



MEMORANDUM

Willie D. Freehling

TO: City Council
FROM: Bill Freehling, Director, Economic Development & Tourism
Kathleen Dooley, City Attorney
DATE: November 21, 2018
RE: Celebrate Virginia After Hours - Trademark License Agreement

Issue:

Shall City Council authorize the City Manager to execute a Trademark License Agreement with SIP Rights, LLC, for "CELEBRATE VIRGINIA AFTER HOURS," (the "Mark") for the purposes of conducting recreational and entertainment events, including live musical concerts, at the Stadium? The Trademark License Agreement was one of four contingencies to final approval of the Development and Shared Use Agreement with Potomac Baseball, LLC, identified in City Council's Resolution 18-99, adopted on November 13, 2018.

Recommendation:

Council should approve the agreement in substantially the form submitted for approval.

Background:

The City and Potomac Baseball, LLC ("Club") entered into a July 11, 2018, Letter of Intent under which they proposed to perform certain responsibilities for the purpose of developing an agreement for the construction, operation, and maintenance of a multi-purpose outdoor recreational venue, to serve as the home of the Minor League Baseball team owned by the Club.

The Silver Companies made a commitment of support for the proposed multi-purpose outdoor recreational venue, in a letter dated April 26, 2018, (the "Silver Commitment.") The Silver Commitment was composed of two components – a commitment to contribute \$100,000 annually to the project for 30 years, and an additional pledge to participate in moving 100% of the operations and

lease proceeds from the Celebrate Virginia After Hours concert series to the new multi-purpose stadium. One of the City's responsibilities under the Letter of Intent was to secure the Silver Commitment.

In fulfillment of the second component of the Silver Commitment, Silver has caused its affiliate, SIP Rights, LLC, to prepare a Trademark License Agreement, under which it licenses to the City the royalty-free, exclusive right to use the registered mark, "CELEBRATE VIRGINIA AFTER HOURS," (the "Mark") for "Licensed Uses," which include conducting recreational and entertainment events at the Stadium, including without limitation live musical concerts and other events. SIP Rights will also transfer control over all domain names and social media accounts used to promote the current CELEBRATE VIRGINIA AFTER HOURS concert series. Finally, the agreement includes a "non-compete" clause for land in Celebrate Virginia South under the ownership or control of the Silver Companies.

The parties anticipate that the current concert series promoter, Event Makers-USA, Inc., will promote a 2019 concert series under the CELEBRATE VIRGINIA AFTER HOURS trademark.

The new stadium will be an attractive venue for musical performers, and the presence of the concert series in the stadium will further enliven what promises to be an exciting venue. The established concert series draws an average of 2,800 people per performance. It is very possible that concerts in the new stadium will draw new and larger audiences to the City.

The Trademark License Agreement has value to the City, and the proceeds from the use of the Mark will help the City meet its City Funding Commitment under the Development & Shared Use Agreement.

Fiscal Impact:

The Trademark License Agreement is projected to generate annual revenues of at least \$100,000 in the first five years of Stadium operations, as well as admissions, meals, and sales tax revenues.

Attachments:

Trademark License Agreement
Resolution

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT is made as of _____, 2018 (“Effective Date”), by **SIP Rights, LLC**, a Florida limited liability company, with offices at 1001 East Telecom Drive, Boca Raton, Florida 33431, registered to do business in Virginia (“Licensor”), **City of Fredericksburg**, a Virginia municipal corporation, with offices at 715 Princess Anne Street, Fredericksburg, Virginia 22401 (“Licensee”) and *(with respect to Section 7.5.2 only), [Land Owner].

Recitals

Licensor owns a portfolio of federally registered service marks for CELEBRATE VIRGINIA for use in connection with a wide range of services, including without limitation providing facilities for recreational activities; real estate brokerage, investment, leasing, and management services; hotels, campgrounds, travel agency and information services and restaurant services; as well as state registered and common law rights for use in connection with certain entertainment services including without limitation providing live musical concerts.

Licensor has registered the service mark CELEBRATE VIRGINIA AFTER HOURS with the Virginia State Corporation Division of Securities & Retail Franchising for the class of services described as “arranging and conducting concerts for public exhibition and viewing, in Class 41, Reg. No. 12,678 issued October 17, 2018 and due for renewal on October 17, 2023.

Licensor licensed the service mark, CELEBRATE VIRGINIA AFTER HOURS to Event Makers-USA, Inc., for the 2018 concert season in an “Easement for Access and Event Operations” dated April 16, 2018, recorded in the land records of the City as Instrument #180000731. Licensor anticipates granting Event Makers-USA, Inc. a license in the service mark for the 2019 concert season.

Licensee has negotiated a Development and Shared Use Agreement (the “Stadium Agreement”) to provide annual funding to Potomac Baseball LLC (“Club”) to facilitate the use and operation of a multi-purpose stadium to be constructed in the City of Fredericksburg, Virginia (the “Stadium”) which will be used by Licensee and Club for purposes of exhibiting minor league baseball games, live concerts, recreational events and other special events.

The estimated cost of the Stadium is \$35 million. The Stadium Plans provide for seating for approximately 5000 people, concession areas, restrooms, and a high-definition video board.

The Stadium Agreement requires the relocation of the Team (the Minor League Baseball team owned and operated by the Club, currently the Class A (Advanced) affiliated with the Washington Nationals Major League Baseball Club) to the Stadium, and the use of the Stadium for Team Home Baseball Games. Accordingly, the Stadium Agreement is a “Regulated Transaction” as defined by Major League Baseball Rule 54(c)(3)(C), and is therefore subject to all Baseball Rules, as provided in more detail in the Stadium Agreement.

The Stadium Agreement includes Stadium Operation and Maintenance obligations which require, among other things, the year-round operation, maintenance, and repair of the Stadium in accordance with the standards set out therein. In addition, Baseball Rules, enforced by Major League Baseball and Minor League Baseball, govern the operation and maintenance of Minor League Baseball stadiums and franchises. The Stadium Plans, Stadium Agreement, and Baseball Rules all assure the quality of the Stadium as a venue for the Licensed Uses (defined below).

The Stadium is proposed to be constructed under a ground lease between Club and CVAS Stadium, LLC, an affiliate of Licensor.

Licensor acknowledges that development and operation of the Stadium will provide benefits to businesses in the Celebrate Virginia South development and that, Licensor and its affiliates who own land in the Celebrate Virginia South development will benefit from Licensee’s entry into and performance under the Stadium Agreement, thereby providing sufficient consideration for the license granted by Licensor to Licensee.

Licensor therefor desires to license the Virginia registered and common law mark CELEBRATE VIRGINIA AFTER HOURS, Virginia registration no. 12,678, used by Licensor in connection with providing live musical concerts (the “Mark”), for use in connection with certain recreational events other than sporting events at the Stadium.

Licensee is willing to accept Licensor’s license to use the Mark in connection with the Licensed Uses under the terms and conditions in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals, mutual promises and covenants between the parties and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I TERM OF AGREEMENT

1.1 Term. Unless otherwise terminated as provided for in Article IV, the initial term of this Agreement shall commence on the Effective Date and shall continue through the Termination Date of the Stadium Agreement. The term shall automatically renew for up to two additional ten-year renewal terms unless either party provides written notice to the other of its intent not to renew the agreement no fewer than 90 days prior to the expiration of the then-current term.

ARTICLE II GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, commencing on November 1, 2019 and continuing through the term of this Agreement, the royalty-free, nontransferable, exclusive right to use the Mark solely in connection with the Licensed Uses. “Licensed Uses” shall mean conducting recreational and entertainment events (other than sporting events) at the Stadium only, including without limitation live outdoor musical concerts, pre-game events, after-game events and other special events. For the avoidance of doubt, Licensee may use the Mark (i) in advertising that jointly promotes the Licensed Uses and baseball games exhibited by the Club, and (ii) on promotional items, including without limitation and for illustration purposes only, cups, water bottles, insulated sleeves for cans, shirts and caps, which promotional items may be sold or given away to the public for the purpose of promoting the Licensed Uses. For purposes of this Agreement, the term “Club” shall include any successors in interest to Potomac Baseball LLC’s rights and obligations under the Development and Shared Use Agreement..

2.2 Domain Names and Social Media. Licensor shall make commercially reasonable efforts to transfer, or cause to be transferred, to Licensee control—but not ownership -- over all domain names and social media accounts used to promote the current CELEBRATE VIRGINIA AFTER HOURS concert series, including but not limited to the domain name celebratevirginiaafterhours.com, the Facebook account

located at facebook.com/CelebrateVirginiaAfterHours, the Instagram account located at instagram.com/celebrateva_AH, and the Twitter account located at twitter.com/CelebrateVA_AH. The license grant set forth in Section 2.1 of this Agreement shall include the exclusive right to use the foregoing domain name and social media accounts, and such other domain names and social media accounts as the parties may mutually agree, during the term of this Agreement.

2.3 2019 Concert Season License. Licensor reserves the right to grant a license in the Mark for an outdoor musical concert series in Celebrate Virginia South for the 2019 concert season, April 1 to October 31. Any such license agreement shall contain the following elements: (i) a license termination date no later than October 31, 2019; (ii) terms and conditions substantially similar to Section 2.8 (Goodwill) of this Agreement; (iii) terms and conditions substantially similar to the first two sentences of Section 3.1 (Ownership) of this Agreement; and (iv) a requirement to transfer to Licensor ownership and control of all domain names and social media accounts used to promote the CELEBRATE VIRGINIA AFTER HOURS concert series, including but not limited to the domain names and social media accounts identified in Section 2.2 of this Agreement, and any other domain names and social media accounts owned or controlled by the 2019 licensee and confusingly similar to CELEBRATE VIRGINIA AFTER HOURS, to Licensor no later than October 31, 2019.

2.4 Sublicense Rights. Licensee may sublicense the rights (together with all obligations) granted under this Agreement to Club or a third-party concert promoter ("Sublicensee"), provided that the sublicense (i) shall be in writing and a copy shall be provided to Licensor; (ii) shall not exceed the scope of rights granted to Licensee hereunder and shall not grant any right to further sublicenses; (iii) shall include an agreement by Sublicensee to be bound by the terms and conditions of this Agreement; (iv) shall include Licensor's right to enforce its rights in the Mark; (v) shall provide that the Term of the sublicense thereunder shall not extend beyond the term of this Agreement; and (vi) shall indicate that Licensor is a third-party beneficiary and entitled to enforce the terms and conditions of the sublicense. Licensee shall not otherwise sublicense the rights granted in this Agreement without the prior written consent of the Licensor, not to be unreasonably withheld. In the event of the termination or expiration of this Agreement, all sublicense rights shall terminate effective as of the termination or expiration of this Agreement. In the event that a Sublicensee commits a violation of this Agreement for which Licensor claims monetary damages, Licensor shall pursue any claims for monetary damages directly against the Sublicensee, and Licensee shall not be liable to Licensor for any such monetary damages. Licensor shall deal directly with any Sublicensee concerning compliance with and enforcement of this Agreement; provided that Licensee shall be notified of any alleged violation of this Agreement by any Sublicensee and Licensee shall provide Licensor with reasonable cooperation in the enforcement of the sublicense against

the Sublicensee. Sublicensee shall be a third-party beneficiary and entitled to enforce the terms and conditions of this Agreement directly against Licensor.

2.5 Sublicense Rights. Licensee may sublicense the rights (together with all obligations) granted under this Agreement to Club or a third-party concert promoter (“Sublicensee”), provided that the sublicense (i) shall be in writing and a copy shall be provided to Licensor; (ii) shall not exceed the scope of rights granted to Licensee hereunder and shall not grant any right to further sublicenses; (iii) shall include an agreement by Sublicensee to be bound by the terms and conditions of this Agreement; (iv) shall include Licensor’s right to enforce its rights in the Mark; (v) shall provide that the Term of the sublicense thereunder shall not extend beyond the term of this Agreement; and (vi) shall indicate that Licensor is a third-party beneficiary and entitled to enforce the terms and conditions of the sublicense. Licensee shall not otherwise sublicense the rights granted in this Agreement without the prior written consent of the Licensor, not to be unreasonably withheld. In the event of the termination or expiration of this Agreement, all sublicense rights shall terminate effective as of the termination or expiration of this Agreement. In the event that a Sublicensee commits a violation of this Agreement for which Licensor claims monetary damages, Licensor shall pursue any claims for monetary damages directly against the Sublicensee, and Licensee shall not be liable to Licensor for any such monetary damages. Licensor shall deal directly with any Sublicensee concerning compliance with and enforcement of this Agreement; provided that Licensee shall be notified of any alleged violation of this Agreement by any Sublicensee and Licensee shall provide Licensor with reasonable cooperation in the enforcement of the sublicense against the Sublicensee. Sublicensee shall be a third-party beneficiary and entitled to enforce the terms and conditions of this Agreement directly against Licensor.

2.6 Scope of Exclusivity; Non-compete.

2.6.1 Licensee shall have the exclusive right to use the CELEBRATE VIRGINIA AFTER HOURS mark in connection with the Licensed Uses and Licensor agrees during the term of this Agreement not to use or license any third party to use the CELEBRATE VIRGINIA AFTER HOURS mark, or any mark that includes a combination of both CELEBRATE VIRGINIA and AFTER HOURS for the Licensed Uses.

2.6.2 Licensor and its affiliates further agree that they will not (i) conduct outdoor concerts on land it owns or controls, (ii) permit a third party to conduct outdoor concerts on land it owns or controls, or (iii) use or permit the use of land it owns and controls in support of an outdoor concert (e.g. as parking, concession area, etc.) within the Celebrate Virginia South development located within the city of Fredericksburg during the term of this Agreement.

For the avoidance of doubt, nothing in this Agreement shall prohibit Licensor from using or licensing a third party to use the marks CELEBRATE VIRGINIA or other CELEBRATE VIRGINIA formatives (with the exception of the CELEBRATE VIRGINIA AFTER HOURS mark or any mark that includes a combination of both CELEBRATE VIRGINIA and AFTER HOURS) in connection with indoor musical concerts taking place inside the Fredericksburg Expo Center.

2.7 Standards of Use.

2.7.1 The parties shall cooperate in good faith to develop mutually agreeable logo designs and standards of use for the Mark no later than October 31, 2019, which shall address acceptable multi-color and single color depictions of the Mark, the proper use of symbols such as “TM”, “SM” or “®”, and the proper use of notices that the Mark are owned by and/or used under license from Licensor (“Standards of Use”). Licensor shall own any logo designs incorporating the Mark and such logo designs shall be included within the scope of the term “Mark” as used in this Agreement. Licensee shall depict the Mark in compliance with the Standards of Use.

2.7.2 At Licensor’s reasonable request from time to time, Licensee, either directly or through a Sublicensee, shall provide Licensor with representative samples of advertising and promotional materials to ensure compliance with the Standards of Use. Licensee shall not otherwise be required to obtain prior approval for individual uses of the Mark in advertising or other promotional uses.

2.7.3 Licensee shall submit any requests to modify the Standards of Use to Licensor in writing, and Licensor shall approve or disapprove any such changes in writing no more than ten (10) business days after receiving a written request from Licensee, such approval not to be unreasonably withheld. Any such disapproval shall include a written explanation of why the proposed modification of the Standards of Use cannot be approved or, if Licensor determines such proposed modifications of the Standards of Use could be approved reasonably with further changes, Licensor shall include the recommended changes that would enable the proposed modifications of the Standards of Use to be approved by Licensor.

In the event that Licensor determines in its reasonable discretion that any advertising or other promotional use does not comply with the Standards of Use, Licensor shall promptly provide Licensee with written notice of such noncompliance, including a written explanation of the noncompliance and recommended changes that would enable the advertising or other promotional use of the Mark to comply with the Standards of Use. Licensee agrees to cease, and not continue with any advertising or other

promotional uses of the Mark that do not comply with the Standards of Use promptly after receiving a notice of noncompliance from Licensor.

2.8 Quality Control. The Licensed Uses shall be provided at the Stadium, which shall be operated and maintained in a manner consistent with the Stadium Agreement and Baseball Rules, including Rule 58 (“Standards for Minor League Playing Facilities”). Licensee shall exercise its rights under the Stadium Agreement, including use of the Advisory Board, communications with the Senior Executive, and, in its sole discretion, its remedies for Club Default, to require Club to operate and maintain Stadium consistently with the Stadium Agreement. Licensor acknowledges and agrees that the Licensed Uses involve performances by third parties over which Licensee has no actual control, and that Licensee shall not be liable to Licensor for damages resulting from the acts and omissions of such third parties nor the negative perception of such third party performances by the public.

2.9 Goodwill. All goodwill arising from or relating to Licensee’s use of the Mark shall inure to the benefit of Licensor as the owner of the Mark. To the extent any rights to the Mark are deemed to accrue to Licensee pursuant to this Agreement or otherwise, Licensee shall and hereby does assign any and all such rights to Licensor.

ARTICLE III OWNERSHIP OF MARK; INFRINGEMENT; INDEMNIFICATION

3.1 Ownership. Licensee acknowledges Licensor’s exclusive right, title, and interest in and to the Mark. Licensee shall not commit, or cause any third party to commit, any act challenging, contesting, or in any way impairing or attempting to impair Licensor’s right, title, and interest in and to the Mark (as applicable), including but not limited to seeking registration of the Mark or any confusingly similar mark anywhere in the world. Licensor will use commercially reasonable efforts to register the Mark with the United States Patent and Trademark Office and the Virginia State Corporation Commission Division of Securities & Retail Franchising for services broad enough to cover the Licensed Uses, and to maintain such registrations.

3.2 Infringement. Licensee shall immediately notify Licensor of any activity by a third party of which Licensee is aware that might constitute unauthorized use or violation of the Mark, or of any actual or threatened claim by a third party that Licensee’s use of the Mark infringes or otherwise threatens such party’s rights. Licensor shall prosecute, defend, or otherwise pursue resolution of any unauthorized use, infringement or other violation related to the Mark occurring in the city of Fredericksburg, Stafford

County, and Spotsylvania County. Licensor will further use reasonable best efforts to enjoin any use of the CELEBRATE VIRGINIA AFTER HOURS mark or any derivations of CELEBRATE VIRGINIA AFTER HOURS by the 2018 and/or 2019 licensee(s) at any time after October 31, 2019, including but not limited to any use of the domain names and social media accounts identified in Section 2.2 of this Agreement if such use is under circumstances likely to cause confusion. Licensor shall have the right, in its sole discretion and at its own expense, to prosecute, defend or otherwise pursue resolution of any other alleged infringement or other violation related to the Mark. Licensor is entitled to any recoveries, costs, attorneys' fees and damages recovered through such proceedings, as the case may be..

3.3 Indemnification by Licensor. Licensor agrees to indemnify, defend and hold harmless Licensee, Sublicensee, and their respective officers, directors, employees and agents (collectively, the "Indemnified Parties"), from and against any and all causes of action brought by a third party alleging that use of the Mark in compliance with the terms and conditions of this Agreement, infringes upon such third party's trademark, copyright, or other intellectual property rights, including all suits, judgments and expenses, including costs and attorneys' fees, to the extent arising out of or in any way connected with such third party claims. The parties agree that Section 3.3 of this Agreement specifically excludes any claims by Indemnified Parties for consequential damages incurred by Indemnified Parties, including economic loss. Licensor may not enter into any settlement of any such claims that imposes any obligation upon the Indemnified Parties, or makes any admission adverse to the interests of the Indemnified Parties, without the prior written consent of the applicable Indemnified Parties, which consent shall not be unreasonably withheld.

3.4 Insurance. Licensee shall require each Sublicensee to carry liability insurance covering its acts and omissions in the initial amount of \$1 million, and thereafter as reasonably approved by Licensor. Insurance policies required by this section shall name Licensor as additional insured. This coverage shall be evidenced by a certificate of insurance and additional insured endorsement document.

3.5 Warranties and Representations. Each party represents and warrants to the other party that (a) it is a juridical person duly established, validly existing and in good standing under the laws of the place of its formation and has full power, authority and legal right to make and perform this Agreement, (b) this Agreement constitutes the legal, valid and binding obligation of said party and is enforceable in accordance with its terms against said party, and (c) said party has all necessary rights needed to perform its obligations under this Agreement and to grant the rights granted hereunder. Licensee agrees that for any breach of subpart (c), Licensee's remedy is limited to indemnification as set out in Section 3.3.

3.6 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND EACH PARTY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

3.7 Limitation of Liability. EXCEPT FOR CLAIMS, DAMAGES OR LIABILITIES ARISING FROM A PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, AND CLAIMS FOR INDEMNIFICATION ARISING UNDER SECTION 3.3 OF THIS AGREEMENT NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES UNDER ANY LEGAL THEORY ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY.

ARTICLE IV TERMINATION

4.1 Termination.

4.1.1 Licensor may terminate the license grant set forth in this Agreement in the event that a court of competent jurisdiction determines, other than in the context of a preliminary or restraining order, that the Mark infringes the rights of a third party, provided that all other obligations of Licensor set forth in this Agreement shall survive and continue for the term of this Agreement.

4.1.2 Licensor may terminate this Agreement if (i) Licensee fails to cure a material breach of its obligations hereunder within ninety (90) days of Licensor's written notice of such material breach, or (ii) Licensee fails to conduct an outdoor concert series in the Stadium for a period of two (2) consecutive years.

4.1.3 Licensee may terminate this Agreement at any time without cause upon written notice to Licensor.

4.2 Discontinuation of Use. Upon the expiration or termination of this Agreement, Licensee shall cease all use of the Mark and return to Licensor or destroy all packaging, advertising and other materials containing the Mark. An officer of Licensee shall certify to Licensor in writing Licensee's compliance with this Section 4.2.

4.3 Accrued Rights. Neither the expiration nor termination of this Agreement for whatever cause shall affect any rights or obligations of any party which have accrued as of the effective date of such expiration or termination, nor shall it affect any rights or obligations of any party under this Agreement which are intended by the parties to survive such expiration or termination.

ARTICLE V GENERAL PROVISIONS

5.1 Survival. The obligations of Articles III, IV and V of this Agreement shall survive the expiration or termination of this Agreement.

5.2 Independent Contractor. The parties are not agents of each other as a result of or in any transaction under or relating to this Agreement, and shall not enter into nor incur any obligations on behalf of one another. The relationship of the parties shall in all respects be that of independent contractors.

5.3 Controlling Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its laws regarding conflicts of law. The parties agree that any and all court proceedings arising out of, relating to, or referencing this Agreement shall be brought in, and only in, the federal or state courts in the territory of the United States District Court for the Eastern District of Virginia. The parties further consent to waive any objection to the jurisdiction and venue thereof.

5.4 Headings. The headings of the articles and sections in this Agreement are included for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

5.5 No Waiver. The failure of either party to insist in any one or more instances upon the performance of any term, obligation, or condition of this Agreement by the other party, or to exercise any right or privilege conferred in this Agreement, shall not be construed as a waiver of such term, obligation, or condition or a relinquishment of such right or privilege. Any waiver by either party of a breach of any term or condition of this Agreement shall not be considered a waiver of any subsequent breach of the same or any other condition.

5.6 Notices. All notices given in connection with this Agreement shall be in writing and shall be deemed to have been received on: (i) the date when delivered by hand to the appropriate address set forth below; (ii) the business day immediately after the business day when delivered to Federal Express, UPS (or a reputable overnight courier service) for overnight or next day delivery to the appropriate address set forth below; or (iii) two business days after the day when mailed by United States certified mail (postage prepaid, return receipt requested) to the appropriate address set forth below, or such other address as a party may subsequently designate to the other party in writing.

If to Licensor: SIP RIGHTS, LLC
SILVER CAPITAL ADVISORS, INC., MANAGER
c/o Jesse A. Holshouser, CFO
1001 East Telecom Drive
Boca Raton, Florida 33431
Facsimile: (561) 981-5254
Email: jholshouser@silverco.com

If to Licensee: Timothy Baroody, City Manager
City of Fredericksburg
P.O. Box 7447
715 Princess Anne Street
Fredericksburg, Virginia 22401
E-mail: tjbaroody@fredericksburgva.gov
with copy to: Fredericksburg City Attorney
P.O. Box 7447
715 Princess Anne Street
Fredericksburg, Virginia 22401
E-mail: kdooley@fredericksburgva.gov

5.7 Severability. In the event any part or parts of this Agreement are found to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect, provided that the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

5.8 Entire Agreement. The terms and provisions of this Agreement constitute the entire agreement between the parties and supersede all previous communications, negotiations, proposals,

representations, conditions, and agreements, whether written or oral, relating to the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by the party sought to be bound.

IN WITNESS WHEREOF, the parties have executed this Agreement.

LICENSOR:

SIP RIGHTS, LLC

LICENSEE:

CITY OF FREDERICKSBURG

By: **Silver Capital Advisors, Inc., its
Manager**

By: _____

Larry D. Silver

Its: President

By: _____

Timothy J. Barody

Its: City Manager

Date: _____

Date: _____

[LAND OWNER]

(with respect to Section 2.5.2 only)

By: _____



MOTION:

SECOND:

**November 27, 2018
Regular Meeting
Resolution 18-**

RE: Approving the Trademark License Agreement from SIP Rights, LLC

ACTION: APPROVED: Ayes: 0; Nays: 0

The City and Potomac Baseball, LLC (“Club”) entered into a July 11, 2018 Letter of Intent under which they proposed to perform certain responsibilities for the purpose of developing an agreement for the construction, operation, and maintenance of a multi-purpose outdoor recreational venue, to serve as the home of the Minor League Baseball team owned by the Club.

The Silver Companies made a commitment of support for the proposed multi-purpose outdoor recreational venue, in a letter dated April 26, 2018 (the “Silver Commitment.”) The Silver Commitment was comprised of two components – a commitment to contribute \$100,000 annually to the project for 30 years, and an additional pledge to participate in moving 100% of the operations and lease proceeds from the Celebrate Virginia After Hours concert series to the new multi-purpose stadium. One of the City’s responsibilities under the Letter of Intent was to secure the Silver Commitment.

In fulfillment of the second component of the Silver Commitment, Silver has caused its affiliate, SIP Rights, LLC, to prepare a Trademark License Agreement, under which it licenses to the City the royalty-free, exclusive right to use the registered mark, “CELEBRATE VIRGINIA AFTER HOURS,” (the “Mark”) for conducting recreational and entertainment events at the Stadium, including without limitation live musical concerts and other events. The Trademark License Agreement was identified as a contingency to final approval of the Development and Shared Use Agreement between the City and the Club in Resolution 18-99, adopted by City Council on November 13, 2018. This condition has now been resolved to City Council’s reasonable satisfaction.

Therefore, the City Council hereby resolves that:

- The City Manager is authorized to execute, deliver, and carry out the Trademark License Agreement from SIP Rights, LLC, in substantially the form submitted for approval.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

*I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 18-,
adopted at a meeting of the City Council held November 13, 2018, at which a quorum was present and voted.*

Tonya B. Lacey, CMC
Clerk of Council