations by RCB.** Subject to reasonable advance written notice to the County, RCB may make any alterations, additions or improvements (collectively, "*Alterations*") to the Stadium which are non-structural in nature at no cost to the County (provided, however, that no prior notice shall be required for any such non-structural alteration, addition or improvement costing less than \$25,000.00. RCB shall have the right to make non-structural Alterations to the standard interior design, furniture and furnishings provided in the Premium Suites and in the bullpen. RCB may permit each licensee of a Premium Suite to make non-structural Alterations to the standard interior design, furniture and furnishings of its Premium Suite at such licensee's sole cost. All Alterations shall be performed in a safe and first rate manner, shall not cause material damage to any part of the Stadium or adversely affect the structural integrity of the Stadium, and shall be completed in accordance with all applicable legal requirements (including the procurement of any required governmental permits). If the County's approval of an Alteration is required under this Section 5.04, RCB's request for such approval shall include reasonably detailed plans and specifications for the proposed work. The County's approval of such plans and specifications shall not constitute any assumption by the County of any responsibility for their accuracy or sufficiency, which shall be the sole responsibility of RCB. In connection with such Alterations undertaken by RCB, RCB also agrees to indemnify the County (or make whatever alternative arrangements as are reasonably satisfactory to the County) with respect to any liens or claims or notices for liens that may be filed against the Stadium arising out of such Alterations, and RCB further agrees to cause all mechanics or other liens against the Stadium arising out of such Alterations to be cancelled and discharged of record, by bond or otherwise at the election and expense of RCB, within thirty (30) days after filing thereof.

**5.05 Alterations Elsewhere in the Stadium.** Except as herein provided, RCB shall not make any Alterations to the Stadium which are structural in nature without the County's prior written consent, which consent the County may grant or withhold in its sole discretion.

**5.06 Utilities.**

RCB will be responsible for all utility costs (e.g., gas, water and electricity, Pure Water charges), cable, and telephone at the Stadium. The County will permit RCB to participate in the County's program for the purchase of gas and electricity in order to allow RCB to obtain such utilities at a lower cost than it could receive on its own from utility providers. Under this program, the County will pay the cost of gas and electricity for the Stadium and RCB shall reimburse the County for all such costs within thirty (30) days of its receipt of the County's invoice. Additionally, if the County has the availability to allow RCB to purchase other goods and/or services under similar purchase programs, and then if permitted by law, the County will use its good faith efforts at the request of RCB to permit it to purchase such goods and/or services through such programs.

**5.07 Taxes.**

(a) The County shall be responsible for the payment when due of all real estate taxes, if any, payments in lieu of real property taxes pursuant to any PILOT, special assessments, so called "Embellishments" (collectively, "*Impositions*") or other agreement entered into in connection with the Stadium or the land where the Stadium is situated ("*Land*").

(b) RCB shall be responsible for the payment when due of all sales and use taxes and income taxes payable by RCB in connection with its activities at the Stadium.

(c) Notwithstanding the foregoing, the County may contest the legal validity or amount of any Imposition for which it is wholly or partially responsible hereunder and may institute such proceedings as it considers necessary therefor without undue delay and shall prosecute such proceedings to a final determination with reasonable dispatch. If the County contests any Imposition, it will notify the other Party and may withhold or defer payment or make payment of the Imposition under protest so long as such withholdings or deferral do not subject the Stadium or the Land to a non-curable forfeiture or a sale without right of redemption.

#### **5.08 Security.**

(a) RCB will supply, at its sole cost and expense, all necessary security services within the Stadium for Baseball Events and Other RCB Events.

(b) The County will pay the cost of all security upgrades to the Stadium mandated by Major or Minor League Baseball or by U.S. Homeland Security.

(c) The County will be responsible at its sole cost and expense for security in parking areas (except the VIP Lot) and traffic control outside the Stadium for Baseball Events.

(d) The County will be responsible, at its sole cost and expense, for maintaining, repairing and replacing the security system located at the Stadium, including without limitation the County's existing security system in the Exclusive Areas.

(e) The County will be responsible, at its sole cost and expense, to maintain the security of the perimeter of the Stadium (including without limitation fences, walls, and alarm systems) and agrees to work in good faith with RCB to pursue any needed upgrades or improvements to same which are reasonably acceptable to the Parties. RCB will provide security personnel to monitor player's vehicles and belongings during Baseball Season and security personnel during Red Wings Baseball Events.

(f) The Parties agree to review the performance of security operations on an annual basis or more frequently upon the reasonable request of either Party. If performance is below objective standards and attempts to improve it fail, then either Party may insist, in collaboration with the other Party, on changes designed to improve performance. In the event the Parties fail to agree on changes needed to improve performance, the issue will be determined by arbitration pursuant to Article IX hereof or such other alternate dispute resolution mechanism to which the Parties may agree in writing.

## **ARTICLE VI INSURANCE**

### **6.01 County Insurance.**

(a) The County shall arrange for and maintain general liability insurance (including broad form contractual and automobile liability coverage) of at least \$10,000,000 combined single limit each occurrence with a self-insured retainage of no greater than \$2,000,000.

(b) The County shall arrange for and maintain insurance against loss or damage by fire, lightning and other casualties customarily insured against, with uniform standard coverage endorsement and shall name RCB and the County in an amount at least equal to \$50,000,000.

(c) The County shall arrange for and maintain all insurance coverages from reputable insurers with a Best Guide Rating of no less than "A- (VII)" and RCB and their respective officers, directors, representatives and employees shall be included as additional insureds on all insurance policies required thereunder.

(d) Insurance provided pursuant to subparagraph (a) hereof shall include insurance against loss or damage by fire, lightning and other casualties customarily insured against, with uniform standard coverage endorsement and shall name the County as insured and RCB as additional insured.

(e) Insurance coverage written on a claims made basis shall only be used if coverage is not available on an occurrence basis.

(f) Costs and expenses of defending any claim, including outside legal fees and expenses, shall be in addition to, and not included within the limits of liability.

(g) All insurance policies required to be carried by the County pursuant to this Agreement shall provide (and any certificate evidencing the existence of any insurance policies shall certify) that unless RCB shall have been given thirty (30) days prior written notice of any cancellation, failure to renew, or material change, as the case may be, the insurance shall not be cancelled and shall continue in full force and effect, and no material change may be made in the insurance policy. All such insurance policies shall be issued on a primary and non-contributory basis.

### **6.02 RCB Insurance.**

(a) RCB shall arrange for and maintain commercial general liability insurance with minimum limits as follows:

(i) Commercial general liability - \$10,000,000 combined single limit each occurrence;

(ii) Liquor liability - \$10,000,000 combined single limit each occurrence;  
and

(iii) Automobile liability - \$5,000,000 each occurrence.

(b) RCB shall arrange for and maintain workers' compensation and employers' liability insurance as required by applicable law.

(c) In the event RCB undertakes any Alterations to the Stadium pursuant to the provisions of Section 5.04 hereof, RCB shall arrange for and maintain "Builder's Risk" insurance covering exposure to loss that may be incurred in connection with such Alterations and shall cause any contractor to arrange for and maintain insurance in such amounts and with such coverages as may be reasonably requested by the County. The Builder's Risk coverage shall name the County as loss payee as its interest may appear (owner).

(d) All insurance required under Section 6.02(a) and (c) shall be obtained from reputable insurers with a Best Guide Rating of no less than "A- (VII)," and the County and their respective officers, directors, representatives, employees and elected officials shall be included as additional insureds on all such insurance policies. All such insurance policies shall be issued on a primary and non-contributory basis.

(e) Costs and expenses of defending any claim, including outside legal fees and expenses, shall be in addition to, and not included within the limits of liability.

(f) All insurance policies required to be maintained by RCB (or, if applicable, any contractor of RCB) pursuant to this Agreement shall provide that (and any certificate evidencing the existence of any insurance policies shall certify that) unless the County shall have been given thirty (30) days prior written notice of any cancellation, failure to renew, or material change, as the case may be, the insurance shall not be cancelled and shall continue in full force and effect, and no material change may be made to the insurance policy.

**6.03 Waiver of Subrogation.** All insurance policies of the County and RCB (or, if applicable, any contractor of RCB) with respect to the Stadium or any property annexed thereto shall contain a waiver of subrogation for the benefit of RCB and the County and their subsidiaries and Affiliates, where appropriate, which waivers shall be in form and content satisfactory to the Parties hereto.

## **ARTICLE VII DAMAGE OR DESTRUCTION, CONDEMNATION**

### **7.01 Damage or Destruction.**

(a) In the event the Stadium or any part thereof is damaged or destroyed by fire or other casualty; and provided no Default by RCB under this Agreement has occurred and is then continuing, the County shall repair or rebuild the Stadium and any insurance proceeds payable as a result of such damage or destruction shall be paid to the County and used for such purposes. If a Default by RCB under this Agreement has occurred and is continuing at the time of such damage or destruction, the County may, in its sole discretion, elect not to repair or rebuild the Stadium, and may instead elect to terminate this Agreement. If the County must rebuild or repair or elects to rebuild or repair the Stadium pursuant to the terms of this Section 7.01 and if the County notifies RCB in

writing within thirty (30) days following any such damage or destruction that, notwithstanding reasonable efforts to effect such repair or reconstruction, the repair or reconstruction work will render the Stadium unusable for RCB's home games during a period of more than twelve (12) months, RCB shall have the right within thirty (30) days following receipt of such notice to terminate this Agreement upon written notice to the County.

(b) If this Agreement is terminated in accordance with the provisions of subsection (a) above, the insurance proceeds payable as a result of such damage or destruction shall be applied, to the extent of funds available and in the following order of priority, as follows:

- (i) first, to Stadium costs;
- (ii) second, in payment of any liability for the unexpired term of any contracts for advertising or other services to unrelated third parties at the Stadium; and
- (iii) third, any balance of insurance proceeds shall be retained by the County.

#### **7.02 Condemnation.**

(a) Any condemnation proceeds payable as a result of any total or partial condemnation of the Stadium shall be paid to the County. In the event of a total condemnation of the Stadium, this Agreement shall terminate as of the date of the condemnation. In the event of a partial condemnation of the Stadium, which materially and adversely impairs RCB's ability to use the Stadium for the purposes and in the manner contemplated by this Agreement, RCB shall have the right to terminate this Agreement by notice given within 90 days of such condemnation (which termination shall be effective as of the later of the date of such partial condemnation or last date RCB occupies the Stadium). In the event RCB elects not to terminate this Agreement, the County shall restore the Stadium as nearly as possible to its condition immediately prior to the condemnation.

(b) If this Agreement is terminated in accordance with the provisions of subsection (a) above, the condemnation proceeds payable as a result of such total or partial condemnation shall be applied, to the extent of funds available and in the following order of priority, as follows:

- (i) first, to other Stadium costs;
- (ii) second, in payment of any liability for the unexpired term of any contracts for advertising or other services to unrelated third parties at the Stadium; and
- (iii) third, any balance of condemnation proceeds shall be retained by the County.

**7.03 Interim Stadium.** If RCB cannot or does not exercise the rights of termination afforded it under Sections 7.01 and 7.02, RCB shall have the right to make arrangements and enter

into agreements with third parties regarding the use by RCB of an interim stadium for the playing of RCB's home games until such time as the Stadium is rendered useable ("*Interim Facility*") and, for such time as RCB must play its home games in an Interim Facility, the County shall have no claim against RCB with respect to Facility Use Fees nor any other revenue derived by RCB in connection with games played at the Interim Facility and the County shall have no right to terminate this Agreement by reason of RCB's use of such Interim Facility as provided herein. Except as herein provided, neither Party shall have the right to terminate this Agreement and each party waives all rights provided by statute to terminate this Agreement in the event of damage or destruction.

## **ARTICLE VIII EVENTS OF DEFAULT; TERMINATION; OTHER REMEDIES**

**8.01 Default by the County.** Without prejudice to any other right or remedy available to RCB at law or in equity in respect of any event described below, this Agreement may be terminated by RCB if:

(a) The County shall fail to make any payments to RCB under this Agreement when due and such payments shall remain unpaid for a period of thirty (30) days following receipt by the County of written notice thereof from RCB unless such payment obligation is being contested in good faith; or

(b) The County shall fail to perform any material agreement, term, covenant or condition to be performed by the County pursuant to this Agreement and such failure shall continue uncured for a period of thirty (30) days after receipt by the County of written notice thereof from RCB (or, if such cure cannot reasonably be accomplished within such 30-day period, the County shall not in good faith have commenced such cure within such 30-day period and shall not thereafter proceed diligently to completion); or

(c) any purported assignment or transfer of the County's rights or obligations hereunder shall be made or deemed to be made that is in violation of this Agreement; or

(d) The County shall:

(i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) (it is the intent of the Parties that the provisions of Section 365(e) (2) (A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement);

(ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affairs in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within sixty (60) days thereafter); or

(iii) admit in writing its inability to pay its debts as such debts become due.

**8.02 Default by RCB.** Without prejudice to any other right or remedy available to the County at law or in equity in respect of any event described below, this Agreement may be terminated by the County if:

(a) RCB shall fail to make any payments under this Agreement when due and such payments shall remain unpaid for a period of thirty (30) days following receipt by RCB of written notice thereof from the County unless such payment obligation is being contested in good faith; or

(b) RCB shall fail to perform any agreement, term, covenant or condition to be performed by RCB pursuant to this Agreement and such failure shall continue uncured for a period of thirty (30) days after receipt by RCB of written notice thereof from the County (or, if such cure cannot reasonably be accomplished within such 30-day period, RCB shall not in good faith have commenced such cure within such 30-day period and shall not thereafter proceed diligently to completion); or

(c) any assignment or subleasing of RCB's rights or obligations shall be made in violation of Section 10.04 of this Agreement; or

(d) any termination or transfer of RCB's franchise that is in violation of Section 2.02(f) or Section 10.04 of this Agreement; or

(e) failure by or refusal of RCB to schedule or play home games at the Stadium for a period of 14 calendar days or more during the Baseball Season, except as permitted in Article VII or Section 8.05 hereof; or

(f) RCB shall:

(i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within 60 days thereafter) (it is the intent of the Parties that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement);

(ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affairs in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or

(iii) admit in writing its inability to pay its debts as such debts become due.

**8.03 Exercise of Right to Terminate.** In the event a Party exercises its rights hereunder to terminate this Agreement because of an event of default hereunder by the other Party and such other Party disputes whether such event of default occurred and requests an expedited hearing to adjudicate such dispute, the terminating Party shall fully support such request.

**8.04 Certain Termination Provisions.** This Agreement may not be terminated by either Party hereto except as expressly provided herein.

**8.05 Force Majeure.** If the performance by either Party under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, terrorism, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other actions adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such Party's control, such Party shall be excused, discharged and released of performance to the extent such performances or obligation is so delayed or prevented by such occurrence without liability of any kind. If a force majeure event shall occur which prevents RCB from playing any home game in the Stadium, (which force majeure event shall include, without limitation, unplayable field conditions caused by a force majeure event outside of RCB's control), RCB shall be entitled to play such game in any other alternate home site for such period of time as the Stadium shall remain unusable, and the County shall have no claim against RCB with respect to Facility Use Fees nor for any other revenue derived by RCB in connection with such alternate home site games and the County shall have no right to terminate this Agreement by reason of the play by RCB of its home games at an alternate site. Likewise, RCB shall have no claim against the County by reason of the play by RCB of its home games at the alternate site. Nothing contained herein shall be construed as requiring any party to accede to any demands or to settle disputes with labor or labor unions, suppliers or other parties that such party considers unreasonable. The provisions of this Section 8.05 shall not relieve any Party of any monetary obligation hereunder except to the extent the amount of such obligation cannot be determined because of a force majeure event.

**8.06 Waiver of Redemption Right.** RCB waives any and all right of redemption provided for in any statute or rule of law now or hereafter in force in case RCB shall be dispossessed or evicted for any cause or reason by a judgment or by warrant of any court or judge.

**8.07 Waiver of Jury Trial.** RCB and the County mutually agree that they do hereby waive trial by jury in any action or proceeding brought by either of them against the other on any matter arising out of or in any way connected with this Agreement. RCB and the County further agree that in the event the County shall commence any proceeding or action, arising out of or in any way connected with this Agreement or the use or occupancy of the Stadium or the Stadium, RCB will not interpose any counterclaim or set off of any nature whatsoever in such proceeding.

**8.08 Right to Cure.** If either RCB or the County shall default in the observance or performance of any term or covenant to be observed or performed under or by virtue of any of the terms or provisions in any Article or Section of this Agreement, beyond the grace periods provided for herein, RCB or the County, as the case may be, may, but shall have no obligation to, immediately or at any time thereafter and without notice perform the same for the account of the defaulting party, and if any expenditures are reasonably made or any obligations for the payment of money in connection therewith reasonably incurred in connection with said performance including, but not



limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred with interest and costs shall be paid by the defaulting party, as applicable, within five (5) calendar days of rendition of any bill or statement to the defaulting party therefor. In addition to the foregoing, if either Party shall default in the observance or performance of any term or covenant to be observed or performed under or by virtue of any of the terms or provisions in any Article or Section of this Agreement, beyond the grace periods provided for herein, the other Party may, but shall have no obligation, to perform the same for the account of the defaulting Party and set-off such sums paid or obligations incurred, with interest and cost, against any amounts owed to the defaulting Party under this Agreement.

**8.09 Remedies Cumulative.** The specific remedies to which RCB and the County may resort under the terms of this Agreement are cumulative, and are not intended to be exclusive of any remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them of any provision of this Agreement. The failure of the County or RCB to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by the County of revenues hereunder with knowledge of the breach of any covenant of this Agreement shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be effective unless expressed in writing and signed by both the County and RCB. In addition to other remedies provided in this Agreement, the County and RCB shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Agreement, or to a decree compelling performance of any such covenants, conditions or provisions.

## ARTICLE IX ARBITRATION

**9.01 Dispute Resolution by Arbitration.** Any dispute arising under any provision of this Agreement may be referred to arbitration by either Party delivering to the other written notice (an "*Arbitration Notice*") specifying the name and address of the arbitrator designated by it, the nature of the dispute, the amount (if any) involved and the qualifications of such arbitrator which meet the requirements hereinafter imposed. Within fourteen (14) days after delivery of an Arbitration Notice by one Party, the other Party shall deliver a response (a "*Response to Arbitration Notice*") specifying the name and address of the arbitrator designated by it and the qualifications of such arbitrator which meet the requirements hereinafter imposed. If a party fails to deliver its Response to Arbitration Notice within such fourteen (14) day period, the arbitrator specified in the Arbitration Notice shall be the sole arbitrator of the dispute. Within seven (7) days after delivery of a Response to Arbitration notice, the two arbitrators appointed shall select a third arbitrator. If the two initial arbitrators cannot agree upon a third arbitrator within such seven (7) day period they shall immediately notify the Parties, whereupon the third arbitrator shall be appointed, upon the application of the arbitrators or of either Party, by the office of the American Arbitration Association located closest to the Stadium. The third arbitrator shall be in all cases a neutral person with no financial or personal interest in the result of the arbitration or any present relationship with the Parties or their counsel. The Parties agree that all arbitrators selected pursuant to this Section 9.01 shall be persons with knowledge and experience relating to minor league baseball or similar sports

franchises, and/or the operation and management of stadium complexes similar to the Stadium. The arbitrator appointed as aforesaid shall convene in Rochester, New York within thirty (30) days after the appointment of the third arbitrator, or failure of a Party to submit a Response to Arbitration Notice, as the case may be, and shall render the decision and award as promptly as possible, and in any event, within thirty (30) days after the completion of the arbitration hearing. Such decision and award shall be in writing and counterpart copies thereof shall be delivered to each of the Parties. In rendering their decision and award, the arbitrators shall not add to, subtract from, or otherwise modify the provisions of this Agreement. The decision and award of the arbitrators shall be final and shall not be subject to appeal and judgment may be had on the decision and the award so rendered.

**9.02 Arbitration Provisions.** The following provisions shall apply to any arbitration instituted pursuant to this Section.

(a) The arbitration shall be determined in accordance with the Commercial Arbitration Rules then in use by the American Arbitration Association, as amended by this Article (or, if such Association shall not then be in existence, such other organization, if any, as shall then become the successor of said Association or if there be no successor, pursuant to applicable law of the State of New York).

(b) The arbitrators shall not be empowered to call for any pre-hearing testimony or other pre-hearing examination of either Party and shall limit requests by the Parties for production of documents and other records to only those necessary to the determination of the issue before them.

(c) The Party against whom the arbitrator's decision is rendered shall pay the fees and expenses of the arbitration as well as the legal fees and costs incurred by the other party in connection with the arbitration. If the arbitrators render a compromise decision, except as may otherwise be ordered in such decision, each party will pay its own legal fees and costs and the parties shall share equally the other fees and expenses of arbitration.

(d) The arbitration shall not permit the submission of affidavits as evidence without the consent of the other Party.

**9.03 Effect of Arbitration.** The application for or pendency of any arbitration shall not extend the times for performance by the Parties of their respective obligations under this Agreement, except as otherwise expressly provided herein, or limit or delay the right of any Party to seek temporary injunctive relief, (during the pendency of such arbitration) from the appropriate court with regard to the matter being arbitrated. No matter which is the subject of arbitration hereunder shall constitute the basis for the termination of this Agreement during pendency of such arbitration.

## **ARTICLE X SPECIAL COVENANTS AND CONDITIONS**

**10.01 Meetings.** Upon the reasonable request of either party, representatives from RCB and the County shall meet in order to discuss any complaints or problems and make recommendations regarding the use and operation of the Stadium.

**10.02 Broadcasting.** Nothing in this Agreement shall be interpreted to grant the County any rights or claims with respect to the broadcasting of RCB's home games or any other Baseball Event or Other RCB Event and the County acknowledges that, notwithstanding any provision of Article IV to the contrary, RCB shall have sole control over, and shall retain all revenues derived from, such broadcasting. Such broadcasting may include, without limitation, radio, television, cablevision, pay television, pay-per-view, videotaping, satellite transmission, closed circuit, and all future forms of media transmission or broadcasting. RCB may grant free and reasonable access to the Stadium to any entity and its personnel for purposes of setting up and taking down any equipment required for such broadcasts. In no event will television origination fees or charges be payable to the County in connection with the broadcast of RCB's home games, or any other Baseball Event or Other RCB Event, locally or otherwise. Further, RCB shall have the sole and exclusive right to operate and control all audio-visual equipment and all electronic scoreboards within the Stadium for All Events.

**10.03 Time of the Essence.** RCB and the County acknowledge that time is of the essence with regard to the rights and obligations under this Agreement.

**10.04 Assignability; Transfer of Franchise.**

(a) There shall be no assignment or subleasing of this Agreement, in whole or in part, by either Party without the other Party's prior written consent; provided, however, that notwithstanding the foregoing, the County may collaterally assign this Agreement and any or all payments or rights hereunder in connection with any other financing of the Stadium.

(b) Notwithstanding any other provision of this Agreement to the contrary, RCB shall have the right to transfer its franchise to another entity provided that transfer does not adversely affect the status of the franchise as the equivalent of the highest level of minor league baseball team and the transferee agrees in writing to assume RCB's obligations under this Agreement.

(c) RCB's consent shall not be required in the event that the County should make any assignment or transfer to an Affiliate of the County; provided that such assignee is capable of performing the County's obligations hereunder and expressly assumes the obligation to do so.

(d) RCB acknowledges that the County may hire one or more management companies to assist the County in carrying out its duties and obligations under this Agreement. Such hiring by the County shall not require the consent of RCB and shall not be treated as an assignment of the Agreement by the County.

(e) Any assignment or subleasing in violation of this Agreement shall be void from the beginning.

**10.05 Books and Records; Audit Rights.**

(a) Both RCB and the County shall keep at their respective offices (or in retrievable storage) complete, true and accurate books of account, records and contracts including sales, revenues, costs and expenses containing complete information as to the matters required to be included in the statements to be furnished to the County and RCB, as the case may be, under this Agreement. The books, records and contracts required under this Agreement to be kept shall not be destroyed for a period of six (6) years following the expiration of the year for which such books of

accounts, records and contracts are kept and shall be kept in accordance with generally accepted accounting principles consistently applied. Within thirty (30) days after a Party's written request, but no more frequently than once per year, the other Party shall provide to the other Party a copy of its published audited annual financial statements as of its most recent fiscal year for which audited financial statements are complete.

(b) In addition to such rights or obligations that may exist under law, at its option, but not more than once per year, either Party may, at any reasonable time during the Term, upon no less than two (2) business days prior notice and for a period of six (6) full calendar years after the expiration or earlier termination of this Agreement, cause a complete audit during regular business hours of the other Party's books and records relating to payments due the auditing Party under the terms of this Agreement. If any such audit shall disclose a liability for amounts owing to the auditing Party for any year which is in excess of any amount actually paid by the audited Party during the period in which such amounts owing to the auditing Party is being calculated, then the audited Party shall forthwith pay to the auditing Party the amount of such liability together with interest thereon at two percentage points above the then-prevailing prime rate of interest, as published from time to time in the Wall Street Journal (the "*Prime Rate*"), from the date payment was originally due to the date of actual payment, and if such audit discloses an understatement by the audited Party of amounts owing to the auditing Party in such period in excess of five percent (5%), then the audited Party shall promptly pay to the auditing Party the cost of said audit. If such audit shall disclose an overpayment to the auditing Party, then the auditing Party shall forthwith pay to the audited Party the amount of such overpayment together with interest at the Prime Rate.

**10.06 Cooperation with Bond Financing and Lenders.** RCB shall cooperate with the issuance of bonds, any lender financing, including but not limited to the financing of a portion of the Stadium by the New York State Urban Development Corporation ("*UDC*") or any additional bond financing, whether by the County, or any other entity authorized to issue bonds, of the Stadium and shall agree to reasonable amendments to this Agreement to facilitate any such financing, so long as such amendments do not result in any material change to the detriment of RCB in the substance of the terms and conditions of this Agreement, including, but not limited to, the Parties' respective financial obligations under this Agreement. RCB further agrees to execute such additional documents, instruments and certificates, and provide such opinions of RCB's counsel, as may be necessary, in the reasonable judgment of the County, UDC, any bond counsel or lender's counsel, the issuer of any other bonds, or any underwriter or rating agency in connection any such financing.

**10.07 Specific Performance.** Each Party acknowledges that the obligations of the other Party are, with the exception of monetary or financial obligations or undertakings, unique, and if either Party were to fail to observe or perform any of the provision of this Agreement, the award of damages arising from any such breach would not be an adequate remedy. Therefore, each Party acknowledges and agrees that the other Party shall be entitled to specific performance, any other injunctive relief, or any other court order to enforce the performance by such Party of the covenants and obligations it has undertaken under this Agreement and that no cure period provided for in this Agreement shall be a condition to the right to obtain such specific performance, other injunctive relief or any court order enforcing performance of this Agreement.

#### **10.08 Indemnification.**

(a) RCB shall indemnify, defend and hold harmless the County, its agents, officers, employees or elected or appointed officials ("*County Indemnitees*") from and against any and all demands, losses, judgments, damages, suits, claims, actions, liabilities and expenses (including, without limitation, all reasonable attorneys' fees and expenses), in law or in equity, of every kind and nature whatsoever, which any County Indemnitee may suffer or sustain or which may be asserted or instituted against any County Indemnitee caused by (except to the extent caused by the negligent acts or willful misconduct of any County Indemnitee): (i) injury to or death of any Person (including, but not limited to RCB employees, invitees, spectators, players from any team, contractors and agents) or damage to or destruction of property caused by RCB's use or occupancy of the Stadium or any portion of the Stadium, whether or not permitted pursuant to the terms of this Agreement; (ii) the breach by RCB of any of its warranties or representations made in this Agreement; (iii) the violation by RCB of any baseball rules; and (iv) any negligent acts or omissions or intentional misconduct of RCB and employees, invitees, spectators, players from any team, contractors and agents using or occupying the Stadium or any portion of the Stadium, whether or not permitted pursuant to the terms of this Agreement, during the Term. If any action or other legal proceeding shall be brought against a County Indemnitee by reason of any claim, demand, loss or cause of action indemnified pursuant to this Section 10.08(a), RCB, upon notice from the County, shall defend any such action or other legal proceeding. RCB's obligations to indemnify the County under this Section 10.08(a) shall survive the expiration or earlier termination of this Agreement.

(b) The County shall indemnify, defend and hold harmless RCB and its Affiliate companies and their respective shareholders, agents, officers, directors and employees ("*RCB Indemnitee*") from and against any and all demands, losses, judgments, damages, suits, claims, actions, liabilities and expenses (including, without limitation, all reasonable attorneys' fees and expenses), in law or in equity, of every kind and nature whatsoever, which any RCB Indemnitee may suffer or sustain or which may be asserted or instituted against any RCB Indemnitee caused by (except to the extent caused by the negligent acts or willful misconduct of any RCB Indemnitee): (i) injury to or death of any Person (including, but not limited to RCB and County employees, invitees, spectators, players, contractors and agents) or damage to or destruction of property caused by the County's use or occupancy of the Stadium (or any portion thereof), including, without limitation, the conduct or management of its business in any portion of the Stadium; (ii) the breach by the County of any of its warranties or representations made in this Agreement; or (iii) any negligent acts or omissions or intentional misconduct of the County, its agents and/or employees. If any action or other legal proceeding shall be brought against an RCB Indemnitee by reason of any claim, demand, loss or cause of action indemnified pursuant to this Section 10.08(b), the County, upon notice from RCB, shall defend any such action or other legal proceeding. The County's obligations to indemnify RCB Indemnitees under this Section 10.08(b) shall survive the expiration or earlier termination of this Agreement.

**10.09 RCB's Obligation to Surrender.** Upon the expiration or earlier termination of this Agreement, RCB shall peaceably surrender the Stadium. At the time of such surrender, RCB shall deliver to the County all keys and access cards and devices for the Stadium which may be in RCB's possession at the place then fixed for the receipt of notices by the County. RCB's obligations to observe and perform the covenants set forth in this Section 10.09 shall survive the expiration or earlier termination of this Agreement.

**10.10 RCB's Property.** Upon the expiration or termination of this Agreement, RCB shall immediately remove all property owned by RCB and which RCB is permitted or required to remove from the Stadium under the provisions of this Agreement. If RCB fails to remove such property by the time it has surrendered the Stadium to the County, the County may exercise any rights or remedies offered by law with respect to such property.

**10.11 Estoppel Certificates.**

(a) Within twenty (20) business days after RCB's receipt of a written request of the County, UDC, any lender, trustee, underwriter, or credit enhancement provider in connection with any financing related to the Stadium, or any present or potential transferee(s) of the County but no more than once in any twelve (12) month period, RCB shall execute and deliver to the County and/or such transferee(s) a written statement: (a) ratifying this Agreement; (b) confirming the commencement and expiration dates of this Agreement; (c) certifying that this Agreement is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that except as otherwise specified in the statement, all conditions and agreements to be satisfied or performed by the County under this Agreement have been satisfied and performed; and (e) certifying that to the best of RCB's knowledge, except as otherwise specified in the statement, the County is not in default under this Agreement and that there are no defenses, set-offs, recoupments or counterclaims against the enforcement of this Agreement by the County (collectively, "*RCB's Estoppel Certificate*"). RCB's failure to execute and deliver RCB's Estoppel Certificate to the County, UDC, any lender, trustee, underwriter or credit enhancement provider in connection with bonds and/or any present or potential transferee(s) within the time period required shall be deemed to be a delivery of RCB's Estoppel Certificate as required. The delivery of RCB's Estoppel Certificate by RCB shall not preclude RCB from exercising any rights and requiring any payments following an audit conducted pursuant to Section 10.05 hereof.

(b) Within twenty (20) business days after the County's receipt of a written request of RCB, or any present or potential transferee(s) of RCB but no more than once in any twelve (12) month period, the County shall execute and deliver to RCB and/or such transferee(s) a written statement: (a) ratifying this Agreement; (b) confirming the commencement and expiration dates of the Term of this Agreement; (c) certifying that this Agreement is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; and (d) certifying that to the best of the County's knowledge, except as otherwise specified in the statement, the County is not in default under this Agreement and that there are no defenses, set-offs, recoupments or counterclaims against the enforcement of this Agreement by RCB (collectively, the "*County Estoppel Certificate*"). the County's failure to execute and deliver the County's Estoppel Certificate to RCB and/or any transferee(s) within the time period required shall be deemed to be a delivery of the County Estoppel Certificate as required. The delivery of the County Estoppel Certificate by the County shall not preclude the County from exercising any rights and requiring any payments following an audit conducted pursuant to Section 10.05 hereof.

**10.12 Waiver of Personal Liability.** All obligations and liabilities on the part of the County or RCB are solely corporate liabilities and each party hereby releases each and every officer, agent, shareholder, director, member or employee of the other Party and the County, of and from any personal or individual liability for obligations under this Agreement. Under no circumstances shall any officer, agent, shareholder, director, member or employee of either party, the issuer of bonds or

the County be individually or personally liable for anything whatsoever under this Agreement, or for any act or failure to act by the County, RCB, the issuer of bonds or the County, whether under this Agreement or otherwise.

**10.13 Conditions to Obligations.**

(a) RCB's obligation to perform any of its obligations hereunder shall be subject to the receipt, on or before April 1, 2018 of all governmental and regulatory approvals, permits and consents from third parties required for use of the Stadium by RCB, provided, that each Party agrees to use best efforts to obtain any such required consents or approvals. In the event that these conditions are not met, waived or extended by RCB, this Agreement and any other related documents shall automatically become null and void and neither Party will have any further obligations or liabilities hereunder or thereunder except as may be specifically provided herein or therein.

(b) In the event that these conditions are not met, waived or extended by the County, this Agreement and any other related documents shall automatically become null and void and neither Party will have any further obligations or liabilities hereunder or thereunder except as may be specifically provided herein or therein.

(c) Either Party may request from time to time a written statement from the other party as to the status of any condition to either Party's obligations to perform any of such Party's obligations hereunder.

**10.14 Association with RCB.** The County shall not have the right, and nothing in this Agreement shall be construed to give the County the right without RCB's prior written consent, to:

(a) use the names, marks, symbols, logos or other proprietary designations or properties owned, developed or created by RCB (the "*RCB Intellectual Properties*"); or

(b) use any of the RCB Intellectual Properties as if they were the County's own property.

**10.15 Association with Monroe County.** RCB shall not have the right, and nothing in this Agreement shall be construed to give the RCB the right without the County's prior written consent, to:

(a) use the names, marks, symbols, logos or other proprietary designations or intellectual properties owned, developed or created by the County (the "*County Intellectual Properties*"); or

(b) use any of the County Intellectual Properties as if they were the RCB's own property.

**10.16 Consents.** The County and RCB will cooperate with one another and proceed, as promptly as is reasonably practicable, to seek and obtain all necessary waivers, consents and approvals from third parties, and to endeavor to comply with all other legal or contractual requirements for or preconditions to the execution and consummation of this Agreement.

**10.17 Plans and Specifications.** Subject to Section 4.02(h) hereof, the County will solicit RCB's input, as principal user of the Stadium, regarding the plans and specifications for any material repairs or replacements in or to the Stadium; provided, however, that the County shall have the right of final approval of the Plans and Specifications, including any changes or modifications thereto.

**10.18 Quiet Enjoyment.** The County covenants that, upon payment of the rent and charges provided herein and upon performance of the covenants and agreements on the part of RCB to be performed hereunder, RCB shall peacefully have and enjoy the Stadium and the rights and privileges granted hereunder.

## **ARTICLE XI SUBORDINATION**

### **11.01 Subordination.**

(a) Subject to subparagraph (c) hereof, this Agreement and any and all modifications, amendments, renewals and extensions thereto shall be subject and subordinate to all ground or underlying leases relating to the Stadium, including but not limited to any mortgage which may now or thereafter affect the Land or the Stadium and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof; provided, however, that no property owned or removable by RCB shall be subject to such liens or paramount mortgages.

(b) This provision shall be self-operative, and no further instrument of subordination shall be required by any mortgagee. However, in confirmation of such subordination, RCB shall execute promptly any certificate the County may request.

(c) The holder of any mortgage or landlord under any underlying lease shall agree in the mortgage or the lease or otherwise that this Agreement shall not be terminated or otherwise affected by enforcement of any such mortgage or underlying lease, provided that at the time thereof no Event of Default under this Agreement shall have occurred and be continuing, and RCB when requested by the holder of such mortgage or the landlord under such underlying lease shall execute an attornment agreement to the holder of such mortgage or the landlord under any such underlying lease should either succeed to the rights of the County under this Agreement.

## **ARTICLE XII MISCELLANEOUS**

**12.01 Notices.** Any required or permitted notice or other communication shall be deemed given when received if: (i) delivered personally to the representatives identified below; or (ii) sent by overnight courier or United States registered or certified mail, postage or charges prepaid, return receipt requested to the addresses set forth below, or such other addresses as the Parties may designate in writing:

**Monroe County:**

Monroe County Director of Environmental Services  
County Department of Environmental Services



50 West Main Street, Suite 7100  
Rochester, New York 14614

*With a copy to:*

Monroe County Attorney  
Suite 307  
39 West Main Street  
Rochester, New York 14614

**Rochester Community Baseball, Inc.:**

President  
Rochester Community Baseball, Inc.  
One Morrie Silver Way  
Rochester, New York 14608

*With a copy to:*

General Manager  
Rochester Community Baseball, Inc.  
One Morrie Silver Way  
Rochester, New York 14608

**12.02 Entire Agreement.** This Agreement shall constitute the entire agreement of and supersedes all prior agreements between the Parties with respect to the subject matter hereof, except as may be modified or separately agreed to by the Parties after the date hereof as provided in this Agreement.

**12.03 No Accord and Satisfaction.** Payment by either Party, or receipt or acceptance by either Party, of any payment in an amount less than the amount required to be paid under this Agreement shall not be deemed an accord and satisfaction, or a waiver of the right to receive and recover the full amount due and payable under this Agreement, notwithstanding any statement to the contrary on any check or payment or on any letter accompanying such check or payment.

**12.04 Costs.** Except as otherwise provided herein, the County and RCB will be solely responsible for and bear all of their respective expenses, including, without limitation, expenses for legal counsel, accountants and other advisors, incurred at any time in connection with the preparation of this Agreement or the transactions contemplated hereby.

**12.05 Non-waiver.** The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every provision hereof.

**12.06 Modification of Agreement.** The County and RCB agree that the terms, conditions and requirements of this Agreement or any part hereof, may be amended, modified, revised,

supplemented or deleted, with the prior written consent of the County, only by mutual agreement of the Parties hereto expressed in writing and signed by the Parties.

**12.07 Jurisdiction and Venue.** Any and all actions arising out of this Agreement shall be instituted and maintained in a court of competent jurisdiction in Monroe County, New York, except as otherwise expressly provided herein.

**12.08 Severability.** If any terms or provisions of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the Parties had not intended the severed term herein; provided that, the Parties may negotiate mutually acceptable adjustments of such severed terms of this Agreement to restore the Parties, to the greatest extent possible, to the respective positions intended on the date hereof.

**12.09 Headings.** The headings of the articles, sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

**12.10 Exhibits, Schedules, Sections.** All Exhibits and Schedules attached hereto are made a part hereof by this reference. References to Sections herein shall be deemed to be references to the numbered Sections of this Agreement.

**12.11 Relationship of Parties.** The relationship of the Parties under this Agreement is intended to be that of lessor and lessee. Nothing contained in this Agreement shall be construed as creating any joint venture, agency, partnership, or other relationship between the Parties except as explicitly and specifically stated in this Agreement. Neither Party shall act as or hold itself out as the agent or partner of the other, nor shall either Party purport or undertake to bind the other Party legally or financially in any way without that Party's prior express written consent.

**12.12 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

**12.13 Execution of Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**12.14 Applicable Law.** This Agreement shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of laws principles.

IN WITNESS WHEREOF, the County and RCB have caused this Agreement to be executed in their respective capacities by their duly authorized officers, all as of the date first written above.

COUNTY OF MONROE

By: \_\_\_\_\_  
Name: Cheryl Dinolfo  
Title: County Executive

ROCHESTER COMMUNITY BASEBALL, INC.

By: Naomi Silver  
Name: Naomi Silver  
Title: President

STATE OF NEW YORK )  
  : SS.:  
COUNT OF MONROE )

On this \_\_\_ day of \_\_\_\_\_, 2018, before me personally came Cheryl Dinolfo, to me known, who, being by me duly sworn, did depose and say she resides in the Town of Irondequoit, New York, that she is the County Executive of Monroe County and signed her name hereto with the authorization of the Monroe County Legislature.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
  : SS.:  
COUNT OF MONROE )

On this 12<sup>th</sup> day of February, 2018, before me personally came Naomi Silver, to me known, who, being by me duly sworn, did depose and say she resides in the Town of Penfield, New York, that she is the President of ROCHESTER COMMUNITY BASEBALL, INC., the corporation described in and which executed the within Lease Agreement; and that she signed her name thereto by order of the Board of Directors of said corporation.

Michael E. Davis  
Notary Public

MICHAEL E. DAVIS  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED IN MONROE COUNTY  
MY COMMISSION EXPIRES APRIL 30, 2018

**EXHIBIT A**  
**LEASED STADIUM**

The Stadium includes the stadium complex located at One Morrie Silver Way and all improvements located thereon and which are a part thereof, including without limitation the baseball stadium, the grandstand, other facilities and structures and associated land and includes the VIP Lot, but shall not include the Firehouse.

At the request of either Party, the parties will prepare a mutually acceptable map depicting the Stadium and amend this Lease to attach such mutually acceptable map as a supplement to this Exhibit A.

## EXHIBIT B

### EXCLUSIVE AREAS

County of Monroe and Rochester Community Baseball, Inc. Lease Agreement  
Exhibit B

Stadium Exclusive Areas

Clubhouse / Field Level		Concourse Level		Suite Level	
Rm. #	Rm. Name	Rm. #	Rm. Name	Rm. #	Rm. Name
102B	Access Corridor	200	Storage	301	Suite
103	Groundskeeper Suite (Incl. Equipment, Storage, Office & Toilet)	204	Concession	302	Suite
109	Home Team Dugout	205	Trash	303	Suite
110	Home Team Field Toilet	206	Manager	304	Suite
111	Home Team Dugout Access Corridor	207	Vault	305	Suite
112	Access Corridor	208	Toilet	Suite Area 301 - 305	Interior Access Corridor, Elevator Lobby Pantry, Men & Women Toilets
112A	Access Corridor	209C	Vending Entry		
114	Laundry	209	Vending	306	Suite
115	Equipment	210	Commissary	307	Suite
116	Training	211	Commissary Storage	308	Suite
117	Whirlpool	213	Concession	309	Suite
118	Exercise Room	214	Storage	310	Suite
119	Office	215	Telephone	311	Suite
120	Storage	216	Room	312	Suite
121	Home Team Clubhouse	217	Lobby	313	Suite
122	Kitchen	222	Booster	Suite Area 312 - 313/ Lounge/Press Box	Interior Access Corridor, Elevator Lobby Concession, Lounge, Men & Women Toilets, Equipment, Radio (x2), TV, SD PA, Toilets (x2), Writing Press, Production
123	Club House Manager	230	Concession	(Incl. 341, 342 & 343)	
124	Conference Room	232	Kitchen		
125	Cooridor	233	Toilet		
126	Shower	234	Toilet	314	Suite
127	Drying Area	235	Conference Room #1	315	Suite
128	Toilet	236	Conference Room #2	316	Suite
129	Coach	237	Storage	317	Suite
130	Manager	238	Corp. Office	318	Suite
130A	Manager Toilet	239	Corp. Office	319	Suite
131	Family Room Entry	240	Book Office	320	Suite
132	Family Room	241	GM Office	321	Suite
133	Family Room Toilet	242	Asst. GM Office	322 & 323	Combined into Single Suite
134	Family Room Toilet	243	Office	324	Suite
135	Official's Room	244	Telemarketing	325	Suite
136	Official's Room	245	Storage	Suite Area 322 - 325	Interior Access Corridor, Men & Women Toilets
137	Official's Room	246	Entry	326	Suite
139	Home Plate Access Corridor	247	Storage	327	Suite
141	Storage	249	Concession	328 - 334	Combined into Single Suite
142	Community Room	250	Ticket	345	Pantry
143	Toilet	251	Will Call	346	Storage
144	Shower	252	Storage		
145	Manager	257	Pump Room		
146	Visitor Clubhouse	258	First Aid		
147	Toilet	258A	Toilet		
148	Shower	259	Guest Services		
149	Training	262	Team Store		
150	Manager	263	Storage		
151	Toilet	264	Concession		
152	Shower	269	Concession		
153	Kitchen	270	Storage		
154	Equipment	272	Storage		
155	Visitor Dugout Access Corridor	273	Concession		
156	Visitor Dugout Field Toilet	276	Concession		
157	Visitor Dugout				
NA	Batting Cage/Building				

## EXHIBIT C

### CONCESSION, GROUNDS KEEPING AND OTHER EQUIPMENT

Red Wings					
<u>Syst.</u>	<u>No.</u>	<u>Description</u>	<u>Syst.</u>	<u>No.</u>	<u>Description (Continued)</u>
	1	Panini Grill		108	Sod Cutter
	2	OMITTED		109	OMITTED
	3	Picnic Tables		110	Donut Fryer
	6	Misc. Equipment		113	Mobile Cashier Stand
	7	OMITTED		114	Hard Ball Equipment
	23	OMITTED		115	Donut Fryer
	27	OMITTED		121	Table
	29	Grills		122	Golf Cart
	30	Beverage Cart		123	TV - Hardball
	31	Food Carts		125	Suite/Seat Signage
	32	Condiment Cart		124	OMITTED
	33	Portable Carts		126	OMITTED
	34	Picnic Tables		127	OMITTED
	41	Perlick Power Packs		129	OMITTED
	42	Beverage Cart		130	Hot Food Cart
	43	Popcorn Warmer Italian Ice, Sausage &		131	Randell 9570 Drop Warmer
	44	Beer Carts		132	Cold Food Cart
	45	Stone Plate Tamper		133	Randell 9772-IC Cold Pan
	46	Airless Spayer		134	Draft Beer Cart
	47	Camera Equipment		135	Soda Cart Square Family Gath Table
	48	Pizza Oven		136	Green
	52	OMITTED		137	Banquet Cabinet Wittco 150C
	57	OMITTED		138	Banquet Cabinet Wittco 150C
	59	OMITTED		139	OMITTED
	60	OMITTED		140	Roll Top Round Chafers - 6
	61	Stools/Chairs		141	OMITTED
	62	Stools/Chairs		142	OMITTED
	63	Stools/Chairs		143	OMITTED
	65	Smoker Attachment		144	OMITTED
	66	Vegetable Slicer		145	OMITTED
	67	Griddle		146	OMITTED
	68	Clam Steams		147	S/S Cabinet for Bar Area
				188	TVs
				189	TVs
				190	Point of Sale Equipment
				191	Picnic Table
				192	Refrigerators
				193	Snowblower
				194	OMITTED
				198	TV Mounts
				199	12 Refrigerators
				202	Suite Furniture Two 22MM 96x432 Digital
				208	Displays Three Power Pak-Air
				209	Cooled Two Cabinet Mobile
				210	Heated
				211	Ice Machine
				212	Ground/Field Equipment
				213	Ground/Field Equipment
				216	Club Car Electric
				218	Ice Machines
				220	OMITTED
				222	Ice Machines
				225	Concession Equipment
				226	John Deere Tractor
				227	Outdoor TV Cover
				228	Concourse TV
				229	Golf Cart Battery Charger
				230	OMITTED
				231	Suite TV
				232	Suite Fridge
				233	Suite TV
				235	OMITTED
				238	Cabinets
				242	OMITTED

70	Stools	151	OMITTED	243	Dishwasher
71	Drink Rail	153	Mower #55	246	Ice Machine Hose
72	Cart Bulkhead	154	Walk In Cooler	247	TV
73	Tent	155	Televisions	248	TV
74	Verticle Blinds	158	Refrigeration Cabinets	264	Televisions & Mounts
76	Interior Signage	159	OMITTED	265	Braising Pan/Tilted Skillet
77	OMITTED	160	Suite Refrigerators	267	Refrigerator
78	Garbage Cans	162	OMITTED	268	Refrigerator/Freezer
79	OMITTED	163	Display Cabinets	269	Flex Hose
81	OMITTED	164	Beer Cooler	270	Cooler
86	Picnic Tables	165	Lawn Mower	271	OMITTED
	Concession Storage		POS (Point of Sale) System		
87	Case	166	Software	272	Greenmaster-Lawnmower
			IDS Telephone System with		
88	OMITTED	167	Voice Mail	273	Office Equipment
			Rational CM102G Combi-Oven		
89	Stools/Chairs	168	with Stand	274	Vinyl Raincover
90	Supply Tables	171	Magi Grill FM	281	Equipment Concession
91	Ice Machine	172	Magi LPAA6	282	Field Equipment
92	Line Lazer	173	Athletic Field Cover	285	Fryer System
95	Lawn Mower	175	OMITTED	286	Sod Cutter
96	OMITTED	176	OMITTED	287	John Deere Sprayer
					2016 Concession
97	Suite Table	179	Beer Cooling Units	289	Equipment
100	Infield Rain Cover (Tarp)	181	OMITTED		
101	Sneeze Guard	182	OMITTED		
102	Cabinet	183	OMITTED		
104	Park Equipment	185	Stadium Televisions		
106	Sneeze Guard	186	OMITTED		
107	Shelving Unit	187	OMITTED		

Additional Items:

Beverage Air Freezer Model No. FB72-15

Master-Built Ice Cream Dipping Cabinet Model No. DC-4D

Landscaping Equipment to be replaced by County prior to Effective Date

1. Field mower - Toro groundsmaster 3505-D
2. Utility vehicle – John Deere TX plus snow plow blade
3. Zero turn mower – 24.5 HP toro V twin w 48” Turbo Force 5” deep
4. Blower – Buffalo Turbine Cyclone KB4



## **EXHIBIT D**

### **RCB IMPROVEMENT PROJECTS**

1. Replacing the cameras located at the Stadium on the Effective Date (current estimated cost of project is approximately \$300,000)
2. Replacing the existing telephone system located at the Stadium on the Effective Date (current estimated cost of project is approximately \$25,000)
3. Upgrades to the current computer/POS system serving the concessions, ticketing and other retail areas of the Stadium (current estimated cost of project is approximately \$175,000)
4. Costs of Replacing the Premium Suite Furniture located at the Stadium on the Effective Date which exceeds the \$100,000 to be contributed by the County as set forth in Section 4.02(g) of the Lease.

## EXHIBIT E

### RCB MAINTENANCE RESPONSIBILITIES

#### Red Wings Maintenance Responsibilities

##### Site/Stadium

- Parking area sidewalk and walkway snow and ice removal and salting and weeding
- Lawn care including topsoil, seeding, watering, weeding, trimming and mowing including the playing field/warning track
- Landscaping including trees, shrubs, bushes, flowers and mulching
- Walk-of-fame Program brick sales, installation, maintenance, repair and replacement (*County will reimburse Red Wings at cost*)
- Grounds equipment repair and replacement including field tarp
- Custodial services stadium wide including both exclusive and all other space
- General litter and debris removal/housekeeping of property and stadium
- RCB will pay for all gas for field related work

*Any tree pruning would need to be contracted by an outside source or a tree expert from the County parks dept. If RCB has to hire an outside tree expert it would bill the County for the work. RCB would not hire the tree expert without first consulting the County.*

##### Stadium

- Exclusive Areas floors, walls, ceiling finishes (dry walling, painting, wall paper, ceiling tiles, carpeting, tiling, rubber matting) furniture and equipment maintenance, repair and replacement
- Exclusive Area fixtures (including millwork, lighting fixtures) maintenance only.
- Exclusive Area and interior door/frame (steel, wood, aluminum) and hardware maintenance, painting and repair
- Ticket booth and concessions window/specialty opening maintenance, painting and repair
- Batting Cage roof maintenance, repair and replacement

##### Mechanical

- Concession equipment maintenance, repair and replacement
- Field irrigation system sprinkler heads repair (County will replace as part of separate capital field replacement project)

##### Electrical

- NA

### Plumbing

- General maintenance associated with fixtures such as placing "out-of-order" signs, plunging clogged toilets, repair loose/leaking fittings, turning off shut-off valves, fixtures (restroom sinks, faucets, drinking fountains, toilets)

### Other

- RCB will be responsible for Public address system repair and replacement as well as closed circuit tv and media equipment repair and replacement. As noted in Exhibit D, RCB is willing to invest approximately \$300,000 in new television cameras and audio/visual equipment as well as a new phone system at an expense of approximately \$25,000. However the County would be responsible for cabling for any needs for audio visual equipment as the cabling would become part of the Stadium.
- RCB will not be responsible for any item of maintenance, repair or replacement to the extent caused by any item for which the County is responsible to maintain or to the extent caused by the failure of the County to adhere to any provision of this Agreement, in which event the County shall be responsible therefor.

**THE FOLLOWING MAINTENANCE ITEMS SHALL NOT BE THE RESPONSIBILITY OF RCB, BUT INSTEAD, SHALL BE THE RESPONSIBILITY OF THE COUNTY AND UNDERTAKEN BY THE COUNTY AT ITS SOLE COST AND EXPENSE.**

### **Monroe County**

#### Site

- Parking pavement sealing and striping, repair and replacement
- Concrete curb repair and replacement
- Concrete sidewalk and brick paver walkway repair and replacement
- Storm water catch basin cleaning, repair and replacement
- Parking lot lighting pole/fixture repair and replacement
- Chain link fencing and gate repair and replacement
- Tree, brush, vegetation trimming, removal along south fence line (adjacent to CSX RR ROW)
- Payment or provision of salt, gas (for mowing areas other than playing field itself) and mulch.

#### Stadium

- Structural concrete and metal decking floor, walkway, stair, ramp, ceiling and bridge sealing, caulking, painting, repair and replacement including suite level walkway drywall ceiling
- Structural concrete and masonry wall repair, sealing, caulking & painting including exterior suite level EIFS/Stucco walls
- Structural steel framing (columns, beams) painting, repair and replacement
- Roof/canopy (Stadium, Pavilion, Fire House) painting, repair and replacement
- Fixed seating bowl seating systems repair and replacement
- Exterior door/frame (steel, aluminum) and hardware and aluminum window painting, repair and replacement
- Steel handrail and guiderail painting, repair and replacement
- Steel gate painting, repair and replacement including automated controls (vehicle delivery gate)

- Seating bowl/playing field netting and padding systems repair and replacement
- Concourse public restroom including floors, walls and ceiling painting and partition repair and replacement
- Replacement of Exclusive Area fixtures when broken or worn out

#### **Mechanical**

- Heating and cooling systems including boiler, chiller, pumps, fan coils (office, ticket booth, clubhouse), unit heaters (concessions/team store), package rooftop heating/cooling units (suites, batting cage, office), furnaces (team store/Fire House), air separators, tanks, piping, valves, belts, filters, fluids, appurtenances, controls testing, repair and replacement
- Concourse/lower seating bowl crawl space exhaust systems
- Passenger and freight elevator systems including cars, controls testing, repair and replacement
- Fire system smoke hatch repair and replacement
- Concession exhaust and dry chemical fire suppression system testing, repair and replacement
- Field drainage system repair and replace
- Overhead security doors in concession areas, team store and ticket booth

#### **Electrical**

- Electric service/power distribution system including main distribution panel, panelboards, switches, circuit breakers, wiring, outlets, emergency generator, switchgear, hand holes, controls, testing, repair and replacement
- Lighting system including stadium fixtures, ballasts, bulbs, field lighting, controls repair and replacement

#### **Plumbing**

- Water service system (house water, field irrigation and fire service) including backflow preventer, pumps, gas-fired water heaters (main concessions, clubhouse, public restrooms), electric water heaters (remote restrooms, concessions), distribution piping, valves, fire sprinkler heads) repair and replacement
- Sanitary manholes, piping and grease trap cleaning, repair and replacement
- Storm water/drainage inlets, manholes, piping repair and replacement

#### **Other**

- Fire alarm system testing, repair and replacement
- Stadium security system testing, repair and replacement
- Scoreboard and control system repair and replacement (shared equally with Red Wings)