

## MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (this "Agreement") is made and entered into as of ~~October~~ <sup>November</sup> 15, 2011, by and between the City of Grand Junction, a Colorado home rule municipality, ("Licensee"), and GJR LLC, a Colorado limited liability company ("Manager").

### WITNESSETH

WHEREAS, the Licensee will be the holder of a certain Alcoholic Beverages Tavern License (the "Liquor License") issued by the Colorado Department of Revenue (the "Department") for Licensee's sports complex, which includes a baseball facility and baseball stadium currently known as "Suplizio Field," and a football facility and football stadium currently known as "Stocker Stadium," together with accompanying grounds, that have concession facilities, a press box, a hospitality suite and various other structures and improvements (the "Licensed Premises"); and

WHEREAS, the Manager has a lease to use the Licensed Premises during Baseball Seasons (as defined in Section 1.2 below) during the term of this Agreement, and is in the business of operating a minor league baseball team and providing concession services, which include the sale of alcoholic beverages; and

WHEREAS, Licensee desires to have Manager use its knowledge and experience to operate alcoholic beverage services on the Licensed Premises during the Baseball Season (the "Licensed Business"), and Manager desires to provide such Services, all on the terms and conditions set forth in this Agreement; and

WHEREAS, Manager has the financial resources and experience necessary to ensure the successful operation of the Licensed Business; and

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein, the parties agree as follows:

**ARTICLE I.**

**SCOPE OF SERVICES**

1.1 **Scope of Services.** During each Baseball Season, Manager, subject to the review of Licensee, will provide for the operation, management and provision of all alcoholic beverage services required for the Licensed Business at the Licensed Premises. Manager will provide such services during the Baseball Seasons during the term of this Agreement in accordance with the terms and conditions herein contained. It is expressly understood and agreed between the parties hereto, that Licensee, as the holder of the Liquor License, shall at all times have and maintain exclusive control of its business and occupancy of the Licensed Premises. Manager's operation of the Licensed Business shall be in compliance with requirements of applicable rules, regulations and laws of the City of Grand Junction, the State of Colorado and United States, including, without limitation, the Rules and Regulations of the Colorado Liquor and Tobacco Enforcement Division of the Colorado Department of Revenue ("the Enforcement Division") (all of the foregoing, collectively, "Applicable Laws"). Manager shall also serve food and non-alcoholic beverages in accordance with the Department's requirements for the Tavern License held by Licensee. At the start of each Baseball Season, Manager will provide Licensee with a copy of Manager's menu for the Licensed Premises.

1.2 "Baseball Season" means, as to each calendar year of the term of this Agreement, the regular annual period of play of professional baseball games and related activities by the Manager's team at the Leased Premises for the minor league baseball league in which the Manager's team is then a member (which is currently the Pioneer Baseball League and whose

season currently runs annually from mid-June through the beginning of September), including any and all pre-season practice games, regular season games, exhibition games (no more than two (2) per season), post-season "playoff" games, and all "all star" games.

## ARTICLE II.

### SERVICES OF MANAGER

2.1 **Management of Operation.** Manager will provide such management, supervisory, advisory, and administrative services as advisable and necessary to carry out the Licensed Business at the Licensed Premises. Such services will include negotiating contracts required in the ordinary course of business; providing advice on the sale and service of food, alcoholic beverages and nonalcoholic beverages; advising, supervising and consulting with Licensee regarding operational matters concerning food, alcoholic beverages and nonalcoholic beverages; and generally providing day-to-day supervision and direction for the operation of the Licensed Business.

2.2 **Alcoholic Beverage Services.** Guests at the Licensed Premises shall be encouraged by Manager to drink responsibly. Guests must be 21 years of age or older to purchase and consume alcohol. Proper identification is necessary to purchase any alcoholic beverages. All alcohol sales will conclude at the end of the 7<sup>th</sup> inning or sooner if Manager deems prudent. Guests will not be allowed to bring alcohol into or out of the Licensed Premises. Guests will not be permitted to enter the Licensed Premises if they appear intoxicated. Drunk and disorderly behavior and/or violation of any alcohol service policy, law rule or regulation will result in prompt ejection from the Licensed Premises, and further administrative action shall be taken by the Manager and/or Licensee if warranted.

2.3 **Procurement.** Manager will purchase all products, supplies, and outside services needed in the operation of the Licensed Business. Such items and services will be purchased from dependable suppliers taking into account the quality and quantity required for the Licensed Business.

2.4 **Personnel.**

(a) Manager shall hire and employ in its own name the number of personnel required for the operation of the Licensed Business under this Agreement. Such personnel shall satisfy the requirements of Applicable Laws regarding the operation of alcoholic beverage services.

Manager shall pay for all such personnel's salary, fringe benefits, workers' compensation, income tax withholding, insurance and any other obligations and expenses associated with employing such personnel including any and all related claims.

(b) Notwithstanding anything to the contrary herein, the sale and service of alcoholic beverages by the Manager shall be in compliance with Applicable Laws.

(c) Manager will train, supervise, direct, discipline, and, if necessary, discharge personnel working at the Licensed Business in accordance with Manager's personnel policies. All personnel directly or indirectly involved with the sale and service of alcoholic beverages will receive training in responsible alcoholic beverage services.

(d) Licensee shall be responsible for ensuring that the Liquor License remains valid, and in full force and effect at all times during the term of this Agreement. Licensee shall be responsible for the preparation of all renewal applications related to the Liquor License and Licensee shall be responsible for the timely filing of such renewal applications and any filing fees related thereto. Manager agrees to pay twenty-five percent (25%) of the annual renewal cost of the Liquor

License and twenty-five percent (25%) of the annual Occupational Tax generally assessed by Licensee.

2.5 **Books, Account, Records.** Manager shall maintain complete and accurate books of account, reflecting all sales, gross receipts and sales tax records of alcoholic beverage services hereunder. Manager will render to Licensee monthly statements of the alcoholic beverage services performed under this Agreement, on or before the fifteenth (15<sup>th</sup>) day of the following month. Manager shall maintain such books of account with respect to the alcoholic beverage services hereunder and shall permit Licensee to inspect and examine such books of account at such reasonable times as Licensee may request for the purpose of verifying and determining the correctness of Manager's payments to Licensee hereunder. Licensee will use its best efforts to exercise its inspection and examination rights in such manner that will not unreasonably disrupt the Licensed Business.

2.6 **Payment of Costs and Expenses.** Manager will promptly pay and discharge all the proper bills due and payable related to the Licensed Business.

### **ARTICLE III.**

#### **FINANCIAL ARRANGEMENTS**

3.1 **Management Fee.** Manager shall be entitled to retain, as compensation for its services during the term of this Agreement, a Management Fee in an amount equal to 99% of the Adjusted Gross Receipts (as defined below) for each reporting period or portion thereof, during the term of this Agreement. Manager shall pay Licensee 1% of the Adjusted Gross Receipts (the "Licensee Payment").

As used in this Agreement, the following terms shall have the following meanings:

(a) "Gross Receipts" shall mean all gross receipts received by Manager or its designee from sales of alcoholic beverages by Manager at the Licensed Premises, whether such amounts are evidenced by cash, check, credit card or otherwise. Gross receipts shall be collected by Manager or its designee.

(b) "Adjusted Gross Receipts" shall mean the Gross Receipts in any reporting period less deductions for Federal, state and municipal excise, sales and taxes (whether paid or unpaid and due and owing) accruing during such reporting period with respect to the related Gross Receipts.

3.2 **Reporting and Payment.** Monthly Licensee Payments shall be paid by Manager to Licensee within fifteen (15) days following the end of each month during the term of this Agreement and shall be based on Adjusted Gross Receipts from the preceding month, which shall be reflected in the monthly statement provided by Manager under Section 2.5 above showing the Gross Receipts and adjusted Gross Receipts for the preceding month. The Management Fee shall be retained by Manager from the remaining Adjusted Gross Receipts.

#### **ARTICLE IV.**

##### **TERM AND TERMINATION**

4.1 **Term.** The term of this Agreement shall begin on the date of this Agreement and end at the end of the Baseball Season that is fifteen (15) years thereafter (i.e., the end of the 2026 Baseball Season) (the "Initial Term") unless sooner terminated pursuant to Section 4.2 below. If not terminated prior to or at the end of the Initial Term or renewal term then in effect, the term of this Agreement shall be renewed on the same terms as then in effect for three (3) consecutive and separate five (5) year extension periods at the option of the Manager, which renewal option(s) may be exercised by Manager providing written notice of extension to Licensee prior to the end

of the Initial term or renewal term then in effect. Manager acknowledges and agrees that at times other than during the Baseball Season (or if during the Baseball Season, at the hospitality suite other than during games at the Licensed Premises), the Licensee or its designee(s) may provide alcoholic beverage services at the Licensed Premises, and Licensee and its designee(s) shall be fully liable and responsible therefor.

4.2 **Default; Termination.** If either party breaches any of its obligations under this Agreement and fails to fully cure or remedy such breach or failure within thirty (30) days after written notice from the non-breaching party specifying the nature of such failure, breach or default in reasonable detail, including the factual circumstances and the applicable sections of this Agreement alleged to be breached, the alleged breaching party shall be in default hereunder; provided that in the event that such breach is not capable of cure within such thirty (30)-day period, then, provided the breaching party has promptly commenced to cure such default within that period and is diligently pursuing the cure, the breaching party shall have an additional reasonable period of time to cure such default. In the event of any uncured default has a material adverse effect on the non-defaulting party, such non-defaulting party shall have the right to terminate this Agreement upon an additional thirty (30) days' written notice to the defaulting party.

4.3 **Suspension or Revocation of Liquor License.**

(a) If the Liquor License is, through the actions, inactions, mismanagement or other cause attributable to the negligence, misconduct or omission of Manager, revoked either permanently or for a period in excess of seven (7) game days or fifteen (15) consecutive calendar days during any Baseball Season, whichever is greater, it shall be a default by Manager hereunder and Licensee shall be entitled to terminate this Agreement under Section 4.2, without regard to the

cure period referenced in Section 4.2. If the Liquor License is suspended for a period less than that specified in the preceding sentence, Manager shall promptly pay Licensee an amount reasonably equivalent to the Licensee Payments Licensee would have received from the sale of alcoholic beverages had Manager sold or served alcoholic beverages during the suspension period.

(b) If the Liquor License is, through the actions, inactions, mismanagement or other cause attributable to the negligence, misconduct or omission of Licensee, revoked either permanently or for a period in excess of seven (7) game days or fifteen (15) consecutive calendar days during any Baseball Season, whichever is greater, it shall be a default by Licensee hereunder and Manager shall be entitled to terminate this Agreement under Section 4.2, without regard to the cure period referenced in Section 4.2. If the Liquor License is suspended for a period less than that specified in the preceding sentence, Licensee shall promptly pay Manager an amount reasonably equivalent to the net amounts that would have been received by Manager from the sale of alcoholic beverages had Manager been able to sell or serve alcoholic beverages under the Liquor License.

## ARTICLE V.

### INSURANCE

5.1 Liquor Liability Insurance. The Manager shall purchase and maintain during the term of this Agreement, or require any third-party vendor that it hires to sell or serve alcohol on its behalf, to purchase and maintain, liquor liability (i.e., dram shop) insurance that shall have limits of liability of not less than \$1,000,000 bodily injury to one person and \$2,000,000 bodily injury for multiple occurrences.



5.2 Workers Compensation Insurance. The Manager shall purchase and maintain worker's compensation insurance during the term of this Agreement. The worker's compensation insurance shall cover the State of Colorado's statutory requirements and also provide \$500,000 of employer's liability.

## ARTICLE VI.

### INDEMNIFICATION

6.1 Manager's Indemnification. Manager agrees that it will undertake to defend or cause to be defended any action brought against Licensee that is attributable to the negligence of Manager, its agents, servants or employees or attributable to the misconduct of the Licensed Business by Manager at the Licensed Premises, including without limitation any alleged violations of Applicable Laws by Manager or its affiliates, including without limitation any such laws related to the sale or service of alcoholic beverages, in each case without cost to the Licensee and that it will pay any judgment resulting from any such actions or proceedings.

6.2 Licensee's Indemnification. Licensee agrees that it will undertake to defend or cause to be defended any action brought against Manager that is attributable to the negligence of Licensee, its agents (other than Manager), servants or employees or attributable to the misconduct of the business of Licensee and its affiliates at the Licensed Premises, including without limitation any alleged violations of Applicable Laws by Licensee or its affiliates, in each case without cost to Manager and that it will pay any judgment resulting from any such actions or proceedings.

**ARTICLE VII.**

**MISCELLANEOUS**

7.1 **Consent.** Except as herein otherwise provided, whenever in the Agreement the consent or approval of Licensee or Manager is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Such consent shall also be in writing only and shall be duly executed by an authorized officer or agent of the party granting such consent of approval.

7.2 **Notices.** All notices required to be given hereunder by the Manager to the Licensee shall be in writing, sent by United States Mail, first class postage prepaid, or by a commercially recognized overnight carrier such as UPS or Federal Express, and addressed to the Licensee as follows:

The City of Grand Junction  
Attn: Laurie M. Kadrich  
City Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

with a copy to:

The City of Grand Junction  
Attn: John Shaver  
City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

All notices required to be given by the Licensee to the Manager shall be in writing, sent by U.S. Mail, first class postage prepaid, or by a commercially recognized overnight carrier such as UPS or Federal Express, and addressed to the Manager as follows:

GJR, LLC  
Attention: Michael P. Baker  
Manager  
7400 E. Crestline Circle, Suite 200  
Greenwood Village, CO 80111-3653

with a copy to:

Harold R. Roth  
General Counsel  
c/o Colorado Rockies Baseball Club, Ltd.  
2001 Blake Street  
Denver, CO 80205

A party may change its address and/or designees for notices and copies by giving written notice to the other party specifying the change and its effective date.

7.3 **No Partnership.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between Licensee, its successors or assigns, on the one part, and Manager, its successors or assigns, on the other part.

7.4 **Modification.** This Agreement cannot be changed or modified except by another agreement in writing signed by the party sought to be charged therewith or by its duly authorized agent.

7.5 **No-Third Party Beneficiary.** The parties acknowledge and agree that there are no third party beneficiaries of this Agreement.

7.6 **Assignment.** Manager may, without obtaining the Licensee's consent, but only upon giving thirty (30) days notice to the Licensee prior to the effectiveness of an applicable transaction, transfer, sublet or assign all or a part of the Manager's interest in this Agreement to any affiliate, subsidiary or parent of the Manager, or to the surviving entity in a statutory merger or reorganization of the Manager, or to any entity which purchases substantially all of the equity, stock or assets of the Manager, or to any entity that acquires a direct or indirect controlling

interest in the Manager, provided the assignee in any such event agrees to assume and honor the Manager's obligations hereunder during the term of the Agreement. Further, Manager may make a collateral assignment of its interests in this Agreement to a lender or lenders of Manager without the consent of Licensee. Manager may, with the consent of Licensee which shall not be unreasonably withheld, assign this Agreement (including all of Manager's rights and obligations hereunder) to a third-party vendor (i.e., a concessionaire), who shall then be the substituted Manager for all purposes of this Agreement.

7.7 Notwithstanding any other provision of this Agreement, neither party shall be entitled to special, incidental or consequential damages as a result of the other party's breach of this Agreement.

7.8 Owner and Manager shall cooperate in good faith to carry out the intent of the parties as closely as possible in the event there is not a specific requirement and/or representation concerning a particular matter specified herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the day and year first above written.

Attest:

By: Stephanie Linn  
City Clerk

**LICENSEE:**  
**City of Grand Junction**

By: Laurie M. Kadrich  
Laurie M. Kadrich  
City Manager



**MANAGER:**  
**GJR, LLC**

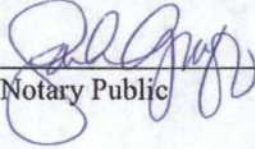
By: Michael P. Baker  
Michael P. Baker  
Manager

\* \* \*

STATE OF COLORADO )

COUNTY OF MESA ) ss.  
 )

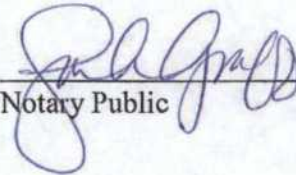
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2011, by Laurie M. Kadrich, the City Manager of the City of Grand Junction, Colorado, a Colorado municipal corporation, on behalf of said Colorado municipal corporation.

  
Notary Public



STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )  
 Mesa of notary

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2011, by Michael P. Baker, a Manager of GJR, LLC, a Colorado limited liability company, on behalf of said Colorado limited liability company.

  
Notary Public



**Exhibit A**

**Liquor License**

**[See Attached]**

THIS LICENSE MUST BE POSTED IN PUBLIC VIEW

DR 8402 (11/23/11)

STATE OF COLORADO  
DEPARTMENT OF REVENUE

Liquor Enforcement Division  
1881 Pierce Street, Suite 108  
Lakewood, Colorado 80214

CITY OF GRAND  
JUNCTION  
LINCOLN PARK SPORTS  
COMPLEX  
1307 NORTH AVE  
GRAND JUNCTION CO 81501

ALCOHOL BEVERAGE LICENSE

		Liability Information					
Account Number	County	City	Indust.	Type	Liability Date	LICENSE EXPIRES AT MIDNIGHT	
43-02111-0000	08	018	722410	G	042712	APR 26, 2013	
Type	Name and Description of License					Fee	
2010	TAVERN LIQUOR LICENSE - MALT, VINOUS, AND SPIRITUOUS					\$75.00	
2180	CITY 85 PERCENT OAP FEE					\$425.00	
					TOTAL FEE(S)	\$500.00	

This license is issued subject to the laws of the State of Colorado and especially under the provision of Title 12, Articles 46 or 47, CRS 1973, as amended. This license is nontransferable and shall be conspicuously posted in the place above described. This license is only valid through the expiration date shown above. Questions concerning this license should be addressed to the Department of Revenue, Liquor Enforcement Division, 1375 Sherman Street, Denver, CO 80261.

In testimony whereof, I have hereunto set my hand. 4/27/12 RLE

*Con Burmania*

Division Director

*Barbara Broke*

Executive Director

No. 4021221

License Fee \$75.00

THE LICENSE EXPIRES APRIL 26, 2013

STATE OF COLORADO  
**CITY OF GRAND JUNCTION**

BY AUTHORITY OF THE CITY COUNCIL

**RETAIL LIQUOR LICENSE**  
**FOR TAVERN**  
**TO SELL AT RETAIL ALCOHOL BEVERAGES**

This is to Certify that CITY OF GRAND JUNCTION DBA "LINCOLN PARK SPORTS COMPLEX" of the State of Colorado, having applied for a License to sell alcohol beverages, and having paid to the City Treasurer the sum of Seventy Five and No One Hundredths (\$75.00) dollars therefor, the above applicant is hereby licensed to sell alcohol beverages by the drink for consumption on the premises as a tavern at 1307 NORTH AVENUE in the City of Grand Junction, Colorado, for a period beginning on the 27<sup>TH</sup> DAY OF APRIL, 2012, and ending on the 26<sup>TH</sup> DAY OF APRIL, 2013, unless this License is revoked sooner as provided by law.

This License is issued subject to the Laws of the State of Colorado and especially under the provisions of Article 46 and 47 of Title 12, Colorado Revised Statutes, as amended and the Ordinances of the City aforesaid, insofar as the same may be applicable.

IN TESTIMONY WHEREOF, The City Council has hereunto subscribed its name by its officers duly authorized this 27<sup>th</sup> day of April, 2012.

ATTEST:

*Stephanie Tuin*

CITY CLERK

THE CITY COUNCIL OF THE CITY OF  
Grand Junction, Colorado

*[Signature]*  
LEASING OFFICER