



# LEGISLATIVE BRANCH ▪ CITY OF BINGHAMTON

*Sophia Resciniti, City Council President*

*Leighton Rogers, City Clerk*

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**COUNCIL OF THE CITY OF BINGHAMTON  
Special Business Meeting Agenda  
City Hall, 38 Hawley Street, Binghamton, NY 13901  
5:15pm Friday, November 19, 2021**

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**IV. PUBLIC COMMENT**

\*Please note: Residents wishing to submit public comment may do so electronically by emailing their comments prior to 1:00pm on the day of the meeting to [clerk@cityofbinghamton.com](mailto:clerk@cityofbinghamton.com)

**V. SECOND READING LEGISLATION**

**Introductory Ordinance 21-135. Considered in Finance: Strawn**

Bond Ordinance of the City of Binghamton authorizing the construction of various improvements to Mirabito Stadium to comply with the mandates of Major League Baseball, stating the estimated maximum cost of \$2,750,000

**Introductory Resolution 21-96. Considered in MPA: Scanlon**

A Resolution authorizing the Mayor to enter into a second development, sublease, operation and management agreement with Evans Street Baseball, Inc.

**VI. ADJOURNMENT**



**THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK**

Date: November 17, 2021

Sponsored by Council Members: Scaringi, Riley, Friedman, Burns, Strawn, Scanlon, Resciniti

Introduced by Committee: Finance

**ORDINANCE**

*entitled*

BOND ORDINANCE OF THE CITY OF BINGHAMTON  
AUTHORIZING THE CONSTRUCTION OF VARIOUS  
IMPROVEMENTS TO MIRABITO STADIUM TO COMPLY  
WITH THE MANDATES OF MAJOR LEAGUE BASEBALL,  
STATING THE ESTIMATED MAXIMUM COST THEREOF  
IF \$2,750,000, APPROPRIATING SAID AMOUNT FOR  
SUCH PURPOSE AND AUTHORIZING THE ISSUANCE OF  
BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF  
NOT TO EXCEED \$2,750,000 TO FINANCE SAID  
APPROPRIATION

WHEREAS, the Council of the City of Binghamton recognizes the need to provide for the construction of various improvements to Mirabito Stadium in the City to comply with the mandates of Major League Baseball, as more specifically described herein.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. The City of Binghamton, in the County of Broome, New York (herein called the "City"), is hereby authorized to construct various improvements to Mirabito Stadium to comply with the mandates of Major League Baseball (the "Project"). The estimated maximum cost of the Project, including preliminary costs and costs incidental thereto and the financing thereof, is \$2,750,000 and said amount is hereby appropriated therefor, such appropriation having been authorized by the Council pursuant to Ordinance No. \_\_\_\_\_. The plan of financing includes the issuance of bonds of the City in the principal amount of not to exceed \$2,750,000 to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable. Fund balance of the City and/or grant funds received from the United States of America, the State of New York or from any other source, are authorized to be applied towards the cost of said project or redemption of the City's bonds or notes issued therefor, or to be budgeted as an offset to the amounts to be collected for the payment of the principal of and interest on said bonds or notes.

Section 2. Bonds of the City in the principal amount of not to exceed \$2,750,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting

**THE COUNCIL OF THE CITY OF BINGHAMTON**  
**STATE OF NEW YORK**

Date: November 17, 2021

Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance the appropriation referred to herein.

Section 3. The period of probable usefulness applicable to the object or purpose for which said bonds are authorized to be issued, within the limitations of Section 11.00 a. 19(c) of the Law, is fifteen (15) years.

Section 4. The proceeds of the bonds herein authorized, and any bond anticipation notes issued in anticipation of said bonds, may be applied to reimburse the City for expenditures made after the effective date of this ordinance for the purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this ordinance, and any bond anticipation notes issued in anticipation of the sale of said bonds, shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds, and any notes issued in anticipation of said bonds, shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds, and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this ordinance and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and as to executing agreements for credit enhancements, are hereby delegated to the City Comptroller, the chief fiscal officer of the City.

Section 7. The validity of the bonds authorized by this ordinance, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such ordinance, or a summary thereof, are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

**THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK**

Date: November 17, 2021

(c) such obligations are authorized in violation of the provisions of the constitution.

Section 8. This bond ordinance shall take effect immediately, and the City Clerk is hereby authorized and directed to publish the foregoing ordinance, in summary, together with a Notice attached in substantially the form prescribed by §81.00 of the Law in the "The Press & Sun-Bulletin," a newspaper published in Binghamton, New York, having a general circulation in the City and hereby designated the official newspaper of said City for such publication.

**State Environmental Quality Review**  
**Determination of Type II Action**

**Project Number:** None

**Date:** November 19, 2021

This Notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

**Nature of action.** An ordinance authorizing issuance of \$2,750,000 serial bonds to finance improvements to Mirabito Stadium, owned by the City of Binghamton. The projects are for (i) renovation of the existing visitor clubhouse; (ii) renovation of the existing home clubhouse (including women's clubhouse); (iii) construction of a stand-alone weight room; and (iv) installation of video surveillance (including player/staff parking, entrances to the home and visitor clubhouses, female staff facilities and umpire facilities).

**Findings.** The City of Binghamton City Council has determined that the proposed action described above is a Type II action based on §617.5 Type II C (1) maintenance or repair involving no substantial changes in an existing structure or facility, (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, and (21) minor temporary uses of land having negligible or no permanent impact on the environment; and no further environmental review is necessary.

**For Further Information**

Contact Person: Sophia Rescinti, President  
City of Binghamton City Council

Address: City Hall  
38 Hawley Street  
Binghamton, NY 13901

Telephone Number: 607-772-7005 (City Clerk's Office)



**THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK**

Date: November 17, 2021

Sponsored by Council Members: Scaringi, Riley, Friedman, Burns, Strawn, Scanlon, Resciniti

Introduced by Committee: MPA

**RESOLUTION**

*entitled*

A RESOLUTION AUTHORIZING THE MAYOR  
TO ENTER INTO A SECOND DEVELOPMENT,  
SUBLEASE, OPERATION AND MANAGEMENT  
AGREEMENT WITH EVANS STREET  
BASEBALL, INC.

WHEREAS, the City of Binghamton wishes to enter into an agreement with Evans Street Baseball, Inc. for a second development, sublease, operation and management agreement; and

WHEREAS, the lease agreement is attached hereto.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby:

RESOLVE that the Mayor, or his designee, is hereby authorized to enter into an agreement with Evans Street Baseball, Inc. for a second development, sublease, operation and management agreement.



**SECOND AMENDMENT TO DEVELOPMENT, SUBLEASE,  
OPERATION AND MANAGEMENT AGREEMENT**

This SECOND AMENDMENT TO DEVELOPMENT, SUBLEASE OPERATION AND MANAGEMENT AGREEMENT (this "Second Amendment") is entered into as of November \_\_, 2021 (the "Effective Date"), by and between the City of Binghamton, a municipal corporation (the "City"), the Binghamton Urban Renewal Agency, a public corporation existing under and by virtue of the laws of the State of New York ("Lessee"), and Evans Street Baseball, Inc., a Georgia corporation ("Sub-Lessee").

RECITALS:

A. The City entered into a lease agreement (the "Lease") with Lessee covering certain property located at Henry and Fayette Streets, which is more particularly described in the Lease as the Leased Premises, pursuant to which the City leased to Lessee the Leased Premises including the baseball stadium currently known as Mirabito Stadium (the "Stadium"), which serves as the home ballpark for the Binghamton Rumble Ponies (the "Team"), currently the Double-A affiliate of the New York Mets.

B. Lessee entered into a Development, Sublease, Operation and Management Agreement (the "Original Sublease") with Sterling Doubleday Enterprises, L.P. on November 6, 1991 for the Leased Premises.

C. Pursuant to that certain Assignment of Sublease dated May 31, 1994, Sterling Doubleday Enterprises, L.P. assigned all of its interest and obligations under the Original Sublease to Binghamton Mets Baseball Club, Inc. ("BMBC").

D. Pursuant to that certain Development, Sublease, Operation and Management Agreement Amendment dated September 1, 2000 (the "First Amendment"), Lessee and BMBC amended the Original Sublease (the Original Sublease and First Amendment, hereinafter, collectively, the "Amended Sublease").

E. By notice delivered to Lessee by BMBC dated November 2, 2011, BMBC renewed the Amended Sublease for an additional five (5) year term, commencing April 1, 2012 through March 31, 2017, pursuant to Paragraph 27(G) of the Original Sublease and Paragraph 2 of the First Sublease Amendment.

F. By notice delivered to Lessee by BMBC dated August 14, 2014, BMBC renewed the Amended Sublease for an additional five (5) year term, commencing April 1, 2017 through March 31, 2022, pursuant to Paragraph 27(G) of the Original Sublease and Paragraph 2 of the First Amendment.

G. By notice delivered to Lessee by BMBC dated December 28, 2015, BMBC assigned all of its interest and obligations under the Amended Sublease to Sub-Lessee pursuant to Section 18 of the Amended Sublease.

H. By notice delivered to Lessee by Sub-Lessee dated November 12, 2018, Sub-Lessee renewed the Amended Sublease for an additional five (5) year term, commencing April 1, 2022 through March 31, 2027, pursuant to Paragraph 27(G) of the Original Sublease and Paragraph 2 of the First Amendment.

I. The City, Lessee and Sub-Lessee (each a “Party” and collectively, the “Parties”) wish to amend the Amended Sublease pursuant to this Second Amendment (the Original Sublease, First Amendment and this Second Amendment, hereinafter, collectively, the “Sublease”).

IT IS THEREFORE AGREED AS FOLLOWS:

1. Sublease Term. Conditioned on and in consideration for the commitment of the City and Lessee to fund \$3.1 million allocated by the City to Improvements (hereinafter defined in Section 6, Funding Commitment, below) to the Stadium required by the Facility Standards (hereinafter defined), the term of the Sublease (the “Term”) is hereby extended from the date hereof to September 30, 2030. Sub-Lessee shall have the option to renew the Sublease as follows (each, a “Renewal Term”): (a) for (i) an additional five (5) years from October 1, 2030 to September 30, 2035, (ii) an additional five (5) years from October 1, 2035 to September 30, 2040, and (iii) an additional three (3) years from October 1, 2040 to September 30, 2043 by providing written notice to Lessee and the City of Sub-Lessee’s intent to exercise each such option on or before March 30<sup>th</sup> of the expiration of the Term or applicable Renewal Term; or (b) after September 30, 2030, for such periods so as to be coterminous with all renewals of the Binghamton PDL License Agreement (hereinafter defined) (or for such periods so as to be coterminous with the term of the PDL License Agreements of other PDL Clubs in the event that the Binghamton PDL License Agreement is not renewed). Sub-Lessee will provide written notice to Lessee and the City of Sub-Lessee’s intent to exercise each such option within (x) thirty (30) days of the date on which MLB PDL (as hereinafter defined) notifies Sub-Lessee of renewal of the Binghamton PDL License Agreement or (y) one hundred eighty (180) days of the date on which MLB PDL notifies Sub-Lessee of non-renewal of the Binghamton PDL License Agreement, as applicable; *provided, however*, that no such Renewal Term shall expire after September 30, 2043. If Sub-Lessee elects not to extend the Term or any Renewal Term, the Sublease will expire as of the expiration date of the Term or applicable Renewal Term. References herein to the “Term” shall be deemed to include any Renewal Term, if applicable.

2. Stadium Maintenance. Section 5 of the First Amendment provided for an annual payment of \$50,000 by Lessee to Sub-Lessee during the Term for routine maintenance of the Stadium. Section 5 of the First Amendment is hereby amended as set forth below in this Section 2. Between September 30<sup>th</sup> and October 31<sup>st</sup> of each year during the Term, Sub-Lessee shall submit to Lessee written claims with paid invoices for service contracts for HVAC and other utility systems, routine maintenance, pre-season and post-season third party professional cleaning, and repair work performed by Sub-Lessee at the Stadium for the benefit of Lessee and Lessee shall reimburse Sub-Lessee for all such claims up to an annual reimbursement cap of \$25,000 by November 30<sup>th</sup> each year during the Term.

3. Sub-Lessee Capital Improvements. Sub-Lessee agrees to use all good faith commercially reasonable efforts to invest a minimum of \$350,000 in capital improvements to the Stadium over the course of the next three (3) years of the Sublease (2022-2024) for purposes of improving the Stadium, with such capital improvements expected to commence in 2023. Sub-Lessee agrees to provide Lessee with written notice of proposed capital improvements not less than sixty (60) days prior to commencement for Lessee’s consent, which shall not be unreasonably withheld, conditioned or delayed. If Lessee



consents or fails to respond within such thirty (30) days, then Sub-Lessee may proceed with implementation of the proposed capital improvements and provide Lessee with a copy of the invoices for such capital improvements within thirty (30) days of completion. If Lessee objects in writing to the proposed capital improvements within thirty (30) days of Lessee's receipt of written notice from Sub-Lessee, then Lessee and Sub-Lessee shall negotiate in good faith to resolve any issues identified by Lessee for a period of thirty (30) days. If such negotiations are unsuccessful, the Parties agree to retain an independent third party engineer familiar with professional baseball stadiums to resolve the issue with the costs of such engineer shared equally by the Parties. If Sub-Lessee fails to complete \$350,000 in capital improvements to the Stadium prior to Opening Day of the 2025 Professional Development League System Season, Lessee shall have the option to suspend the routine maintenance reimbursements set forth in Section 2 hereof until such time as Sub-Lessee completes such capital improvements at which time reimbursements shall be restored. Additionally, if Sub-Lessee fails to complete \$350,000 in capital improvements to the Stadium prior to the expiration of the Term, Sub-Lessee shall reimburse the City or Lessee, as applicable, for any shortfall (e.g., if Sub-Lessee completes \$300,000 in capital improvements during the Term, Sub-Lessee's required reimbursement would be \$50,000); that the foregoing reimbursement obligation shall be applicable to any and all assignees/Sub-Lessees. Notwithstanding the foregoing, Sub-Lessee's obligation to invest a minimum of \$350,000 in capital improvements to the Stadium pursuant to this Section 3 shall be subject to completion of all improvements necessary to bring the Stadium into compliance with the Facility Standards.

4. Future Modifications to MLB PDL Facility Standards. The Parties hereby agree to the provisions set forth in the attached Exhibit A, which shall be incorporated in the Sublease as new Section 28. The Parties further agree to discuss in good faith any change in the Facility Standards that would require monetary expenditures in excess of Twenty-Five Thousand Dollars (\$25,000) in the aggregate per year for all such changes in order to achieve compliance with any future modifications to the Facility Standards.

5. Liquidated Damages. Sub-Lessee shall pay to the City liquidated damages in the amount of \$3.1 million in the event that Sub-Lessee relocates the Club or other PDL Club prior to September 30, 2030, provided that no liquidated damages shall be due or payable if such relocation is subsequent to: (i) a breach by City or Lessee of Section 6 hereof; or (ii) Lessee declining to make any monetary expenditures necessary to comply with future changes in the Facility Standards. No liquidated damages shall be due or payable if Sub-Lessee relocates the Club or other PDL Club at any time after September 30, 2030.

6. Funding Commitment. The City and Lessee hereby commit to fund, or provide for the contribution of, all Improvements (hereinafter defined) up to the amount of \$3.1 million. For purposes hereof, "Improvements" means the following items of the Facility PDL Compliance Plan as set forth in the Ewing Cole Facility Assessment dated April 28, 2021 (the "Assessment"): (i) renovation of the existing visitor clubhouse as set forth in section 1 of the Assessment; (ii) renovation of the existing home clubhouse (including women's clubhouse) as set forth in section 2 of the Assessment; (iii) construction of a stand-alone weight room as set forth in section 3 of the Assessment; and (iv) installation of video surveillance (including player/staff parking, entrances to the home and visitor clubhouses, female staff facilities and umpire facilities) as set forth in section 5 of the Assessment. In addition to the foregoing Improvements, the City and Lessee further



commit to fund, or provide for the contribution of, the allowance to repair drainage for the playing field, home and visitor dugouts, and home and visitor clubhouses as set forth in section 11 of the Assessment; *provided, however*, that such commitment shall be satisfied separately by the City and Lessee apart from the \$3.1 million commitment to fund the Improvements. In the event of a breach by the City or Lessee of their foregoing obligations set forth in this Section 6, Sub-Lessee **may either**: (i) specific performance or reimbursement for the unpaid costs required to complete the Improvements (not to exceed a total of \$3.1 million) and the additional commitment to fund the drainage repairs; or (ii) without being in breach of the Sublease, terminate the Sublease and relocate the Club or other PDL Club with no liquidated damages due or payable by Sub-Lessee. **Additionally, if the Stadium is graded at 15 points or higher under the Grading Rubric of the Facility Standards on Opening Day of the 2023 Professional Development League System Season, Sub-Lessee shall have the right, without being in breach of the Sublease, to terminate the Sublease and relocate the Club or other PDL Club with no liquidated damages due or payable by Sub-Lessee.**

7. Construction. Prior to commencing construction of the Improvements, the City, Lessee, or the Sub-Lessee, will provide MLB PDL with copies of the plans for the Improvements. It is the understanding of the Parties that: (i) Ewing Cole will review the plans with MLB PDL to ensure same meet Facility Standards; (ii) Ewing Cole or MLB PDL, as applicable, will then provide a letter to the City, Lessee, and Sub-Lessee stating that the plans are compliant with Facility Standards; and (iii) after completion of all construction, Ewing Cole or MLB PDL, as applicable, will inspect the work for purposes of certifying that construction is consistent with the plans. Any contract for construction of the approved plans will require the general contractor to build according to the plans. The City will resolve the drainage issues in the Stadium set forth in Section 6 hereof separate and apart from the \$3.1 million commitment set forth in Section 6 hereof.

8. MLB PDL Requirements. The Parties hereby agree to the provisions set forth in the attached Exhibit B, which shall be incorporated in the Sublease as new Section 29. **The Parties acknowledge that Exhibit B is for the benefit of MLB; it does not have any effect on the rights and obligations of the City, Lessee, and Sub-Lessee to each other under the Sub-Lease or any amendment thereto.**

9. Other Modifications. The Parties hereby agree that Section 5(B) of the Sublease is hereby deleted and replaced in its entirety with the following:

“B) Subject to (i) temporary closing of the Stadium for repair work or as otherwise provided herein, (with respect to clause (b) only), and (ii) the PDL Rules and Regulations, all home games and all postseason home games under the control of Sub-Lessee shall be played at the Stadium.”

10. Miscellaneous. Venue for any action or proceeding will be in Broome County, New York. This Agreement is binding on the successors and assigns of each of the Parties. An assignment will not relieve any party from the obligations and responsibilities herein. Except as set forth in this Agreement, all terms and agreements contained in the Amended Sublease are hereby made a part of this instrument as though fully set forth herein. If the terms of this Second Amendment in any way conflict with the terms and provisions of the Amended Sublease, the terms and conditions of this Second Amendment shall prevail. This

Agreement may be executed in two or more counterparts (delivery of which may occur via facsimile or electronic mail attachment in "pdf" or similar format), each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to Development, Sublease, Operation and Management Agreement to be executed as of the Effective Date.

**City of Binghamton**

**Binghamton Urban Renewal Agency**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Evans Street Baseball, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit A

### MLB PDL Facility Standards

#### Section 28. Compliance with Future Modifications to the Facility Standards

A. Generally. Subject to the terms, conditions and limitations of this Section 28, during the Term of this Agreement, Lessee shall comply with any changes to the Facility Standards (hereinafter defined) which pertain to the obligations of Lessee under this Agreement and which become effective after the date of this Agreement. For purposes of this Agreement, "Facility Standards" shall mean the facility standards set forth in the PDL Operating Guidelines as in effect from time to time including any amendments, supplements or other modifications thereto.

B. Notice. Sub-Lessee shall give the Lessee written notice of any changes to the Facility Standards which pertain to Lessee's obligations under this Agreement. Unless waived or otherwise agreed by Lessee in writing, the effective date of any change affecting Lessee's obligations under this Agreement shall be not less than thirty (30) days from the date of receipt of the written notice by Lessee. Lessee shall not be required to comply with any change to the Facility Standards unless it is given written notice of such change as provided in this Section 28(B).

C. De Minimis Obligations. Sub-Lessee shall comply with any changes to the Facility Standards which pertain to the obligations of Lessee under this Agreement and which do not require the expenditure of funds by Lessee of more than a *de minimis* amount. For purposes of this Agreement, a *de minimis* amount means no more than Twenty-Five Thousand Dollars (\$25,000.00) per year in the aggregate for all such changes.

D. Changes Requiring Monetary Expenditures by Lessee of More than a De Minimis Amount. In the event of a change in the Facility Standards that applies to all PDL Clubs that would require Lessee to make monetary expenditures in excess of a *de minimis* amount in order to achieve compliance with the Facility Standards as modified, Lessee shall have the option to either agree to make such expenditures or to refuse to make such expenditures. Lessee shall notify Sub-Lessee as to Lessee's decision with respect to making the monetary expenditures in question. Such notice shall be given by Lessee to Sub-Lessee within thirty (30) days of the Lessee's receipt of written notice of the change in the Facility Standards, as specified in Section 28(B), above. If Lessee fails to give such notice, Lessee shall be deemed to have declined to make the expenditures in question. If Lessee agrees to make the expenditures in question, Lessee shall be given a reasonable period of time to effectuate compliance with the Facility Standards. If Lessee declines to make such expenditures, (i) Lessee shall not be in breach of this Agreement, (ii) this Agreement shall otherwise remain in effect, subject to the right of Sub-Lessee to terminate this Agreement, as provided in Section 28(E), below and (iii) Sub-Lessee shall have the right (but not the obligation) to implement any necessary changes at Sub-Lessee's sole expense to effectuate compliance with the Facility Standards, provided that any physical changes to the Stadium shall have first received the written consent of Lessee, which consent shall not be unreasonably withheld, conditioned or delayed.



E. Right of Sub-Lessee To Terminate. In the event that Lessee declines to make any monetary expenditures necessary to comply with future changes in the Facility Standards as set forth in Section 28(D) above, Sub-Lessee shall have the right to terminate this Agreement, without being in breach of this Agreement, in accordance with this Section 28(E). If Sub-Lessee chooses to terminate this Agreement pursuant to this Section 28(E), Sub-Lessee shall do so by giving written notice thereof to Lessee. Such notice must be given to Lessee by Sub-Lessee within one hundred eighty (180) days after the date that Lessee had given (or was deemed to have given) notice to Sub-Lessee that it would not make the expenditures necessary to comply with the changes in the Facility Standards. If Sub-Lessee fails to give such notice, Sub-Lessee shall be deemed to have waived its rights under this Section 28(E), but only as to the change in the Facility Standards in question. Such notice of termination shall specify the effective date of termination. The effective date of termination may not be earlier than the end of the year in which the change to the Facility Standards in question becomes effective. In the event Sub-Lessee exercises its right to terminate this Agreement under this Section 28(E), Sub-Lessee shall not be in breach of this Agreement, and Sub-Lessee shall not be liable to Lessee for any liquidated damages. In addition to the foregoing right of termination, in the event that MLB PDL revokes or terminates the Binghamton PDL License Agreement as a result of Lessee declining to make any monetary expenditures necessary to comply with future changes in the Facility Standards, then Sub-Lessee shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Lessee. In the event of such a termination: (1) neither Sub-Lessee nor Lessee shall be in breach of this Agreement; and (2) in no event shall Sub-Lessee be liable to Lessee for any liquidated damages. The right to terminate the Sub-Lease is Sub-Lessee's sole remedy pursuant to this Section 28(E). Neither the City nor Lessee will be responsible for any damages to Sub-Lessee in the event Sub-Lessee elects to terminate the Sublease pursuant to this Section 28(E).

F. Scope of Changes. Lessee's obligation to comply with future changes to the Facility Standards shall be limited to changes pertaining to the scope of the obligations assumed by Lessee under this Agreement. Lessee shall not be required to comply with future changes to the Facility Standards which: (1) would require Lessee to take actions or assume obligations which are outside the scope of Lessee's obligations under this Agreement; or (2) are not generally applicable to all PDL Clubs.

G. Legal Limitations. Lessee shall not be required to comply with the Facility Standards or any future changes to the Facility Standards as and to the extent that compliance therewith would be in violation of applicable local, state or federal law.



## Exhibit B

### MLB PDL Requirements

Section 29. MLB PDL Requirements. Any contrary provisions contained herein notwithstanding:

a. This Agreement and any rights granted to Lessee or Sub-Lessee hereunder shall in all respects be subordinate to the PDL Rules and Regulations, as long as Sub-Lessee is party to the Binghamton PDL License Agreement that is in effect. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at no cost or liability to any MLB PDL Entity or to any individual or entity related thereto. The territory within which Lessee is granted rights under this Agreement is limited to, and nothing herein shall be construed as conferring on Lessee rights in areas outside of, the PDL Club Marketing Territory (as defined in the Binghamton PDL License Agreement). No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Agreement, except as are specifically approved in writing by MLB PDL.

b. Lessee agrees that if the date upon which any termination or suspension of this Agreement falls during the regular season or postseason, the effective date of such termination or suspension shall be the first day of the month following the final home game of such season, and, in no event, shall Lessee terminate or suspend Sub-Lessee's rights under this Agreement during any regular season or postseason.

c. If, at any time prior to the expiration of the term of this Agreement, this Agreement is terminated by Lessee for any reason (and any legal action challenging the right of Lessee to terminate this Agreement and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance) and the Binghamton PDL License Agreement has been terminated, Lessee agrees to offer to assign this Agreement to any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to Lessee. To the extent that this Agreement is not so assigned, Lessee agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, Lessee shall offer to lease the Stadium to such PDL Club.

d. As long as Sub-Lessee is party to the Binghamton PDL License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 29 and each other provision in this Agreement that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 29, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.

e. Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 29 (other than for

fraudulent acts or willful misconduct with respect to this Section 29 by MLB PDL), and Lessee hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Agreement shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

- f. As used in this Agreement, the following terms shall have the following meanings:
- i. “Binghamton PDL License Agreement” means that certain player development license agreement entered into between Sub-Lessee and MLB PDL pursuant to which the Club has been granted the right to participate in the Professional Development League System.
  - ii. “Club” means the professional baseball club currently known as the Binghamton Rumble Ponies.
  - iii. “Commissioner” means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.
  - iv. “Major League Baseball” or “MLB” means, depending on the context, any or all of (a) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof and/or (b) the Major League Clubs acting collectively.
  - v. “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.
  - vi. “Major League Constitution” means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.
  - vii. “MLB PDL” means, depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.
  - viii. “MLB PDL Entity” means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.
  - ix. “PDL Approval” means, any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

- x. “PDL Club” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.
- xi. “PDL Governance Agreement” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each Club, as may be amended, modified, supplemented or restated from time to time.
- xii. “PDL Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.
- xiii. “PDL License Agreement” means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the Binghamton PDL License Agreement.
- xiv. “PDL Operating Guidelines” means the Player Development League Operating Guidelines, which set forth the rules, regulations, policies, and procedures that are applicable to each PDL Club that is a party to a PDL License Agreement.
- xv. “PDL Rules and Regulations” means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.
- xvi. “Professional Development League System” means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball Clubs.