



LICENSE AGREEMENT

CITY OF ABERDEEN

&

TUFTON PROFESSIONAL BASEBALL, LLC

December 19, 2016

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") entered into by and between City of Aberdeen ("City") and Tufton Professional Baseball, LLC ("Tufton"), retroactively to July 1, 2016. As used in this Agreement City and Tufton individually are referred to a "party" and collectively as "parties."

EXPLANATORY STATEMENT: Pursuant to a Concession Agreement dated December 7, 2000 (as amended) ("Concession Agreement") and related instruments and agreements Tufton operates the baseball facility in Aberdeen, Maryland known as Ripken Stadium ("Stadium"). The Stadium is owned by the City. The City also owns surface parking facilities adjacent to the Stadium ("Parking Facilities") that are used for public parking during Stadium events.

Pursuant to the Concession Agreement Tufton and the City each have the rights to use the Stadium, Parking Facilities and surrounding grounds (referred to and defined in Section 1.01 of the Concession Agreement as "the Site") as specified in the Concession Agreement. As explained in the Concession Agreement (i) Tufton uses the Stadium and related facilities primarily for the Aberdeen IronBirds minor league baseball team home games and related baseball activities, and has the right to use the Stadium for non-baseball related activities on a limited number of dates, and (ii) the City has the right to use the Stadium and related facilities for commercial, recreational and civic purposes on those dates that the Concession Agreement does not allocate to Tufton.

The City and Tufton entered into a prior License Agreement for the period that commenced on July 1, 2013, and ended on June 30, 2016. The City desires and agrees to continue to license to Tufton, without interruption retroactively from July 1, 2016, the City's rights to use of the Site under the terms and conditions of this Agreement, and Tufton desires and agrees to accept the license.

Tufton and the City further understand and agree that (i) certain provisions of this Agreement are different from the provisions of, and the rights and obligations of the City and Tufton under, the Concession Agreement, (ii) to the extent of any inconsistency between this Agreement and the Concession Agreement the provisions of this Agreement supersede the provisions of the Concession Agreement during the term of this Agreement, and (iii) upon expiration or termination of this Agreement the Concession Agreement shall again govern the rights and obligations of the City and Tufton with respect to all matters covered by this Agreement.

Furthermore, certain recorded instruments affect or regulate various other persons' rights to use portions of the Parking Facilities. This Agreement is not intended to alter rights and obligations under other instruments.

Finally, this EXPLANATORY STATEMENT is an integral and material part of this Agreement and is not merely prefatory.

Now, therefore,

WITNESSETH, that for and in consideration of the EXPLANATORY STATEMENT and the mutual rights and obligations in this Agreement, and other good and valuable considerations, the receipt and adequacy of which is acknowledged, the City and Tufton agree as follows:

1. Term of Agreement. This Agreement shall run for a term of eighteen (18) months commencing, retroactively on July 1, 2016 and ending December 31, 2017.

2. Licensing of Rights. The City hereby licenses to Tufton the exclusive right to schedule and use the Site on all days that would otherwise be available for use by the City for City Events as defined in Section 4.01 of the Concession Agreement (“Licensed Events”) except that:

a. The City may schedule and use the Site, without payment of any cost, fee or charge to Tufton, for City Events five dates each year (or more in Tufton’s reasonable discretion) subject to the same terms and conditions under which the City could use the Site for City Events under the Concession Agreement. In exercising its reasonable discretion to allow the City to use the Site for more than five dates in a year, Tufton shall allow the City to use the Site for additional City Events, without payment of any cost, fee or charge to Tufton, on any day that the Site is not in use for an Aberdeen IronBirds baseball game or other activity or event previously scheduled by Tufton. When using the Site for City events, the City shall pay Tufton’s actual costs for post-event cleaning (to the extent that such cleaning has not been undertaken by the City as provided in Paragraph 2.d.) and reasonable on-site Tufton staff to monitor the events, and the City’s costs to repair or pay for damage to the Site resulting from the City’s events.

b. In addition to the City’s rights under Paragraph 2.a., the City may schedule and use, without payment of any cost, fee or charge to Tufton, the Parking Facilities for training and other similar City government related activities on any day that the Site is not in use for an Aberdeen IronBirds baseball game or other activity or event previously scheduled by Tufton or the City; and

c. The City may reject Tufton’s scheduling and use of all of any part of the Site under this Paragraph 2, or as an additional Franchisor Event provided for under Section 4.03 of the Concession Agreement, if the City reasonably believes such use is likely to cause a clear and identifiable harm to the Stadium or other parts of the Site. For purposes of implementing this subparagraph c. Tufton shall provide the City from time to time with Tufton’s proposed schedule of non-baseball activities and events with sufficient detail and sufficiently in advance to afford the City sufficient time to advise Tufton whether any proposed activity or event is objectionable. The City and Tufton also may agree, in writing, upon types of activities and events on the Site that Tufton may schedule and allow without specific authorization by the City provided that Tufton notifies the City of each specific activity or event in advance.

The City shall provide Tufton with as much advance notice as practicable of the City's desire to schedule and use the Site as provided in Paragraphs 2.a. and b. Tufton shall honor the City's request unless Tufton has previously scheduled the use of the Site. Any dates that Tufton schedules and uses the Site under this Paragraph 2 shall not be deemed a City Event under the Concession Agreement. The City and Tufton shall provide each other, in writing, with a point of contact to coordinate City and Tufton scheduling of the use of the Site as provided in this Paragraph 2. The City and Tufton promptly shall notify the other in writing of any change in that party's designated point of contact.

d. Tufton shall provide the City with a schedule of required cleanup for those entities and organizations who shall reserve the Stadium as a City event pursuant to this Paragraph 2. If the Stadium is not cleaned to that schedule, Tufton may clean the Stadium to the requirements of the schedule and charge the City expenses related thereto.

3. Revenues from Licensed Events. Tufton shall collect and retain all revenues, other than generally applicable governmental taxes and charges, which Tufton receives from any activities and events that Tufton schedules pursuant to Paragraph 2 of this Agreement.

4. Food and Beverages. At any City Event scheduled by Tufton under this Agreement at which the City desires to provide food and beverages, Tufton, at the City's request, shall provide such food and beverage through the catering service normally used by Tufton to provide food and beverages for Aberdeen IronBirds baseball games and Franchisor events, and the cost charged to the City for such food and beverages shall not exceed the cost charged for such baseball games and Franchisor events. This Paragraph 4 allows but does not require the City to use Tufton's normal catering service to provide food and beverages at City Events. If the City does not use Tufton's normal catering service the City may use a caterer or other food supplier of its own choosing at the City's sole cost and expense. However, the City recognizes that Tufton has obtained and must maintain all applicable Health Department permits for the kitchens at the facility. So, in the event that another caterer is used by the City that will use the facility's kitchen to prepare or warm food on-site, Tufton may supervise that caterer's use of the kitchen to ensure that the on-site food preparation and warming complies with Health Department requirements. Tufton shall not impose any cost or charge on the City for any community event where outside food is brought in and the facility's kitchen and concession stands are not used.

5. Stadium Recovery Fee (SRF). Neither party shall charge any fees for parking at the Parking Facilities during any Aberdeen IronBirds baseball game or event connected with the Cal Ripken World Series. The City and Tufton shall charge a Stadium Recovery Fee of up to \$3.00 per ticket sold for all other activities and events at the Site. The SRF shall be added to and collected as part of the ticket or admittance fee for the activity or event. The City and Tufton shall negotiate in good faith to agree upon amount of the SRF for any particular activity or event. If the City and Tufton are unable to agree upon the amount of the SRF for a particular activity or event, the fee for that activity or event shall be \$3.00 per ticket sold. Tufton shall remit to the City all SRF fees that Tufton collects promptly after the activity or event at which the fee was collected. The City shall deposit all SRF fees collected by the City and Tufton into an account

maintained by the City for the exclusive purpose of funding maintenance and upgrades to the Stadium and Parking Facilities. Non-profit and non-ticketed events are not subject to the SRF.

6. Licensing Fee. In exchange for the rights that the City grants to Tufton under this Agreement, Tufton shall pay to the City a licensing fee in the following amounts for the periods specified:

a. July 1, 2016 through December 31, 2016: \$35,000

b. January 1, 2017 through December 31, 2017: \$95,000

Tufton shall pay the licensing fee for the period July 1, 2016, through December 31, 2016, concurrently with Tufton's execution of this Agreement. Tufton shall pay the licensing fee for the period January 1, 2017 through December 31, 2017 in two equal installments. The first installment shall be paid on or before April 1, 2017, and the second installment shall be paid on or before October 1, 2017. The City shall deposit all licensing fees collected by the City and Tufton into an account maintained by the City for the exclusive purpose of funding maintenance and upgrades to the Stadium and Parking Facilities.

7. Failure to Pay Licensing Fee. If Tufton does not pay all or any part of any installment of the licensing fee provided for in Paragraph 5 within 30 days after the installment is due, the City, at its option, may terminate this Agreement upon five days written notice to Tufton.

8. Tufton Default. If Tufton breaches any of its obligations under this Agreement, other than for a failure to pay licensing fee provided for in Paragraph 7, the City shall give Tufton written notice of the breach. After receipt of such written notice Tufton shall have ten days to cure any breach. If the nature of Tufton's non-monetary obligation is such that additional time after the cure period is reasonably required for its performance, Tufton shall not be in breach if it commences performance to cure the default within the cure period and thereafter diligently pursues the cure to completion.

9. City Default. If the City breaches any of its obligations under this Agreement, Tufton shall give the City written notice of the breach. After receipt of such written notice the City shall have 30 days to cure any breach. If the nature of obligation is such that additional time after the cure period is reasonably required for its performance, the City shall not be in breach if it commences performance to cure the default within the cure period and thereafter diligently pursues the cure to completion.

10. Insurance. Tufton shall ensure that the insurance required to be carried by Tufton as Franchisor under Section 17.02 of the Concession Agreement also covers losses arising from Tufton's acts and omissions under this Agreement.

11. Indemnification. Tufton shall indemnify and save harmless the City and the City's officials, officers, employees and agents for any claims and liabilities whatsoever, for

personal or bodily injury, death or property damage arising out of Tufton's exercise of its rights, and its scheduling and the use of the Site by Tufton or others, under this Agreement. The provisions of this Paragraph shall survive expiration or termination of this Agreement.

12. Notices. Any notice, request or demand or other communication required or permitted to be given pursuant to this Agreement (each, a "Notice") shall be in writing and shall be deemed sufficiently given if delivered by hand by messenger at the address of the intended recipient (set forth below); sent by Federal Express or a comparable guaranteed overnight delivery service, prepaid, with instructions to deliver on the next business day; or sent by United States first class mail, registered or certified, postage prepaid, with return receipt requested; and addressed as follows (or to such other address as may have been specified by the addressee party in a written notice previously given to the sender party in accordance with this Section):

If to the City: City Manager
 City of Aberdeen
 60 N. Parke Street
 Aberdeen, MD 21001

With a copy to:

Frederick C. Sussman, Esq.
Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, MD 21401

If to Tufton: Tufton Professional Baseball, LLC
 873 Long Drive
 Aberdeen, MD 21001 _Attn: Matt Slatius

With a copy to:

Shapiro, Sher, Guinot & Sandler
250 West Pratt Street, Suite 2000
Baltimore, MD 21201
Attn: William Carlson

Any Notice given in accordance with this Section shall be deemed to be given and delivered as of (i) the date of actual delivery, if delivered by hand by messenger; (ii) the first (1st) business day following deposit with Federal Express (or comparable guaranteed overnight delivery service), if sent by such overnight delivery service, prepaid, with instructions to deliver on the next business day; or (iii) the third (3rd) day following deposit with the United States Postal Service, if sent by United States first class mail (registered or certified, postage prepaid, with return receipt requested).

13. **Invalidity.** If a court determines that if any material part of this Agreement, but less than the entire Agreement, is invalid or unenforceable this Agreement shall be deemed terminated without further action of either party at the expiration of any period for appeal or further judicial review. Such termination does not preclude the parties from negotiating a new agreement that is consistent with the determination of the court.

14. **Relationship of Parties.** Each party shall be deemed to be an independent contractor in its performance under this Agreement such that neither party nor any employee or agent of either party shall be deemed an agent of the other party, unless otherwise expressly agreed in writing by the parties.

15. **Assignment.** Tufton shall not, directly or indirectly, assign or propose to assign this Agreement or any of its rights or obligations, in whole or in part, to any third party without the prior written consent of the City, which consent may be withheld or delayed by the City in its sole and unfettered discretion.

16. **Attorney Fees.** The prevailing party in any judicial proceedings to interpret or enforce this Agreement, or to recover damages for breach of this Agreement, shall be entitled to recover its reasonable attorney fees, court costs and litigation expenses from the non-prevailing party as determined by the court. Where both parties are successful in obtaining affirmative relief in a judicial proceeding neither party shall be entitled to attorney fees and neither party shall be deemed to have "prevailed."

17. **Time of Essence.** Time is of the essence with respect to performance of the parties' obligations under this Agreement.

18. **Binding Effect.** This Agreement is binding upon the parties and their respective officers, employees, agents, successors and permitted assigns.

19. **Interpretation of Agreement.** This Agreement has been negotiated and prepared jointly by both parties. If any provision of this Agreement is ambiguous the ambiguity shall not be construed against either party as the drafter of the Agreement or that provision.

20. **Governing Law.** This Agreement is made in the State of Maryland and shall be governed, interpreted and construed according to the laws of Maryland without regard for its principles governing choice or conflicts of laws.

21. **No Waiver.** The failure of either party to exercise or enforce at any time any of the provisions, rights, or obligations in this Agreement shall not affect the validity of this Agreement and does not alter that party's right to exercise or enforce the provision, right or obligation in the future.

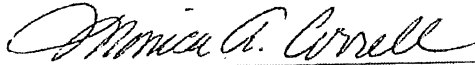
22. **Jurisdiction and Venue.** Any action to interpret or enforce this Agreement or to recover damages for its breach shall be brought in the State court having appropriate jurisdiction sitting in Harford County. To the extent permitted by law, the parties waive their rights to transfer an action to the United States District Court.

23. Waiver of Jury Trial. The City and Tufton waive their rights to trial by jury with respect to any dispute or proceeding between the parties arising from this Agreement.

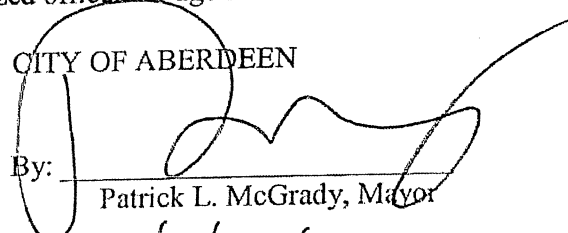
24. Complete Agreement. This Agreement is the complete agreement of the parties with respect to the matters addressed in this Agreement. There are no covenants, promises, agreements, conditions or understandings, either written or oral, between the parties other than as are set forth in this Agreement. Any alteration, amendment, change or addition to this Agreement shall be binding on the Parties only if reduced to writing and signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the City and Tufton have executed this Agreement on the dates reflected by the signatures of their respective authorized officers or agents.

WITNESS/ATTEST



Monica A. Correll, City Clerk

CITY OF ABERDEEN


By: 
Patrick L. McGrady, Mayor

Date: 12/19/2016

Approved for form and legal sufficiency:


Frederick C. Sussman, City Attorney

TUFTON PROFESSIONAL
BASEBALL, LLC

By: 
Authorized Person

Date: 12/19/16