



## **RESOLUTION**

**AUTHORIZING THE MAYOR TO ENTER INTO A SUCCESSOR "CONCESSION AGREEMENT" WITH NASHUA COLLEGIATE BASEBALL, INC. OF THE FUTURES COLLEGIATE BASEBALL LEAGUE**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Eleven*

***RESOLVED*** by the Board of Aldermen of the City of Nashua to authorize the Mayor to enter into the attached "Concession Agreement" with Nashua Collegiate Baseball, Inc. of the Futures Collegiate Baseball League. This agreement is for a term of two (2) years commencing on January 1, 2012 with five (5) additional one year options at the Holman Stadium facility.

**LEGISLATIVE YEAR 2011**

**RESOLUTION:** R-11-147

**PURPOSE:** Authorizing the Mayor to enter into a successor "Concession Agreement" with Nashua Collegiate Baseball, Inc. of the Futures Collegiate Baseball League

**ENDORSERS:** Mayor Donnalee Lozeau

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** This Concession Agreement will generate \$22,000 in game fees for the use of Holman Stadium per baseball season. The City will also receive 40% of net profits of concession sales from City non-league games and sponsored events. For the 2012 season, the City received to date \$3,066.00 from concession sales. The increased costs of utilities, grounds maintenance and overtime will be approximately \$9,350.00 per year.

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**ANALYSIS**

This resolution authorizes the Mayor to enter into a "Concession Agreement" with Nashua Collegiate Baseball, Inc. of the Futures Collegiate Baseball League. This agreement is for a term of two (2) years with five (5) additional one year options at the Holman Stadium facility. There are no changes to the language of the existing contract except language related to the term of the Agreement.

A red-lined copy of the proposed "Concession Agreement" is attached.

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**Approved as to form:** Office of Corporation Counsel

By: Dowley Clarke

Date: Sept. 7, 2011

## CONCESSION AGREEMENT

This Agreement is made and entered into on the \_\_\_\_ day of ~~January~~September, 2011, by and between the City of Nashua, New Hampshire, a New Hampshire municipal corporation located at 229 Main Street, Nashua, Hillsborough County, New Hampshire, its successors and assigns (hereinafter "City") and Nashua Collegiate Baseball, Inc., its successors and assigns, with an address of 67 Amherst Street, Nashua, County of Hillsborough, New Hampshire 03064 (hereinafter "Franchisor").

### I. SITE

City does hereby grant unto the Franchisor a concession to use the Premises during the times and for the purposes hereinafter set forth. The Premises shall be defined as the Holman Stadium Facility in its entirety, including the main field within the facility perimeter fence, all grandstands, seating, picnic and concession areas, offices, locker rooms, batting cages, storage areas, road, access roads and associated parking areas.

### II. FRANCHISOR PAYMENTS

A. Franchisor will pay the City the sum of One Thousand Dollars (\$1,000.00) per home game during the ~~2011-2012 and 2013~~ 2011-2012 and 2013 collegiate baseball league seasons. It is anticipated by the Franchisor that its home schedule will consist of twenty-two (22) home games to be played each season beginning on or about June 1<sup>st</sup>, ~~2011~~ of each year and ending in ~~on~~ or about mid-August ~~August 6, 2011~~ each year. Franchisor shall make payment in full to the City on or before February 1<sup>st</sup> of each calendar year during the term ~~the date of signing of this Agreement~~; provided, however, that in the event that any game is rained out or otherwise cancelled due to weather and the City does not offer and provide an acceptable make-up date for that game during

the season,, the City shall remit the per game fee to Franchisor within thirty (30) days following the end of the league season.

B. Franchisor will pay to the City a fee sufficient to cover any costs to be incurred by the City for Franchisor's non-collegiate league events. For non-collegiate league events such as clinics and camps providing opportunities to local youth, the fee paid by Franchisor to the City shall not exceed anticipated costs to be incurred by the City for such events.

### **III. ADMINISTRATIVE CONTROL**

City shall exercise overall administrative overview and control of the Premises, subject to the rights and privileges granted to the parties herein.

### **IV. TERM**

A. The term of this Agreement shall be for ~~one~~two (2) years beginning January 1, 2012 and ending December 31, 2014 ~~from the date this Agreement is approved by the Board of Aldermen and signed by the parties.~~

B. Franchisor shall have the right to exercise up to five (5) additional one year options to extend the parties' Agreement, pursuant to terms to be agreed upon. City agrees that it shall exclusively negotiate with Franchisor and shall not negotiate with any other baseball team and/or league until ninety (90) days following the conclusion of that year's baseball league season.

### **V. CITY USE**

City is, and shall remain, the owner of Holman Stadium. No ownership interest of any nature is provided to Franchisor. City shall have use of Premises for its purposes and uses consistent with the sound management and operation of a collegiate league baseball facility and

specifically retains the right to sponsor other activities at the Premises when Franchisor is not using the Premises for its baseball operations and other Franchisor sponsored events. Such other activities shall not interfere with Franchisor's use of the Premises for the conduct of its baseball operations and other events. City use shall not disrupt or damage the Premises beyond routine maintenance requirements and City shall promptly restore the Premises and playing field to the same condition as they were at the commencement of said use prior to Franchisor's next scheduled game.

City shall remain responsible for the scheduling of all events at the facility, subject only to Articles VI and VII below.

#### **VI. FRANCHISOR USE**

City and Franchisor agree that it is their mutual desire to provide for the maximum use of the site by the community consistent with the sound management and operation of a first rate community and collegiate league baseball facility. City grants to Franchisor the exclusive use of the Premises for the purpose of the conduct of its collegiate baseball operations including all regularly scheduled games, practices and post-season games ("Franchisor's league use"), and certain non-collegiate league events such as camps, and clinics ("non-collegiate league events"), as well as other events such as movie nights and concerts, as may be agreed to by the City and the Franchisor ("Franchisor sponsored events"). No other users, or preparations for such users, shall unreasonably interfere with the Franchisor's use of the Premises for its purposes. Franchisor shall also be allowed to use the Premises at all times during the term of this Agreement for purpose of providing clubhouses for Franchisor and other teams using the Premises relating to Franchisor's baseball operations, housing and conducting its offices for administration and management, ticket offices, parking area, concession areas, batting

cages/areas, private boxes, scoreboards, and such other related appurtenances, improvements or amenities. Franchisor shall not disrupt or damage the Premises beyond routine maintenance requirements. It is the intention of the Franchisor that its use of the Premises after the conclusion of each league season and prior to the commencement of the next would typically consist of its general office and business operations. City reserves the right to utilize the offices, including the ticket office, at the Premises for the purpose of conducting its operations. City agrees that its use of such offices shall not unreasonably interfere with Franchisor's use of such offices for the purpose of conducting its baseball operations.

Franchisor will have the right to sell merchandise and novelties during its games and at other Franchisor sponsored events and Franchisor shall retain all revenues from such sale of merchandise or novelties.

## **VII. FRANCHISOR'S SCHEDULE**

A. On or before February 1<sup>st</sup> commencing on February 1, ~~2011~~2012, and each subsequent year of the term of this Agreement, Franchisor shall provide the City a final schedule for all dates of Franchisor's league use and non-collegiate league events to be held at the Premises for the ensuing twelve (12) month period. Franchisor will endeavor to provide City with a tentative schedule at its earliest opportunity but in no event later than February 1<sup>st</sup> of each year of the term of this Agreement unless agreed upon by the parties. Upon providing Franchisor's schedule to the City, in accordance herein, said dates shall be reserved for the Franchisor's use of the Premises as described herein. Franchisor may be entitled to additional practice dates throughout the term of this Agreement subject to the Premises' availability.

B. The City will endeavor to provide Franchisor with a tentative schedule of all dates (which shall not include any date already appearing on Franchisor's league use and non-

collegiate league events schedules) of its sponsored events to be held at the Premises for the ensuing twelve (12) month period at its earliest opportunity but in no event later than March 1<sup>st</sup> of each year of the term of this Agreement unless agreed upon by the parties. Upon providing the City's schedule to Franchisor, in accordance herein, said dates shall be reserved for the City's use. Thereafter, Franchisor may identify dates it desires to use the Premises for Franchisor sponsored events, subject to the agreement of the City and the Franchisor. In the event of any conflict between the schedules of the Franchisor and the City, the parties will endeavor in good faith to resolve such conflict in a mutually satisfactory manner.

C. Rain Date/Postponement.

In the event that any of Franchisor's baseball related events are postponed due to weather or other circumstances, Franchisor shall endeavor to re-schedule said event on a date which Franchisor has a previously scheduled event. If Franchisor is unable to re-schedule said postponed event in said manner, the City and Franchisor shall consult with each other in an effort to re-schedule rained out or postponed games for a mutually acceptable date, and it is recognized that Franchisor's games will be given priority to the greatest extent reasonably possible over unscheduled or non-regularly scheduled City events.

**VIII. DUTIES AND OBLIGATIONS OF FRANCHISOR AND CITY**

A. MAINTENANCE

1. City's Maintenance Obligations. Throughout the term of this Agreement, the City shall be responsible for, at its sole cost and expense, the operational capacity and maintenance, capital and non-capital, of the Premises and appurtenances thereto, including any improvements thereto, in good order and repair and make all replacements thereto necessary to keep the same in good and useable condition for the conduct of Franchisor's baseball operations.

City responsibilities in regard to maintenance and operational capacity shall include, but are not limited to, structure, foundation, roof, seating, exterior concession area (i.e., no maintenance or repair of concession equipment, but including interior structure of concession areas necessary for the conduct of operations), plumbing, hallways, locker rooms, press boxes, private boxes, HVAC, boilers, air-conditioning, electricity, sound system, lighting (including bulb replacements both on the playing field, the concourse, public walkways, stairways, and elsewhere within the Premises and improvements, as necessary to insure that all lighting is operative), transformers, water, sewer, gas and its connections, scoreboards, pipes, mains, grounds, sidewalks, fencing, loading areas, parking areas and all fixtures, playing surface, playing area, field irrigation and drainage systems. Franchisor shall not interfere with the ability of the City to access all areas of the Premises for the purpose of maintenance and inspection. Notwithstanding the same, absent the event of an emergency and/or for the protection of persons, property or the Premises, the City shall not have access to the offices of Franchisor or other secure areas, including the home team's locker room while used and/or occupied by Franchisor without Franchisor's prior consent. City shall have access to such areas for the purpose of fulfilling its maintenance obligations and for inspection purposes with reasonable advance notice to Franchisor. City shall have access and use of visitors' locker room and officials' room when not being used by the Franchisor. City is responsible for Event Maintenance, as defined below, for its sponsored events. City is also responsible for snow plowing (and any de-icing) outside the fence surrounding the stadium.

2. Franchisor Maintenance Obligations. Franchisor shall be responsible for performing certain Premises maintenance and cleaning of the Premises during the season(s) covered during the term of this Agreement related to the Franchisor's league use, non-collegiate

league events and sponsored events. Said Premises maintenance shall include the cleaning of the stadium areas, including parking areas, stands, locker rooms, press boxes, private boxes, laundry facility and restrooms, removing refuse from the facility, turning off all lights upon the conclusion of its operations and securing the Premises at the end of its games, non-collegiate league events and sponsored events (“Event Maintenance”). Franchisor shall return the stadium area to the same condition as it was at the commencement of the conduct of its baseball operations and sponsored events, reasonable wear and tear excepted. Franchisor shall be responsible for reimbursing the City for any damage to the Premises beyond reasonable wear and tear due to the negligence, recklessness or intentional conduct by the Franchisor, its employees, agents or invitees. Franchisor agrees to power-wash the Premises as needed and after any game or sponsored event at which its turnstile numbers exceed one thousand (1,000).

Franchisor shall be responsible for snow removal and shoveling and de-icing walkways utilized by Franchisor after the conclusion of each league season and prior to the commencement of the next league season.

Franchisor shall place all refuse removed from the Premises in an area to be designated by the City. City will supply a sufficient amount of trash and recycling containers for stadium area cleanup by the Franchisor. City shall be responsible for the removal and disposal of all refuse and recycling items from the said designated areas.

B. FIELD MAINTENANCE. City shall be responsible for preparing and maintaining the playing area and appurtenances thereto for the baseball seasons covered by this Agreement in a manner consistent with the level of maintenance provided at stadiums utilized by collegiate league baseball teams. City agrees that the maintenance services, including, but not limited to, the field maintenance as outlined herein shall include daily game routines consistent

with the standard practices of collegiate baseball leagues generally and in regard to pre-game batting/in field practice, etc. That said maintenance responsibility shall include good faith efforts to avoid preventable losses of the Franchisor's scheduled games due to weather or other circumstances and consistent with the obligations of the Franchisor relating to its league membership. City agrees to obtain and maintain any equipment necessary and/or generally used or necessary to provide the maintenance obligations contained herein. As part of its Event Maintenance, Franchisor shall be responsible for the application and/or removal of field tarps from the playing field after 2:45 p.m.

#### **IX. SECURITY**

Franchisor agrees to provide, at its expense, adequate security to protect the safety of the players, attendees and employees at all times when it is conducting its baseball operations, consistent with the customary practices of the City. It shall be the obligation of the Franchisor to make all necessary plans and arrangements with the Nashua Police Department and emergency medical providers in meeting its obligations under this section.

#### **X. CONCESSIONS**

City hereby grants to Franchisor the exclusive right to operate all food and beverage, including alcoholic beverages, concessions for collegiate league baseball games, non-collegiate league events, and Franchisor sponsored events held at the Premises. Franchisor shall have the right to retain all revenue from all food and beverage concessions during its scheduled league games and non-collegiate league events. Franchisor shall provide the City on a monthly basis with copies of all meal tax forms required to be filed with the State of New Hampshire and supporting documentation.

Franchisor shall control the pouring rights at the Premises, including beer, wine and every type of alcoholic and non-alcoholic beverage of every kind and description. Franchisor's control of the pouring rights at the Premises shall not apply to City sponsored events such as the brewfest. Further, Franchisor is also granted the exclusive right to operate all food and beverage concessions, including alcohol beverages concessions, during all City non-league games played at Holman Stadium (including, but not limited to, games played by Nashua North, Nashua South, American Legion, and Babe Ruth) and during any non-game events (example – concerts) sponsored by the City. Franchisor agrees to operate concessions for food and drink, including alcoholic beverages when appropriate as determined by the City of Nashua (provided attendance between participants and spectators is anticipated to be at least 100 or more persons), during all non-league games and events commencing April 1, ~~2011~~<sup>st</sup> and ending on October 31<sup>st</sup> during each calendar year during the term, ~~2011~~. Franchisor agrees that it shall provide access to drinks and food during non-league games and events at which the number of participants and spectators is less than 100 by the use of vending machines or other methods. Franchisor shall pay to the City for such exclusive rights during City non-league games and City sponsored events, forty percent (40%) of the net profit from such sales. "Net profits" is defined as the retail sale price of the goods less meals tax and the cost of goods and labor associated with the concession sales.

All payments to the City by Franchisor arising from concession sales shall be made on a monthly basis, on the 15<sup>th</sup> day of the month following the end of the month for which such concession sales were made, commencing on May 15<sup>th</sup> and ending November 15<sup>th</sup> during each calendar year, ~~2011~~. Franchisor shall provide to the City with each concession sales payment copies of all meals tax forms required to be filed with the State of New Hampshire and supporting documentation for the calculation of the "net profits".

Franchisor shall provide, at its expense, any additional concession equipment necessary to supplement the concession equipment owned by the City, which shall be owned by Franchisor and may be removed by Franchisor upon expiration or termination of this Agreement. Franchisor shall pay the cost of removal of any such concession equipment and repair any damage resulting from the removal of any such concession equipment. Franchisor shall service, and maintain, at its own expense, all existing City-owned concession equipment at the Premises; provided, however, that no person or entity may operate such equipment without the prior written approval of Franchisor.

Franchisor shall be responsible for obtaining any necessary licenses, permits or other approvals related to the sale and use of food and/or alcoholic beverages at the Premises and agrees to comply with all local, state and federal rules, regulations and laws in regard to the sale of said alcoholic beverages and food.

Franchisor shall have the right with respect to Franchisor's league use, non-collegiate league events and sponsored events to prohibit the bringing of any food or beverage into the Premises by any person other than the Franchisor or its contractors, except for box lunches provided for players at tournaments. To the extent that the City permits the bringing of food or beverage into the Premises during its events, it shall be solely responsible and liable for the same.

#### **XI. NON-BASEBALL REVENUE EVENTS**

It is anticipated that the parties will enter into a memorandum of understanding in regard to the conduct of certain "non-baseball revenue events". "Non-baseball revenue events" are understood to be of the nature and character of promotional events that have not been regularly scheduled at the Premises, but that do not include events traditionally scheduled by the City

(example: 4<sup>th</sup> of July celebration). Such “non-baseball revenue events” may include City sponsored events, Franchisor sponsored events and/or jointly sponsored events.

The City and Franchisor agree that in the event that the parties enter into such a memorandum of understanding whereby they mutually agree that such “non-baseball revenue event(s)” shall be held at the Premises, that said agreement shall provide that, after expenses, the net profit, including concessions, from such events will be divided equitably among the parties. Such equitable division shall be based upon the responsibilities, duties, and liabilities to each party in the planning, conduct, and clean-up for such events. The responsibility for any expenses related to such events as described herein shall be agreed upon by the parties. In the event that the City decides to solely conduct such a “non-baseball revenue event”, which it specifically reserves the right to do, the parties shall agree to the obligation of the City to the Franchisor in regard to the concessions. Any agreement entered into between the City and the Franchisor relating to said “non-baseball revenue events” shall be signed by both parties and, upon execution of the same, shall become part of this Agreement as if originally a part thereof.

## **XII. PRIVATE BOXES**

Franchisor shall have the sole and exclusive right to operate and grant use and occupancy rights to third parties in and to all private boxes at the Premises except as noted herein. Franchisor shall be entitled to receive and retain all such fees or other revenue derived from said private boxes for games and events held at the Premises except as otherwise provided herein. City shall retain the right to utilize one (1) large center suite for all Franchisor’s games, non-league games and for non-game events. City also retains the right to use all private boxes for its annual July 4<sup>th</sup> fireworks event. Franchisor shall not be entitled to any revenue which may be generated during said annual 4<sup>th</sup> of July fireworks event. City also retains the rights to use three

(3) private boxes and the center box for all concerts, festivals and corporate events and to retain all revenues generated from the utilization of said boxes during those events.

The private boxes shall not be utilized by Franchisor on a year-round basis and will be winterized by the City at the same time as those portions of the Premises not utilized by Franchisor for its off-season business operations.

### **XIII. UTILITIES**

City agrees to pay all utility costs associated with Franchisor's games, non-league games and non-game functions conducted at the Premises.

Franchisor shall be responsible for all costs associated with its telephone, internet and cable service at the Premises.

### **XIV. PARKING**

Franchisor shall have the right to utilize parking at the Premises and appurtenances thereto, free of charge, for the conduct of its baseball operations, sponsored events and any City sponsored event at which it is providing concessions. Franchisor shall also have the right to reserve up to forty (40) preferred parking spaces in connection with its private box sales. The manner and location of any such reserved parking shall be determined by the City after consultation with the Franchisor

### **XV. SPONSORSHIPS**

Franchisor shall have, and is hereby provided, the exclusive right to arrange for, sell and provide sponsorships at the Premises including, but not limited to, billboards and other signage. City shall have use, at no costs, of one standard size advertising sign for its own use during the term of this Agreement to promote the City and surrounding area. City will place and arrange for its sign at its own expense.

Franchisor agrees that any signs relating to alcohol or tobacco products may be covered during the conduct of non-Franchisor games and events as the City deems appropriate.

Franchisor shall have the right to also arrange for, sell and provide scoreboard/scoreboard advertising and similar advertising items. City shall have the right to have one (1) full page of advertising in any annual yearbook of Franchisor to promote the City and surrounding region at no expense to City. City shall provide Franchisor the necessary copy, camera ready, in sufficient time prior to publication. Franchisor shall notify City of the publication deadline no later than 10 days before said deadline.

In the event Franchisor shall vacate the Premises, for any reason whatsoever, Franchisor shall remove said signage and restore said signage areas in a manner to the reasonable satisfaction of the City within sixty (60) days of vacating Premises.

Franchisor agrees that all sponsorship items and placement shall be of a manner which is consistent with the historical nature and family orientation of the Premises and the operation of collegiate league baseball. City shall have the right at the conclusion of each baseball season covered by this Agreement to apprise Franchisor of any concerns it has relating to sponsorship at the Premises. That in such event, the parties shall diligently and in good faith attempt to resolve any such issues to their mutual satisfaction.

In the event that an issue relating to a sponsorship item cannot be mutually agreed upon between the parties despite their diligent attempts to do so, the parties agree that said issue may be submitted to the full Board of Aldermen for resolution and that if said full Board of Aldermen, by vote, agree with the City's position then Franchisor shall abide by that decision. Franchisor will consult with City in regard to its anticipated sponsorship at the Premises to obtain the City's input, but not approval, in regard to the same.

## **XVI. EXTERIOR SIGNAGE**

Exterior signage includes all informational signage erected on or about the Premises, identifying the Premises and its scheduled events. Franchisor shall have the right to use any such exterior signage to promote its baseball operations. The presentation and context of the messages on such signage shall be consistent with the family nature of the activity being promoted.

All such exterior signage shall comply with applicable City ordinances or other applicable law.

## **XVII. UNUSABILITY**

In the event that the Premises would be rendered unusable through fire, acts of nature or similar causes, through no substantial fault of the City, its agents, lessees, sublessees, assigns, tenants or other entities/persons having dealings with the City, the City shall not be responsible for furnishing additional or alternative facilities for Franchisor's use.

In the event of such loss or damage, the City shall act promptly to fully restore the Premises to the condition it was in prior to said loss or damage. During the time period, if any, that the Premises are not operational or are unusable for Franchisor's baseball operations, this Agreement and all rights or obligations hereunder shall be suspended until such time as the facility can be made available for said operations with the obligations of Franchisor to City to be prorated for the time period that said Premises were not operational or usable for Franchisor's purpose.

## **XVIII. ASSIGNMENT**

This Agreement between the City and Franchisor is not assignable; provided, however, that the Franchisor may delegate its rights, duties and obligations under this Agreement with the

prior consent of the City which shall not be unreasonably withheld.

**XVIX. COMPLIANCE WITH LAWS**

Franchisor shall obtain the necessary permits, licenses or authorization from the City Clerk, or other licensing, permitting or concerned regulatory agencies, and shall comply with all security, health and fire regulations and ordinances of the City of Nashua and with any statute, rules and orders of the appropriate governmental authorities affecting the use of the Premises, including all orders and directives of the Nashua Police and Fire Departments pertinent to codes, games, the conduct of games, parking, traffic and other such matters.

Fireworks displays are specifically permitted by Franchisor provided it obtains the approvals and permits necessary for the conduct of the same and provides the City with notice that it intends to conduct such fireworks displays at the time it applies for the required approvals and permits.

City agrees to comply with all applicable federal, state or local acts, statutes, ordinances and administrative requirements that apply directly or indirectly to the use of and operations at the Premises.

**XX. ROYALTIES, RENTS, LICENSES, TRADEMARKS AND COPYRIGHTS**

Franchisor shall be solely responsible for obtaining such permission as may be necessary for the performance of the approved baseball games and related customary entertainment incidental thereto, and for paying any royalties, rents, license, franchise or copyright use fees as may be pertinent thereto, and shall release, indemnify and save harmless the City therefrom in accordance with the indemnification provisions hereof.

**XXI. DEALINGS WITH BASEBALL PLAYERS, BASEBALL TEAMS AND AGENTS**

Franchisor shall be solely responsible for dealings with baseball players, baseball teams, their agents, baseball officials and others involved with the regulation and presentation of baseball games. Franchisor shall be responsible for any and all franchise fees, wages and other benefits to baseball players, and all other expenses associated with sponsoring baseball games associated with the Franchisor.

**XXII. RESTROOM AND GARBAGE PICKUP**

Franchisor shall be responsible for maintaining and cleaning all public bathrooms at the Premises during and after its collegiate baseball league games, non-league events and sponsored events.

City shall be responsible for maintaining and cleaning the public lavatories at the Premises throughout the term of this Agreement for non-league games and events. City shall be responsible for picking up garbage collected by Franchisor at the Premises from the dumpster thereat after each event and as necessary throughout the term of this Agreement. The restrooms shall be cleaned and garbage picked up prior to the next collegiate baseball league game.

**XXIII. PUBLIC ADDRESS SYSTEM**

Franchisor shall have the non-exclusive right to use the Public Address system, which shall be in working order at the start of the league season, and the Franchisor may sell public address advertising during baseball games sponsored and promoted by it, provided however, that the Franchisor shall maintain said Public Address system during their scheduled games and any possible playoffs at no charge to City. City reserves the right to utilize the Public Address system during the course of Franchisor's baseball games, at no charge to the City, for emergency announcements and public service announcements so long as it is not unreasonably disruptive to

the game proceedings. City maintains the right to require volume levels to be lowered if the volume levels are unreasonable.

#### **XXIV. BROADCAST RIGHTS**

Franchisor shall have the right to broadcast or televise baseball games sponsored or promoted by it, and may sell or lease such rights. The exercise of said rights is subject to the terms and conditions of this Agreement.

#### **XXV. FRANCHISOR EQUIPMENT**

Franchisor shall have the right to locate at and on the Premises personal property necessary to conduct its baseball operations. In the event that Franchisor shall vacate the Premises for any reason, it shall be entitled to remove any and all such items or personalty from the Premises.

#### **XXVI. INSURANCE**

Franchisor shall obtain and maintain throughout the term of this Agreement, Policies of Insurance to protect the City and Franchisor, their agents, representatives and servants from losses arising from Franchisor's use of the Premises. Franchisor and City shall be named on the insurance certificates as additional insured parties.

In particular, Franchisor shall have:

- A. Workers Compensation Insurance at or exceeding statutory minimums/  
Employers Liability \$100,000/\$500,000/\$100,000.
- B. Public/General Liability - \$5,000,000 in coverage.
- C. One million dollars combined single limit in regard to any vehicles owned and operated by Franchisor. Motor Vehicle Liability – owned, hired, non-owned vehicles \$1,000,000 Combined Single Limit.

**D. Property insurance to cover any property not owned by the City.**

Certificates of said insurance indicating the City to be an additional insured on policies providing the foregoing coverage shall be required to be provided prior to the commencement of each league season covered during the term of this Agreement. Additionally, the City of Nashua shall be made an additional insured on any other insurance policies of the Franchisor affording liability protection to the Franchisor in connection with the baseball operations described herein in the same manner as aforesaid.

City shall obtain and maintain adequate insurance through the term of this Agreement in an amount sufficient (over the time of the original Agreement and any renewal periods) to protect the City of Nashua's property and City-owned contents of the Premises equal to the actual costs of replacement and to provide commercial general liability insurance for its sponsored events.

The insured risk at the Premises will be that Franchisor shall provide for the insurance, as described herein, to insure the risk of the conduct of its operations generally, within the confines of the Premises. City shall provide insurance to insure all risk to the Premises and City-owned contents, and any loss or damage thereto and the conduct of the City's operations and sponsored events.

All insurance coverage shall be written and required to protect the City and the Franchisor with regard to this Agreement and ownership of the Premises and the operation and maintenance of the Premises and improvements.

City's required fire insurance and broad form extended coverage shall be in an amount, at least, for full replacement cost for property and City-owned contents at the Premises.

To the fullest extent permitted by law, the City and Franchisor hereby waive any right of recovery from the other for any loss of or damage to property (or resulting from loss of income or extra expense) they may suffer, by reason of any peril insured against (including self-insurance) or required to be insured against under this Agreement and to the extent of such insurance. To the fullest extent permitted by law, the property insurers for each party shall not hold any right of subrogation against the other party. Both parties shall advise their respective insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies required in this Agreement. Waiver of the right to recovery does not include recovery for losses resulting from negligence of the other party.

#### **XXVII. HOLD HARMLESS**

A. **INDEMNIFICATION BY FRANCHISOR.** Franchisor shall indemnify and hold harmless City and its employees, agents, officers and servants from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees and all other expenses including claims, liens, debts, personal injuries, including that to employees of City, and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, as a result of any negligent act or omission, willful misconduct or breach of this Agreement and the activities authorized hereby, by Franchisor, its directors, officers, employees, agents, or of any occupant, visitor or user present on or about the Premises in connection with the Franchisor's activities pursuant to the Agreement that occurs during the term of this Agreement. Franchisor agrees to investigate, handle respond to, provide defense for and defend any such claims, demands, or suits at its sole expense in a timely fashion and in no event later than 30 days after a written demand is made by the City. Franchisor also agrees to bear all other costs

and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision regarding indemnification shall be deemed to be a separate and enforceable New Hampshire contract which shall survive the termination or expiration hereof and which shall not be diminished or otherwise affected by the presence or absence of insurance.

**B. INDEMNIFICATION BY CITY.** City shall indemnify and hold harmless Franchisor, its officers, directors, employees and agents from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees and all other expenses including claims, liens, debts, personal injuries, including that to employees of Franchisor, and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, as a result of any negligent act or omission, willful misconduct or breach of this Agreement and the activities authorized hereby, by City, its directors, officers, employees or agents, or of any occupant, visitor or user present on or about the Premises in connection with the Franchisor's activities pursuant to the Agreement that occurs during the term of this Agreement. City agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suits at its sole expense in a timely fashion and in no event later than 30 days after a written demand is made by the Franchisor. City also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision regarding indemnification shall be deemed to be a separate and enforceable New Hampshire contract which shall survive the termination or expiration hereof and which shall not be diminished or otherwise affected by the presence of absence of insurance.

## **XXVIII. CERTIFICATE OF GOOD STANDING**

Franchisor agrees and warrants unto the City that it is a New Hampshire corporation, duly authorized to do business in the State of New Hampshire and in good standing.

## **XXVIX. ALTERATIONS**

Franchisor agrees that it shall make no, nor permit the making of any material alterations, changes or improvements to the Premises, or any part thereof, without the prior written consent of the City. City agrees to consult with Franchisor prior to any other material alterations, changes or improvements to the Premises during the term of this Agreement. Agreed upon alterations, changes or improvements to the Premises shall, upon completion, become the property of the City.

## **XXX. DEFAULT**

Excluding any failure of the Franchisor to make timely payments to the City under this Agreement, any failure of the Franchisor to comply with any other provisions herein shall constitute an event Default. Upon any event of Default, if Franchisor shall fail to cure said Default within thirty (30) days of written notice by the City, then the City shall have the right, at its option, to terminate this Agreement.

Notwithstanding the terms of Default as indicated herein, should Franchisor's default be related to the failure of the Franchisor to make any payments rightfully due to the City, or pay the same into an escrow account, within ten (10) days of being due, the City shall have the right to terminate this Agreement and require Franchisor to vacate the Premises within ten (10) days of receipt of written notice from the City requesting such. Further, interest on any payments not timely made as indicated herein shall be applicable at three percent (3%) per annum. In such event, the Agreement between the parties, and any amendments thereto, shall be terminated and

rightfully accrued amount then due the City by Franchisor pursuant to the same shall become due and payable.

No failure by the City to exercise any right or power accruing upon the occurrence of any event of default shall be construed to be a waiver of the City's rights hereunder including the right to terminate this Agreement.

Failure of the City to comply with any provisions herein shall constitute an event of default. Upon any event of default, if the City shall fail to cure said default within thirty (30) days of written notice by Franchisor, then Franchisor shall have the right, at its option, to terminate this Agreement.

No failure by the Franchisor to exercise any right or power accruing upon the occurrence of an event of default shall be construed to be a waiver of its rights hereunder including the right to terminate this Agreement.

#### **XXXI. PROVISION FOR DISPUTE RESOLUTION**

The parties agree that any disputes or alleged claims between the parties relating to the terms of this Agreement except those relating to failure of the Franchisor to make full or timely payments, shall attempted to be resolved through Mediation. In the event that Mediation is unsuccessful, despite the parties' good faith efforts, each party specifically retains any and all rights or remedies it may have.

#### **XXXII. NEW HAMPSHIRE LAW APPLIES**

The parties agree that this Agreement shall be governed by applicable New Hampshire law and that any action brought to enforce any provisions of this Agreement shall be brought in a New Hampshire court of competent jurisdiction.

**XXXIII. INTEGRATION**

This Agreement represents the complete and total agreement of the parties and that there are no other agreements or understandings between the parties other than those contained herein.

Any amendments or modifications of this Agreement shall be signed by both parties. In the event of any such amendments or modifications, upon execution of the same by both parties, such shall become part of this Agreement as if it had been originally part thereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement at Nashua, New Hampshire, on the day and year first above written.

**CITY OF NASHUA**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Donnalee Lozeau, Mayor  
DULY AUTHORIZED

**NASHUA COLLEGIATE BASEBALL, INC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
DULY AUTHORIZED



**RESOLUTION R-11-147**  
**AUTHORIZING THE MAYOR TO ENTER**  
**INTO A SUCCESSOR "CONCESSION**  
**AGREEMENT" WITH NASHUA**  
**COLLEGIATE BASEBALL, INC. OF THE**  
**FUTURES COLLEGIATE BASEBALL**  
**LEAGUE**

**IN THE BOARD OF ALDERMEN**

1<sup>ST</sup> READING SEPTEMBER 13, 2011

Referred to:

FINANCE COMMITTEE AND THE BOARD  
OF PUBLIC WORKS

2<sup>nd</sup> Reading SEPTEMBER 27, 2011

3<sup>rd</sup> Reading \_\_\_\_\_

4<sup>th</sup> Reading \_\_\_\_\_

Other Action \_\_\_\_\_

Passed SEPTEMBER 27, 2011

Indefinitely Postponed \_\_\_\_\_

Defeated \_\_\_\_\_

Attest: Paul Keenan City Clerk

Brigitte McLean President

Approved Maiale Lozano Mayor's Signature

October 3, 2011

Date

Endorsed by Maiale Lozano MAYOR  
Richard W. Vitale CLEMONS  
Frank J. Crafey VITALE  
\_\_\_\_\_ CRAFFEY  
\_\_\_\_\_ TABACSKO  
\_\_\_\_\_ DEANE  
\_\_\_\_\_ MELIZZI-  
\_\_\_\_\_ GOLJA  
\_\_\_\_\_ COX  
\_\_\_\_\_ SHEEHAN  
\_\_\_\_\_ MCCARTHY

Vetoed: \_\_\_\_\_

Veto Sustained: \_\_\_\_\_

Veto Overridden: \_\_\_\_\_

Attest: \_\_\_\_\_ City Clerk

\_\_\_\_\_ President