

USER AGREEMENT, LEASE AND MANAGEMENT AGREEMENT

BY AND BETWEEN

DENVER METROPOLITAN MAJOR

LEAGUE BASEBALL STADIUM DISTRICT

AND

COLORADO ROCKIES BASEBALL CLUB, LTD.

DATED MARCH 31, 2017

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## **USER AGREEMENT, LEASE AND MANAGEMENT AGREEMENT**

THIS USER AGREEMENT, LEASE AND MANAGEMENT AGREEMENT (the "Agreement") dated March 31, 2017, is by and between the Denver Metropolitan Major League Baseball Stadium District, a body corporate and politic and a political subdivision of the State of Colorado (the "District"), and Colorado Rockies Baseball Club, Ltd., a Colorado Limited Partnership (the "Partnership").

### **RECITALS**

A. The General Assembly of the State of Colorado (the "Legislature") has declared that a Major League Baseball franchise in the State of Colorado would stimulate economic development throughout the State resulting in increased tourism, the creation and maintenance of new jobs, and the attraction and retention of sports and entertainment events. Accordingly, pursuant to the Denver Metropolitan Major League Baseball Stadium District Act at §32-14-101, et seq., of the Colorado Revised Statutes, as it may be amended from time to time, (the "Act"), the Legislature has created the District for the purposes of acquiring a site, financing, constructing, and leasing a Major League Baseball stadium.

B The Partnership is (i) the holder of a franchise (the "Franchise") located within the geographical boundaries of the District (the "Boundaries") originally issued by The National League of Professional Baseball Clubs and the BOC (as defined below) and (ii) the owner of the "Colorado Rockies" professional baseball team (the "Team").

C. The District and the Partnership entered into the Amended and Restated User Agreement, Lease and Management Agreement, dated as of March 30, 1995, which expires on March 30, 2017.

D. The Partnership and District desire to enter into this Agreement to set forth the terms and conditions for the use of the Stadium.

**ARTICLE I**  
**LEASED PREMISES**

In consideration of the mutual agreements contained in this Agreement, incorporating herein the recitals set forth above, and subject to the limitations set forth in Article V concerning permitted purposes and periods of use, the District hereby leases to the Partnership, and the Partnership hereby leases from the District, the real property described in Exhibit A attached hereto and made a part hereof (the "Stadium Land"), together with all the improvements to be constructed thereon, including but not limited to the stadium constructed thereon, and all improvements, additions, alterations, fixtures, equipment, and installations owned or leased by the District and constructed, provided or added to the stadium at any time (the "Stadium"), and all other improvements, additions, alterations, fixtures, equipment, and installations owned or leased by the District and constructed, provided or added to the Stadium Land at any time (collectively, the "Leased Premises"). A map of the Leased Premises delineating the Stadium and the Stadium Land is attached hereto as Exhibit B.

**ARTICLE II**  
**PARTNERSHIP PROPERTY**

2.1 Partnership Property.

(a) The Partnership shall provide and bear all costs of acquisition, ownership, operation, maintenance, repair and replacement of all property on the Stadium Land owned by the Partnership (the "Partnership Property").

(b) Upon the expiration or termination of this Agreement, the Partnership may voluntarily remove the Partnership Property from the Stadium Land. The District may require the Partnership to remove from the Stadium Land the Partnership Property, or any part thereof,

which the District has not purchased and the Partnership has not voluntarily removed upon the expiration or termination of this Agreement. If the Partnership Property, or any portion thereof designated by the District, is not removed from the Stadium Land within a reasonable time after the expiration or termination of this Agreement and upon the District's written request to so remove, not to exceed ninety (90) days, the Partnership Property, or designated portion thereof, shall be deemed abandoned, and shall, at the District's election, become part of the real property constituting the Leased Premises, with title thereto held by the District or its successors in interest. Notwithstanding, if abandonment of any item of Partnership Property will cause a Material Adverse Effect, the Partnership shall remove such item at its expense if the District elects not to purchase it regardless of the effect on the value, utility or damage to the Stadium.

(c) The Partnership shall not grant or permit any liens, claims, security interests or encumbrances against any Partnership Property without the District's prior approval, except for MLB Liens (as defined below) or a purchase money security interest which satisfies the following conditions:

(i) the loan documents relative to the purchase money security interest shall provide that:

(A) the lender shall provide notice to the District of any default of the Partnership thereunder and shall deliver to the District copies of the then current loan documents at the time of such notice;

(B) the District shall have an opportunity to cure such default within no less than thirty (30) days from the District's receipt of notice of the Partnership's default;



(C) the District's right to notice of default and to cure cannot be amended without the prior written approval of the District;

(D) the original principal amount of the loan shall not exceed the invoice cost of the item or items of Partnership Property securing the loan;

(E) all of the proceeds of the loan shall be used to purchase the item or items of Partnership Property securing the loan;

(F) the original principal amount of the loan cannot be increased nor payments or principal or interest be waived or rescheduled without the prior written approval of the District; and

(G) the original term of the loan shall not exceed the lesser of ten (10) years or the useful life of the item or items if Partnership Property securing the loan, and cannot be extended without the prior written approval of the District.

(ii) the lender shall agree in writing with the District prior, to the perfection of the purchase money security interest that the loan agreement contains all of the provisions referred to above, that the lender agrees with the District to abide by all of such provisions, and that to the best of its knowledge items (D), (E) and (G) above are then accurate. The lender shall also provide to the District a writing setting forth the original principal amount, interest rate, amortization, and term of the purchase money loan and a description of the items of Partnership Property serving as collateral, which shall be marked "Confidential" and treated as confidential financial information by the District. A default under such a purchase money loan will constitute a default under this Agreement. If the District advances money to cure a default under such a loan, the

Partnership will be in default under this Agreement and will be liable to the District for the amounts advanced plus interest at the rate of four percent (4%) above Wells Fargo Bank, National Association's (or its successor bank(s)) prime lending rate.

### **ARTICLE III**

#### **TERM**

3.1 Term. This Agreement shall become effective as of March 31, 2017, upon execution of this Agreement by the District and the Partnership ("Commencement Date"). Subject to the provisions of Section 3.2, the Partnership's right to occupy the Leased Premises as set forth in Article V hereof shall end thirty (30) years after the Commencement Date, March 31, 2047.

3.2 Options to Extend.

(a) Provided the Partnership is not then in default under the provisions of this Agreement, the Partnership has the option to extend this Agreement for an additional five (5) year term (the "First Extension Term"). The First Extension Term shall commence the day after the last day of the thirty (30) year occupancy period as determined pursuant to Section 3.1, subject to the provisions of Sections 3.2(b) and (d) below. Provided the Partnership is not then in default under the provisions of this Agreement, the Partnership has the option to extend this Agreement for a second additional five (5) year term (the "Second Extension Term"). The Second Extension Term shall commence the day after the expiration of the First Extension Term. Provided the Partnership is not then in default under the provisions of this Agreement, the Partnership has the option to extend this Agreement for a third additional five (5) year term (the "Third Extension Term"). The Third Extension Term shall commence the day after the expiration of the Second Extension Term.

The initial thirty (30) year occupancy, the First Extension Term, the Second Extension Term and the Third Extension Term shall, collectively, constitute the "Term" of this Agreement.

(b) To exercise its options to extend, the Partnership, the Partnership must provide the District with written notice of its intent to renew no later than one hundred eighty (180) days prior to the last day of the thirty (30) year occupancy period, for the First Extension Term, and no later than one hundred eighty (180) days prior to the expiration of the First Extension Term, for the Second Extension Term, and no later than one hundred eighty (180) days prior to the expiration of the Second Extension Term, for the Third Extension Term.

(c) If, prior to the expiration of the Third Extension Term, the District and the Partnership have not executed a new lease agreement or amended this Agreement to provide for an additional extension term, and if the Partnership is not then in default under the provisions of this Agreement, the Partnership shall be entitled to occupy the Leased Premises for an additional one-year period under the terms and conditions of this Agreement then in effect (the "Grace Term"), as long as written notice is provided to the District by the Partnership of its intent occupy no later than one hundred eighty (180) days prior expiration of the Third Extension Term and subject to the provisions of this Section 3.2(c) and Section 3.2(d).

(d) Time is of the essence with regard to the notices required pursuant to Sections 3.2(b) and (c).

#### **ARTICLE IV**

##### **OPERATING COSTS AND PAYMENTS TO THE DISTRICT**

4.1 Operating Costs. The Partnership shall be responsible for all costs associated with the Repair, Maintenance, operation, use and ownership of the Leased Premises and Partnership Property, including but not limited to the following costs:

(a) wages and salaries of all Partnership employees engaged in operation, Repair, Maintenance or security of the Leased Premises and Partnership Property, including taxes, insurance and benefits related thereto;

(b) all supplies and materials used by the Partnership in operation and Maintenance of the Leased Premises and Partnership Property;

(c) costs of all utilities for the Leased Premises and Partnership Property, including but not limited to the cost of water, power, heating, lighting, air conditioning, ventilating, sewer, waste water, and trash disposal;

(d) cost of all Maintenance, Stadium Management and service agreements for the Leased Premises and Partnership Property and the equipment therein, including but not limited to alarm service, janitorial service, window cleaning, security service, elevator maintenance, police, game-day operations, landscaping, snow removal, parking lot maintenance (subject to the provisions of Section 4.2(b) hereof), and playing field maintenance;

(e) cost of all insurance as provided in Article VI, relating to the Leased Premises and Partnership Property, including but not limited to the cost of casualty and liability insurance applicable to the Leased Premises and Partnership Property; and

(f) all taxes and assessments and special assessments imposed upon the Partnership Property and the Partnership's assets on the Stadium Land by any governmental bodies or authorities, and all charges specifically imposed in lieu of such taxes.

The foregoing is presented by way of example only and is not intended to be an all-inclusive list.

4.2 Payments to the District. The Partnership will pay to the District the following payments (which payments shall not be set-off against any sums due to the Partnership from the District hereunder) for the Term and Grace Term:

(a) The District shall provide an accounting by January 31 of each year of its actual operating expenditures for the previous year. If actual operating expenses are greater than the amount paid or provided to the District pursuant to Sections 4.2(b), 4.2(c), 5.2(d) and 8.9(b) of this Agreement for any year during the Term or Grace Term, the Partnership shall promptly pay any additional sum to the District necessary to insure that all of the District's actual operating costs are reimbursed to the extent provided for in this Section 4.2 (subject to the \$150,000.00 annual limitation, as adjusted). Any such reimbursement or additional payment shall be made no later than February 15 of each year.

(b) The Partnership shall pay the District an annual rental payment of \$1,000,000 during each year of the Term. Payment of \$500,000 shall be made on September 15 of each year and payment of \$500,000 shall be made on January 15 of each year. The District shall deduct any amounts necessary to pay its operating costs and establish an adequate operating reserve and shall transfer the remaining amount to the Capital Fund. The Partnership shall pay the District an annual Capital Fund payment of \$1,500,000 during each year of the Term. Payment of \$750,000 shall be made on September 15 of each year and payment of \$750,000 shall be made on January 15 of each year. The Partnership shall have the right to prepay any annual rental payment or Capital Fund payment due hereunder.

(c) All parking net profits (net profits shall equal gross receipts less operating costs; operating costs are all direct incremental costs paid to or retained by third parties or Affiliates of the Partnership, provided costs attributable to any Affiliates of the Partnership are

competitive with the costs third parties would charge for providing the same services, as a direct result of parking operations) from the main parking lot (which consists of Lots A, B and C as shown on Exhibits D and E and the RTD Lot, respectively, the "Main Lot") shall be shared on a twenty percent (20%) (to the District), eighty percent (80%) (to the Partnership) basis for all Major League Baseball Games played during the Term and Grace Term and Non-Baseball Events for which the Partnership is entitled to use the Leased Premises pursuant to Section 5.1. All other parking net profits from the Main Lot shall be shared on an eighty percent (80%) (to the District), twenty percent (20%) (to the Partnership) basis. The Partnership shall retain the Base Amount which shall be the first \$585,000 for 2017, with this Base Amount increasing by three percent (3%) each year of the Term. Payment of the remaining amount shall be made to the District, along with a written report itemizing gross receipts and operating costs by February 15 of each year, for the immediately preceding year.

The Partnership shall ensure that the operator of the parking on the Main Lot, including, but not limited to, the parking structure, provides an annual accounting of all revenues from the previous year, to be provided on or before February 15 of each year during the Term and Grace Term beginning the year after the Commencement Date. If necessary, the amounts paid to the District pursuant to this Section shall be adjusted annually pursuant to the results of the accounting, with any such adjustment reflected in the payment due on the February 15 next following.

(d) The Partnership will pay the District an amount equal to forty percent (40%) of the net profit (defined as gross receipts from all sources less operating costs - operating costs are all incremental out-of-pocket costs (including costs of goods sold) paid to third parties or Affiliates of the Partnership, provided costs attributable to any Affiliates of the Partnership are

competitive with the costs third parties would charge for providing the same services, as a direct result of the event) from any and all of the Non-Baseball Events held by the Partnership and from any and all other events held by the Partnership on the Leased Premises (except for Major League Baseball Games or any event held immediately preceding or following a Major League Baseball Game) from which the Partnership realizes revenue. In calculating the net profit, the Partnership shall be entitled to deduct fifteen percent (15%) of gross receipts as operating costs to cover the Partnership's administrative costs and overhead. All amounts received by the District shall be deposited into the Capital Fund established pursuant to Section 8.11. These payments shall be submitted along with a written report itemizing gross receipts and operating costs within ninety (90) days after each such Non-Baseball Event held by the Partnership.

(e) The Partnership will remit to the District 100% of the gross receipts from any and all Non-Baseball Events held by the District and operated by the Partnership, including, without limitation, gross receipts from novelty and concession sales (if the District is entitled to such novelty and concession revenues), after deducting (1) operating costs (as defined in Section 4.2(d) above) paid or incurred by, the Partnership as a direct result of the event, plus (2) the "managerial and operational costs" for which the Partnership is entitled to reimbursement pursuant to Section 5.2(d) hereof, plus (3) the "management fee," if any, payable to the Partnership pursuant to Section 5.2(d) hereof, plus (4) any amounts for which the Partnership is entitled to payment or reimbursement pursuant to Sections 6.8, 8.2(i), 8.3(b)(ii) or 8.10(d). Payments shall be submitted within ninety (90) days after the conclusion of each Non-Baseball Event held by the District along with a written report itemizing gross receipts, deductible items being currently deducted from gross receipts and a reasonable description and good faith estimate of the nature and amount of deductible items not determinable at the time the written

report is submitted. The District shall reimburse the Partnership for any excess of operating costs over gross receipts from any such event and for any deductible costs not determinable until after the written report is submitted to the District.

4.3 Budget Review. The District agrees to conduct its business in a prudent, cost efficient manner and to use its best efforts to operate within the limits set forth in §32-14-115(a) of the Act in the performance of its administrative duties under the Act, and philosophically agrees to prepare its operating budgets as if it were spending its own funds. Upon Request, the Partnership shall have the right to review the District's annual budget with the District, prior to adoption. The District shall cooperate with the Partnership in such review. Nothing in this Section 4.3 shall be construed, however, as giving the Partnership the authority to dictate or require any addition, deletion, change, modification, or supplement to any District annual budget or any provision(s) therein. Nothing in this Section 4.3 shall be construed as altering or limiting the Partnership's obligations pursuant to Section 4.2(a), 4.2(b), 4.2(c) or 4.2(d).

4.4 Access to Partnership's Books and Records. Each payment pursuant to Section 4.2 shall be accompanied by a statement showing with reasonable specificity all computations relating thereto as may be reasonably required by the District. The District shall have the right as reasonably required, through the use of an independent certified public accounting firm selected by the District, at any time during normal business hours and at the offices of the Partnership, to review all records of the Partnership which relate to any such payments. In the event such review results in a determination that the computations are erroneous and that such error resulted in an underpayment to the District, the Partnership shall promptly remit payment to the District of all amounts underpaid, and if the underpayment is five percent (5%) or more of what the District was actually entitled to, the error shall be promptly corrected by the Partnership, the Partnership



shall promptly remit payment to the District of all amounts underpaid, plus interest thereon at the rate of four percent (4%) per annum above the prime rate charged from time to time by Wells Fargo Bank, National Association, or its successor bank(s), and the Partnership shall pay any out-of-pocket costs incurred by the District in reviewing the Partnership's books and records and assuring such errors are corrected. If the review results in a determination that the Partnership overpaid amounts to the District, the District shall promptly remit payment to the Partnership of all amounts overpaid.

4.5 Affiliates. Affiliates shall mean persons or entities controlled by, under common control with or controlling the Partnership.

4.6 New Taxes. The District shall not impose or assess any user, ticket, seat, amusement or service tax or any other tax of comparable nature upon the Partnership or on events held at the Leased Premises.

4.7 Ground Lease of the West Lot. The District and the Partnership shall enter into a Ground Lease in the form attached hereto as Exhibit C. Pursuant to the terms of the Ground Lease, the Partnership shall submit any development plans for the West Lot as defined in the Ground Lease to the District for approval, which shall not be unreasonably withheld. All payments received by the District pursuant to the Ground Lease shall be deposited into the Capital Fund.

4.8 North Lot Development.

(a) The Partnership and the District shall consider opportunities to jointly develop Lot A and/or Lot B, as Lot A and Lot B are set forth on Exhibit D, upon such terms and conditions as the parties agree. All net proceeds of any development from Lot A and/or Lot B shall be equally divided between the parties.

(b) The District shall have the right to develop Lot C, as shown on Exhibit E, and the District shall be entitled to proceeds, if any, of such development. Prior to any development, the District must provide replacement parking spaces equal to or greater than the number displaced by the development.

## ARTICLE V

### USE OF STADIUM AND LIMITATIONS (USER AGREEMENT)

5.1 Partnership's Use. Commencing with the Commencement Date and continuing for the balance of the Term and Grace Term, the Partnership shall, subject to all limits and conditions imposed upon the Partnership in this Agreement (specifically including but not limited to the limitations on the time and duration of such use set forth below in this Section 5.1), be entitled to use the Leased Premises for the following purposes:

(a) Playing of Major League Baseball Games and activities related to the playing of Major League Baseball Games and the maintenance of a Major League Baseball team, including, but not limited to: training, practices, maintenance and preparation of the Leased Premises to suit such purposes, advertising and marketing of games and ticket sales;

(b) the operation of club/restaurant facilities and club seating lounges currently known as the "Mountain Ranch Club", and the restaurant and bar facilities in the Student Movers Building, currently known as the Sandlot Brewery;

(c) the operation of the Partnership's general offices;

(d) the sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items normally considered "concessions";

(e) the sale of space on or for advertising signs and billboards, subject to the provisions of Article XX;

(f) any and all other activities which, from time to time during the Term and Grace Term, are associated with, or are conducted in connection with, or are related to, the conduct of the business of a Major League Baseball team; and

(g) Non-Baseball Events and Baseball Related Events.

The Partnership's possession and use of the Leased Premises shall be subject to the following limitations:

(i) The Partnership shall not occupy or use the Leased Premises or any portion thereof (or permit the use or occupancy of the Leased Premises) for any purpose or in any manner which is unlawful or which violates this Agreement or any other agreement binding upon the District as of the date hereof, a copy of which has been provided to the Partnership or law under which the District or its property is bound.

(ii) The Partnership shall provide written notice no later than thirty (30) days to the District prior to the occurrence of any Non-Baseball Event, of its intent to hold such an event.

(iii) Subject to Article IX and the MLB Rules and Regulations, the Partnership shall not allow any Team Home Game or Major League Baseball All-Star Game played within the Boundaries to be played in any facility other than the Leased Premises without first obtaining the written approval of the District, which may be withheld in its sole and absolute discretion, except that the Partnership may play up to six (6) regular season Team Home Games per year outside of the Boundaries without first obtaining the written approval of the District if scheduled by the BOC at locations outside of the Boundaries where the Team is designated as the home team. A "Home Team Game" shall be any baseball game during any Major League Baseball Season in which

the Team acts as the host Team for its opponent (i.e., the Team takes the field in the first half of each inning). A "Major League Baseball Game" shall be any Team Home Game; any Major League Baseball All Star Game played within the Boundaries; any other Major League Baseball game or event (including but not limited to Major League Baseball games in which the Team does not act as the home team, World Baseball Classic games, Home Run Derbies, All-Star Futures Games) whether during a Major League Baseball championship season, postseason or otherwise; or any other baseball game which the Partnership or Team gives its permission to be played. This subsection shall not require the Team to play any Team Home Game or host any Major League Baseball All-Star Game in the Stadium or within the Boundaries if any governmental agency with jurisdiction over the Stadium and its use prohibits such use on the basis of health or safety risks attendant to such use.

(iv) The Partnership shall be responsible at its own expense for advertising and promoting events it conducts on the Leased Premises.

(v) The Partnership's permitted uses of the Leased Premises shall be limited to those times and those portions of the Leased Premises set forth in this Section 5.1(g)(v). Aside from those times and those portions of the Leased Premises granted to the Partnership hereby, the District, as the owner of the Leased Premises, shall have the exclusive right to use the Leased Premises subject to any obligations and limitations placed upon the District's use thereof by this Agreement during times when the Partnership has no user rights thereto. The Partnership's use of the Leased Premises (in the Partnership's capacity as the "Tenant" or "User" hereunder) shall be limited to the following times and portions:

(A) The Partnership shall have year-round use of the following portions of the Leased Premises:

- That portion of the Leased Premises used as general offices by the Partnership, including but not limited to the ticketing area/windows located on Blake Street and any other space designated for the Partnership's general office use by this Agreement;
- The basement plus floors 1, 2, 3 and 4 of the Student Movers Building (subject to the District's right to use office and conference room space on the fourth floor thereof pursuant to this Agreement);
- The stadium club and the club seating lounge (now known as the Mountain Ranch Club) and adjacent areas of the Club Level concourse above Sections 214-227 of the seating bowl of the Stadium;
- The home clubhouse and all associated facilities (e.g., offices for team managers and coaches, locker facilities, training room, indoor batting cage, indoor bull pen, weight room, whirlpool and shower/bathroom facilities);
- The scoreboard operations room;
- Concessionaire's offices located under the right field bleachers of the Stadium;

- The Diamond Dry Goods Store located at 2151 Blake Street; and
- Sufficient parking on the Stadium Land to permit normal business operations of the Partnership's general offices and the restaurants and clubs operating on the Leased Premises as agreed upon by the District and the Partnership.

(B) Subject to the MLB Rules and Regulations, the Partnership shall have the right to use the following portions of the Leased Premises ONLY from 6:00 a.m. local time on those dates when a Major League Baseball Game is scheduled at the Stadium and those dates when a Non-Baseball Event sponsored by the Partnership is scheduled to be held at the Stadium pursuant to Section 5.1(g) hereof to 2:00 a.m. local time of the following day:

- The Playing Field (as defined in Section 8.3(a) of this Agreement);
- The seating bowl of the Stadium (including all seats, stands, boxes, concourses and aisles);
- The concession areas and all associated facilities; and
- All other areas of the Stadium, Stadium Land and/or Leased Premises necessary to conduct the Major League Baseball Game, Baseball Related Event or the Non-Baseball Event sponsored by the

Partnership (including but not limited to parking areas).

(C) Subject to the MLB Rules and Regulations, the Partnership shall have the right to use the following portions of the Leased Premises ONLY from 6:00 a.m. to 10:00 p.m. local time on those dates during or within five (5) days immediately preceding any postseason playoff series when off-day workouts and/or practice sessions are conducted by either team involved in such playoff series (up to a maximum of five (5) days for all playoff series combined):

- The Playing Field;
- The visitors' clubhouse and all associated facilities;
- The seating bowl; and
- The press box.

(D) The District hereby grants to the Partnership a license to use the following portions of the Leased Premises during the specified time periods in order to complement the other user rights of the Partnership set forth herein:

- Periodic use, as and when required, of the General Manager's Suite and the Business Operations Suite and the conference room adjacent thereto;
- Casual access to the seating bowl of the Stadium as and when required to show seat locations and box locations/amenities to prospective purchasers or current ticket holders and their guests and to

provide tours of the Stadium to guests of the Partnership; Periodic use of the Playing Field for off-day workouts and/or practice sessions for the baseball team or Partnership related activities during the Major League Baseball Season; provided that such off-day workouts and/or practices shall not conflict with any District sponsored Non-Baseball Event; and

- All necessary routes of ingress to and egress from the Leased Premises required by all uses granted to the Partnership pursuant to this Agreement.

The license rights granted by this Section 5.1(g)(v)(D) may be revoked or modified only by a written amendment to this Agreement executed by both the District and the Partnership. The "periodic use" and "casual access" described immediately above are subject to the District's exclusive right to use the Leased Premises or portions thereof when such areas are not being used by the Partnership pursuant to Sections 5.1(g)(v)(A) through (C) above.

(E) The District hereby grants to all players who are party to a Uniform Player Contract with the Team, casual access by such players (specifically excluding all other persons) to the Playing Field to conduct informal workouts only during the Off-Season (as defined below) and only when no other activities of any kind or nature are scheduled thereon by either the District or the Partnership and subject to the discretion of the Partnership (or the then current



"Manager" of the Stadium, if not the Partnership) in conducting its management of the Stadium pursuant to Article VIII. The District and the Partnership hereby agree and acknowledge that the license granted in this Section 5.1(g)(v)(E) is not intended to allow the Partnership any additional user rights to the Stadium other than those set forth in Sections 5.1(g)(v)(A) through (D) above.

Except for the foregoing limitations and subject to the provisions of Section 5.2 and all other provisions of this Agreement, the Partnership shall have the right during those time periods specified in Sections 5.1(g)(v)(A) through (C) above to determine how the Leased Premises (or the applicable portions thereof) shall be used and who may be present therein, and, further, to select, competitively, and employ, concessionaires, licensees, or subtenants with respect to any Stadium operations, including, but not limited to parking lots, concession areas, Stadium Club, Suite catering or advertising space in the Stadium. Subject to the provisions of this Agreement (including but not limited to Section 4.2 and Article XXI), the Partnership shall have the right to proceeds from the conduct of any of the activities permitted to be conducted by the Partnership, including but not limited to radio and television fees and revenues, signage and advertising sales, concession and vending machine rents or payments, sales of souvenirs, sales of food and beverage (including alcoholic beverages), and club membership fees related to any or all of the foregoing upon terms and conditions deemed acceptable by the Partnership, provided that no contract entered into by or on behalf of the Partnership shall impair any right of the District hereunder, impose any contractual liability on the District or have a Material Adverse Effect on the District.

5.2 District's Rights. During the Term and Grace Term, the District will have the following rights regarding the use of the Stadium:

(a) The District reserves for itself, and the Partnership will provide to the District, without payment of rent or any other consideration therefor, the use of suite number 42 ("Suite"), or another suite as mutually agreed by the parties. The District shall permit use of the Suite and the tickets in Section 5.2(c) below in accordance with policies as adopted by the District and all normal privileges which lessees of Suites receive upon payment of rent.

(b) The District reserves for itself, and the Partnership will provide to the District admission tickets and passes (including but not limited to parking passes) for all Suite seats for all events in the Stadium at no cost to the same extent as such tickets and passes are provided to all suite holders as attendant privileges of owning rights to a suite in the Stadium.

(c) The District reserves for itself, and the Partnership will provide to the District, at no cost, six season tickets at a location between first base and third base along the infield and within the first twenty-five (25) rows from the field, and all normal privileges which season ticket holders receive, including three (3) parking passes, at no cost.

(d) The District shall have exclusive use and possession of the Leased Premises, or any portion thereof, for which the Partnership does not have the right to occupy pursuant to Section 5.1, subject to the limitations of this Section 5.2(d). The District may use the Stadium (or any portion thereof) only for Non-Baseball Events sponsored by the District and for other de minimis uses that do not interfere with the uses permitted by the Partnership under Section 5.1. In the case of Non-Baseball Events to be held by the District, the District will be required to "ensure the integrity of the playing field" (as defined below) in the Stadium to the reasonable satisfaction of the Partnership. The District shall notify the Partnership at least forty-five (45) days in advance of any Non-Baseball Event, which notice will allow the Partnership to reasonably reach a decision as to whether such Non-Baseball Event will fail to ensure the

integrity of the playing field, in which case such Non-Baseball Event will be disallowed, or, if the Partnership concludes that such Non-Baseball Event does ensure the integrity of the playing field. to reach a good faith estimate of managerial and operational costs (specifically including any increased costs of Maintenance or Repair of the Leased Premises as described in Section 8.10(b) hereof) that may be incurred as a result of such Non-Baseball Event (or a combination of more than one Non-Baseball Event, if applicable), and to coordinate with the District in the scheduling of all such events so as not to interfere with the Partnership's rights and duties as a "Tenant," as a "User" and as a "Stadium Manager" under this Agreement or its other obligations pursuant to the MLB Rules and Regulations.

The Partnership shall use its best efforts to advise the District within fifteen (15) days of receipt of such notice if it reasonably believes that the proposed Non-Baseball Event will fail to ensure the integrity of the playing field or if the proposed Non-Baseball Event cannot be held due to a conflict with a Major League Baseball Game, a Baseball Related Event or a Partnership Non-Baseball Event or is in conflict with the MLB Rules and Regulations. (In determining whether a proposed Non-Baseball Event will conflict with a Major League Baseball Game, the District hereby acknowledges that the Partnership is entitled to assume for any Major League Baseball Season that the Team will participate in all applicable postseason playoff series for that season, as and when each game of each such series may be scheduled by Major League Baseball, unless and until the Team is mathematically excluded from participation in or is eliminated from such playoffs.) The failure by the Partnership to so notify the District shall be deemed an affirmative statement by the Partnership that it does not reasonably believe that the proposed Non-Baseball Event will harm the integrity of the playing field and that no such scheduling conflict exists. If the Partnership does not so notify the District as set forth above, then within

thirty (30) days after receipt of the notice from the District provided for in this Section 5.2 the Partnership shall provide the District with a good faith estimate of managerial and operational costs (specifically including any increased costs of Maintenance or Repair as described in Section 8.10 (c) hereof) which will be incurred by the Partnership as a result of any Non-Baseball Event (or a combination of more than one such event, if applicable), which shall not include prorated salaries or incremental payments to employees of the Partnership or its Affiliates not specifically incurred as a result of such event. Within thirty (30) days after receipt of an itemized statement of such actual costs from the Partnership, the District shall reimburse the Partnership for all reasonable operational and managerial costs incurred as a result of any Non-Baseball Event sponsored by the District (except for any such costs that have been deducted by or reimbursed to the Partnership pursuant to Section 4.2(d) hereof). In addition, the District shall pay the Partnership a management fee for each Non-Baseball Event sponsored by the District equal to 10% of the sum of the costs that the Partnership is entitled to deduct under Section 4.2(d), provided that the management fee shall not in any event exceed 50% of the net profit (if any) from the Non-Baseball Event (calculated in the same manner as is described in Section 4.2(e) for Partnership-sponsored Non-Baseball Events). A District-sponsored Non-Baseball Event "ensures the integrity of the playing field" if and only if (1) the Partnership concludes in the exercise of reasonable discretion that, after completion of the Non-Baseball Event and prior to the commencement of the next Major League Baseball Game or Baseball Related Event, the playing field can and will be restored to levels of appearance, physical condition and playability consistent with first-class major league standards, and (2) the District agrees to pay the costs and expenses required to complete such restoration as provided in Section 8.3(b)(ii). The Partnership's judgment as to whether a proposed Non-Baseball Event ensures the

integrity of the playing field shall be accorded substantial deference. The District hereby acknowledges that any Non-Baseball Event requested by the District during the "Off-Season" (which Off-Season shall commence upon the expiration of any Major League Baseball Season and end fifteen (15) days prior to commencement of the following Major League Baseball Season) is less likely to be rejected by the Partnership as failing to ensure the integrity of the playing field than those Non-Baseball Events requested during the Major League Baseball Season, all other factors being equal between the proposed Non-Baseball Events, due to the tight scheduling of Major League Baseball Games during the Major League Baseball Season. However, the Partnership acknowledges the District's ownership rights of the Leased Premises and agrees to carefully evaluate any Non-Baseball Event requested by the District during any Major League Baseball Season on its own merits based upon the potential harm to the integrity of the playing field and the date of the next use thereof by the Partnership.

(e) The District reserves for itself and shall be entitled, at no expense, to office space incorporated into the structure of the Stadium on the 4th floor of the Student Movers building as shown on Exhibit F. Any change in the location of the District's office space after the Commencement Date shall only be with the approval of the Partnership, which approval shall not be unreasonably withheld. Attendant to this office space, the District will also have, at no expense, the use of parking spaces (as agreed to between the District and the Partnership or, if no such agreement can be reached, as reasonably designated by the District) for its office staff. The Partnership is obligated to maintain and pay all costs of maintenance and utilities for the District's office space pursuant to the provisions of Article VIII. The Stadium security system and parking plan developed by the Partnership shall not cause unreasonable interference with the

ingress and egress of any of the District's employees, agents, or representatives to and from the Leased Premises, necessary for the District to perform all of its operations.

(f) The District, at no expense, will have use and control of the community rooms adjacent to the District's offices on the 4th floor of the Student Movers building as shown on Exhibit F or as otherwise agreed by the parties. The District shall manage the use of the community rooms and, subject to the Stadium security system developed by the Partnership, shall be entitled to allow outside community groups to use the community rooms as the District deems appropriate. Nothing herein shall be construed to preclude use of the community rooms by the Partnership or its designees. The Partnership is obligated to maintain and pay all costs of maintenance and utilities for the community rooms pursuant to the provisions of Article VIII.

5.3 Non-Baseball Events. A "Non-Baseball Event" shall be any use of the Leased Premises that includes the use of any portion of the seating bowl, the playing field, or both, and that is not a Major League Baseball Game and is not held immediately preceding or following a Major League Baseball Game, including, by way of example and without limitation, concerts, fireworks displays, shows, fairs, markets, and exhibitions unless such events immediately precede or follow a Major League Baseball Game.

5.4 Baseball Related Events. A "Baseball Related Event" shall be any use of the Leased Premises that includes the use of any portion of the seating bowl, the playing field, or both that is not a Major League Baseball Game but is held immediately preceding, following or in conjunction or in connection with a Major League Baseball Game, including by way of example and without limitation, concerts, fireworks displays, shows, fairs, markets and exhibitions.

5.5 Management. The Partnership shall be exclusively responsible for the management and operation of the Leased Premises pursuant to the terms and conditions of Article VIII and the District hereby grants to the Partnership all required access rights to any portion or all of the Leased Premises at all times necessary for the Partnership to fulfill its obligations in its capacity as the "Manager" thereof pursuant to such Article VIII, specifically including but not limited to the right to grant access to the concession areas of the Stadium to those concessionaires who desire access thereto for the purposes of conducting maintenance, repair, cleaning, stocking, restocking or other activities relating to the operation thereof by such concessionaires.

## ARTICLE VI

### INSURANCE AND SUBROGATION

#### 6.1 Type of Insurance.

(a) Upon the occurrence of the Commencement Date, the Partnership shall have purchased and shall maintain such insurance as will protect it and the District, the District's Board, employees, agents and representatives from all claims arising as a result of the ownership, use, management, and operation of the Leased Premises and Partnership Property, all as may be typical in coverage and amount to similar facilities including but not limited to the following:

(i) Worker's Compensation in compliance with state statutory laws, covering employees, volunteers, temporary workers and leased workers; disability benefit and other similar employee benefits acts and employer's liability;

(ii) Claims for loss of or damage to boiler and machinery (including but not limited to heating, ventilation, air conditioning, scoreboard(s), electrical system equipment and all other equipment and machinery).

(iii) Commercial General Liability Insurance providing coverage for bodily injury and property damage and personal and advertising injury, including products-completed operations and contractual liability coverage with minimum limits of \$20,000,000 per occurrence and \$20,000,000 in the aggregate.

(iv) Commercial Automobile Liability Insurance covering all owned, non-owned, leased, hired or borrowed vehicles with minimum limits of \$1,000,000 per accident.

(v) Property Insurance. All risk insurance also known as Special Form Property insurance (hereinafter referred to as "All Risk") in respect of the Leased Premises and Stadium Land and other improvements on the land normally covered by such insurance for the benefit of the District and other parties the District may from time to time designate as Loss Payees as their interests may appear. The All Risk insurance will be on a full replacement cost basis and not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies.

(vi) The Partnership shall purchase and maintain All Risk property insurance for the Partnership Property. Property coverage shall include Partnership Property, all materials and supplies of any nature included in the Leased Premises (including personal property, fixtures and equipment) whether any or all of the foregoing are located on the Leased Premises, in transit or while temporarily stored elsewhere. The coverage shall be replacement value for "risk of physical loss."

(b) The required limits may be satisfied through a combination of primary and umbrella policies. All policies shall be written by admitted insurance carriers with an AM Best Rating of A-, VIII, or better. The District, the District's Board, employees, agents, and



representatives shall be included as additional insureds on the Partnership's Commercial General Liability, Commercial Automobile and Umbrella Liability policies for claims arising in connection with the Partnership's use, occupancy and operation of the Stadium. The Partnership's liability policies shall provide coverage on a primary and non-contributory basis to any insurance maintained by the District for claims arising in connection with the Partnership's use, occupancy and operation of the Stadium.

(c) District Approval. The provisions of the insurance policies (including but not limited to all exclusions in such policies) required by this Article VI shall be subject to the reasonable approval of the District. However, the Parties agree that any policies under the Major League Baseball League-Wide insurance program will be deemed approved.

(d) District Copies. Certificates evidencing the existence of the required policies shall be delivered to the District upon the Commencement Date or such earlier date as the insurance coverage is required hereunder.

6.2 Concessionaire Insurance. The Partnership shall require the concessionaires, any contractor of the Partnership performing services related to the use, operation, and management of the Leased Premises or Partnership Property, and any other user of the Leased Premises and Partnership Property for a Non-Baseball Event, to maintain worker's compensation insurance and additional insurance coverage substantially the same as that coverage set forth in Section 6.1, except that the Commercial General Liability Insurance for concessionaires, contractors and other users shall have minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. In the Partnership's reasonable discretion, the foregoing entities need not provide boiler and machinery coverage. Any subcontractors of the Concessionaire shall be required to maintain worker's compensation insurance as set forth in Section 6.1. The District and its Board,

employees, agents and representatives shall be named as additional insureds in all such liability policies.

6.3 Repairs and Improvements Insurance.

(a) Contractors and Subcontractors. The Partnership shall require all contractors and subcontractors hired in the performance of any Repairs or Improvements to maintain commercially reasonable types and amounts of insurance under the terms and conditions set forth in this Article VI consistent with the nature and scope of the work to be performed by the contractor or subcontractor. All such liability policies shall name the District and its Board, employees, agents, and representatives as additional insureds for claims arising in connection with the named insured's operations.

(b) Errors and Omissions/Professional Liability Insurance. As to any Repairs or improvements to be performed hereunder, the Partnership shall require any architect and any other person or entity to purchase and maintain professional liability insurance for damages for claims by reason of negligent acts, errors or omissions committed by the person or entity providing such professional services. Professional errors and omissions insurance coverage shall be on an occurrence basis if available but may be structured to provide coverage on a "claims made" basis. However, if written on a claims made basis, the Partnership shall require the person or entity providing such professional services to maintain and keep in effect said professional liability insurance coverage until substantial completion of any Repair or Improvement and for a period of three years after final payment by the Partnership.

6.4 Notice of Cancellation. The Partnership shall not cancel its policies without giving the District at least 30 days' written notice thereof.

6.5 Waiver of Subrogation. The District and the Partnership each hereby waive any and all right of recovery, claim, action or cause of action against the other, its agents, directors, officers and employees for any loss or damage (including loss of use thereof) that may occur to the Leased Premises or any improvements or any personal property of such party in the Leased Premises by reason of fire, the elements or any other cause which is insured against or should be insured against under the terms of any insurance policies regardless of cause of origin including negligence of the other party, hereto, its directors, officers or employees. Such waiver also applies to any such loss that would but for the deductible, be covered by such insurance policies.

6.6 District's Governmental Immunity. The parties recognize that the District is a Colorado governmental entity within the scope and purview of §24-10-101, et seq., of the Colorado Revised Statutes and has not taken steps, by resolution or otherwise, to waive its governmental immunity or to increase or modify its statutory limits of liability of \$350,000 per person or \$990,000 per occurrence.

6.7 Bond Requirements. The Partnership shall ensure that, to the extent applicable, the bond requirements set forth in Sections 38-26-105, 38-26-106 and 38-26-107 of the Colorado Revised Statutes are complied with in relation to any Repair or Improvement.

6.8 Increased Cost of Partnership Insurance Due to District Sponsored Non-Baseball Events. If, due solely to the use of the Stadium and the Stadium Land by the District (or its licensees or invitees) for greater than ten (10) District sponsored Non-Baseball Events during any calendar year, there is an increase in the cost of any insurance premiums with respect to any insurance required to be maintained by the Partnership by this Article VI (or any portion thereof), then the District shall be solely liable for all such increases in premiums and shall

promptly reimburse the Partnership for such increased insurance costs upon notification thereof by the Partnership.

## ARTICLE VII INDEMNIFICATION

### 7.1 Partnership Indemnification.

(a) Subject to the limitations hereinafter set forth, the Partnership hereby agrees, upon its occupancy and use of the Leased Premises, to protect, defend, indemnify and hold harmless the District, its officers, Board members, employees, agents and representatives from and against all loss, cost, expense and, obligation including but not limited to reasonable attorneys' fees (hereinafter "Loss") in connection with or arising out of any proceedings, judicial or otherwise, claims, demands, judgments, damage or injury to person or property occurring within or about the Leased Premises arising out of or in connection with the Partnership's operation, use, Maintenance, ownership, Improvement, or Repair of the Leased Premises or Partnership Property or any events occurring thereon, or performance of the Partnership's other obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Partnership be obligated to protect, defend, indemnify or hold harmless the District, its officers, Board members, employees, agents or representatives from or against any Loss, to the extent the same arises out of, or is connected with:

(i) the negligence or misconduct of the District, its Board members, Executive Director, employees, agents, attorneys, sponsors, promoters, representatives or independent contractors;

(ii) the failure of the District to perform or observe any covenant or condition to be performed or observed by the District under this Agreement; or

(iii) defects in (i) the design of the Leased Premises; or (ii) the workmanship or materials employed in the construction of the Leased Premises.

(b) If the District bears any property tax liability with respect to the Leased Premises, the Partnership shall indemnify the District against any such property tax liability. The indemnity provided by this Paragraph 7.1(b) shall not apply to property taxes imposed as a result of the District's ownership of the Leased Premises or as a result of District-sponsored Non-Baseball Events. Any indemnification required by this Paragraph 7.1(b) shall be made by the Partnership to the District in sufficient time to enable the District to pay timely any property tax liability for which the District is entitled to indemnity (but not less than thirty days after the Partnership's receipt of notice from the District of the amount of property tax for which the District claims entitlement to indemnity and copies of all documents then in the possession of the District and not previously provided to the Partnership pertaining to the property tax liability for which indemnity is claimed). The Partnership's obligation to indemnify the District under this Paragraph 7.1(b) shall be conditioned on the District's compliance with the following:

(i) Promptly after receipt of any "Notice of Valuation" or other communication indicating an assessment of property tax for which the District would be entitled to indemnity under this Section 7(b) is contemplated or intended (and in any event in sufficient time to enable the Partnership to respond to such communication within applicable time limits), the District shall provide a copy of such notice or other communication to the Partnership. Thereafter the District shall promptly furnish to the Partnership copies of any additional written communications and summaries of any oral communications received by the District pertaining to the assessment.

(ii) The Partnership shall have the right, at the Partnership's option and the Partnership's sole cost, risk and expense, to contest in any appropriate forum and by any appropriate remedy (including without limitation both pre-assessment remedies (such as valuation protests) and post-assessment remedies (such as petitions for abatement or refund)) the amount, validity or applicability of any assessment of property tax for which the District would be entitled to indemnity under this Section 7.1(b). The District shall cooperate with the Partnership in any such contest (provided that the Partnership reimburses the District for any costs incurred by the District as a result of its cooperation) and shall allow the Partnership (and hereby grants to the Partnership the right) to prosecute any such contest in the name of the District. In the event that any such contest results in a reduction or elimination of a property tax liability for which the Partnership has already indemnified the District by payment to the District or to the appropriate taxing authority, the District shall promptly pay over to the Partnership the amount of any refund received by the District on account of such reduction, including any interest received by the District in connection with such refund.

The Partnership's payment of any indemnity claimed by the District pursuant to this Section 7.1(b) shall not operate as a waiver of the Partnership's right to dispute the applicability of this Section 7.1(b) to the property tax liability for which indemnity is claimed or the amount of the property tax liability to which this Section 7.1(b) applies, provided that the Partnership gives notice of its dispute to the District no later than one year after its payment of the indemnity. If the Partnership and the District are unable to resolve any such dispute, the Partnership may bring an action in the District Court in and for the City and County of Denver for a determination of the dispute.

7.2 District Indemnification. The District shall make available to the Partnership any indemnities under which the District is entitled to indemnification from any and all architects, engineers, consultants, contractors or subcontractors employed by the District or the Partnership in the construction of the Stadium, the Leased Premises and the Partnership Property. The Partnership shall, at its expense, pursue all claims for indemnity directly against such architects, engineers, consultants, contractors or subcontractors.

7.3 District Cooperation.

(a) The District shall cooperate with the Partnership and its counsel in any action being actively contested or defended by the Partnership pursuant to its obligations under Section 7.1, shall join in making any appropriate counterclaim or cross-claim in connection with the actions, and shall provide such access to the books and records of the District as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Partnership. The Partnership shall provide its defense or contest through attorneys, accountants, and others selected by the Partnership. Notwithstanding that the Partnership is actively conducting such defense or contest, any such action may be settled, compromised, or paid by the District without the consent of the Partnership, provided however; that if such action is taken without the Partnership's consent, its indemnification obligations in respect of such claim shall thereby be nullified. Any such action may, be settled, compromised, or paid by the Partnership without the District's consent, so long-as such settlement or compromise does not cause the District to incur any present or future cost, expense, obligation or liability of any kind or nature with respect to such action.

The District shall also cooperate with the Partnership in its pursuit of any indemnity under which the District is entitled to indemnification from any architect, engineer, consultant, contractor or sub-contractor.

(b) In the event any action involves matters partly within or partly outside the scope of the indemnification by the Partnership hereunder, then the attorneys' fees, costs, and expenses of contesting or defending such action shall be allocated between the District and the Partnership as they shall agree.

## **ARTICLE VIII**

### **MAINTENANCE, REPAIRS, AND OPERATIONS**

8.1 Definitions. As used in this Article VIII and elsewhere in this Agreement, the terms listed below shall have the following meanings:

(a) Stadium Management. "Stadium Management" means the planning, supervision and conduct of the day-to-day management of the Leased Premises and Partnership Property and all activities connected with the operation of the Leased Premises and Partnership Property on a year-round basis, including but not limited to the provision of (or arrangements for third parties to provide) all personnel, supplies, equipment and services necessary for Repairs, Maintenance, Improvements and the security required by Article VIII on the Leased Premises and Partnership Property, which are the responsibility of the Partnership as provided in this Article VIII.

(b) Deterioration. "Deterioration" and "Deteriorated" means any equipment, fixture, furnishing, facility, surface, structure or any other component of a Repair Area which has become dysfunctional due to ordinary wear and tear. (For purposes of this Section 8.1(b), any equipment, fixture, furnishing, facility, surface, structure or any other Component shall be



deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or any other component has deteriorated to a degree that cannot be remedied through Maintenance.)

(c) Repairs. "Repair" or "Repairs" means any work (including all labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, facility, structure or any other component of a Repair Area, if such work, is necessitated by: (i) any material defects in design, construction or installation which, if not repaired, would create a threat to health or safety or a material interference with the Team's ability to play any Major League Baseball Game in the Stadium; (ii) Deterioration (including replacement necessitated by the repeated breakdown of a component despite successive efforts to repair or restore it short of such replacement); (iii) requirements initiated and imposed prospectively by the BOC, which requirements are made of all Major League Baseball open-air stadiums; (iv) modifications required by city, state or federal laws, ordinances, rules, or regulations, including without limitation, accommodations required to be made to Leased Premises or Partnership Property under the Americans with Disabilities Act (unless such modifications are for components negligently excluded by the design consultants from the original construction); and (v) requirements of any insurance carrier, which requirements are necessary to enable the Partnership to obtain insurance coverage at commercially reasonable rates.

If any Repair is necessitated due to the gross negligence or intentional or willful misconduct of the Partnership, the Partnership shall not be entitled to reimbursement or advances from the Capital Fund for the cost of such Repair.

(d) Repair Areas. "Repair Area" means the Leased Premises and Partnership Property and the contiguous sidewalks to the Stadium Land.

(e) Maintenance. "Maintain" and "Maintenance" means all work (including all labor, supplies, materials and equipment) reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures (including but not limited to media plug-ins and cable and all wiring attendant thereto); equipment or furnishings, or any other component of a Repair Area in order to preserve such items in their existing condition, ordinary wear and tear excepted. By way of illustration, and without limiting the generality of the foregoing, Maintenance shall include: (i) preventive or periodic maintenance procedures for equipment, fixtures or systems; (ii) periodic testing of buildings systems, such as mechanical, card-key security, fire alarm, lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for HVAC, plumbing, mechanical, electrical and structural systems, such as periodic cleaning, lubrication, and changing of air filters and lights; (v) touch up painting; (vi) cleaning prior to, during and following all Major League Baseball Games, Baseball Related Events and Non-Baseball Events; and (vii) any other work of a routine, regular and generally predictable nature that is reasonably necessary in order to keep the Leased Premises in good order and condition. As used in this Article VIII, the term "Maintenance" shall not include any work defined in Section 8.1(c) as a "Repair."

(f) Damaged Property. "Damaged Property" means any equipment, facility, structure, furniture, fixture or any other component of a Repair Area which is damaged or destroyed, including any damage or destruction resulting from the acts or omissions of third parties (including licensees or invitees of the Partnership and including licensees or invitees of the District with respect to any District sponsored Non-Baseball Events).

(g) Improvements. "Improvements" or "Improvement" means any alterations, modifications, additions, or other construction, development, or improvement of any part of the

Leased Premises or Partnership Property which the parties jointly determine are desirable for a Best of Class Major League Baseball facility. For the purposes of this Agreement, "Best of Class" means the highest current level among professional sports venues.

8.2 Partnership Obligations.

(a) General Obligations. The Partnership is hereby designated operator/manager of the Leased Premises and shall be responsible for all Stadium Management unless such responsibility is terminated by the District pursuant to Section 8.8(d). Subject to the provisions of Sections 8.10 and 8.11, the Partnership shall at its own expense, Repair and operate all Repair Areas. The Partnership shall obtain or provide, at its expense, all labor, services, materials, supplies and equipment needed to perform all Stadium Management, Maintenance and security. The Partnership shall not reduce, diminish or eliminate any equipment or services that it is required to provide under this Agreement without the prior written consent of the District. The District shall provide the Partnership with a copy of all plans, specifications and other documents in the control of the District necessary to assist the Partnership in fulfilling its obligations pursuant to this Section 8.2. The Partnership shall enter into an agreement, if required, with the City and County of Denver regarding-maintenance of pedestrian lighting, trees, trash receptacles and sidewalks contiguous to the Leased Premises. The Partnership agrees that the costs of such maintenance shall not be borne by the District.

(b) Standards. The Partnership shall Maintain, operate and Repair the entire Leased Premises, Partnership Property and Repair Area in a safe and first-class manner.

(c) Cleaning and Trash Removal. The Partnership shall provide ongoing sweeping and trash removal services, and shall provide Maintenance of the Leased Premises, Partnership Property and Repair Areas after all Major League Baseball Games, Baseball Related

Events and Non-Baseball Events, and at all other times, as necessary, during the Term and Grace Term, so as to Maintain the Leased Premises, Partnership Property and Repair Areas in conformity with the standard set forth in Section 8.2(b).

(d) Emergency Maintenance. The Partnership shall provide for all necessary emergency maintenance of mechanical, electrical and plumbing facilities of the Leased Premises and Partnership Property to or use of the including but not which directly affect the public's safe access Leased Premises and Partnership Property, limited to the Stadium's elevators and escalators, for the duration of each Major League Baseball Game, all Baseball Related Events and Non-Baseball Events using the playing field or stands.

(e) Conduct of Repairs and Maintenance. The Partnership shall cause all Maintenance and Repairs required to be performed by the Partnership under this Article VIII to be performed promptly and diligently, and in a good and workmanlike manner. The Partnership shall plan, schedule and conduct such Maintenance and Repairs so as to prevent or at least minimize (i) inconvenience to any patrons, (ii) any reduction in seating capacity at the Stadium, (iii) any reduction in the number of spaces available in the parking facilities, and (iv) interference with the District's or Partnership's use and enjoyment of the Leased Premises.

(f) Partnership's Property. The Partnership shall be responsible, at its sole expense, for repair, operation and maintenance of the Partnership Property, except for repair of such property necessitated by damage caused by the District.

(g) Game and Event Operations. On the dates of Major League Baseball Games, Baseball Related Events and Non-Baseball Events which are open to the public and use the playing field or stands, beginning with the time of day by which an admissions ticket to such games or events is required in order for the public to enter the Stadium or the Leased Premises,

the Partnership shall be responsible for (i) providing and supervising all personnel, including ushers; (ii) providing crowd control and management within the Leased Premises; (iii) providing and supervising first-aid personnel to operate the first-aid facilities of the Leased Premises; (iv) working cooperatively with the City and County of Denver (or other providers) to provide event security and emergency medical assistance during such games and events; (v) implementation of a transportation management program as agreed by the Partnership and the City and County of Denver. (The Partnership shall enter into agreements with the City and County of Denver, regarding the necessary personnel to provide additional traffic control and see that it complies with all other requirements of the City and County of Denver during Major League Baseball Games, Baseball Related Events and Non-Baseball Events. The Partnership agrees that the costs of all personnel and all other costs associated with the provision of additional traffic control and compliance with all other requirements of the City and County of Denver (or other providers) shall not be borne by the District); and (vi) providing all other services and materials necessary to fulfill its obligations under this Agreement.

This list is provided by way of example only and is not a limitation upon the Partnership's Stadium Management responsibilities or any other obligations of the Partnership under this Agreement.

(h) Notice to District. The Partnership shall promptly notify the District (orally first, then by written notice if written notice alone is not practicable) whenever the Partnership knows of or discovers any material defects in, damage to, or destruction of any part of the Leased Premises, Partnership Property or Repair Areas, or any dangers or hazards on the Leased Premises, Partnership Property or Repair Areas.

(i) Obligations Regarding Damaged Property. The Partnership shall provide the insurance required by the provisions of Article VI to cover the repair, restoration or replacement of any Damaged Property. The Partnership shall be responsible for the payment of all deductibles attendant to such insurance, specifically excluding those instances where the Damaged Property is the result of any District sponsored Non-Baseball Event, in which case the District shall be solely responsible for payment of all the deductibles applicable to such Damaged Property loss (unless such loss is caused by the Partnership, its employees or any invitees or licensees of the Partnership in attendance at such District sponsored Non-Baseball Event). To the extent that such insurance is insufficient to cover the costs of any repair, restoration or replacement of any Damaged Property, the Partnership shall be solely responsible for such costs (including the costs of all labor, supplies, materials and equipment), specifically excluding those instances where the Damaged Property is the result of any District sponsored Non-Baseball Event, in which case the District shall be solely responsible for such costs (including the costs of all labor, supplies, materials and equipment) unless the Damaged Property is the result of action by the Partnership, its licensees or invitees, or members of the Team in attendance at such District sponsored Non-Baseball Event. No moneys in the Capital Fund shall be used for the repair, restoration or replacement of any Damaged Property if the damage is the result of the gross negligence or intentional or willful misconduct of the Partnership.

(j) Public Art. Notwithstanding anything contained in this Article VIII to the contrary, the District and the Partnership shall share equally in the costs of maintaining and refurbishing the public art work located on the Stadium Land.

8.3 Playing Field Maintenance and Repairs.

(a) Playing Field. As used in this Article VIII, "Playing Field" shall mean the infield grass, the outfield grass, the infield skinned area, the ground lying to the foul side of the foul lines of the playing field, the warning track, the sod farms, the dugouts, and the bullpens.

(b) Major League Baseball Season and Off-Season Obligations.

(i) During Major League Baseball Season. During any Major League Baseball Season, the Partnership shall be responsible, at its expense, for the day-to-day landscaping and Maintenance of the Playing Field and Stadium Land, and for the costs of landscaping all supplies in connection with such day-to-day landscaping and maintenance (such as the cost of fertilizer and grass seed). Nothing in this Section 8.3(b)(i) shall be interpreted to mean that any Repairs of the Playing Field, Stadium Land or any part thereof or any repair, restoration or replacement of any part of the Playing Field which becomes Damaged Property, shall be included in the Partnership's day-to-day landscaping and Maintenance responsibilities. Each "Major League Baseball Season" shall commence on the day of the Team's first home game played inside the Boundaries in any calendar year and shall end on the day of the Team's last Major League Baseball Game (including postseason play, if any) in such calendar year.

(ii) Non-Baseball Events. The Partnership shall be responsible for performing and completing any day-to-day landscaping and maintenance of any portion of the Leased Premises required in connection with Non-Baseball Events which are permitted to be held thereon pursuant to the terms and conditions of this Agreement, including any necessary preparation and conditioning of the Playing Field before or during such Non-Baseball Events, and the landscaping and maintenance (including

sodding and seeding) as may be required in the Partnership's reasonable judgment after such Non-Baseball Events in order to restore the Playing Field to first-class major league condition. Such restoration shall be completed by: (1) the beginning of the next Major League Baseball Season after such Non-Baseball Events occurring during the Off-Season; or (2) by the date of the next Major League Baseball Game after such Non-Baseball Events occurring during the Major League Baseball Season. For Non-Baseball Events sponsored by the District, the District shall promptly pay and/or reimburse the Partnership (or cause a promoter or other third party to reimburse the Partnership) for the Partnership's personnel and material costs in providing such landscaping and maintenance and for reasonable costs associated with the repair or restoration of any portion of the Leased Premises which becomes Damaged Property as a result of a Non-Baseball Event held by the District (except for any such costs that have been deducted by or reimbursed to the Partnership pursuant to Section 4.2(d) hereof). The Partnership shall supply the District and any promoters or third parties designated by the District with itemized invoices for such personnel and material costs, including supporting invoices for costs incurred in acquiring materials. If the District believes that the Partnership is failing to perform its obligations under this Section 8.3(b)(ii), the District shall promptly notify the Partnership, and the Partnership shall then be obligated to cause its groundskeepers to perform such duties.

8.4 Partnership's Failure to Maintain or Repair. If the Partnership fails to fulfill its obligations under this Article VIII, and if the District reasonably determines that the condition in question, if not promptly remedied, will pose a threat to the health or safety of persons or property, the District shall promptly notify the Partnership in writing of such failure, explaining



the reasons why the condition in question meets the standard set forth in this Section 8.4, and give the Partnership a reasonable opportunity to perform the Maintenance or Repair in question. If the Partnership fails to perform the work in a reasonably prudent time and manner despite such written notice from the District, the District may (in addition to any other rights which it may exercise hereunder), at its election, cause such Maintenance or Repair to be performed at commercially reasonable rates and advance the costs for doing so. The District shall thereupon promptly notify the Partnership, in writing, of the nature of the work performed by the District (or its agents or contractors) and the cost and expense incurred by the District in performing such Maintenance or Repair. Within thirty (30) days after receiving the District's written notice the Partnership shall: (i) reimburse the District for all such costs and expenses, or (ii) inform the District, in writing that the Partnership disputes the District's entitlement to charge such costs or expenses, in which case the District may consider the Partnership in default and proceed pursuant to the provisions of Article XI.

8.5 Utilities. The Partnership shall bear the cost of all utilities consumed or used in or on any Repair Area or in connection therewith (such as, by way of example and without limitation, gas, steam, electricity, water, sewer, telephone, cable, trash collection, etc.), except such costs associated with any Non-Baseball Event held by the District which shall be paid by the District or other user of the Leased Premises or Partnership Property pursuant to Section 5.2(d). The parties shall endeavor to avoid waste in the use of such utilities, in the interest of conserving resources. If there is any interruption in utility services affecting the Leased Premises or Partnership Property not caused by the District or its employees, Board members, agents or representatives, the District shall not be responsible for such interruption, and shall endeavor to actively assist the Partnership in arranging, with the appropriate providers of such utilities, for

the prompt and complete restoration of such service. In addition, if and to the extent that the District has any cause of action for damages or any other remedy against the providers of utilities for losses caused by the interruption in utility services on the Leased Premises or Partnership Property, the District shall assign its right to pursue such cause of action or other remedies to the Partnership. Notwithstanding the foregoing, the Partnership shall provide, Maintain, Repair and regularly test the Stadium's emergency electrical back-up systems.

8.6 Improvements and Alterations by the Partnership.

(a) Improvements by Partnership. During the Term and Grace Term, the Partnership, with the District's prior written approval, may make any Improvements to the Leased Premises which do not (i) adversely affect the Stadium aesthetics, structure or its systems as determined by the District; (ii) materially increase the cost of Repairs to the Leased Premises or-Partnership Property; (iii) violate any laws, ordinances, or regulations; or (iv) have a Material Adverse Effect on the District. In constructing any such Improvements, the Partnership shall comply with and is subject to the provisions of this Agreement, including Sections 8.10, 8.15 and 8.16. If any such improvement is determined to be Partnership Property, as agreed to by the District and the Partnership, such improvement shall be subject to the purchase, request for removal and abandonment provisions set forth in Section 2.1. Any such improvement constructed on the Leased Premises not so determined by the District to be Partnership Property shall become a part of the real property constituting the Leased Premises and title thereto shall be held by the District or its successors in interest.

(b) Alterations to the Partnership's Offices. The Partnership may make any interior alterations, additions or improvements to the Partnership's offices, at the Partnership's cost and expense, provided such alterations, additions or improvements do not (i) adversely

affect the Stadium aesthetics, structure, or its systems, as reasonably determined by the District; (ii) materially increase the cost of Repairs to the Leased Premises; (iii) violate any laws, ordinances, or regulations; or (iv) have a Material Adverse Effect on the District. The Partnership shall provide the District a written notice at least thirty (30) days prior to commencing any such alterations, additions or improvements, together with reasonably detailed plans and specifications for the proposed work and estimated costs. The District's receipt of such plans and specifications shall not constitute any assumption by the District of any responsibility for their accuracy or sufficiency, which shall be the sole responsibility of the Partnership. All such alterations, additions or improvements shall be performed, in a good and workmanlike manner, shall not cause damage to any part of the Stadium, and shall be completed in accordance with all applicable legal requirements (including the procurement of any required governmental permits). Before commencing any such alterations, additions or improvements, the Partnership shall obtain and furnish to the District, proof of compliance with all appropriate insurance and bonding requirements as set forth in Article VI, as agreed to by the District and the Partnership. The form of such bond and insurance policy and the surety or insurance carrier must be reasonably acceptable to the District. In connection with any such alterations, additions or improvements, the Partnership shall also agree in writing to indemnify the District (or make whatever alternative arrangements are reasonably required by the District) with respect to any liens or claims or notices for liens that may be filed against the Stadium, the Leased Premises, or the Partnership's leasehold interest in the Leased Premises arising out of such alterations, additions or improvements. The affirmative covenants set forth in Section 8.16 shall also apply to any such alterations, additions or improvements of the Partnership's offices performed in accordance with this section.

(c) Alterations Elsewhere in Stadium. The Partnership shall not make any alterations, additions or improvements whether interior or exterior, structural or non-structural, to any area of the Leased Premises other than the Partnership's offices without the District's prior written consent, which shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, the Partnership shall not be entitled to any advances or reimbursements from the Capital Fund for any alterations, additions or Improvements constructed on the Leased Premises, unless expressly agreed to, in writing, by the District.

(d) Alterations Made Without the District's Consent. If the Partnership makes any alterations, additions or Improvements to any part of the Stadium, except the interior of the Partnership's offices, without the District's prior approval, or any alterations, additions or improvements to the interior of the Partnership's offices without prior notice to the District, in violation of this Section 8.6, the District shall determine whether such alterations, additions or improvements shall remain part of the Stadium or be removed. If the District determines that such alterations, additions or improvements shall be removed, the Partnership, at its cost and expense, shall cause their prompt removal, and shall restore the Stadium to its condition prior to any such alterations, additions or improvements. In addition, if the Partnership cuts through or pierces or alters in any manner the roof or exterior walls of the Stadium structure without first obtaining the District's written consent, the Partnership shall be obligated, at the District's request, to restore the roof and exterior walls to their prior condition at the Partnership's sole cost and expense. Further, the Partnership may be liable to the District for consequential damages caused as a result of such breach by the Partnership.

8.7 Partnership's Personal Property. Prior to the installation of any and all safes, telephones, computers or other heavy equipment which may installed at the Stadium by the

Partnership Commencement Date, the Partnership shall obtain an engineering report, satisfactory to the District, regarding the placement or installation upon the Stadium structure and shall comply with all provisions contained in such report, including, but not limited to, all provisions regarding the proper placement or installation of such equipment. The Partnership shall perform any reinforcing required for such installation at the Partnership's Cost and expense. The Partnership shall install and place, at its own expense, all items of personal property, fixtures or leasehold improvements which the Partnership installs, places, or maintains in the Stadium pursuant to this Agreement, and shall install and place such property, fixtures or improvements in settings which are sufficient, in the District's reasonable judgment, to absorb and prevent vibration in or damage to the Stadium. If such placements or installations cause such vibration or damage, the Partnership shall, at its expense, take such steps as the District may reasonably direct to remedy any such condition.

8.8 Partnership's Management Qualifications.

(a) Standards. The District has the right and obligation (pursuant to §32-14-125 of the Act) to ensure that the Partnership has experience, expertise and specialization in the management of and operation of sports, entertainment or convention facilities sufficient to perform its Stadium Management obligations. The Partnership has demonstrated to the District that the Partnership, through its own staffing or contracts with third parties, has experience, expertise and specialization in, without limitation:

- (i) Maintenance of all HVAC, electrical, plumbing, and communications support systems;
- (ii) Custodial and groundskeeping operations;

(iii) Development and implementation of security procedures for the physical protection of personnel and property on the Leased Premises;

(iv) Management of all administrative functions associated with the Leased Premises, including, but not limited to, operation of any computer based maintenance management system, administration of a purchasing system, coordination and reporting of payroll and employee benefits, and proper supervision of all clerical staff;

(v) Management and planning of all Maintenance and Repair operations;

(vi) Management of all audio, video, telecommunications and scoreboard facilities;

(vii) Management of all concession operations; and

(viii) Management of all parking operations.

(ix) The District represents that based upon this demonstration, the District has approved, by approval of this Agreement, the Partnership as manager and operator of the Leased Premises.

(b) Operations Manual. Upon request, the Partnership shall provide a copy of the Stadium Operations Guidelines and Policy Manual for proper operation of the Stadium, which shall include a delineated policy regarding the use of all lighting on the Leased Premises which policy address the concerns of the neighborhoods affected by the Stadium to have all lighting, except that related to security purposes, extinguished as soon as practicable following any event held upon the Leased Premises.

(c) On-going Qualifications. The Partnership must at all times during the Term remain qualified to manage the Leased Premises as a first class facility. So that the District can adequately discharge its duties pursuant to Section 32-14-125 of the Act, the Partnership shall notify the District of significant changes in the management of the Partnership's maintenance and operation of the Leased Premises and Partnership Property or any part of such maintenance and operation, as set forth in Section 8.8(a).

(d) Termination of Stadium Management Responsibilities. If during the Term or Grace Term, the District determines that the Partnership has materially defaulted in its obligation to perform or be qualified to perform all Stadium Management, the District shall notify the Partnership of such default in accordance with the provisions of Section 26.5. The Partnership shall have the right to contest, only via the arbitration process described herein, whether a default has occurred, is material, or has been cured. In order to contest whether a default has occurred or is material, the Partnership must provide written notice to the District of its claim that the alleged default did not occur or is not material within thirty (30) days after receipt of the notice of such default from the District. In order to claim the default has been cured, the Partnership must send written notice making such claim within thirty (30) days after the alleged cure or the notice provided by the District, whichever occurs later.

All material defaults shall be cured by the Partnership within thirty (30) days after notice from the District or within one (1) year after notice from the District if the default (i) is not capable of cure within thirty (30) days and (ii) the Partnership is working diligently toward cure.

If the arbiter, pursuant to Section 27.1 shall find that there is an uncured material default and the Partnership thereafter fails to cure such default within thirty (30) days after the arbiter's decision, then the District shall have the right to terminate the management responsibilities of the

Partnership under this Agreement and, subject to the MLB Rules and Regulations, retain separate management for the Leased Premises; provided, however, that the District shall not be allowed to so terminate the management responsibilities of the Partnership as to a material default that cannot reasonably be cured within thirty (30) days, so long as the Partnership has promptly commenced such cure, diligently proceeds in a reasonable manner to complete the same thereafter, and effectuates such cure within one (1) year after the arbiter's decision. If the arbiter does not find an uncured material default, then there shall be no right to terminate the management responsibilities of the Partnership based upon the claimed default; however, such determination by the arbiter shall not affect the District's other rights or remedies under this Agreement.

If the date upon which any such termination would be effective falls within any Major League Baseball Season during the Term or Grace Term, the effective date of such termination shall be the date of the Team's final home game of such Major League Baseball Season. Any such termination of management responsibilities shall have no effect upon the Partnership's tenancy, rent and other rights and obligations hereunder, including, but not limited to, the Partnership's obligation to pay all costs of Maintenance, Repairs, Improvements, Alterations, and operations of the Leased Premises and Partnership Property (including the District's costs to hire and maintain a substitute manager), throughout the Term and Grace Term, which shall all remain in full force and effect.

8.9 Inspection by the District.

(a) District's Right to Inspect. The parties acknowledge that the District will have an ongoing obligation to maintain the integrity of the design of the Stadium and ensure that the Leased Premises and Partnership Property are properly Maintained and Repaired throughout



the Term and Grace Term. It will be necessary for the District to periodically inspect the Leased Premises and Partnership Property to be certain that they are being maintained in a first-class manner. In upholding this obligation, the District shall have the right to inspect the Leased Premises and Partnership Property, at least annually, at times agreed to by the parties. If any such time cannot be agreed to by the parties, the District shall be entitled to provide the Partnership with written notice of such inspection date. No later than 15 days after receipt of such notice, the Partnership shall be required to allow the District to proceed with its inspection of the Leased Premises and Partnership Property, and cooperate with and assist the District during the course of the inspection.

(b) Scope of Inspection. The District shall have the right to inspect the entire Leased Premises and Partnership Property and shall comply with all security provisions regarding access to the Leased Premises and Partnership Property in conducting such inspections. The Partnership shall, as part of such security provisions, provide for District access to conduct inspections and shall cooperate fully with the District in its conducting such inspections. In the course of its inspections, the District may hire mechanical, structural or electrical engineers, or other experts to assist in making a determination that the Leased Premises and Partnership Property have been Repaired and Maintained as a first-class facility. The reasonable costs of any inspection, including the cost of any engineers or experts retained by the District, shall be borne by the Partnership. The District shall submit an invoice to the Partnership of all costs incurred in any inspection within thirty (30) days after that inspection. The Partnership shall be required to reimburse the District for all such expenses within thirty (30) days of receipt of that invoice. In the alternative, the Partnership may retain in its name,

engineers or experts designated by the District to assist in inspection and remit payments directly to such engineers and experts as agreed between the Partnership and those hired.

8.10 Repairs Procedure.

(a) Repairs Ownership. Any Repair, resulting, upon completion of the Repair, in the addition to the Leased Premises of any component which shall be deemed to have, in the District's sole discretion, an economic life thereof, then remaining until paid for by the Partnership longer than the years, or fractions the expiration of this Agreement and or from the Capital Fund shall be Partnership Property and shall be subject to the purchase, request for removal, and abandonment provisions set forth in Section 2.1. Any Repair resulting, upon completion of the Repair, in the addition to the Leased Premises of any component which shall be deemed to have, in the District's sole discretion, an economic life shorter than the years, or fractions thereof, then remaining until the Expiration Date, shall, upon the District's election, become a part of the real property constituting the Leased Premises and title thereto shall be held by the District or its successors in interest. No Repairs shall be performed which would have a Material Adverse Effect on the District.

(b) Conditions of Repair Work. On or before October 1 of each year during the Term and Grace Term, the Partnership shall provide the District with a list of anticipated Repairs, with estimated budgets and time tables for completing such Repairs. Except as provided in Section 8.13, the Partnership will not initiate any listed Repairs or any other Repairs the cost of which the Partnership in good faith estimates will exceed \$100,000 without obtaining written approval from the District, which approval shall not be unreasonably withheld or delayed. Except as provided in Section 8.13, as to all Repair work, the Partnership shall ensure the fulfillment of the following conditions:

(i) District Liability. Assurance to the District's reasonable satisfaction that the performance of any Repair work will not have a Material Adverse Effect on the District, result in the necessity for the District to remit any payment, or result in any liability to the District.

(ii) Approval of Contractors, Subcontractors and Materialmen. The Partnership shall use reasonable good faith efforts to not employ any contractors who discriminate in violation of applicable federal, state and local laws.

(iii) Plans, Specifications, Permits, Contracts, and Budgets. The District shall be provided or have the opportunity to review and inspect: (i) a complete set of plans and specifications setting forth all construction requirements for the Repair; (ii) copies of all permits and requisite approvals of any governmental bodies necessary for the construction and use of the Repair; (iii) an executed copy, if any, of the architecture contract and an executed copy, if any, of the construction contract; and (iv) detailed budget and cash flow projections of the Repair costs and a schedule of the estimated amount and time of disbursement of each advance, if any.

(iv) The Partnership shall provide upon request by the District insurance policies or evidence thereof providing for the applicable coverages and policy terms set forth in Article VI.

(c) Advances or Reimbursements from the Capital Fund. Subject to the provisions of Sections 8.10(a), 8.10(b), and 8.11, the Partnership shall be entitled to use funds from the Capital Fund for the payment of Repair Work or Improvements on the Leased Premises and Partnership Property. The Partnership may, in its discretion, elect to perform any Repair and seek reimbursement from the Capital Fund after completion or seek advances from the Capital

Fund to pay for the Repair construction as the work progresses. The Partnership recognizes that the purpose of the Capital Fund is to ensure the availability of adequate funds to perform Repair Work or Improvements throughout the Term and Grace Term. The Partnership shall exercise prudence in its use of the Capital Fund. The District may withhold its approval of advances or reimbursements from the Capital Fund if the Partnership does not comply with the provisions of Section 8.10(b). Subject to the terms of Section 8.10(d) hereof, nothing in this Section 8.10 or elsewhere in this Agreement shall be interpreted as a limitation upon the Partnership's obligation to perform all Repair work, at its sole expense, throughout the Term and Grace Term. The Partnership shall not submit a request for advance from the Capital Fund or part thereof prior to completion of any Repair or portion thereof for which advance or reimbursement is requested. By submission of the request, the Partnership warrants that to the best of its knowledge, the Leased Premises or Partnership Property, is free and clear of liens, claims, security interests or encumbrances (except for such liens, claims, security interests or encumbrances previously approved by the District or permitted pursuant to the provisions of Section 2.1) in favor of the Partnership, subcontractors, material suppliers or other entities making a claim by reason of having provided labor, materials or equipment relating to the Repair and that the requirements of any governmental authority with jurisdiction over the Leased Premises, Partnership Property or both have been met. The District may refuse to consent to payments from the Capital Fund to such extent as may be necessary to protect the District from loss because of:

- (i) Defective performance in effectuating the Repair or any part thereof;
- (ii) Third-party claims made or filed or reasonable evidence indicating the probability of such filing; or

(iii) Failure of the Partnership to make payments properly to subcontractors for labor, materials or equipment. If the District in its sole discretion determines that any work or materials do not conform to any approved plans and specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, the District may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, the Partnership will promptly correct the work to the District's reasonable satisfaction. Upon completion of any Repair, the Partnership shall provide or make available to the District a complete set of record documents regarding such Repair.

(d) Repairs and Maintenance Occasioned by District Use for Non-Baseball Events. Notwithstanding any contrary term or provision contained within this Agreement, if during any calendar year of the Term or Grace Term the District sponsors or causes to be held greater than ten (10) Non-Baseball Events, then the Partnership shall be entitled to charge to and collect from the District any increased costs of Maintenance or Repair of the Leased Premises which are caused by each such District Non-Baseball Event (after the tenth) over those Maintenance and Repair costs which would have been incurred by the Partnership without the occurrence of such additional Non-Baseball Events.

#### 8.11 Capital Fund.

(a) The amount paid to the District by the Partnership as rent pursuant to the Ground Lease of the West Lot as set forth in Section 4.7, the amounts as set forth in Section 4.2(b) (including the amounts for the Capital Fund and any remaining rental payment) and the amounts paid pursuant to Section 4.2(d) shall be deposited in the Capital Fund. The amounts provided for in this Section 8.11(a) will fund the Capital Fund. The Capital Fund shall be the

property of the District, subject to the terms of this Agreement. All interest earned on the Capital Fund shall remain in the Capital Fund and become a part thereof. The Capital Fund will be maintained as a separate escrow to be used solely for Repairs and Improvements to the Leased Premises and Partnership Property and will not inure to the benefit of the District.

Notwithstanding, if a Partnership Default occurs during the Term or Grace Term and is not cured upon the expiration or termination of this Agreement, the Capital Fund shall not be used by the Partnership until the Partnership default is cured or otherwise.

(b) The Capital Fund may be drawn only upon the signature of the designated signatory or signatories of the District and the Partnership. Disbursement of funds from the Capital Fund shall be made only with the District's approval, which shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, the District shall have no liability for any Repair, replacement or restoration, which shall be paid for with funds in the Capital Fund. The District shall have no obligation to fund any Repair or Improvement to the Leased Premises or Partnership Property. The Partnership remains solely liable for the funding of all Repairs and Improvements from all sources available to the Partnership.

(c) The Partnership shall reimburse to the Capital Fund any amounts taken therefrom for any Repairs or Improvements to the extent that the Partnership receives funds from any source (including, but not limited to, insurance proceeds and recovery from third parties) to reimburse it for costs and expenses incurred in the performance of such Repair or Improvement.

(d) If the Partnership advances payments for Repairs or Improvements approved by the District because of insufficient amounts in the Capital Fund, the Partnership shall be entitled to reimbursement from the Capital Fund when there are sufficient funds in the Capital Fund to make such reimbursement.

8.12 Use and Return of Capital Fund. At the end of the Term or Grace Term, or upon termination of this Agreement, all sums in the Capital Fund shall continue to be held in a separate escrow account, exclusively for the purpose of funding Repairs and Improvements that relate to the Partnership's use of the Leased Premises and Partnership Property (except for Partnership Property removed by the Partnership) hereunder, until such Repairs have been completed, and any remaining funds shall be returned to the District. Nothing contained in this Section 8.12 shall be interpreted to limit the Partnership's obligation to bear the costs of all Repairs and Improvements that relate to the Partnership's use of the Leased Premises and Partnership Property.

8.13 Emergency Repairs. If the Partnership reasonably determines that the health or safety of persons or property will be jeopardized absent the immediate commencement of a Repair, the Partnership may commence such Repair without the prior written approval of the District. The Partnership shall provide the District monthly during the Term and Grace Term, a report of all such emergency Repairs made by the Partnership.

8.14 Competitive Process. The Partnership shall ensure that contracts for the performance of any Repair work are fair and competitive. Upon request by the District, the Partnership must provide evidence, satisfactory to the District, of such competitiveness.

8.15 Limitation of Responsibility. The making of any advance by the District shall not constitute or be interpreted as either (a) an approval or acceptance by the District of the work done through the date of the advance, or, (b) a representation or indemnity by the District to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the plans and specifications, the workmanship and materials used in any Repair, and the exercise of any other right of inspection, approval, or inquiry granted to the

District in this Agreement are acknowledged to be solely for the protection of the District's interest, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on the District to any party. No disbursement or approval by the District shall constitute a representation by the District as to the nature of any Repair, its construction or its intended use for the Partnership or for any other person, nor shall it constitute an indemnity by the District to the Partnership or to any other person against any deficiency or defects in any Repair or against any breach of contract.

8.16 Affirmative Covenants. The Partnership covenants and agrees with the District the Partnership will:

(a) Project Claims and Litigation. Subject to the Partnership's actual knowledge, promptly inform the District of (1) all material adverse changes in the financial condition of any general contractor; (2) any litigation and claims, actual or threatened, affecting any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises, Partnership Property, or the general contractor therefor, which could materially affect the successful completion of any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises or Partnership Property, or the ability of the general contractor therefor to complete the Repair, Improvement or other repair, replacement or restoration, as agreed.

(b) Payment of Claims and Removal of Liens. (1) Cause all claims against the Partnership, the Leased Premises or the District for labor done and material and services furnished in connection with any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises or Partnership Property, including but not limited to any claims made against the District pursuant to §31-26-107 of the Colorado Revised Statutes, to



be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises or Partnership Property for a continuous period of thirty (30) days or more, and (4) other than with respect to MLB Liens, take all reasonable steps necessary to remove all claims of liens against the Leased Premises or Partnership Property or any rights or interests appurtenant to the Leased Premises or Partnership Property. Upon the District's request, the Partnership shall make such proper demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with any Repair, Improvement or any other repair, replacement or restoration affecting the Leased Premises or Partnership Property. The Partnership shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by the Partnership, or upon the filing of any claim pursuant to §38-26-107 of the Colorado Revised Statutes, provide the District with a surety bond issued by a surety acceptable to the District sufficient to release the claim of lien or to pay any amount claimed beyond any bonds obtained by the Partnership pursuant to §§ 38-26-105 and 38-26-106 of the Colorado Revised Statutes as required by Section 6.11 of this Agreement, deposit with the District an amount satisfactory to the District for the possibility that the contest will be unsuccessful, or provide other security reasonably acceptable to the District. If the Partnership fails to remove any lien or pay any claim on the Leased Premises or Partnership Property or provide a bond or deposit pursuant to this provision, the

District may pay such lien or claim or may contest the validity of the lien or claim, and the Partnership shall pay all costs and expenses of such contest, including the District's reasonable attorneys' fees.

8.17 Expedited ADR Regarding Use of Capital Fund. Disputes regarding the approval of the use of funds from the Capital Fund pursuant to Article VIII hereof shall be determined using an expedited alternative dispute resolution process ("Expedited ADR"). The District and the Partnership shall mutually agree on a qualified person to resolve Capital Fund Disputes, and will designate the person as the "Neutral" to whom Capital Fund Disputes are to be submitted for resolution under this Section 8.17.

If the person designated as the Neutral refuses, or for any other reason is unable to serve, as the Neutral with respect to a given Capital Fund Dispute, the District and the Partnership shall promptly designate another individual to serve as the Neutral with respect to such Expedited ADR Dispute. Such other individual shall be independent of the District and the Partnership (and their respective Affiliates) and shall hold no financial interest in, or have any material financial or personal relationship with, either the District or the Partnership (or their respective Affiliates). Such individual shall be employed by a nationally-known architecture or design firm and shall have experience in the design and/or construction of Major League Baseball facilities.

The Expedited ADR shall be conducted by the Neutral at a time and location in the City and County of Denver, Colorado selected by the Neutral. The Neutral shall give the District and the Partnership reasonable notice of the Expedited ADR, and shall make reasonable efforts to accommodate the schedules of the District and the Partnership in a manner that does not delay the prompt resolution of the issue(s) to be decided by the Neutral. The Neutral shall conduct the Expedited ADR in such manner as the Neutral deems appropriate but consistent with the

provisions of this Section 8.17. The District and the Partnership intend that the Neutral have the sole and exclusive authority and power to resolve Expedited ADR Disputes by making the decisions described herein, including determining whether an Improvement is consistent with the "Best of Class" standard for a Major League Baseball ballpark. The Neutral shall not have the power or authority to award any damages or require any payments other than those described in the last paragraph of this Section 8.17.

There shall be no discovery permitted with respect to any Expedited ADR other than that required by the Neutral, and each of the District and the Partnership shall present its position with respect to the issue(s) to be determined by such Expedited ADR by an oral presentation to the Neutral. Each of the District and the Partnership shall be given the opportunity to hear and orally respond to the other's presentation to the Neutral, and to present documents to the Neutral in support of such party's position. The Neutral shall have the right to limit the documents presented to the Neutral to assure a prompt resolution of the issue(s) to be determined by the Neutral. Each of the District and the Partnership may have its counsel present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than required or permitted by the Neutral.

The District and the Partnership shall cooperate in good faith to permit a conclusion of the Expedited ADR within seven (7) days following the submission of the Expedited ADR Dispute to the Neutral.

The District and the Partnership shall use Expedited ADR exclusively, rather than litigation, as a means of resolving all Capital Fund Disputes. The written award by the Neutral shall be the binding, final determination on the merits of the Capital Fund Dispute, and shall preclude any subsequent litigation on such merits. The District and the Partnership agree that any

disputes which arise out of such a written award shall be resolved exclusively by Expedited ADR pursuant to this Section 8.17, provided that the District and the Partnership may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Expedited ADR award in accordance with Applicable Law. The fees and costs of the Neutral shall be borne as directed by the Neutral; provided, however that the substantially prevailing party in Expedited ADR shall be entitled to reimbursement for any costs of such proceedings, reasonable attorneys' fees, reasonable costs of investigation and any other expenses incurred in connection with such Expedited ADR in the manner directed by the Neutral.

## **ARTICLE IX**

### **UNTENANTABILITY**

9.1 Alternate Site. If the Stadium is rendered untenantable in whole or in any material part (as defined in Section 16.1), then for the period of such untenantability, the Partnership shall be entitled to make arrangements for an alternate site (either within or outside of the Boundaries) for any Major League Baseball Games during any such Major League Baseball Season throughout the Term and Grace Term. Notwithstanding any provisions herein to the contrary, any such period of untenantability shall not give the Partnership any right to terminate this Agreement, unless the Stadium is rendered untenantable in whole or in any material part within the last five (5) years of the Term or Grace Term and a new lease agreement or long term extension (at least five (5) years) of this Agreement has not been agreed to between the parties to this Agreement or their successors in interest.

9.2 Continuing Obligations. Any period of untenantability shall not relieve the Partnership of any of its necessary Stadium Management obligations hereunder; however, the

Partnership shall not be obligated to make any payments to the District pursuant to Section 4.2(b) for any such period of untenability.

9.3 Rebuilding Obligations. If it becomes necessary for the District to rebuild the Stadium, the District will only be required to complete such rebuilding to the extent it receives insurance proceeds sufficient to effectuate the same. If such insurance proceeds are not sufficient to cover the entire cost of rebuilding, any rebuilding shall be as agreed to between the District and the Partnership.

The District shall receive and hold, in its name, all insurance proceeds payable due to the destruction of the Stadium from forces outside of the District's control. If the Stadium is not rebuilt after destruction, the District shall be entitled to disburse all insurance proceeds received as required by the Act.

The District shall have no obligation to rebuild any portion of the Leased Premises during the last five years of the Term or Grace Term unless a new lease agreement or long-term (at least ten (10) years) extension of this Agreement has been agreed to between the parties to this Agreement or their successors in interest. If a decision is made to not rebuild the Stadium, either party shall have the right to terminate this Agreement.

## **ARTICLE X**

### **RIGHT OF ENTRY**

Notwithstanding the provisions of Section 8.9, the District and its agents and representatives, with notice to the Partnership, during the Term and Grace Term, shall have rights of access and entry into and upon the Leased Premises and Partnership Property, provided any such entry does not unreasonably interfere with the Partnership's operations. The District shall comply with all security provisions regarding access to the Leased Premises and

Partnership Property. The Partnership shall, as part of such security provisions, provide for District access and shall cooperate fully with the District in its entry into and upon the Leased Premises and Partnership Property.

## ARTICLE XI

### DEFAULT AND REMEDIES

11.1 Default by the Partnership. The occurrence and continuance of any one or more of the following events constitutes a default by the Partnership under this Agreement ("Partnership Default"):

(a) Failure by the Partnership at any time to pay any sums payable by the Partnership to the District hereunder within ten (10) days after notice from the District that any such payment is past due if not paid when due;

(b) Failure by the Partnership to obtain any advance approval of or give advance notice to the District required by this Agreement prior to any material action or omission by the Partnership and such failure continues for 10 days after notice from the District;

(c) Failure by the Partnership to observe or perform any other covenant, agreement, condition or provision of this Agreement, if such failure shall continue for more than thirty (30) days after notice of such failure is given to the Partnership by the District; provided, however, that the Partnership shall not be in default with respect to matters that cannot be reasonably cured within thirty (30) days, so long as the Partnership has promptly commenced such cure, diligently proceeds in a reasonable manner to complete the same thereafter, and effectuates such cure within one (1) year after commencing such cure;

(d) the Partnership admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for the Partnership or for a major part of its property;

(e) a trustee or receiver is appointed for the Partnership or for a major part of its property and is not discharged within ninety (90) days after such appointment;

(f) bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against the Partnership, and, if instituted against the Partnership, are allowed against it or are consented to by it or are not, dismissed within ninety (90) days after such institution; or

(g) any action of the Partnership results in a Material Adverse Effect upon the District or could so result with the passage of time;

(h) failure by the Partnership to observe or perform any covenant, agreement, condition or provision of the Ground Lease.

11.2 District's Remedies. If a Partnership Default occurs, in addition to any other rights or remedies the District may have at or in equity, the District shall have the following rights:

(a) The District may enforce the provisions of this Agreement and may enforce and protect the rights of the District hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of monetary damages (including consequential damages) and all moneys due or accrued or accruing and not yet paid from the Partnership under any of the provisions of this Agreement, or any other relief or remedies to the extent permitted by law, by filing a cause of action or actions for such damages,

equitable relief, of other appropriate remedies or relief from the Partnership in any court of competent jurisdiction.

(b) After the time when the District has given notice and any applicable cure period provided has expired, if any sums payable by the Partnership shall remain due and payable, or after the time for performance by the Partnership of any other term, covenant, provision or condition of this Agreement, or before the expiration of that time in the event of a bona fide emergency (in which case the District shall only be required to give notice as is reasonable and practical under the circumstances), the District may, at the District's election (but without obligation), make any payment required of the Partnership under this Agreement, or perform or comply with any covenant or condition imposed on the Partnership under this Agreement, as the District deems advisable. The amount so paid plus the cost of such performance or compliance, plus interest on such sums at the rate of four percent (4%) above Wells Fargo Bank, National Association's (or its successor bank(s)) prime lending rate, shall be deemed to be additional rent payable by the Partnership immediately upon demand. No such payment, performance, or compliance by the District shall constitute a waiver of default or of any remedy for default. The District may, with notice to the Partnership and at any time or from time to time, charge, set off, and otherwise apply all or any part of any costs incurred by the District in connection with its performance of the Partnership's obligations against any of the District's obligations now or in the future.

(c) Upon a default by the Partnership in performing its Stadium Management functions and after a determination that such default is a material default pursuant to the provisions of Section 8.8, the District may terminate the Partnership's management authority and responsibilities under this Agreement. Termination of the Partnership's management authorities



and responsibilities pursuant to this section shall not relieve the Partnership of any of its other obligations under this Agreement, including but not limited to its obligation to occupy the Leased Premises for the Term, to continue to make the payments as set forth in Section 4.2, to bear the costs of all Repairs, Improvements, Maintenance, and operations of the Leased Premises and Partnership Property, including, but not limited to the cost to employ a substitute operator/manager and to fund the Capital Fund pursuant to Section 8.11(a). In addition, the District shall be entitled to recover, in addition to all other damages to which it may be entitled pursuant to this Article XI, damages equal to the District's costs and expenses incurred in obtaining, and retaining until the expiration or termination of this Agreement, replacement management services for the Leased Premises and Partnership Property.

(d) The District may retake possession of the Leased Premises without terminating this Agreement.

(e) No termination of any or all of the Partnership's rights under this Agreement shall deprive the District of any of its remedies or actions against the Partnership for past or future rent or other sums due from the Partnership hereunder, nor shall the bringing of any action for rent or other sums or other Partnership Default be construed as a waiver of the right to obtain possession of the Leased Premises.

(f) The District may exercise any of its remedies hereunder with or without exercise of its right to terminate hereunder. No action on the part of the District shall be deemed to be a termination of this Agreement unless expressly stated by the District to be intended to be a termination.

(g) The District shall not be required to post any bond in connection with any action or proceeding filed by the District to enforce Article XIII of this Agreement.

11.3 Default by District. The occurrence of any one or more of the following events constitutes a default by the District under this Agreement ("District Default"):

(a) Failure by the District at any time to pay any sums payable by the District to or on behalf of the Partnership hereunder within ten (10) days after notice from the Partnership that any such payment is past due if not paid when due (no advance or reimbursement to be paid to the Partnership pursuant to Article VIII shall be considered due until such time as all conditions precedent to the Partnership's (or any third party's) entitlement to such advance or reimbursement have been satisfied);

(b) Failure of the District to observe or perform any other covenant, agreement, condition or provision of this Agreement, if such failure shall continue for more than thirty (30) days after notice of such failure is given to the District by the Partnership; provided, however, that the District shall not be in default with respect to matters that cannot be reasonably cured within thirty (30) days, so long as the District has promptly commenced such cure, diligently proceeds in a reasonable manner to complete the same thereafter, and effectuates such cure within one (1) year after commencing such cure; provided further, however, that the extension of such cure period described in the preceding proviso will not be available with respect to the District's failure to observe the covenant of quiet enjoyment or to cooperate as provided herein.

(c) A trustee or receiver is appointed for the District or for a major part of its property and is not discharged within ninety (90) days after such appointment or;

(d) Bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against the District, and, if

instituted against the District, are allowed against it or are consented to by it or are not dismissed within ninety (90) days after such institution.

11.4 Partnership's Remedies.

If a District Default occurs, the Partnership's sole remedy hereunder shall be a suit or suits at law for recovery of monetary damages (including consequential damages) and all moneys due or to become due from the District under any of the provisions of this Agreement. The Partnership may enforce and protect such rights by filing a cause of action or actions for such damages in any court of competent jurisdiction within the Boundaries. The Partnership shall have no right to terminate this Agreement and is entitled to no equitable remedies as a result of any District Default; provided, however, nothing herein shall preclude the Partnership from seeking injunctive relief against the District.

11.5 General Provisions.

(a) No right or remedy herein conferred upon, or reserved to the District or the Partnership is intended to be exclusive of any other right or remedy, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, or in equity or by statute.

(b) No waiver by either party of any breach of obligations, agreements, or covenants herein shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by either party to seek a remedy for any breach by the other party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach, nor shall any express waiver by either party be deemed to apply to any other existing or subsequent right to remedy any default by the other party, nor shall any waiver by either party of any default or breach by the other party in the performance of any of the covenants or obligations

of such other party under this Agreement be determined to have been made by the party against which the waiver is sought to be charged unless contained in a writing executed by such party.

(c) In the event that either party fails to pay any payment required hereunder when due, then, without limiting any other rights of the non-defaulting party, the defaulting party shall be liable for interest thereon at the rate of four percent (4%) above Wells Fargo Bank, National Association's (or its successor bank(s)) prime lending rate from the date that such installment was due until the date paid in full.

## **ARTICLE XII**

### **SURRENDER OF LEASED PREMISES**

12.1 General. Upon the expiration or termination of this Agreement (by lapse of time or otherwise) the Partnership shall peaceably deliver up and surrender the Leased Premises to the District in good order, Maintenance, and Repair. The Partnership shall surrender to the District all keys for the Leased Premises at the place then fixed for the receipt of notice by the District, and shall notify the District in writing of all combinations of locks, safes and vaults, if any. The Partnership's obligations to observe and perform the covenants set forth in this Article XII shall survive the expiration or earlier termination of this Agreement (by lapse of time or otherwise); provided however, that if the Partnership has a continuing obligation, upon expiration or termination of this Agreement, to perform or complete any Repair(s), alterations or Improvement(s) and the Capital Fund contains, in the District's sole discretion, adequate funds to complete such Repair(s), alterations or Improvement(s), the Partnership may surrender the Leased Premises, waive claim to all or that portion of the Capital Fund required to cover the cost of such Repairs, alterations or Improvements pursuant to Section 8.11 or elsewhere in this

Agreement, and be relieved of all liability for the performance or completion of such Repair or Improvement.

12.2 District's Property. At the expiration or termination of this Agreement (by lapse of time or otherwise), all structures and fixtures incorporated into the Leased Premises shall be deemed a part of the Leased Premises and the same shall not be removed, except that upon the expiration or termination of this Agreement, Partnership Property, or any part thereof, shall be incorporated into the Leased Premises only if such Partnership Property is purchased by the District at the then fair market value, as determined pursuant to Section 2.1, for such Partnership Property. The District may require the Partnership to remove the Partnership Property, or any part thereof, which the District has not purchased and the Partnership has not voluntarily removed upon the expiration or termination of this Agreement, from the Stadium Land. Subject to the provisions of Section 2.1, if the Partnership Property, or any portion thereof designated by the District, is not removed from the Stadium Land within a reasonable time after the District's written request to so remove, not to exceed ninety (90) days, the Partnership Property, or designated portion thereof, shall be deemed abandoned, and shall, at the District's election, become part of the real property constituting the Leased Premises, with title thereto held by the District or its successors in interest. Thereafter the District may, at its option, (a) cause that property to be removed at the Partnership's expense, (b) sell all or any part of such property at public or private sale, without notice to the Partnership; or (c) declare that title to such property shall be deemed to have passed to the District.

12.3 Abandoning Leased Premises. The Partnership shall not vacate or abandon the Leased Premises at any time during the Term or Grace Term. If the Partnership does so vacate or abandon the Leased Premises or is dispossessed by process of law, any Partnership Property

which may be left on the Leased Premises following such abandonment or dispossession shall be deemed to have been abandoned by the Partnership, and in that event such property shall be disposed of by the District in accordance with the provisions of Section 12.2. The District agrees that the Partnership shall not be deemed to have abandoned or vacated the Leased Premises during any Off-Season, so long as the Partnership's Stadium Management obligations are being performed by the Partnership or a replacement manager for the Leased Premises if the Partnership has been terminated as manager pursuant to the provisions of section.

### **ARTICLE XIII**

#### **RELOCATION OF TEAM**

The Partnership acknowledges that the District will be irreparably harmed by the relocation of the Team to a location other than the Leased Premises during the Term of this Agreement. Accordingly, the Partnership agrees as follows:

(a) The District does not have an adequate remedy at law for breach of this Article XIII.

(b) Except during any period of untenability pursuant to Article IX or temporary taking pursuant to Section 16.3, the Partnership shall not apply to the BOC for approval to allow the Team to play any of the Team's regular season or postseason home games anywhere other than in the Stadium during the Term, except as permitted under this Agreement.

(c) The Partnership recognizes that the Stadium was constructed, the sales tax was imposed, and the bonds were issued solely to bring the Team and the franchise to the District, and agrees that in the event of a violation of this Article XIII, the District shall, without posting any bond, be entitled to seek and obtain an injunction from the District Court of the City and County of Denver, Colorado, or any other court of competent jurisdiction, to enjoin any

violation of this Article XIII. Additionally, the District shall have the right to enforce any breach of Sections 5.1(g)(iii) or 23.4 through specific performance as provided in Section 11.2(a), or otherwise as provided in this Agreement.

#### **ARTICLE XIV**

##### **SALE OF FRANCHISE**

Upon sale of the Franchise or 80% of the beneficial interests in the Partnership during the Term, or Grace Term, the Partnership shall pay to the District an amount equal to 2% of the net profit realized by the Partnership or the selling partners or beneficial owners of the Partnership, as the case may be, not to exceed \$2 million. Net profit shall be the gross proceeds of the sale less capital contributions (or capital contributions of partners selling their beneficial interests) to the Partnership, plus a five percent (5%) imputed annual return on such capital contribution(s) and less Partnership debt if such debt is not assumed or paid by the purchasing entity. The sale of the Franchise or 80% beneficial interests in the Partnership to any person or entity or any affiliate thereof or related person who is a partner, member or a stockholder of a partner on the date of this Agreement and who has been a partner, member or a stockholder of a partner in the Partnership for at least three (3) years prior to the subject sale will not trigger this profit sharing provision. Individual sales of the Partnership interests in the Partnership and sales of stock of the general partner of the Partnership will not trigger this profit-sharing provision, provided such sales do not result in the sale of 80% or more of the beneficial interests in the Partnership to a person or entity or related persons or entities that have not been a partner or partners in the Partnership for at least three (3) years prior to the initial sale, subsequent to the Commencement Date, of any beneficial interest to such person(s) or entity(ies). Nothing in this Article XIV shall

be interpreted as limiting the Partnership's obligations or the District's rights set forth in Article XIII.

## **ARTICLE XV**

### **ASSIGNMENT**

The Partnership shall not assign this Agreement, except with the prior written consent of the District which consent may be withheld at the sole discretion of the District. Notwithstanding the foregoing, it is agreed that the District will consent in writing to an assignment of this Agreement to any person, firm, corporation or entity which acquires the Franchise now held by the Partnership in accordance with applicable MLB Rules and Regulations and subject to the prior compliance with all the provisions of this Agreement, including the provisions of Article XIII; provided such assignee assumes unconditionally in writing in advance all of the Partnership's past, present and future obligations hereunder and agrees to be bound hereby. Upon the effective date of any such assignment, provided the District has received from the Assignee the written assumption of obligations referred to in the previous sentence in form and substance satisfactory to the District, the Partnership shall have no further liability hereunder.

## **ARTICLE XVI**

### **EMINENT DOMAIN**

16.1 Termination for Condemnation. In the event that any material part of the Leased Premises shall at any time during the Term be taken by exercise of the power of eminent domain ("Condemnation"), whether by formal condemnation proceedings or by purchase under threat of exercise of the power of eminent domain proceedings, this Agreement shall terminate on the date on which possession is required to be delivered to the condemning authority. As used herein, a "material part" shall mean any loss of Stadium seating in excess of a number of seats having a



face ticket price equal to ten percent (10%) or more of the aggregate face ticket price of all sales in the Stadium, loss of any material portion of the concourse area or the failure of the District, within twelve (12) months after any Condemnation of parking facilities on the Leased Premises, to have on the Leased Premises or adjacent land at least seventy-five percent (75%) of the parking spaces that were available to the Partnership immediately prior to the Condemnation, including spaces acquired with condemnation proceeds as provided in Section 16.4.

Notwithstanding, the Partnership may elect in its sole discretion to treat any loss as not a "material part" of the Leased Premises, and this Agreement will not terminate upon such Condemnation. The Partnership must make any such election within fifteen (15) days after an award of immediate possession of the condemned portion of the Leased Premises to the condemning authority and must provide written notice of such election to the District within that same fifteen (15) days. If this Agreement terminates pursuant to the provisions of this Section 16.1, all rights, obligations and liabilities of the parties hereto shall end as of the effective date of such termination, without prejudice to any rights which have accrued prior to such termination.

16.2 Performance of Work. If there shall be a Condemnation and this Agreement shall not terminate as a result thereof in accordance with the provisions of Section 16.1, the District shall endeavor to perform any and all work necessary to restore the Stadium to a complete architectural unit suitable for the Partnership's use in as expeditious a manner as possible, with the costs of such restoration to be borne as agreed to by the District and the Partnership, provided, however that the District shall have no obligation to perform such restoration unless and until an agreement regarding costs is reached. All proceeds of any condemnation award or settlement shall be used to pay for costs of restoration, including, but not limited to, the purchase of any necessary additional real property.

16.3 Temporary Taking. In the event of any temporary taking of the Leased Premises or any portion thereof for public use, this Agreement shall not terminate by reason thereof, and the rights and obligations of the parties shall continue in full force and effect as provided herein except that during any period of a temporary taking of the Stadium or a material part thereof (as defined in Section 16.1), the Partnership shall be entitled to make arrangements for an alternative site (either within or outside of the Boundaries) for any Major League Baseball Game, and the Partnership shall be relieved of its Stadium management responsibilities during the period of such temporary taking to the extent such management responsibilities are inconsistent with the terms of the taking, and shall not be liable for Payment of rent as set forth in Section 4.2(b) during the time of such temporary taking.

The Partnership shall be entitled to make a separate claim against the condemning body for an award of any damages sustained by it as a result of such temporary taking.

16.4 Condemnation of Parking Facilities. If more than five percent (5%) of the parking spaces located on the Leased Premises at the time of any Condemnation are taken by such Condemnation, the District shall use the proceeds received as a result of the Condemnation to construct on the remaining Leased Premises, or acquire on adjacent land, substantially similar parking facilities to the extent possible with such proceeds. The District, alternatively, upon written consent signed by the Partnership and the District, may deposit any such proceeds into the Capital Fund established pursuant to Section 8.11 and use such funds in accordance with Article VIII.

## ARTICLE XVII

### SALE OF STADIUM LAND AND PURCHASE OPTION

Section 34-14-129 of the Act provides that the District cannot sell the Stadium Land to any buyer other than a "qualified" buyer. The District shall accept input from the Partnership, as to what criteria will define a "qualified" buyer during the Term or Grace Term. The Board, however, shall have the ultimate authority to determine, in its sole discretion, what criteria will define a "qualified" buyer.

If at any time during the Term or Grace Term the District proposes to sell the Leased Premises including any remaining interest in the Ground Lease to a third-party offeree, the District will first give the Partnership a written offer to sell the Leased Premises including any remaining interest in the Ground Lease to the Partnership on the same terms and conditions on which the District proposes to sell the Leased Premises including any remaining interest in the Ground Lease to the third-party offeree. The Partnership must provide the District with a written acceptance or rejection of such offer within thirty (30) days after receipt. Failure to provide such acceptance or rejection within that time shall be deemed a rejection of the District's offer and the District shall thereupon be entitled to proceed with its sale to the third-party offeree upon the terms and conditions of the original offer. If at any time during the Term or Grace Term the Partnership shall desire to purchase the Leased Premises including any remaining interest in the Ground Lease, the District will negotiate in good faith to sell the Leased Premises including any remaining interest in the Ground Lease to the Partnership, subject to all rules, ordinances, regulations, laws or other agreements by which the District is or may be bound. If the Partnership accepts any contract for sale from the District, notwithstanding anything in this Agreement to the contrary, such Contract shall be specifically enforceable by each party against the other.

Notwithstanding the foregoing, the District acknowledges that it may not sell the Stadium Land and/or the Leased Premises, other than Lot C, if the MLB Rules and Regulations would prevent the prospective purchaser from owning the Stadium and/or land surrounding where a Major League Club plays (e.g., potential purchasers who have any ownership or management involvement in gambling activities, performance enhancing drugs or any professional baseball club). Prior to any sale, the District shall provide the Partnership and BOC with at least thirty days' prior written notice of the prospective purchaser, including any involvement of such prospective purchaser set forth in the preceding sentence. Such sale may not occur until the prospective purchaser complies with any guidelines or conditions required by the BOC with respect to such sale and the Partnership receives all necessary MLB Approvals.

### **ARTICLE XVIII**

#### **STADIUM SECURITY AND CROWD CONTROL**

18.1 Event Security. The Partnership shall provide, at its expense, at all Major League Baseball Games, Baseball Related Events and Non-Baseball Events at the Stadium, such security, traffic control, police, and crowd control personnel as shall be required for such purposes, except that such security, traffic control, police and crowd control for the District's Non-Baseball Events shall be at the District's or other user's expense. The Partnership will permit and the District will utilize the Partnership's security and crowd control administrative personnel for the District's Non-Baseball Events.

18.2 Twenty-Four (24)-Hour Security. The Partnership, at its expense, will provide such security guards and night watchmen as may reasonably be necessary in order to provide twenty-four (24) hours per day, year-round, protection and security of the Leased Premises and Partnership Property.

## ARTICLE XIX

### CONCESSIONS

19.1 Partnership Rights. Except as expressly provided in this Agreement, including Section 19.2, the Partnership shall have all rights to the concessions operated on the Leased Premises, including the right and duty to select concessionaires and to negotiate and enter into concession agreements for the Leased Premises for a term no longer than the Term.

19.2 Concessionaire Agreement. The Partnership will obtain, or has obtained through a competitive process, a concession agreement that will provide: (a) the concessionaire will service all events at the Stadium, including Non-Baseball Events sponsored by the District, on the same terms (including concession commissions) as Baseball Related Events; (b) the concessionaire will clean and Maintain all concession areas; (c) the concessionaire will name the District and the Partnership as insureds, as appropriate, in all insurance policies required to be held by the concessionaire pursuant to the concession agreement and this Agreement; (d) the concessionaire and the Partnership will indemnify the District in connection with the operation of the concession areas and in connection with all concession activities; and (e) the Partnership will determine the prices and quality of the products sold by the concessionaire, and the Partnership will determine the products to be sold.

19.3 Additional Stands. The Partnership agrees to not construct or place concession stands, portable or other, in the Stadium that will unreasonably restrict the view of the Playing Field from the main concourse of the Stadium.

19.4 Environmental Responsibilities. The Partnership shall encourage its Concessionaires to demonstrate an environmental awareness by managing their operations to

include recycled and recyclable paper and plastic products and no toxic cleaners in their operations and otherwise practice on-going environmental awareness.

## ARTICLE XX

### ADVERTISING AND SIGNS

20.1 Stadium Signs. Subject to the provisions of Sections 20.4, 24.9, and 26.2 herein, the Partnership shall have the exclusive right to: (a) sell, and at its sole expense create, install and maintain such advertising panels and maintain signs and other advertising on the Stadium scoreboard and to receive and retain all revenues therefrom; (b) at its expense, create and erect additional signs in the Stadium for such advertising which do not materially or adversely affect the Stadium structure or design integrity; (c) determine the size, form and content of such advertising; (d) ensure compliance with all applicable laws and regulations and obtain all necessary governmental approvals for such signs; and (e) at its expense, create and erect additional informational and directional signs of a non-advertising nature; all only to the extent that such advertising and signs are not detrimental to the maintenance of the Stadium as a first-class facility, and only if such construction does not have a Material Adverse Effect on the District.

20.2 District Advertising. In its temporary advertising for Non-Baseball Events held by the District, if any, the District shall not violate any valid and binding exclusivity agreements relating to advertising in the Stadium entered into by the Partnership or the MLB Rules and Regulations as to which the District has been given notice by the Partnership. The District shall request a list of such exclusivity agreements prior to any Non-Baseball Event and the Partnership shall have seven (7) days to provide such a list to the District.

20.3 Other Advertising. Subject to the provisions of Section 26.2, the Partnership may conduct, or permit to be conducted, in the Stadium, any and all other forms of advertising, including any advertising to be worn or carried by the Partnership's or any concessionaires' personnel, promotional events sponsored by advertisers; logos or other forms of advertising to be affixed to or included with cups, hats, t-shirts, and other concession items or giveaways, real time signage on television broadcasts, and any and all other forms of such, advertising or promotion.

20.4 Approval Rights. The District shall have a right to approve the size and location of all advertising and signs located on the exterior of the Stadium structure or elsewhere on the Stadium Land outside of the Stadium, which approval shall not be unreasonably withheld. The Partnership shall submit a request for approval of any such proposed advertising or signs it least ninety (90) days prior to initiating the implementation of any such advertising or signs. Failure of the District to promptly object to any proposed advertising and/or signs within sixty (60) days after receipt of a request for approval therefore may be conclusively relied on by the Partnership as constituting the District's approval thereof. Nothing in this Section 20.4 or elsewhere in this Article XX shall be construed as permitting the Partnership to erect additional signs on the exterior of the Stadium or billboards or other signs on the Stadium Land, which is expressly prohibited by applicable laws, ordinances, rules, or regulations.

## **ARTICLE XXI**

### **BROADCAST FEES**

All rights and other fees and arrangements relating to the production and distribution of the Team's Major League Baseball Games or Baseball Related Events for commercial television, non-commercial television (by over-the-air, cable or otherwise), including direct sales of

advertising by the Partnership, radio broadcast or any other media fees and revenues, and any income attributable to such broadcasts (whether in or out of the local market) ("Broadcast Fees") shall be retained and exclusively controlled by the Partnership. Broadcast Fees for Non-Baseball Events held by the Partnership shall be distributed according to Section 4.2(d). If a Non-Baseball Event is hosted by the Partnership and broadcast under any MLB broadcast agreement, MLB shall have the right to all revenues from such broadcast. Broadcast Fees for Non-Baseball Events held by the District shall be paid to, retained and exclusively controlled by the District.

## **ARTICLE XXII**

### **COVENANT OF QUIET ENJOYMENT**

The District covenants that if, and so long as, the Partnership materially performs each and every covenant, agreement, term, provision and condition of this Agreement on the part and on behalf of the Partnership to be kept and performed, the Partnership will have quiet and peaceful enjoyment of its rights under the Agreement and will not be disturbed by the District or anyone claiming, by, through or under the District, subject to the covenants, agreements, terms, provisions and conditions of this Agreement.

## **ARTICLE XXIII**

### **ADDITIONAL OBLIGATIONS OF PARTNERSHIP**

23.1 Promotion. The Partnership shall reasonably advertise and promote all Major Baseball League Games, Baseball Related Events, and Non-Baseball Events it conducts at the Stadium.

23.2 Attendance of Children From Low Income Families. The Partnership has established and will maintain the Colorado Rockies Baseball Club Foundation, a Colorado non-profit corporation (the "Foundation"). One of the many purposes of the Foundation is to assure



that children from low income families are able to attend Major League Baseball Games. The Partnership shall be responsible for the operation of the Foundation and realization of its purposes. The District may participate in the activities of the Foundation.

23.3 Public Parking. The District, as owner of the Stadium Land, hereby directs the Partnership, in its capacity as "Manager" thereof, to allow a portion of the parking facilities located on the Stadium Land to be used for paid public parking on days on which no Major League Baseball Games or Non-Baseball Events are being held on the Leased Premises and Partnership Property. The parking facilities to be used for such public parking shall be as agreed to by the District and the Partnership or, if no agreement can be reached, as reasonably designated by the District. In no event will the Stadium Land be used for public parking if it would result in a monetary loss to the Partnership or the District.

23.4 Commitment to Stadium. Except as expressly provided in this Agreement and subject to the MLB Rules and Regulations, the Team shall play all Team Home Games during the Term and Grace Term in the Stadium.

## ARTICLE XXIV

### REPRESENTATIONS BY PARTNERSHIP

The Partnership represents and warrants as follows, as of the date hereof, and as to Sections 24.9 and 24.10 only at all times from and after the date hereof until the expiration or termination of this Agreement:

24.1 Valid Existence. The Partnership is a limited partnership duly organized and validly existing under the laws of the State of Colorado. The Partnership has full partnership power to own its property and conduct its business as presently conducted.

24.2 Power: No Limitation on Ability to Perform. The Partnership has full partnership power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the Partnership. Neither the Partnership's partnership agreement or certificate of limited partnership or the articles of incorporation or by-laws of Colorado Baseball 1993, Inc. (the "Corporation"), the Partnership's general partner, nor any rule, policy, constitution, by-law or agreement of the BOC, nor any other agreement, law or other rule in any way prohibits, limits or otherwise affects the rights or power of the Partnership or the Corporation to enter into and perform all of the terms and provisions of this Agreement and all transactions contemplated hereby. Neither the Partnership nor any of its partners (general or limited, including, without limitation, the Corporation), members or stockholders of any corporate partner, officers, directors, or any of their personal or legal representatives are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of (except the MLB Approvals already obtained by the Partnership), or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by the Partnership and the Corporation of this Agreement or any of the transactions contemplated hereby.

24.3 Valid Execution. The execution and delivery of this Agreement by the Partnership has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Partnership, enforceable against the Partnership in accordance with its terms. The Partnership shall provide to the District a written resolution of the Partnership authorizing the execution of this Agreement.

24.4 Defaults. The execution, delivery and performance of this Agreement (a) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which the Partnership or the Corporation is a party or by which the Partnership's or the Corporation's assets may be bound or affected, (ii) any law, statute, ordinance or regulation applicable to the Partnership or the Corporation, or (iii) the articles of incorporation or by-laws of the Corporation, or the partnership agreement or certificate of limited partnership of the Partnership, and (b) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Partnership or the Corporation.

24.5 Good Standing Corporation. The Corporation is the Partnership's sole general partner, and is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. The Partnership shall provide to the District a certificate of good standing for the Corporation issued by the Colorado Secretary of State.

24.6 Power of Corporation. The Corporation has full corporate power and authority to execute and deliver this Agreement on behalf of the Partnership as the Partnership's sole general partner, and to carry out the terms and provisions of this Agreement, and all transactions contemplated hereby.

24.7 Valid Execution by Corporation. The execution and delivery of this Agreement by the Corporation on behalf of the Partnership as the Partnership's sole general partner has been duly and validly authorized by all necessary action. The Partnership shall provide to the District a written resolution of the Corporation authorizing the execution of this Agreement.

24.8 Team Ownership. The Partnership owns the Team as of the date hereof.

24.9 Compliance With Laws. The Partnership complies and shall comply, at all times, with all laws and regulations applicable to its use of the Leased Premises in accordance with the terms of this Agreement, including Section 10-62.7 of the Denver Revised Municipal Code regarding the Coors Field View Plane, and shall obtain licenses and permits, necessary in connection therewith at its sole cost and expense.

24.10 Maintenance of Good Standing in League. The Partnership is the owner of the Franchise, through which the Team is authorized to play Team Home Games within the Boundaries, and the Partnership or its successor in interest shall maintain the Franchise in good standing with the BOC, subject to the MLB Rules and Regulations.

24.11 Effect of MLB Rules and Regulations. Nothing in this Agreement is in violation of the MLB Rules and Regulations as they currently exist and that nothing in the MLB Rules and Regulations as they currently exist adversely affects the rights and obligations of the District or the Partnership hereunder, including the obligation of the Partnership to have the Team play the Team's regular season and postseason home games at the Stadium. The Partnership will promptly notify the District of any amendment to the MLB Rules and Regulations that affects or may affect this Agreement. In the event any change in or interpretation of the MLB Rules and Regulations eliminates or materially diminishes the District's rights under this Agreement or materially increases the District's obligations under this Agreement, then the parties shall negotiate in good faith to mutually agree upon additional rights and/or amendments to rectify the elimination or material diminishment the District's rights hereunder or the increase in the District's obligation hereunder, within thirty (30) days of any such adverse change or interpretation. The Partnership shall be responsible for any and all reasonable out-of-pocket costs

incurred by the parties in modifying the terms of this Agreement to provide the District with any such additional rights and/or amendments.

## **ARTICLE XXV**

### **REPRESENTATIONS BY DISTRICT**

The District represents and warrants as follows, as of the date hereof and at all times from and after the date hereof until the expiration or termination of this Agreement:

25.1 Valid Existence. Pursuant to §32-14-104 of the Act, the District is a body corporate and politic and a political subdivision of the State of Colorado.

25.2 Power; No Limitation on Ability to Perform. Pursuant to §32-14-107(d), (g) and (h) of the Act, the District, through its Board of Directors, has the power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the District. The District is not bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same.

25.3 Valid Execution. The execution and delivery of this Agreement by the District has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the District, enforceable against the District in accordance with its terms. The District will provide to the Partnership a written resolution of the District authorizing the execution and delivery of this Agreement.

25.4 Defaults. The execution, delivery and performance of this Agreement (a) does not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under: (i) any agreement, document or instrument to which the District is a party or by which the

District's assets maybe bound or affected, or (ii) any law, statute, ordinance or regulation applicable to the District, and (b) does not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the District.

25.5 Compliance With Laws. The District shall comply at all times with all laws and regulations applicable to its ownership of the Leased Premises in accordance with the terms of this Agreement.

## ARTICLE XXVI

### MISCELLANEOUS

26.1 Naming Rights. With respect to Stadium naming rights, the Partnership shall have the right to sell the name of the Stadium in perpetuity. The Partnership has granted the naming rights in perpetuity to Coors Brewing Company or its successors. The District approves the name "Coors Field" for the Stadium and has the right to approve any other name to be attributed to the Stadium, which approval shall not be unreasonably withheld. If the naming rights to the Stadium should become available during the Term, fifty percent (50%) of the revenue from the sale of the naming rights (but not including inventory provided by the Team) shall be paid to the Partnership and fifty percent (50%) of the revenue shall be paid to the District to be placed in the Capital Fund to be used upon such terms as agreed by the Partnership and the District.

26.2 Architectural Drawings and Logo. The District owns architectural renderings of the Stadium, architectural drawings of the Stadium and the Stadium Land, and the Coors Field logo currently used by the District. The Partnership will contribute four percent (4%) of the gross sales amount of all retail sales derived from products utilizing one or more of such renderings, drawings or logo alone, and two percent (2%) of the gross sales amount of all retail sales derived from products utilizing one or more of such renderings, drawings or logo in conjunction with the

Teams logo(s), to the Colorado Rockies Baseball Foundation, in the name of the District. The District hereby licenses the Partnership to use such renderings, drawings or logo in the sale of products during the Term and Grace Term).

26.3 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no promises, agreements, conditions, undertakings or warranties or representations, oral or written, express or implied, between them other than as herein set forth or as specifically referred to herein. This Agreement is intended to be an integration of all prior or contemporaneous promises or agreements, conditions or undertakings between the parties hereto. The District and the Partnership have jointly participated in the drafting of this Agreement and any ambiguity contained in this Agreement shall not be construed against the District or the Partnership solely by virtue of the fact that either the District or the Partnership should be considered the drafter of this Agreement.

26.4 Default Interest, Attorneys' Fees. Except for advances, all amounts payable hereunder by either party shall, from and after the date on which such party is in default in the payment thereof, bear interest at the rate of four percent (4%) per annum in excess of the published prime rate charged from time to time by the Wells Fargo Bank, National Association or its successor bank(s). Should any party hereto be required to enforce any of the provisions of this Agreement as between itself and the other party hereto, through legal proceedings in a court of law or otherwise, the prevailing party shall be entitled to receive all of its costs and expenses of enforcement including reasonable attorneys' fees.

26.5 Notices. All notices, consents, approvals, demands and submissions (hereinafter collectively referred to as a "Notice") shall be in writing and shall be served as provided in this Article XXVI (except as otherwise provided in this Agreement). Any notice to the District shall

be deemed properly given via first class, registered or certified mail, postage prepaid, or if delivered personally (or by bonded courier) to the District at 2195 Blake Street, Denver, Colorado, 80205 (or other address designated by notice so given), to the attention of the Chair of the District or to the District offices at the Stadium addressed to the attention of the individual regularly in charge thereof, with a copy to the District's general counsel, Hogan Lovells US LLP, 1601 Wewatta Street, Denver, Colorado 80202, addressed to the attention of such individual as the District has designated in a Notice to the Partnership. The District shall notify the Partnership of the name of such individual in charge of the District offices at the Stadium and Notices may thereafter be mailed or delivered to such individual until the Partnership has been notified in writing by the District that some other individual is in charge of the District offices and authorized to receive Notices. Any notice to the Partnership shall be deemed properly given via first class, certified or registered mail, postage prepaid, or if delivered personally (or by bonded courier) to the Partnership at Coors Field, 2001 Blake Street, Denver, Colorado, 80205, or its business offices in the Stadium (or other address designated by notice so given), addressed to the attention of the Chief Executive Officer of the Partnership or to any other employee of the Partnership whom the Partnership has designated in a Notice to the District as an individual authorized to receive Notices hereunder, with a copy to the General Counsel at the same address. Any notice shall be deemed to have been given three days after postmarked or when personal service is effected or delivery is refused.

26.6 Force Majeure. Should any fire or other casualty, act of God, earthquake, flood, epidemic, landslide, war, riot, civil commotion, general unavailability of certain materials, strike (except as set forth below), slowdown or labor dispute (any of the foregoing hereinafter referred to as "Force Majeure") prevent performance of this Agreement in accordance with its provisions,



performance of this Agreement by either party shall be suspended or is excused to the extent commensurate with such interfering occurrence, except that the Partnership shall still be obligated for payments to the District pursuant to Section 4.2(a) and payments to the Capital Fund required by Section 8.11(a).

26.7 Reasons for Disapproval. Whenever in this Agreement a party to this Agreement is given the right to approve or disapprove any matter or action, such approval or disapproval shall not be unduly delayed and any disapproval shall be reasonable and shall state the reasons therefor, except where it is specifically provided that a party may withhold approval or otherwise act in its sole discretion. Notwithstanding, the District shall not be deemed to have unreasonably withheld its approval if the District disapproves because it determines, in its sole discretion, that such approval could result in a Material Adverse Effect upon the District.

26.8 Successor Bound. The covenants, terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the District and the Partnership and their respective successors and, to the extent permitted herein, assigns.

26.9 Governing Law. This Agreement is made, and shall be construed, under the laws of the State of Colorado.

26.10 Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify amplify or add to the interpretation, construction or meaning of any provisions of this Agreement or the scope or intent thereof, nor in any way affect this Agreement.

26.11 Plural/Singular. Wherever appropriate herein, the singular includes the plural and the plural includes the singular.

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

26.13 Further Assurances. The Partnership and the District shall execute, acknowledge and deliver, without additional consideration, such instruments and documents and shall take such further actions, the District or the Partnership shall reasonably request of other in order to fulfill the intent of this Agreement and transactions contemplated thereby.

26.14 Anti-Discrimination Clause. The District and the Partnership shall comply with all applicable state, local and federal laws, rules, regulations, executive orders and pertaining to discrimination in employment, unlawful employment practices and affirmative action.

26.15 Material Adverse Effect. The Partnership will not take, permit or cause any action under this Agreement that would have a Material Adverse Effect on the District. "Material Adverse Effect" shall mean an event, action or inaction which results in any of the following:

(a) causing a default under any agreement to which the District or its property is bound including, but not limited to, this Agreement, and of which the Partnership has actual knowledge; or

(b) causing the District to be in violation of any law, regulation, or court or administrative ruling applicable to it or its property;

26.16 Amendment; Waiver. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Agreement. This Agreement cannot be altered, amended or modified and no provision can be waived by the Partnership without obtaining all necessary MLB Approvals in advance thereof. The failure of the Partnership or the District to insist on any one or more instances upon

the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Partnership or the District of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the District or the Partnership. The payment by either party of sums due and payable hereunder, with knowledge of the breach of any covenant, agreement, term, provisions or condition herein contained, shall not be deemed a waiver of such breach.

26.17 Severability. If any article, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

26.18 No Joint Venture. Nothing in this Agreement shall be association between the District and construed as creating a joint venture, partnership, or any other association between the District and the Partnership. To the extent that the Partnership performs Stadium Management activities hereunder, the Partnership shall be an independent contractor of the District.

26.19 Words of Limitation. Whenever the words "including but not limited to" or "by way of example but not limitation" or any other similar prefatory words are used throughout this

Agreement, such words shall be deemed to preface an example or list of examples, which example(s) are set forth for informational purposes only and not for purposes of limitation.

26.20 No Third Party Beneficiary. The parties understand and agree that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Partnership, or their successors or assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity whatsoever on such Agreement. It is the express intention of the District and the Partnership that any person or entity other than the District or the Partnership, or their successors or assigns, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26.21 Contributions from Denver or State of Colorado. The Partnership shall be entitled to seek and retain any funds from either the City and County of Denver or the State of Colorado in relation to or in recognition of the economic benefit of the Stadium or related to the development of the West Lot.

## **ARTICLE XXVII**

### **ARBITRATION**

27.1 Arbitration. Except for Expedited ADR Disputes to be resolved pursuant to Section 8.17, any event of default or any other dispute between the District and the Partnership under, in connection with or relating to this Agreement (each, an "Arbitration Dispute") shall be submitted to binding arbitration ("Arbitration") under this Section 27.1.

The Arbitration shall be conducted before the Judicial Arbiter Group ("JAG") at a location in the City and County of Denver, Colorado selected by the Arbiter. Either party may commence the arbitration by written demand to the other party with a copy to JAG. JAG shall

provide to the parties, within fifteen (15) days after the demand, a list containing an odd number of the names of at least five (5) potential arbiters. The parties, beginning with the Partnership, shall each strike one name in turn until only one (1) name remains. If it is one party's turn and that party does not strike a name within three (3) business days, then that turn is forfeited, and the other party shall strike the next name. When only one (1) name remains, the remaining person shall be selected as the single arbiter. The Arbitration shall be conducted under the Colorado Arbitration Act, subject to this Agreement, the MLB Rules and Regulations and any other documents executed by the parties hereto. In the event of a conflict between this Section 27.1 and the Colorado Arbitration Act, this Section 27.1 shall govern. The District and Partnership shall make reasonable efforts to agree on discovery rules and to the extent and scope of discovery with respect to any Arbitration Dispute and as outlined in the Colorado Arbitration Act. In the event the parties are not able to agree on such rules and the extent and scope of such discovery, all issues relating to such discovery shall be resolved by the Arbiter in his/her sole discretion. Unless waived by each of the parties participating in the Arbitration, the Arbiter shall conduct an Arbitration hearing at which the parties and their respective counsel may be present and have the opportunity to present evidence and examine cross-examine witnesses. Witnesses shall, unless waived by the parties, present testimony under oath.

If the Arbiter determines that the matters or issues involved in any Arbitration Dispute are outside the scope of the Arbiter's expertise, the Arbiter shall have the right to retain and rely on experts with respect to such matters and issues. The cost of any expert retained by the Arbiter shall be a cost of the Arbitration to be paid as set forth herein. Any information obtained by the Arbiter from an expert engaged by the Arbiter shall be disclosed by the Arbiter to both the

District and the Partnership, and each such party shall have the right to present evidence and/or testimony from such party's own expert with respect to such matter or issue.

The parties agree to expedite the arbitration to the fullest extent possible. Unless the parties agree in writing to a different schedule, the arbitration hearing shall be commenced with thirty (30) days from the date of the selection of the arbiter. Within fifteen (15) days following the closing of the hearing, a written award and/or decision shall be made by the arbiter and accompanied by findings of fact and conclusions of law, which shall be contemporaneously delivered to the parties.

The parties hereto shall use Arbitration exclusively, rather than litigation, as a means of resolving all Arbitration Disputes. Notwithstanding any other provision of this Article XXVII to the contrary, in the event any party hereto desires to seek interim equitable relief with respect to an Arbitration Dispute in the form of a temporary restraining order, preliminary injunction or other interim equitable relief concerning an Arbitration Dispute, including specific performance, provisional remedies, stay of proceedings in connection with special action relief or any similar relief of an interim nature, at any time before an arbiter has been selected pursuant to the procedure in this Section 27.1, such party may initiate litigation in in the City and County of Denver to obtain such interim equitable relief ("Equitable Litigation"). Nothing herein shall be construed to suspend or terminate the obligation of any party hereto to promptly proceed with Arbitration concerning the Arbitration Dispute that is the subject of such Equitable Litigation while such Equitable Litigation (and any appeal therefrom) is pending. Regardless of whether such interim relief is granted or denied, or whether such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, the parties shall at all times diligently proceed to complete the Arbitration. Any interim relief granted in such Equitable Litigation, or

any appeal therefrom, shall remain in effect until, and only until, the Arbitration concerning the Arbitration Dispute that is the subject of such Equitable Litigation results in the issuance of an award or decision following Arbitration or until the parties enter into a private written settlement agreement (hereinafter a "Settlement Agreement").

The award and/or decision by the Arbiter shall be the binding, final written determination on the merits of the Arbitration Dispute (including any equitable relief but excluding any award of attorneys' fees or costs awarded or granted in the Equitable Litigation), shall supersede and nullify any decision in the Equitable Litigation on the merits of the Arbitration Dispute, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom. Judgment upon the award rendered by the Arbiter may be entered in any court of competent jurisdiction. The parties agree that any disputes which arise out of a Settlement Agreement resolving an Arbitration Dispute or arising from an arbiter decision shall be resolved exclusively by Arbitration pursuant to this Article XXVII, provided that any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award. Each of the District and the Partnership shall bear its own costs and fees and an equal share of the fees and expenses of the Arbitration and the administrative fees of the Arbitration, including costs and expenses of experts retained by the Arbiter. All aspects of the arbitration shall be treated as confidential. Neither the arbitrating parties, JAG, nor the Arbiter may disclose the existence, content, or results of the arbitration, except as necessary to enforce the award or to comply with legal or regulatory requirements, including but not limited to, the Colorado Open Records Act.

#### ARTICLE XXVIII

## APPROVAL OF MAJOR LEAGUE BASEBALL

28.1 Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by the Partnership hereunder shall in all respects be subordinate to each of the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. The territory within which the Partnership is granted rights is limited to, and nothing herein shall be construed as conferring on the Partnership rights in areas outside of, the Home Television Territory as established and amended from time to time. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities.

For the purposes of this Agreement, the following terms shall have the following meanings:

"BOC" means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Clubs who are party to the Major League Constitution, and any successor organization thereto.

"Commissioner" means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

"Home Television Territory" means the area within which Partnership has television and marketing rights under the MLB Rules and Regulations as may be amended by MLB from time to time, which is defined as of the Effective Date, as set forth in Exhibit G.



"Major League Baseball" or "MLB" means, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, Executive Council and the Ownership Committee, and/or (b) the Major League Clubs acting collectively.

"Major League Baseball Club" or "Major League Club" means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

"Major League Constitution" means the Major League Constitution adopted by the Major League Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major Leagues Central Fund dated as of December 8, 1983, as amended, and the respective constitutions of the former American and National Leagues of Professional Baseball Clubs) as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

"MLB Approval" means, with respect to the Major League Baseball Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such Person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such Person(s)).

"MLB Entity" means each of the BOC, Major League Baseball Properties, Inc., The MLB Network, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, assigns or successors.

"MLB Governing Documents" means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League

Constitution, (b) the Basic Agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Baseball Clubs, and the National Association of Professional Baseball Leagues, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Baseball Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Baseball Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of January 1, 2013, by and among Major League Baseball Properties, Inc., the various Major League Baseball Clubs and the BOC (and the Operating Guidelines related thereto).

"MLB Liens" means liens, encumbrances and restrictions imposed by the MLB Governing Documents or the MLB Rules and Regulations.

"MLB Rules and Regulations" means (a) the MLB Governing Documents, (b) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any other MLB Entity or the Major League Baseball Clubs acting collectively, including, without limitation, agreements or arrangements entered into pursuant to the MLB Governing Documents, and (c) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

"Person" means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, governmental entity or other entity.

IN WITNESS WHEREOF, the Parties have executed this User Agreement, Lease and Management Agreement as of the date first above written.

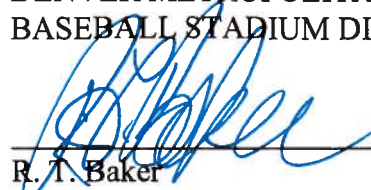
COLORADO ROCKIES BASEBALL CLUB,  
LTD., a Colorado Limited Partnership

By: COLORADO BASEBALL 1993, INC., as  
General Partner

By:

  
Richard L. Morfitt  
Vice-Chairman

DENVER METROPOLITAN MAJOR LEAGUE  
BASEBALL STADIUM DISTRICT



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R. T. Baker  
Chair

EXHIBIT A  
STADIUM LAND

EXHIBIT B  
MAP

EXHIBIT C  
GROUND LEASE

EXHIBIT D  
LOTS A AND B

[ INSERT LEGAL DESCRIPTION ]



EXHIBIT E  
LOT C

[INSERT LOT 5B LEGAL DESCRIPTION]

EXHIBIT F  
DISTRICT OFFICE AND COMMUNITY ROOM

EXHIBIT G  
HOME TELEVISION TERRITORY