

5F-1

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

TIME CERTAIN
11:00 A.M.

Meeting Date: August 18, 2015 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement with the City of West Palm Beach ("Agreement") for the exchange of property for the development of a two team Major League Baseball spring training complex ("Facility").

Summary: Pursuant to this Agreement, the City will convey approximately 141 acres of City owned property between Haverhill Road and Military Trail lying South of 45th Street (the "Site") in exchange for the County conveying 1.8 acres of County owned property lying between Evernia and Fern Streets (the "County Property"). The County will also cause the Teams to construct a 12.2 acre City Park on adjoining City owned property contemporaneously with development of the Facility. As contemplated by the material term sheet approved by the Board on February 3, 2015, this exchange is not tied to the valuation of the properties being exchanged. As the Site was previously used by the City as a yard waste landfill, substantial environmental assessment work was performed which indicates that no significant environmental contamination exists which would require remediation of the Site. The team's consultants have estimated non-environmental reclamation costs (trash removal, soil processing, transportation and disposal) at roughly \$11 Million. Both the City and County have completed their due diligence investigations of the properties to be received by them in this exchange, and each party will be accepting title to the properties in "As-Is" condition. Closing will occur within thirty (30) days following issuance of County bonds to fund development costs of the Facility. *The approval of this Agreement is a companion to and contingent upon the approval of the Developer Agreement, Sports Facility Use Agreement, and three separate Agreements pertaining to reclaimed water serving the Facility.* **Approval of this item requires a supermajority vote (5 votes). (FDO/Admin) Countywide/District 7 (HJF)**

Background and Policy Issues: This transaction was structured as an exchange of the Site for the County Property with the County also committing to cause the Teams to construct an adjacent City Park at the Team's expense. There is no cash consideration and pursuant to the material term sheet approved by the Board, the parties are not basing the exchange on the value of the properties. However, the PREM ordinance requires that appraisals be obtained. Staff obtained two appraisals of both the Site and the County Property. The appraisals valued the Site at \$6,300,000 and \$6,700,000. The appraisals valued the County Property at \$4,270,000 and \$4,725,000. It should be noted that the appraisals did not take into account the obligation to develop the City Park. This transaction is not subject to review by the Property Review Committee as it is an intergovernmental exchange of real property pursuant to F.S. Section 125.38.

CONTINUED ON PAGE 3

Attachments:

- 1. Location Maps
- 2. Interlocal Agreement

Recommended By: Raymond Wolf Department Director 8/14/15 Date
Approved By: [Signature] County Administrator 8/14/15 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income	_____	_____	_____	_____	_____
(County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund 0001 Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This Interlocal Agreement exchanges the South Block of Government Hill for the property currently owned by the City of West Palm Beach for the Stadium. The value of the land is \$4,725,480 and the end of year projections reflect the general fund receiving a revenue in an equal amount from the TDC 1st Cent Reserves. Title Insurance will also be paid from the 1st Cent in the amount of approximately \$14,000, bringing the total revenue to be received to \$4,739,480. The expense for the title insurance will be charged to 3804-411-B585-08.

Fixed Assets Numbers G06980, G02943, G02945, G06905, J04496 and G07266
A. Di Piero, mgr., FAMO, OFMB
8/16/15

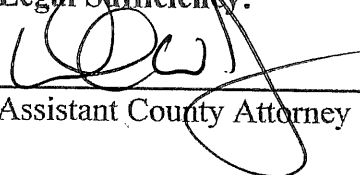
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 _____ OFMB <i>30</i> <i>8/12</i> <i>8/12</i>	 _____ Contract Development and Control <i>B. Wheeler 8-13-15</i>
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B. Legal Sufficiency:



 Assistant County Attorney *8/14/15*

C. Other Department Review:

 Department Director

A more detailed discussion of the material components of this Agreement is provided below.

Due Diligence

Each party is responsible for performing all due diligence necessary to evaluate the property they will be receiving in the exchange. The properties will be exchanged in their "As-Is" condition. Both parties have completed their due diligence investigations and are agreeing that they are satisfied with the physical condition of the properties.

Environmental Assessment. The historic use of the Site as a landfill required the County and Teams to perform an extensive amount of testing and analysis to determine the suitability of the Site for the proposed development of the Facility, as well as to confirm that there is no environmental contamination which would require remediation. The Teams contracted with URS Southern Corp. (URS) to perform an environmental assessment of the Site. Test pits were dug to determine the composition of materials placed into the landfill. The test pits confirmed that the materials within the landfill consist primarily of vegetative waste, however, there is a significant amount of non-hazardous solid waste that will need to be processed and properly disposed of. The plan is to process the landfill materials by separating plastics, concrete, metals, wood and other materials, both by hand and by screening, dispose of the larger solid items at the SWA landfill, and spread the separated soil materials throughout the site. The Team's engineer estimated the cost of this reclamation work at roughly \$11 Million.

Soil borings were performed at strategic locations across the Site to test for contaminated soils. Arsenic and lead were discovered in some of the soil samples derived from these borings, however, only arsenic was found to exceed target cleanup levels for residential use and none of the samples were found to contain contaminants that exceeded cleanup target levels for commercial use. For these purposes, the Facility is classified as a commercial use. A memorandum provided by the Florida Department of Environmental Protection (FDEP) concurred that no further assessment of Site soils was warranted.

Thirteen clusters of monitoring wells were installed in strategic locations to determine if groundwater contamination had occurred. Constituents exceeding groundwater cleanup target levels ("GCTL") consisted of ammonia in eight wells and total dissolved solids in seven wells. Ammonia exceeding GCTL was also found in a well installed at the northeast corner of the Site which is downgradient from the direction of groundwater flow. However, these constituents are typically associated with a landfill, elevated concentrations have not migrated offsite, and preliminary indications from FDEP are that continued groundwater monitoring will be all that is required. Only in the event that concentrations of these constituents in the groundwater increase would there be a risk that remediation will be required. As the landfill has not received additional waste since 1991 (other than hurricane vegetation debris in 2004), no significant groundwater contamination has occurred thus far, and the plan is to remove the solid waste, process the soils and spread the reclaimed soil throughout the Site, thereby reducing the volume and concentration of source contamination, Staff agrees with URS's conclusion that the risk of an increase in groundwater contamination is low. A more likely conclusion is that the presence of these constituents in the groundwater would further attenuate over time.

Under the terms of the Agreement, the County is solely responsible for removal, remediation and proper disposal of any environmentally unsuitable materials and Hazardous Waste as may be required in connection with the development of the Facility. Except for the foregoing, the City will retain responsibility for any violation of environmental law existing prior to closing.

Contingencies to Closing

The County's obligation to close upon the transactions contemplated by the Agreement is contingent upon: 1) The full execution of the Sports Facility Use Agreement and Developer Agreement; 2) receipt of a letter from the Florida Department of Economic Opportunity certifying the County for funding for the development of the Facility; 3) obtaining all permits and approvals for development of the Facility; 4) the County and City entering into an agreement for provision of reclaimed water to the Facility; and 5) the issuance of bond financing by County for the development of the Facility. The City's obligation to close is contingent upon the issuance of bond financing by the County for development of the Facility. Should these contingencies not be satisfied or waived on or before March 1, 2016, both parties have the right to terminate the Agreement or mutually agree to a future date by which closing must occur.

Deed Restriction and Restrictive Covenant

Residential use of the Site will be prohibited both by a restriction contained in the deed conveying the Site to the County and by a separate restrictive covenant. Use of the southern 400 feet of the Site (the "Buffer Area") will also be restricted to grassed pervious open space, multi-purpose athletic fields and parking. Use of the Buffer Area for parking shall be restricted to 40 days per year, inclusive of the spring training season, unless extended by mutual agreement of the parties.

Access Easement

The design of the Facility includes access throughout the adjacent City Park to access the Buffer Area from Haverhill Road. At closing, the City will grant the County an Access Easement over the driveway within the City Park.. The City shall maintain the Access Easement at its sole cost and expense.

Temporary Construction Easement for City Park

At closing, the City will grant the County a Temporary Construction Easement over the entire City Park for the County to construct the Park. Pursuant to the companion Developer Agreement, the Teams will assume full responsibility for all County obligations under the TCE at the Teams' sole cost and expense. Attachments to the TCE detail design and construction procedures for the City Park as well as a list of the improvements that the Teams have committed to install at no cost to the City.

Land Management

The proximity of the Site to the City's M-Canal is cause for the City to take precautions to assure its protection. To this end, the Facility and City Park are being designed and permitted to include no stormwater discharge to the M-Canal. Upon issuance of the Site's Environmental Resource Permit (ERP), neither party will amend same without the written consent of the other. The parties shall also agree in writing to a list of pesticides, fertilizers and herbicides that will be permitted for use in the aforementioned Buffer Area prior to any such application, and to exercise care during all instances of their application to safeguard the M-Canal

Groundwater Monitoring

Despite the favorable conclusions of the environmental assessment performed by URS and the northeasterly groundwater gradient, the City is requiring groundwater monitoring along the south property line of the Site abutting the City's Water Catchment Area and M-Canal. Monitoring will consist of three equally spaced wells to be sampled prior to construction commencement and annually for a period of two years thereafter. In the event that it can be demonstrated that any previously identified constituent exceeding groundwater cleanup target levels (GCTL) is migrating from the Site to the Water Catchment Area or M-Canal, the County will be responsible to take all steps reasonably necessary to contain the migration and remediate the surface and ground water. A groundwater monitoring plan will be prepared and submitted for FDEP approval.

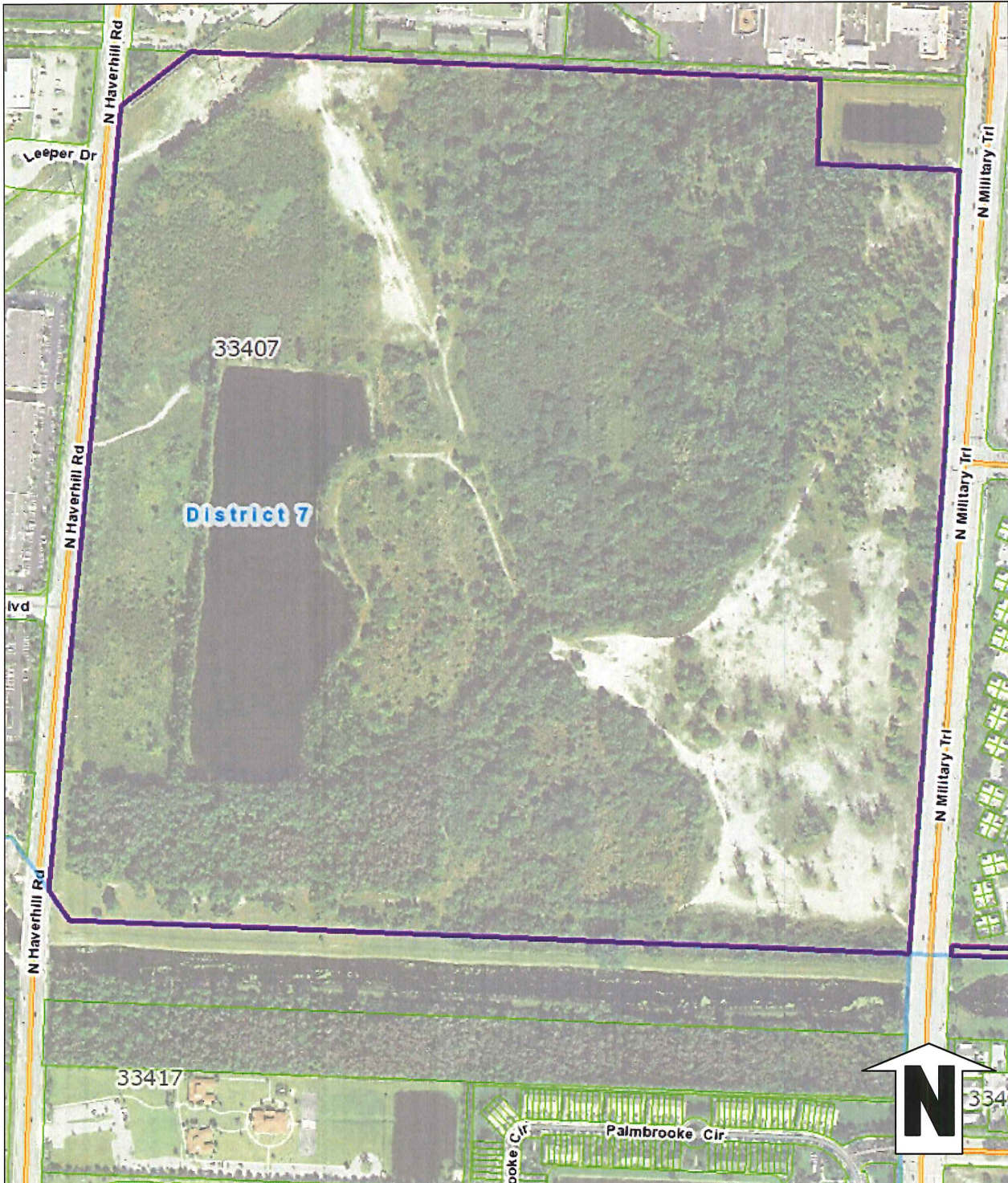
The LLC/Teams assume sole funding and performance responsibility for the County's obligations with regard to Groundwater Monitoring via the Developer Agreement and Sports Facility Use Agreement.

Irrigation

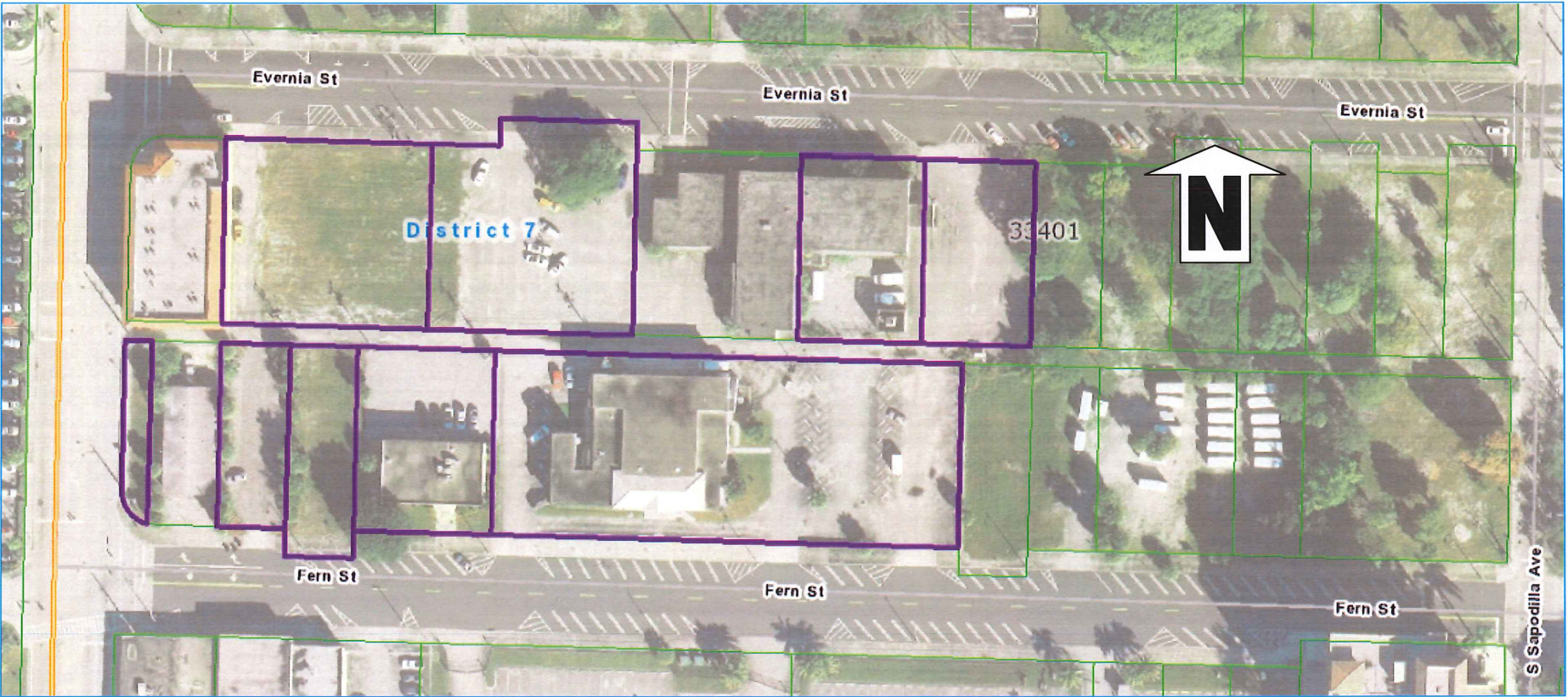
Given the nature of the Facility and its many athletic fields, the existing and proposed on-site lake will be used in conjunction with reclaimed water as an economical irrigation source for the Site. The three companion reclaimed water agreements are critical to the operation of the Facility. In response to City concerns regarding impacts to the M-Canal, the County has agreed to provide groundwater and lake modeling evaluations to the City and to incorporate the results into applicable permit applications. In the event that groundwater flows are reversed or the groundwater levels are drawn down by 0.1 feet or more, the County shall either replenish the water that it withdraws from the lake daily using reclaimed water, or discontinue use of the lakes for irrigation until any negative impact no longer exists.

The LLC/Teams assume sole funding and performance responsibility for the County's obligations with regard to irrigation via the Developer Agreement and Sports Facility Use Agreement.

Location Map



Location Map



ATTACHMENT 2
Interlocal Agreements (6 originals)
Pages 1-77 each

County Final 8-4-15

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND
CITY OF WEST PALM BEACH**

WPB Contract No. 15565

THIS IS AN INTERLOCAL AGREEMENT (hereinafter referred to as "Agreement") entered into by and between the **CITY OF WEST PALM BEACH**, a municipality duly organized and existing by virtue of the laws of the State of Florida, hereinafter referred to as "City" and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities;

WHEREAS, Part I of Chapter 163, Florida Statutes, permits "public agencies", as defined therein, to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately;

WHEREAS, County and City have identified a City owned 167 acre property located between Military Trail and Haverhill Road as the location for development of a two team Major League Baseball Spring Training Facility for use by the Houston Astros and Washington Nationals;

WHEREAS, City has agreed to make approximately 141.75 acres of the 167 acre property available for development of the Facility and to convey the 141.75 acres to County in exchange for County conveying to City approximately 1.8 acres of County owned land located between Evernia and Fern Streets in West Palm Beach;

WHEREAS, County has also agreed to develop a City Park including the features requested by City on approximately 12.2 acres of adjacent land to be retained by City;

WHEREAS, City has previously authorized County to perform certain due diligence investigations and perform predevelopment work on the City's property pursuant to an Access Agreement between the parties;

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WHEREAS, the County contemplates entering into a Developer Agreement with HW Spring Training Complex, LLC, (hereinafter, "LLC") a development entity created by the Houston Astros and Washington Nationals pursuant to which the LLC will take and perform all actions necessary for development of the Facility and City Park on behalf of County;

WHEREAS, the County and the LLC will enter into a Sports Facility Use Agreement pursuant to which the LLC will have the long term right and obligation to use and operate the Facility;

WHEREAS, County and City desire to specify the terms and conditions upon which the exchange of properties will take place;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City agrees to convey the Site, as hereinafter defined, to County in exchange for County conveying the County Property, as hereinafter defined, to City upon the terms and conditions hereinafter set forth.

1. **DEFINITIONS.** The following terms as used herein shall have the following meanings:

1.1 **Access Agreement** – The Access Agreement between the parties dated March 16, 2015 and approved by the Board of County Commissioners under Resolution 2015-0357 and by the West Palm Beach City Commission under Resolution No. 75-15. All references in the Access Agreement to the term "exchange agreement" shall mean and refer to this Agreement.

1.2 **Agreement** - this instrument, together with all exhibits, addenda, and proper amendments hereto.

1.3 **Buffer Area** – the south 400 feet of the Property to be used as grassed pervious open space, multi-purpose athletic fields, and/or overflow parking as depicted on the Conceptual Plan and described in Section 12.7 of this Agreement.

1.4 **City Park** - the park to be constructed by County on the City Park Property pursuant to Section 12.6 of this Agreement.

1.5 **City Park Property** - the approximately 12.2 acres depicted on the Conceptual Plan and legally described in Exhibit "A".

1.6 **Closing and Closing Date** - the consummation of the transaction contemplated hereby which shall be held upon the date reflected in Section 10.2 of this Agreement, unless extended by the terms of this Agreement, or by mutual consent of the parties.

1.7 **Conceptual Plan** – the general layout of proposed improvements to the Property, including the City Park, Facility and Buffer Area attached hereto as Exhibit "B".

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1.8 **County Property** – the approximately 1.8 acres of County owned land located between Evernia and Fern Streets in West Palm Beach and legally described in Exhibit “C”.

1.9 **County Property Permitted Exceptions** – those exceptions to title to the County Property set forth in Exhibit “D” attached hereto.

1.10 **Developer Agreement** – the executed agreement between Palm Beach County and the LLC, providing for the LLC to coordinate, administer and perform all aspects of the design, permitting, construction and development of: 1) the Site as required to complete and deliver the Facility in accordance with the Conceptual Plan and the further requirements set forth in the Developer Agreement, and 2) the City Park Property as is required to deliver and complete the City Park Improvements in accordance with the Conceptual Plan and the specific requirements set forth in this Agreement.

1.11 **“Environmental Laws”** means all federal, state and local health, laws, statutes, rules, regulations, and governmental orders, including all laws and governmental orders to the extent the foregoing relate to the following: (a) odors; (b) the pollution or protection of the air, soil, surface water, ground water, or other elements of the environment; (c) the use, release, threatened release, storage, disposal, emission, handling, discharge, transport, recycling, treatment, processing, distribution, or manufacturing of any Hazardous Materials; and (d) the cleanup, removal, recovery, assessment, or remediation of any damage, release, emission, discharge, pollution, or contamination of or into air, soil, buildings, surface water, groundwater, or personal property.

1.12 **Facility** – the two team Major League Baseball Spring Training Facility including a stadium, practice fields, clubhouses, parking areas and other related improvements as depicted on the Conceptual Plan.

1.13 **Funding Certification Letter** – a letter from the Florida Department of Economic Opportunity certifying the County pursuant to Section 288.11631, Florida Statutes, providing funding for the development of the Facility in the amount of two million dollars (\$2,000,000) per year for a total of twenty five (25) years.

1.14 **“Hazardous Material”** or **“Hazardous Materials”** means any chemical, pollutant, contaminant, pesticide, petroleum or petroleum product or by product, radioactive substance, solid waste (hazardous or extremely hazardous), special, dangerous or toxic waste, substance, chemical or material regulated, limited or prohibited under any Environmental Law, including without limitation: (i) asbestos, asbestos-containing material, presumed asbestos-containing material, polychlorinated biphenyls (“PCBs”), solvents and waste oil; (ii) any “hazardous substance” as defined under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); and (iii) any “hazardous waste” as defined under the Resource Conservation and Recovery Act (RCRA).

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1.15 **LLC** – HW Spring Training Complex, LLC, an entity formed by the Houston Astros and Washington Nationals to design, permit, construct, operate and maintain the Facility and to perform the various other obligations of the County hereunder with respect to the Facility and City Park.

1.16 **Property** – collectively, the City Park Property and the Site.

1.17 **Site** – the approximately 141.75 acres depicted on the Conceptual Plan and legally described in Exhibit “E” to be used for development of the Facility and which includes the Buffer Area as defined in Section 12.7 hereof.

1.18 **Site Permitted Exceptions** – those exceptions to title to the Site set forth in Exhibit “F” attached hereto, together with any other title matters that may be accepted in writing by County.

1.19 **Sports Facility Use Agreement** - the executed agreement with the LLC whereby the County grants to the LLC the rights to use, occupy and operate the Facility for a term of thirty (30) years and sets forth the LLC’s responsibilities for the maintenance and repair of the Facility, as well as the LLC’s responsibility for maintenance of the loop trail improvement and surface water management system.

2. **EXCHANGE AND CONVEYANCE**

City agrees to exchange and convey the Site to County and County agrees to exchange and convey the County Property to City, subject to the terms and conditions of this Agreement.

3. **DUE DILIGENCE.**

3.1 **Due Diligence on the Property** - County and City have entered into an Access Agreement dated March 10, 2015, providing County with access to the Site and the City Park Property for the conduct of such pre-purchase inspections and evaluations County deems necessary to determine whether the Property is suitable for County’s intended purposes of development and operation of a two team Major League Baseball Spring Training Facility. The terms and provisions of the Access Agreement are incorporated herein and made a part of this Agreement, and shall continue in full force and effect until the earlier of termination of this Agreement or Closing of the exchange of properties. The terms of this Agreement and the Access Agreement shall be interpreted in conjunction to provide the maximum flexibility and authority to expedite the County’s due diligence evaluations, the Closing and development of the Facility. In the event that County determines that the Site is unsuitable for the intended purposes, County shall have the right to terminate this Agreement at any time prior to the Effective Date of this Agreement. Without waiving the right to sovereign immunity as provided by Florida Statutes, Section 768.28, County acknowledges to be self-insured for General Liability for any and all liability which might arise out of County’s entry upon the City Property and any activities undertaken by County and conducted upon the City Property.

3.2 **Due Diligence on County Property** – Pursuant to a license agreement issued by County to City prior to the Effective Date of this Agreement, City and its engineers, surveyors, agents and representatives shall have had unrestricted access to the County Property for purposes of survey, testing, inspection, and appraisal thereof. All surveys, testing, inspections, and appraisals shall be conducted by City at its expense, and shall be performed by licensed persons or firms dealing in the respective areas or matters tested. All testing shall be done in the least intrusive manner reasonably practical. City shall provide County with a copy of all test and inspection reports generated by City, its agents, contractors and employees within ten (10) days of City's receipt of same. In the event City elects not to close upon its purchase of the County Property, City shall restore the County Property to the condition in which it existed prior to such inspections, using materials of like kind and quality. Nothing contained herein shall be construed to prohibit City from disclosing the results of said inspections as may be required by applicable law. In the event that such inspections shall reveal a deficiency in the County Property, as determined by City in its sole and absolute discretion, City shall have the right, at its option to terminate this Agreement at any time prior to the Effective Date of this Agreement. Without waiving the right to sovereign immunity as provided by Florida Statutes, Section 768.28, City acknowledges to be self-insured for General Liability for any and all liability which might arise out of City's entry upon the County Property and any activities undertaken by City and conducted upon the County Property.

4. **CONDITION OF PROPERTIES.**

4.1 The parties acknowledge that each party will have had the opportunity to perform such studies, inspections, examinations, investigations and evaluations of the property they will receive in this exchange as each party, in their discretion, deems necessary or appropriate. Both parties are sophisticated purchasers, owners, and managers of real property, and each party will rely solely upon such studies, inspections, examinations, investigations and evaluations in deciding whether to accept title to the property they will receive in this exchange. Unless otherwise expressly stated herein, neither party is making any representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered in connection with the transactions contemplated hereby. Excepting those rights to recover as against URS Corporation Southern for those rights delivered to City pursuant to Section 10.3.2.4, each party acknowledges and agrees that any materials, data and information prepared by third parties and delivered in connection with the transactions which are the subject of this Agreement are provided as a convenience only and that any reliance on or use of such materials, data or information is at the sole risk of the party relying thereon. Without limiting the generality of the foregoing provisions, each party acknowledges and agrees that (a) any environmental or other report which is delivered is for general informational purposes only (b) neither party will have any right of action against the other or the LLC, with respect to any such reports, (c) neither party will have any liability to the other or the LLC, for any inaccuracy in or omission from any such report, and (d) neither party represents or warrants the truth, accuracy or completeness of any such reports or any written or verbal statement made by their agents. To the contrary, each party acknowledges and agrees that this information is provided merely as an accommodation, that each party relies upon such information at its own risk, and understands that it is responsible to make its own full and complete investigation concerning the property they

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will receive is this exchange. It is expressly understood and agreed that the Site and County Property will be exchanged "as is", "where is" and "with all faults," and that neither party has made, and does not and will not make, any representations or warranties, express or implied, including any with respect to the quality, physical condition, expenses, legal status, zoning, value, utility or potential of the property they will receive in this exchange, or any other matter or thing affecting or relating to the property they will receive in this exchange or this Agreement (including warranties of merchantability and or a fitness for a particular purpose) which might be pertinent in considering whether to acquire the property they will receive in this exchange or to make and enter into this Agreement, and both parties hereby acknowledge that, except as specifically set forth herein, they have not made, and have not relied upon, any such representations. Neither party will be liable or bound in any manner by any warranties, either express or implied, guaranties, or any promises, statements, representations or information pertaining to the property they will receive in this exchange or the value thereof made or furnished by any broker or any real estate agent, employee, servant or other person representing or purporting to represent such party.

4.2 The County shall have sole responsibility for the lawful removal, disposal and remediation of any unsuitable environmental materials and Hazardous Materials as may be required to accomplish County's development of the Facility and the City Park, including any Hazardous Material discovered during construction. County's development, and the remediation, removal, transport, storage and disposal of all such unsuitable environmental materials and Hazardous Materials shall be performed at County's sole cost and expense and in accordance with applicable Environmental Law. The City shall have no responsibility to remove or dispose of unsuitable materials necessary to develop the Facility. County shall ensure that all such unsuitable environmental materials and Hazardous Materials are transported and disposed of in a lawfully permitted facility. For purposes of this Agreement, County and City do not object to Palm Beach County Solid Waste Authority or any other lawfully permitted facility, as the recipient of any Hazardous Materials that are removed from the Site. If costs for clean-up and/or removal for development are estimated to exceed an amount acceptable to County, the County shall have the right to terminate this Agreement prior to the Effective Date. If County exercise its right to terminate, County shall, at its expense, promptly repair any damage resulting from the exercise of the rights granted by the Access Agreement and restore the Property to its conditions prior to such damage. County has conducted due diligence on the Property and is aware of the condition of the Property. County shall have responsibility for any environmental issue which is aggravated by or is the result of County's activities on the Property under the Access Agreement and construction on the Property or the operation and/or maintenance of the Facility. Excepting the foregoing, City shall retain responsibility for any violation of Environmental Law existing on the Property prior to Closing. .

4.3 The City shall have sole responsibility for the lawful removal and remediation of any unsuitable environmental materials as may be required to accomplish any future development of the County Property, including removal of the asbestos within the existing building and any Hazardous Material discovered during construction. City's development, and the remediation, removal, transport, storage and disposal of all such unsuitable materials shall be performed at City's sole cost and expense and in accordance with applicable Environmental Law. If costs for clean-up and/or removal for development are estimated to exceed an amount

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acceptable to City, the City shall have the right to terminate this Agreement prior to the Effective Date. Excepting the foregoing, County shall have responsibility for any violation of Environmental Law caused by County.

4.4 BY COUNTY'S ACCEPTANCE OF THE DEED AT CLOSING COUNTY ACKNOWLEDGES THAT COUNTY'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF THE SITE HAS BEEN ADEQUATE TO ENABLE COUNTY TO MAKE ITS OWN DETERMINATION WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE SITE.

4.5 BY CITY'S ACCEPTANCE OF THE DEED AT CLOSING CITY ACKNOWLEDGES THAT CITY'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF THE COUNTY PROPERTY HAS BEEN ADEQUATE TO ENABLE CITY TO MAKE ITS OWN DETERMINATION WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE COUNTY PROPERTY.

5. **ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES OF CITY.** As a material inducement to County to enter into this Agreement City hereby acknowledges, represents, and warrants to County, as follows:

5.1 All documents executed or to be executed by City which are to be delivered to County at Closing will, to the best of City's knowledge and belief, be legal, valid, and binding obligations of City.

5.2 That there are no leases pursuant to which any party holds a possessory interest in the Property.

5.3 City has entered into no other contracts for the sale or lease of any portion of the Site which remain in force.

In the event that any of City's acknowledgements, representations and warranties shall prove to be materially untrue, City shall cure the breach thereof and Closing shall be delayed until the breach is cured.

6. **ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES OF COUNTY.** As a material inducement to City to enter into this Agreement, County hereby acknowledges, represents, and warrants to City, as follows:

6.1 All documents executed or to be executed by County which are to be delivered to City at Closing will to the best of County's knowledge and belief, be legal, valid, and binding obligations of County.

6.2 That there are no leases pursuant to which any party holds a possessory interest in the County Property.

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6.3 County has entered into no other contracts for the sale or lease of any portion of the County Property which remain in force.

In the event that any of County's acknowledgements, representations and warranties shall prove to be materially untrue, County shall cure the breach thereof and Closing shall be delayed until the breach is cured.

7. **EVIDENCE OF TITLE.**

7.1 **Site.**

7.1.1 Within five (5) days after the Effective Date of this Agreement, the City shall deliver to the County an owner's title insurance commitment, together with legible copies of all exceptions to coverage reflected therein, issued by a title insurance company acceptable to County, agreeing to issue to the County upon the recording of the City Deed to the Site, an owner's title insurance policy, insuring the marketability of the fee title of the Site to the County, subject only to the Site Permitted Exceptions for its appraised fair market value. The cost of said title insurance commitment and title insurance policy and any premium therefor shall be borne by City.

The County shall have until the later of fifteen (15) days after receipt from the City of the title insurance commitment, in which to review same. In the event the title insurance commitment shall show as an exception any matter other than the Site Permitted Exceptions, County shall notify City of County's objection thereto, and City shall act with reasonable effort, to remove any such exception(s) not caused by the City and shall act to remove any such exception caused by the City, which exceptions shall be deemed to constitute title defects. The City shall be entitled to ninety (90) days from the date of notification by County (with adjournment of the Closing Date, if necessary) within which to cure such defects or to make arrangements with the title insurer for deletion of any such title defects from the title insurance commitment without the inclusion of any additional exceptions to coverage. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the said ninety (90) day period, County shall have the option, of: (a) extending the time period in which to cure; (b) accepting title to the Site as it then exists; or (c) terminating this Agreement, by giving written notice thereof to City.

7.1.2 County may request, prior to the Closing, an endorsement of the title insurance commitment making it effective to within fifteen (15) days after the Closing Date. At Closing, City shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an owner's title insurance policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the Site (provided County obtains a survey in accordance with Section 8 hereof); (c) easements or claims of easement not shown by the public records (provided County

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obtains a survey in accordance with Section 8 hereof); (d) any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records; (e) taxes for the year of Closing and all prior years, and taxes or special assessments which are not shown as existing liens by the public records; (f) matters arising or attaching subsequent to the effective date of the title insurance commitment but before the acquisition of record of title to the Site by the County; and (g) any general or specific title exceptions other than the Site Permitted Exceptions.

7.2 **County Property.**

7.2.1 Within five (5) days after the Effective Date of this Agreement, the County shall deliver to the City an owner's title insurance commitment, together with legible copies of all exceptions to coverage reflected therein, issued by a title insurance company acceptable to City, agreeing to issue to the City upon the recording of the County Deed to the County Property, an owner's title insurance policy, insuring the marketability of the fee title of the County Property to the City subject only to the County Property Permitted Exceptions, for its appraised fair market value. The cost of said title insurance commitment and title insurance policy and any premium therefor shall be borne by County.

The City shall have until the later of fifteen (15) days after receipt from the County of the title insurance commitment, in which to review same. In the event the title insurance commitment shall show as an exception any matter other than the County Property Permitted Exceptions, City shall notify County of City's objection thereto, and County shall act with reasonable effort, to remove any such exception(s), not caused by the County and shall act to remove any such exception caused by the County, which exceptions shall be deemed to constitute title defects. The County shall be entitled to ninety (90) days from the date of notification by City (with adjournment of the Closing Date, if necessary) within which to cure such defects or to make arrangements with the title insurer for deletion of any such title defects from the title insurance commitment without the inclusion of any additional exceptions to coverage. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the said ninety (90) day period, City shall have the option of: (a) extending the time period in which to cure; (b) accepting title to the County Property as it then exists; or (c) terminating this Agreement, by giving written notice thereof to County.

7.2.2 City may request, prior to the Closing, an endorsement of the title insurance commitment making it effective to within fifteen (15) days after the Closing Date. At Closing, County shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an owner's title insurance policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the County Property (provided City obtains a survey in accordance with Section 8 hereof); (c) easements or claims of easement not shown by the public records

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(provided City obtains a survey in accordance with Section 8 hereof); (d) any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records; (e) taxes for the year of Closing and all prior years, and taxes or special assessments which are not shown as existing liens by the public records; (f) matters arising or attaching subsequent to the effective date of the title insurance commitment but before the acquisition of record of title to the County Property by the City; and (g) any general or specific title exceptions other than the County Property Permitted Exceptions.

7.3 **Title Company.** County and City agree that Robert Graham of the Gunster law firm shall serve as the title agent for this transaction and that title policies shall be underwritten by Old Republic National Title Insurance Company.

7.4 **Further Encumbrances.** From the Effective Date of this Agreement until after the Closing, neither party shall take any action which would impair or otherwise affect title to any portion of the property owned by such party, and shall record no documents in the Public Records which would affect title to the Site and the County Property, without the prior written consent of the other party.

8. **SURVEY.** Each party shall have the right, within the time period provided in Section 7 for delivery and examination of title, to obtain a current survey of the property to be conveyed to them pursuant to this Agreement and all improvements thereon. If the survey reveals any encroachments, overlaps, boundary disputes, or other defects, or any matters other than the Site Permitted Exceptions or the County Property Permitted Exceptions, the same shall be treated as title defects as described in Section 7 of this Agreement, and each party shall have the same rights and remedies as set forth therein.

9. **CONTINGENCIES TO CLOSING.**

9.1. **County Contingencies.** County's obligation to close the transactions contemplated by this Agreement is expressly subject to and conditioned upon satisfaction of the following conditions precedents:

9.1.1 The full execution of the Sports Facility Use Agreement and Developer Agreement, and the satisfaction or waiver of all conditions precedent or contingencies therein.

9.1.2 The full execution and approval of the Funding Certification Letter.

9.1.3 Other than that due diligence relating directly to the condition of the property, satisfactory completion of due diligence requirements for the proposed Facility which include having obtained all permits and approvals required for the development and construction of the Facility. Due diligence relating to the condition of the Property, contained in Section 3 of this Agreement, shall not be considered a contingency to Closing.

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9.1.4 The County and City having entered into an Agreement for provision of reclaimed water to the Facility and City Park.

9.1.5 The issuance of bond financing by County for the development of the Facility.

9.2 In the event that the foregoing precedents have not been fully satisfied or waived by County on or before March 1, 2016, then the County shall have the right to: 1) terminate this Agreement, or 2) agree with the City to another date by which the Closing must take place.

9.3. **City Contingency.** City's obligation to close the transactions contemplated by this Agreement is expressly subject to and conditioned upon satisfaction of the following condition precedent:

9.3.1 Issuance of bond financing by County for the development of the Facility.

9.4 In the event that the foregoing precedents have not been fully satisfied or waived by City on or before March 1, 2016, then the City shall the right to: 1) terminate this Agreement, or 2) agree to another date with the County by which the Closing must take place.

10. **CLOSING.** The parties agree that the Closing of the exchange of the County Property and the Site shall be consummated as follows:

10.1 **Place of Closing.** The Closing shall be held at the County Property and Real Estate Management Division office, 2633 Vista Parkway, West Palm Beach, Florida.

10.2 **Closing Date.** The Closing shall take place within thirty (30) days of the date agreed by City and County that the contingencies to Closing, set forth in Section 9.1 and 9.3 hereof have been satisfied and/or waived, but in no event shall the Closing Date occur later than March 1, 2016.

10.3 **Closing Documents.** County shall be responsible for preparation of all Closing documents. County shall submit copies of same to City no less than ten (10) days before Closing.

10.3.1 **City Documents.** At Closing, City shall deliver, or cause to be delivered to County, the following documents, each fully executed and acknowledged as required.

10.3.1.1 **City Deed.** A City Deed in the form attached hereto as Exhibit "G" conveying fee simple title to the Site to the County, subject only to the Site Permitted Exceptions, and containing a prohibition and restriction on the use of the Property for residential purposes.

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10.3.1.2 **Closing Statement.** A Closing Statement prepared in accordance with the terms hereof.

10.3.1.3 **Access Easement.** An access easement over the easement area from Haverhill Road to the Buffer Area of the Site in the form attached hereto as Exhibit "H".

10.3.1.4 **License.** A license for construction of berm on a portion of the 50 feet of Water Catchment Area adjacent to the Buffer Area, as required by Section 12.8 of this Agreement in the form attached hereto as Exhibit "M".

10.3.1.5 **Temporary Construction Easement.** A temporary construction easement for City Park in the form attached hereto as Exhibit "I", as required by Section 12.6 of this Agreement.

10.3.1.6 **Additional Documents.** City shall also deliver and/or execute such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated.

10.3.2 **County Documents.** At Closing, County shall deliver, or cause to be delivered to City, the following documents, each fully executed and acknowledged as required.

10.3.2.1 **County Deed.** A County Deed in the form attached hereto as Exhibit "J" conveying fee simple title to the County Property.

10.3.2.2 **Closing Statement.** A Closing Statement prepared in accordance with the terms hereof.

10.3.2.3 **Restrictive Covenant.** A Restrictive Covenant over the Buffer Area in the form attached hereto as Exhibit "K", as required by Section 12.7 of this Agreement.

10.3.2.4 **Environmental.** Certification of URS Limited Site Assessment dated June 23, 2015 and Amendment #1 thereto dated July 9, 2015 ("LSA") to City or designation of City as third party beneficiary under URS contract for delivery of the LSA.

10.3.2.5 **Additional Documents.** County shall also deliver and/or execute such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated.

10.4 **Possession.** At Closing, City shall deliver full, complete, and exclusive possession of the Site to the County, and County shall deliver full, complete and exclusive possession of the County Property to the City.

11. **EXPENSES.**

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11.1 City shall pay the following expenses at Closing.

11.1.1 The cost of recording the County Deed, the Restrictive Covenant over the Buffer Area, the License and the Access Easement.

11.1.2 All costs and premiums for the owner's title insurance commitment and policy for the Site.

11.1.3 All costs necessary to cure title defect(s) or encumbrances, other than the Site Permitted Exceptions.

11.2 County shall pay the following expenses at Closing.

11.2.1 The cost of recording the City Deed.

11.2.2 All costs and premiums for the owners title insurance commitment and policy for the County Property.

11.2.3 All costs and expenses necessary to cure title defects or encumbrances other than the County Property Permitted Exceptions.

11.3 The City and County shall each pay their own attorney's fees.

12. **Development and Use of Property.** County shall perform the following:

12.1 **Land Use/Zoning Changes.** County will submit applications for such land use and zoning changes, development approvals, site plan approvals, waivers and/or variances, as may be required, for development of the Facility and City Park identified on the Conceptual Plan, at County's sole cost and expense. The County, as contract purchaser, shall have the right to submit said applications in its own name and do all things that City, as owner of the Property, is entitled to do to prosecute said applications to completion/approval. The parties acknowledge that pursuant to the Access Agreement, County has previously filed certain applications as contemplated herein, including, but not limited to, Amendment of the Future Land Use Map of the City Comprehensive Plan, Rezoning, Planned Development requesting Waivers required to accommodate the Facility, Minor Subdivision Plan, and Environmental Resource Permit (ERP), and has initiated modification to the Property's Landfill Closure. The parties acknowledge that the Conceptual Plan is a concept plan and may be modified through the development and site plan approval processes.

The parties acknowledge and agree that this Agreement shall not limit or restrict the City's discretion in the exercise of its governmental or police powers. County acknowledges and agrees that the City's authorization to County to prepare and file any of the applications for the approvals set forth in this section: (i) in no way restricts the legislative, quasi-judicial or executive discretion of the City Commission or staff of the City; (ii) does not guarantee any

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particular results for County on the applications; and (iii) does not give rise to any enforceable right by County to require any particular results on the applications. County further acknowledges and agrees that all governmental actions to be taken by the City, the City Commissioners, City staff and quasi-judicial boards regarding the Site shall be in conformance with applicable laws and ordinances with no guarantees or agreement by the City as to any particular recommendation or approval. The City's obligations under this Agreement are made in a proprietary capacity, rather than in a governmental capacity, and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws nor alter or impair the City's governmental functions, including, without limitation, the City's right to lawfully exercise its regulatory authority over the development of the Site, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the City's governmental authority; provided, however, that nothing in this Section shall be construed to limit the liability of the City, acting in its proprietary capacity, for defaults under this Agreement.

12.2. Land Management Practices.

12.2.1 The Facility and City Park have been designed to protect against discharges of surface water or ground water to the City's M-Canal and Water Catchment Area. County has filed for and requested approval of an Environmental Resource Permit ("ERP"), including storm water management. The design of the storm water management system included in the ERP provides for no offsite discharge. County shall comply with all terms and conditions of the ERP on the Site and City shall comply with all terms of the ERP on the City Park Property. Notwithstanding the foregoing, County shall be responsible for the maintenance and operation of the improvements on the Site identified in the ERP and City shall be responsible for the maintenance and operations of the improvements within the City Park Property identified in the ERP. Neither the City nor the County shall modify the ERP such that there is or will be any offsite surface water discharge without prior written consent of the other.

12.2.2 The Facility and City Park have been designed to include a berm straddling the south property line, and a fence atop the berm, as a physical barrier between the Property and the City's M-Canal and Water Catchment Area. Notwithstanding the foregoing, County shall be responsible for the maintenance and repair of the berm and fence on the Site and City shall be responsible for the maintenance and repair of the berm and fence within the City Park Property and Water Catchment Area. Neither the City nor the County shall modify the berm or fence without the prior written consent of the other.

12.2.3 The Facility and City Park include use of the Buffer Area. Prior to any chemical application (including pesticides, fertilizers, and herbicides) within the Buffer Area, County and City shall agree in writing upon a list of such chemicals that are permitted for use in the Buffer Area. Thereafter, care shall be exercised during any/all chemical applications within the Buffer Area to minimize any overspray beyond the south property line of the Site and City Park Property, including no such applications being performed at times when prevailing winds would pose a risk of chemicals becoming airborne and drifting past the south property line. The agreed

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list of permitted chemicals for use in the Buffer Area may be modified by written agreement by City and County.

12.2.2.4 All physical improvements required to implement this Section 12.2 shall be constructed by County at County's sole cost and expense.

12.3 Groundwater Monitoring.

12.3.1 Prior to commencement of construction, three (3) equally spaced groundwater monitoring well pairs shall be installed along the southern boundary of the Property to detect any migration from the Site to the M-Canal, and three (3) equally spaced groundwater monitoring well pairs shall be installed along the northeast corner of the Property to detect any off-site migration. A "pair" of wells means one shallow and one deep, at levels below the land surface, to be designated by agreement of the parties based on a recommendation by URS. Such wells shall be sampled for all constituents detected above GCTL's as reported in the LSA prior to any construction activity to establish a baseline. The wells shall be sampled for the identified constituents by the County, annually for two years following installation to detect any potential migration of the aforementioned constituents from the Site to the City's M-Canal and Water Catchment Area. It is County's obligation to perform monitoring under this Section 12.3.1 whether or not required by FDEP. Upon expiration of the County's monitoring obligation, the City may, in its discretion, elect to continue some or all of the monitoring at its sole cost and expense, and in the event of such election, those monitoring wells to be monitored by the City shall remain in place for so long as the City continues to monitor. In the event it can be demonstrated in any of the three wells along the southern boundary of the Property that constituents above GCTL's are migrating from the Site to the M-Canal and Water Catchment Area (and such constituent migration is not detected to be originating from off-site in any of the wells along the northeast corner of the Property) which migration was caused by the County, the County shall take all steps reasonably necessary to contain the migration, and conduct such measures, at County expense, as may be necessary to remediate the surface and ground water. If any applicable Groundwater Cleanup Target Level ("GCTL") is demonstrated to be exceeded, the County's obligations under this Section 12.3 shall include remediation and monitoring until no GCTL is exceeded by sample data and such additional measures as may be required by FDEP.

12.3.2 County shall develop and submit its groundwater monitoring plan for the Site to the Florida Department of Environmental Protection ("FDEP") for approval and shall perform groundwater monitoring, in addition to the groundwater monitoring required by Section 12.3.1 of this Agreement, if and as required by FDEP,.

12.3.3 All physical improvements required for groundwater monitoring shall be constructed by County at County's sole cost and expense. County shall also be solely responsible for maintaining each well in proper condition and for all sampling to comply with County's obligations set forth in Section 12.3.1.

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12.4 Irrigation System.

12.4.1 The on-site lakes will be used in conjunction with reclaimed water as an irrigation source for the Facility. County shall cause modeling evaluations to be performed to determine that neither i) groundwater flow, nor ii) the elevation of the water table in the cone of influence of the drinking water supply wells located adjacent to the M-Canal, nor iii) the control elevation of the M-Canal are Negatively Impacted by the County's use of the on-site lakes as an irrigation source. In this context, "Negatively Impacted" or "Negative Impact" shall mean i) the elevation of the water table in the cone of influence of the drinking water supply wells located adjacent to the M-Canal, or the control elevation of the M-Canal, are reduced by a drawdown contour of 0.1 feet, or ii) the groundwater flow reverses and enters the M Canal, as a result of County's use of the on-site lakes as an irrigation source. County shall provide the groundwater and lake modeling evaluations to the City for its review and comment, and County shall incorporate the modeling results into the ERP, consumptive use, or other applicable permit applications as appropriate. In the event that use of the lake as an irrigation source causes, either i) the elevation of the water table in the cone of influence of the drinking water supply wells located adjacent to the M-Canal, or the control elevation of the M-Canal, are reduced by a drawdown contour of 0.1 feet, or ii) the groundwater flow reverses and enters the M Canal, the County shall either replenish each day the water that it uses from the lake or discontinue use of the lakes for irrigation of the Site until the Negative Impact no longer exists.

12.4.2 County will own and be responsible for the repair and maintenance of the irrigation system for the Facility. County will be responsible for the costs of the reclaimed water service for the Facility.

12.4.3 The City Park will be irrigated with potable water. County shall be responsible for the installation of the irrigation system for the City Park including the costs of installation, with the exception that the costs associated with: 1) any and all water/sewer connection and capacity charges, 2) irrigation meter and installation and 3) backflow administrative fee, which shall be paid by City.

12.4.4 City will own and be responsible for the repair and maintenance of the irrigation system in the City Park, including pump station, private meter and piping. City will be responsible for the costs of the potable water used to irrigate the City Park.

12.5. Water and Sewer.

12.5.1 County shall own and be responsible for construction and maintenance of the sanitary sewer system serving the Facility, including collection piping, sewer pump station and associated force main, and the onsite water distribution system including fire hydrants, meter and other appurtenances.

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12.5.2 County shall be responsible for: 1) water/sewer connection and capacity charges, 2) water meter and installation and 3) backflow administrative fee for water/sewer service to the Facility. The County shall be responsible for the costs of water and sewer service for the Facility.

12.5.3 County shall be responsible for construction of the sanitary sewer system including collection piping, private sewage pump station with grinder, and the onsite water distribution system including fire hydrants, meter and other appurtenances to the City Park. The pump station grinder shall be suitable for commercial use and City shall have the right to approve the equipment selected. The City will be responsible for: 1) water/sewer capacity and connection charges for water and sewer service; 2) water meter and installation and 3) backflow administrative fee for all water/sewer service to the City Park.

12.5.4 City will own and be responsible for the repair and maintenance of the water distribution and sewer system collection infrastructure, including the private sewage pump station, City will be responsible for the costs of water and sewer service to the City Park.

12.6. **Development of City Park.** County will cause the LLC to design, develop, and construct at the LLC's sole cost and expense, a City Park with the facilities and features detailed in Attachment "C" to Exhibit "T" attached hereto (the "Park Improvements"). Construction of the Park Improvements will be completed contemporaneously with construction of the Facility. City will grant County a Temporary Construction Easement in the form attached hereto as Exhibit "T", to allow the construction of the Park Improvements on the City Park Property. The loop trail feature identified on the Conceptual Plan will be designed to meander along the perimeter of the Site and in some cases may have to be located within the City Park Property.

Construction of the City Park will be completed in accordance with Attachment "B" to the Temporary Construction Easement. The City will be named as an additional insured on all insurance policies required by the County and as a third party beneficiary on all performance and payment bonds required by the County.

Substantial Completion of the City Park shall occur on or before March 1, 2018. Upon Substantial Completion of the Park Improvements, County shall assign to City all warranties provided by County's contractor for the Park Improvements, and thereafter County shall not have any further responsibility for maintenance or repair of the City Park or Park Improvements. Upon Substantial Completion of the Park Improvements, as that term is defined in the construction contract for such work, the County shall only be responsible for completing those items on the punch list and for performing warranty work. Prior to Final City Acceptance, the County shall provide City with a final survey showing all Park Improvements. City shall operate the City Park and maintain and repair all portions of the City Park at City's sole cost and expense. The City agrees that its operation of the Park will not conflict with the requirements of Section 12.2.

12.7 **Buffer Area.** The parties have agreed to establish a buffer within the south 400 feet of the Property (the "Buffer Area"), the use of which shall be restricted to grassed pervious open space,

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multipurpose athletic fields, and parking. Use of the Buffer Area for grassed pervious open space and multipurpose athletic fields shall be unlimited. Use of the Buffer Area for parking shall be limited to 40 days per year, inclusive of the Major League Baseball spring training season, unless extended by mutual agreement of the parties. Any additional use of the Buffer Area beyond those listed in this paragraph will be subject to City's approval. County shall execute and record a Restrictive Covenant in the form attached hereto as Exhibit "K" containing these restrictions on the use of the Buffer Area.

12.8 **South 50' License.** City shall grant County a temporary construction license over portions of the 50 foot' strip of land running immediately adjacent to the south boundary of the Property that is part of the City's Water Catchment Area ("License"). This License shall be solely for the purposes of installing a berm and fencing for the protection of the M-Canal. The form of the License shall be as set forth in Exhibit "M".

13. **USE RESTRICTION.** The County agrees that it shall never use the Site for residential purposes. The City Deed conveying the Site to the County shall contain a restriction prohibiting residential use.

14. **SPECIFIC PERFORMANCE.** In the event either party to this Agreement fails or refuses to timely, fully and faithfully perform each and every term, covenant and condition on its part to be performed hereunder, which failure or refusal continues after written notice from the non-defaulting party and expiration of a reasonable period of time under the circumstances in which to cure said default, the same shall constitute a default hereunder. In addition to all rights and remedies which may be provided at law or in equity for such default, the non-defaulting party shall be entitled to seek specific performance by the defaulting party of such term covenant or condition.

15. **NOTICES.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, emailed or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

15.1 County:

Palm Beach County
Property & Real Estate Management Division
Attention: Director

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2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Fax 561-233-0210

With a copy not to constitute notice to:

County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax 561-355-4398

15.2 City:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a copy not to constitute notice to:
City of West Palm Beach
Attn: City Attorney
PO Box 3366
West Palm Beach, FL 33402-3366

15.3 *With a copy not to constitute notice to:*

Giles Kibbe
HW Spring Training Complex, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002

And

Arthur Fuccillo
HW Spring Training Complex, LLC
Lerner Enterprises
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852

With copies to:

Houston Astros, LLC

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501 Crawford Street, Suite 500
Houston, Texas 77002
Attention: Reed Ryan

And

Washington Nationals Baseball Club, LLC
Mark D. Lerner
Vice Chairman & Principal Owner
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

And

Brian M. Seymour, Esq.
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, Florida 33401

Any party may from time to time change the address at which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

16. **ASSIGNMENT.** Neither County nor City may assign this Agreement or any interest herein without the prior written consent of the other party, which may be granted or withheld at such other party's sole and absolute discretion. Any attempted assignment without such consent shall be null and void, without legal effect and shall constitute a breach of this Agreement. This provision shall be construed to include a prohibition against any assignment by operation of law.

17. **GOVERNING LAW & VENUE.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws provisions. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

18. **BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.

19. **TIME OF ESSENCE.** Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

20. **INTEGRATION.** This Agreement constitutes the entire understanding and Agreement between the parties with respect to the subject matter hereof, and may not be modified or amended, except in a writing signed by all of the parties hereto.

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21. **EFFECTIVE DATE OF AGREEMENT.** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and the West Palm Beach City Commission, and shall become effective only when signed by both parties. The date of the last to sign shall be the Effective Date. In the event that a referendum is required pursuant to Section 2-31(27)(f) of the City Code of Ordinances, either party hereto shall have the right to terminate this Agreement.

22. **HEADINGS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

23. **NON-DISCRIMINATION.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Pursuant to County Resolution R-2014-1421, as may be amended, City shall be required to submit a copy of City's non-discrimination policy which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. Should City not have a written non-discrimination policy, a signed statement (attached as Exhibit "L") affirming City's non-discrimination policy is in conformance with Palm Beach County's policy will be required.

24. **CONSTRUCTION.** No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

25. **THIRD PARTY BENEFICIARIES.** The parties understand and agree that the LLC is a third party beneficiary to this Agreement and will be damaged in the event of a breach hereof. Other than as to the LLC, no provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of County or employees of County or City.

26. **ENTIRE UNDERSTANDING.** This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Agreement.

27. **SURVIVAL.** The parties' warranties, agreements, covenants and representations set forth in this Agreement shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

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28. **WAIVER.** No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
29. **AMENDMENT.** This Agreement may be modified and amended only by written instrument executed by the parties hereto.
30. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.
31. **TIME COMPUTATION.** Any references in this Agreement to time periods of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and federal or state legal holidays; any time period provided for in this Agreement that shall end on a Saturday, Sunday, or federal or state legal holiday shall extend to 5:00 p.m. (EST) of the next day that is not a Saturday, Sunday, or federal or state legal holiday.
32. **RADON GAS.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from your County public health unit.
33. **OFFICE OF THE INSPECTOR GENERAL.** Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.
34. **BROKERS.** County and City each represent and warrant to the other that it has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that it has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. The provisions of this Section shall survive the Closing and termination of this Agreement.
35. **TAXES.** It is the intent of the City to not have the LLC be financially impacted by the assessment of Ad Valorem taxes. If in the future any Ad Valorem real property taxes are imposed or assessed against the Site, the Facility, the LLC's interest therein and/or the LLC's operation thereof the City shall reimburse the County an amount equal to the total portion of the

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Ad Valorem tax due to the City. The City's obligation to reimburse pursuant to this Section is solely contingent on the County: 1) agreeing to pay the LLC's payment obligation pursuant to Section 14.2 of the Sports Facility Use Agreement; 2) sending an invoice which includes a copy of the tax bill and evidence of payment at the November discounted rate. Reimbursement by the City shall be made by the City within 60 days of receipt of the invoice. For reference purposes, Section 14 of the Sports Facility Use Agreement is attached hereto as **Exhibit N**. If necessary to meet the intent of this provision, the City and County will agree to alternative arrangements to meet said intent.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By:  _____
Department Director

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ATTEST:

By: _____
Hazeline F. Carson, City Clerk

City:

CITY OF WEST PALM BEACH, a
municipal corporation of the State of Florida

By: _____
Geraldine Muoio, Mayor

(City Seal)

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality

By: _____

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EXHIBIT A
LEGAL DESCRIPTION
CITY PARK PROPERTY

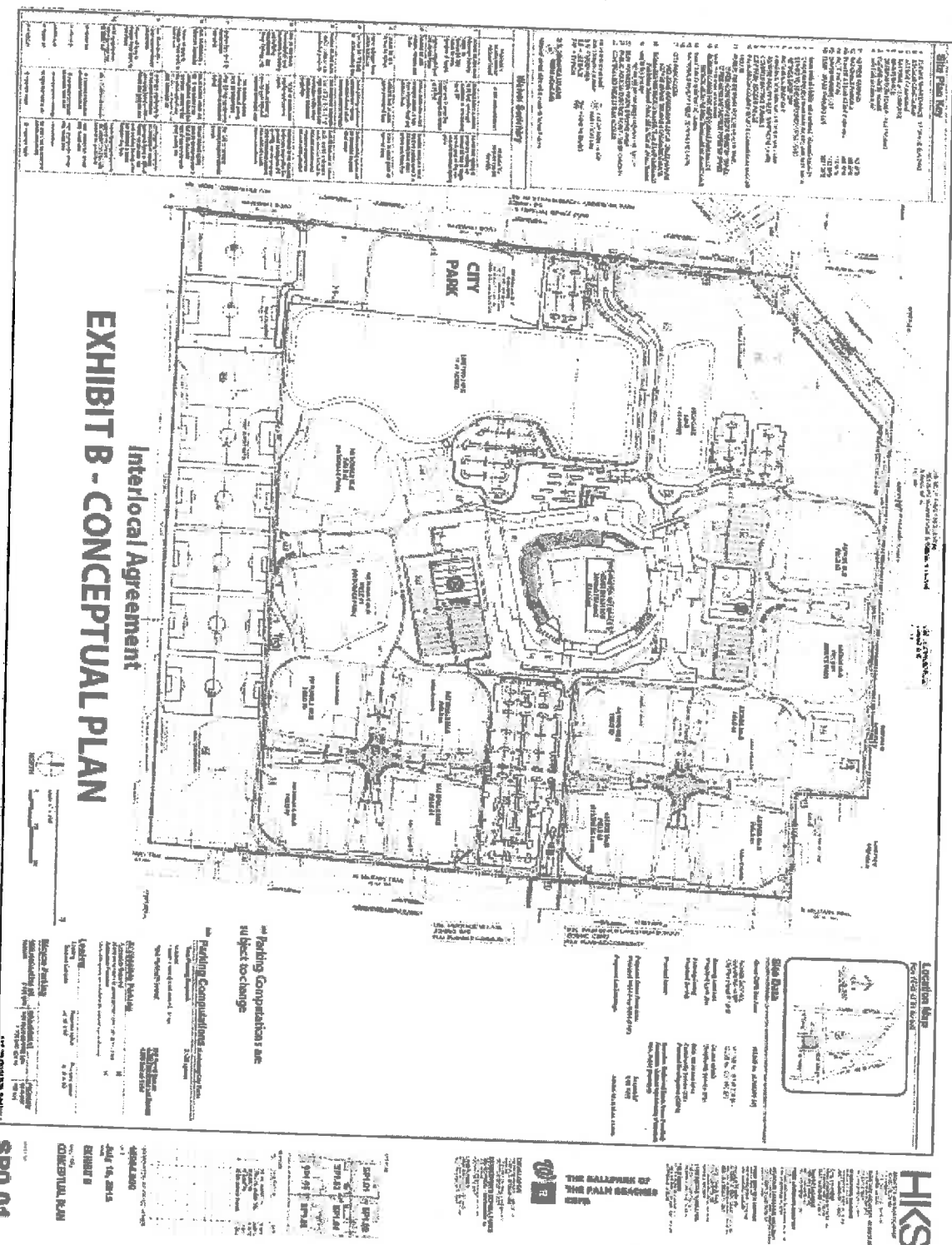
A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N.04°55'38"E., ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S.88°08'01"E. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925, AND THE POINT OF BEGINNING; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 49.68 FEET; THENCE S.85°04'22"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 352.18 FEET; THENCE N.48°24'36"E., A DISTANCE OF 36.28 FEET; THENCE N.04°55'38"E., A DISTANCE OF 24.03 FEET; THENCE N.41°35'28"W., A DISTANCE OF 50.95 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF SAID HAVERHILL ROAD; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 669.39 FEET; THENCE S.85°04'12"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 177.91 FEET; THENCE S.86°00'00"E., A DISTANCE OF 323.67 FEET; THENCE S.04°33'50"W., A DISTANCE OF 922.84 FEET; THENCE S.86°00'41"E., A DISTANCE OF 217.70 FEET; THENCE S.02°27'51"W., A DISTANCE OF 390.13 FEET TO A POINT OF INTERSECTION WITH A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE N.88°08'01"W. ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 531,433 SQUARE FEET/12.200 ACRES MORE OR LESS.

EXHIBIT B CONCEPTUAL PLAN



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EXHIBIT C
LEGAL DESCRIPTION
COUNTY PROPERTY

Parcel 1: PCN 74-43-43-21-01-043-0062

The West one half of Lot 6, Block 43, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida, Less and except the road right-of-way as described in that Order of Taking recorded in O.R. Book 2748, Page 627, Public Records of Palm Beach County, Florida, more particularly described as follows:

A parcel of land in West Palm Beach, Palm Beach County, Florida, more particularly described as follows:

From a point of beginning being the Northwest corner of Lot 6, Block 43, West Palm Beach (Original Townsite), an addition to the City of West Palm Beach, Florida, according to the Plat thereof recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida; run East along the North line of said Lot 6, a distance of 30 feet; thence South along a line 30 feet East of and parallel to the West line of said Lot 6, a distance of 108.15 feet, to the beginning of a curve concave to the Northeast, radius 25 feet, central angle $78^{\circ}27'47''$; thence along the arc of said curve a distance of 34.24 feet; thence South along a line 50 feet East of and parallel to the West line of said Lot 6, a distance of 20.48 feet to a point on the South line of said Lot 6; thence West along the South line of said Lot 6, a distance of 50 feet, to the West line of said Lot 6; thence North along the West line of said Lot 6, a distance of 153 feet, to the Point of Beginning.

Parcel 2: PCN 74-43-43-21-01-043-0031

Lot 4 and the West one half of Lot 3, Block 43, Less the North 20 feet for road right-of-way, and the West one half of Lot 7, Block 43, Less the South 20 feet for road right-of-way, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 3: PCN 74-43-43-21-01-043-0071

The East one half of Lot 7, Block 43, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

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Parcel 4: PCN 74-43-43-21-01-043-0020

Lot 2, Less the North 20 feet for Evernia Street right-of-way, and the East one half of Lot 3, Block 43, Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 5: PCN 74-43-43-21-01-034-0051

The West 90 feet of Lot 5, Block 34, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 6: PCN 74-43-43-21-01-034-0042

The West one half of Lot 4, Less the North 20 feet for road right-of-way, and the East 30 feet of Lot 5, Less the North 20 feet for road right-of-way, Block 34, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

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EXHIBIT D
COUNTY PROPERTY PERMITTED EXCEPTIONS

1. All matters contained on the Plat of MAP OF THE TOWN OF WEST PALM BEACH, as recorded in PLAT Book 1, Page 2, Public Records of Palm Beach County, Florida. (All Parcels).
2. Reservations in favor of the State of Florida, as set forth in the Deed from the Trustees of the Internal Improvement Fund of the State of Florida, recorded in Deed Book 640, Page 352, Public Records of Palm Beach County, Florida.
3. Provisions contained in City Deed between the City of West Palm Beach and Palm Beach County in regards to parking spaces recorded in O.R. Book 117, Page 303, Public Records of Palm Beach County, Florida. (Parcels 5 and 6)
4. Subject to phosphate, metals, minerals and petroleum reservations by virtue of Sec. 270.11(1), F.S. as contained in Deed from Palm Beach County, a political subdivision of the State of Florida to the City of West Palm Beach, a municipal corporation of the State of Florida, recorded in O.R. Book _____, Page _____, Public Records of Palm Beach County, Florida. (To be recorded) (All Parcels). This mineral reservation shall be set forth in the County Deed. The right of entry in favor of the County with respect to such mineral rights shall be released by County.

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EXHIBIT E
LEGAL DESCRIPTION
SITE

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, THENCE S.87°45'40" E., ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 513.11 FEET TO THE NORTHEAST CORNER OF THOSE CERTAIN LANDS RECORDED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, AND THE POINT OF BEGINNING; THENCE CONTINUE S.87°45'40"E. ALONG SAID NORTH LINE, A DISTANCE OF 1,674.92 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN FLORIDA DEPARTMENT OF TRANSPORTATION RETENTION AREA, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.01°47'54"W. ALONG THE WEST LINE OF SAID RETENTION AREA, A DISTANCE OF 261.46 FEET; THENCE S.87°47'46"E. ALONG THE SOUTH LINE OF SAID RETENTION AREA, A DISTANCE OF 438.30 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.02°40'54"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 848.33 FEET; THENCE S.03°41'15"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 1517.89 FEET; THENCE N.88°08'01"W. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 2,080.84 FEET; THENCE N.02°27'51"E., A DISTANCE OF 390.13 FEET; THENCE N.86°00'41"W., A DISTANCE OF 217.70 FEET; THENCE N.04°33'50"E., A DISTANCE OF 922.84 FEET; THENCE N.86°00'00"W., A DISTANCE OF 323.67 FEET; THENCE N.04°55'38"E., A DISTANCE OF 175.20 FEET; THENCE N.49°23'30"E., A DISTANCE OF 35.68 FEET; THENCE N.04°55'39"E., A DISTANCE OF 60.01 FEET; THENCE N.40°35'00"W., A DISTANCE OF 51.86 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 603.73 FEET; THENCE N.51°47'07"E. ALONG THE SOUTHEASTERLY LINE OF THOSE CERTAIN LANDS DESCRIBED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, A DISTANCE OF 633.92 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 6,160,376 SQUARE FEET/141.423 ACRES MORE OR LESS.

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EXHIBIT F
SITE PERMITTED EXCEPTIONS

1. All matters contained on the Plat of Public Water Supply Area West Palm Beach Water Company, as recorded in Plat Book 23, Page 149, Public Records of Palm Beach County, Florida.
2. Right-of-Way Agreement in favor of Florida Power & Light Co. recorded in Deed Book 1023, Page 680, Public Records of Palm Beach County, Florida.
3. Resolution Fixing Setback Requirements along State Road 809 (Military Trail) recorded in Deed Book 1145, Page 510, Public Records of Palm Beach County, Florida.
4. Easement in favor of Palm Beach County contained in instrument recorded in O.R. Book 1014, Page 93, Public Records of Palm Beach County, Florida.
5. Easement in favor of Florida Gas Transmission Company contained in instrument recorded in O.R. Book 1653, Page 892, Public Records of Palm Beach County, Florida.
6. Road Plat for State Road 809 (Military Trail) recorded in Road Plat Book 3, Page 77, Public Records of Palm Beach County, Florida.
7. Easement to Florida Power and Light Company recorded in O.R. Book 2463, Page 1542, Public Records of Palm Beach County, Florida.
8. Easement in favor of City of Riviera Beach contained in instrument recorded in O.R. Book 2556, Page 1084, Public Records of Palm Beach County, Florida.
9. Drainage Outfall Easement in favor of Palm Beach County contained in instrument recorded in O.R. Book 6727, Page 1609, Public Records of Palm Beach County, Florida.
10. Temporary Sidewalk Easement in favor of Palm Beach County contained in instrument recorded in O.R. Book 12414, Page 1250, Public Records of Palm Beach County, Florida.
11. Subject to phosphate, metals, minerals and petroleum reservations by virtue of Sec. 270.11(1), F.S. as contained in Deed from City of West Palm Beach, a municipal corporation of the State of Florida to Palm Beach County, a political subdivision of the State of Florida, recorded in O.R. Book _____, Page _____, Public Records of Palm Beach County, Florida.). This mineral reservation shall be set forth in the Deed. The right of entry in favor of the City with respect to such mineral rights shall be released by City.

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EXHIBIT G
CITY DEED

PREPARED BY AND RETURN TO:

Ross Hering, Director

PALM BEACH COUNTY

PROPERTY & REAL ESTATE MANAGEMENT DIVISION

2633 Vista Parkway

West Palm Beach, FL 33411-5605

PCN: _____

CITY DEED

THIS CITY DEED is made and executed this ____ day of _____, 2015 by the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida, whose address is 401 Clematis Street, West Palm Beach, FL 33401 hereinafter called (the "Grantor"), and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605 hereinafter called (the "Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby grant, bargain, sell, remise, release, convey and quit-claim unto the Grantee, all that certain land situated in Palm Beach County, Florida, to wit:

See **Exhibit "A"** attached hereto and made a part hereof (the "Premises").

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee forever.

SUBJECT TO reservation of an undivided three-fourths interest in and title in and to all the phosphate, metals, minerals that may be in, on or under the Premises, along with an undivided one-half interest in all the petroleum that is or may be in, on or under the Premises, pursuant to Sec. 270.11 F.S. The Grantor hereby releases its right of entry to mine its interest in any phosphate, metals, minerals or petroleum that may be in, on or under the Premises.

This conveyance is made pursuant to an Interlocal Agreement between the Grantor and Grantee dated _____ pertaining to the development of a Major League Spring Training Facility. As evidenced by its acceptance of title to the Premises, Grantee covenants and

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agrees that the Premises shall not be used for residential purposes. In addition, Grantee further covenants and agrees that the use of that portion of the Premises legally described in Exhibit "B" attached hereto (the "Buffer Area") shall be restricted to grassed pervious open space, multipurpose athletic fields and parking, as detailed in the Interlocal Agreement. The foregoing restrictive covenants shall constitute covenants running with the land and be binding upon Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantor has signed these presents the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

GRANTOR:

CITY OF WEST PALM BEACH

By: _____
Geraldine Muoio, Mayor

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

(SEAL)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Geraldine Muoio, Mayor of the City of West Palm Beach, as an act and deed of the City. She is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this ___ day of ____, 20__.

My Commission Expires:

Notary Public

Typed, Printed or Stamped name of Notary Public

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EXHIBIT "A"
Legal Description of the "Premises"

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, THENCE S.87°45'40" E., ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 513.11 FEET TO THE NORTHEAST CORNER OF THOSE CERTAIN LANDS RECORDED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, AND THE POINT OF BEGINNING; THENCE CONTINUE S.87°45'40"E. ALONG SAID NORTH LINE, A DISTANCE OF 1,674.92 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN FLORIDA DEPARTMENT OF TRANSPORTATION RETENTION AREA, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.01°47'54"W. ALONG THE WEST LINE OF SAID RETENTION AREA, A DISTANCE OF 261.46 FEET; THENCE S.87°47'46"E. ALONG THE SOUTH LINE OF SAID RETENTION AREA, A DISTANCE OF 438.30 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.02°40'54"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 848.33 FEET; THENCE S.03°41'15"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 1517.89 FEET; THENCE N.88°08'01"W. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 2,080.84 FEET; THENCE N.02°27'51"E., A DISTANCE OF 390.13 FEET; THENCE N.86°00'41"W., A DISTANCE OF 217.70 FEET; THENCE N.04°33'50"E., A DISTANCE OF 922.84 FEET; THENCE N.86°00'00"W., A DISTANCE OF 323.67 FEET; THENCE N.04°55'38"E., A DISTANCE OF 175.20 FEET; THENCE N.49°23'30"E., A DISTANCE OF 35.68 FEET; THENCE N.04°55'39"E., A DISTANCE OF 60.01 FEET; THENCE N.40°35'00"W., A DISTANCE OF 51.86 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 603.73 FEET; THENCE N.51°47'07"E. ALONG THE SOUTHEASTERLY LINE OF THOSE CERTAIN LANDS DESCRIBED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, A DISTANCE OF 633.92 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 6,160,376 SQUARE FEET/141.423 ACRES MORE OR LESS.

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EXHIBIT "B"
The "Buffer Area"

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER OF SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N 04° 55' 38" E, ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S 88° 08' 01" E ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925, THENCE CONTINUE S 88° 08' 01" E, ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET TO THE POINT OF BEGINNING; THENCE N 02° 27' 51" E, A DISTANCE OF 390.13 FEET; THENCE N 86° 00' 41" W, 217.70 FEET; THENCE N 04° 33' 50" E, 1.83 FEET TO A POINT OF INTERSECTION WITH A LINE 450.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE S 88° 08' 01" E ALONG SAID PARALLEL LINE, A DISTANCE OF 2306.95 FEET TO THE INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE S 03° 41' 15" W, ALONG SAID WEST RIGHT-OF-WAY LINE, 400.20 FEET TO THE INTERSECTION WITH A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE N 88° 08' 01" W, ALONG SAID PARALLEL LINE, 2080.84 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 835,320 SQUARE FEET/19.176 ACRES MORE OR LESS.

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**EXHIBIT H
ACCESS EASEMENT**

This Instrument Prepared By
And Should Be Returned to:

Parcel No. _____

WPB Matter No. 15565

ACCESS EASEMENT

THIS ACCESS EASEMENT (the "Easement") is made and entered into this ____ day of _____, 2015, by and between the CITY OF WEST PALM BEACH, a municipal corporation organized and existing under the laws of the State of Florida (the "Grantor") and PALM BEACH COUNTY, a political subdivision of the State of Florida (the "Grantee" or "County").

BACKGROUND:

WHEREAS, County and City have entered into an Interlocal Agreement dated _____ ("Interlocal Agreement") providing, among other things, for County's development of a City Park along Haverhill Road, north of the M-Canal, as described in **Exhibit A** (the "City Park"); and

WHEREAS, adjacent to the City Park, Grantee will cause to be constructed a Major League Baseball Spring Training Facility (the "Facility"); and

WHEREAS, in accordance with the Interlocal Agreement, the parties have agreed to establish a buffer within the south 400 feet of the Facility property (the "Buffer Area"), the use of which shall be restricted to grassed pervious open space, multipurpose athletic fields, and parking; and

WHEREAS, the most efficient path for vehicular access to the Buffer Area is through the City Park parking entrance; and

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WHEREAS, pursuant to the Interlocal Agreement, the City is required to grant to the County an Access Easement for access to the Buffer Area ("Access Easement") during Spring Training and other events at the Facility.

Now, therefore, for and in consideration of the sum of TEN DOLLARS (\$10.00) and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City does hereby grant to the County, an Access Easement upon a portion of the City Park property, as described in **Exhibit B**, for access to the Buffer Area upon the terms and conditions hereinafter set forth.

1. Definitions. All capitalized terms used herein shall have the definitions provided in this Access Easement and in the Interlocal Agreement.
2. Access Easement. Grantor grants to the Grantee, its successors and assigns, invitees, agents, guests, contractors, and others associated therewith, and for use by the general public for roadway purposes, a perpetual, non-exclusive access easement (the "Access Easement") under, over and across the property described in Exhibit "B" attached hereto (the "Easement Area") for access, ingress and egress to the Buffer Area during Spring Training and other events at the Facility in accordance with the Interlocal Agreement. City shall maintain the Easement Area at its sole cost and expense.
3. Use Limitation. Grantee acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted in the Interlocal Agreement and herein and that Grantee may not utilize the Easement Area for any purpose or at any times not specifically permitted in the Interlocal Agreement and hereby.
4. Reservation of Grantor's Rights. Grantor shall retain title to the Easement Area. Grantee acknowledges that the Easement Area is a portion of the City Park.
5. Matters of Record. County hereby accepts this Easement on the Easement Area "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Park property, and all other easements, restrictions, conditions, encumbrances and other matters of record.
6. No Dedication. The grant of easement contained herein is solely for the use and benefit of Grantee, and Grantee's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Area.
7. Prohibition Against Liens. Neither Grantor's nor Grantee's interest in the Easement Area or City Park property shall be subject to liens arising from Grantee's or any other person or entity's use of the Easement Area, or exercise of the rights granted hereunder.

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8. Waste or Nuisance. Grantee shall not commit or suffer to be committed any waste upon the Easement Area or City Park property or any nuisance or other act or thing which may result in damage to the Easement Area or depreciation of value of the City Park or which may affect City's fee interest in the City Park. After each use, Grantee shall maintain the Easement Area so that it is free from trash, debris and safety hazards; provided; however, that the foregoing shall not impose any obligation on Grantee to provide regular maintenance for the Easement Area. The Grantee shall be responsible for any damage or injury directly resulting from Grantee's use of the Easement Area.

9. Insurance. County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

10. LLC. The City acknowledges and accepts that the County intends on contracting with HW Spring Training Complex, LLC (LLC) regarding the use and operation of the Facility. The City recognizes that the LLC is a limited liability company whose sole managers are Arthur Fuccillo and Giles Kibbe. HW Spring Training Complex, LLC., a Florida Limited Liability Company, is formed under the laws of the State of Florida and validly authorized to do business as a limited liability company under Florida Law. All parties hereto agree that no manager, member, agent, or employee of the LLC shall have any liability or obligation whatsoever directly or indirectly, personal or authorize, under this Agreement under any legal or equitable theory.

All parties further agree that no manager, member, agent, or employee shall directly or indirectly have any liability or obligation under any related agreement or agreement entered into in connection herewith, nor under any related understanding or undertaking, except if and to the extent such person or entity shall have executed an agreement expressly agreeing to such liability. No party to this Agreement shall name or serve any manager, member, agent or employee of the LLC in any proceeding, suit or claim in violation of this paragraph. This paragraph shall not preclude any lawful claim against the LLC as a limited liability company.

11. No Third Party Beneficiary. The parties understand and agree that the LLC is a third party beneficiary to this Easement and will be damaged in the event of a breach hereof. Other than as to the LLC, no provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of County or employees of County or City.

12. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, gender identity or expression, genetic information, or sexual orientation be excluded from the

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benefits of, or be subjected to, any form of discrimination under any activity conducted pursuant to this Easement.

Pursuant to Palm Beach County Resolution No. R2014-1421, as may be amended, Grantor shall submit a copy of its non-discrimination policy which shall be consistent with the policy of the County as stated above. Should Grantor not have a written non-discrimination policy, a signed statement affirming that its non-discrimination policy is in conformance with the policy of the County will be required.

13. Palm Beach County Office of the Inspector General Palm Beach County has established the Office of the Inspector General in the Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General including receiving access to records relating to Bid or any resulting contract.

14. Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

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With a copy not to constitute notice to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: 561-355-2225
Fax: 561-355-4398

City:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a copy not to constitute notice to:

City of West Palm Beach
Attn: City Attorney
PO Box 3366
West Palm Beach, FL 33402-3366

LLC (*not to constitute notice*):

Giles Kibbe
HW Spring Training Complex, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002
And

Arthur Fuccillo
HW Spring Training Complex, LLC
Lerner Enterprises
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852

With copies to:

Houston Astros, LLC
501 Crawford Street, Suite 500

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Houston, Texas 77002
Attention: Reed Ryan

And

Washington Nationals Baseball Club, LLC
Mark D. Lerner
Vice Chairman & Principal Owner
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

And

Brian M. Seymour, Esq.
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, Florida 33401

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

15. Default. In the event Grantee fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, Grantor shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

16. Governing Law & Venue. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

17. Prohibition Against Assignment. This Easement may not be assigned by Grantee.

18. Dispute Resolution. The Grantee and Grantor will agree to make every reasonable effort to resolve disputes under this Easement prior to either party proceeding to terminate this Easement due to the default of the other party. Accordingly in the event of a dispute related to the performance of either the Grantee or Grantor under this Easement, the Grantee and Grantor agree not to exercise their respective termination rights until they have engaged in an expedited dispute resolution process including mediation, the parameters of which are to be agreed upon by the parties. The process is initiated by delivery or written notice to the other party, setting forth the subject of the dispute, claim or controversy and the relief requested.

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Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation sessions shall be within thirty (30) days from the initiating notice. The parties agree to share equally in the costs and expenses of the mediation and to each bear their own attorney's fee and costs thereafter.

19. No Waiver. No delay in exercising or omission of the right to exercise any right or power by any party hereunder shall impair any such right or power or shall be construed as a waiver of any breach or default or of acquiescence thereto.

20. Effective Date of Easement. This Easement shall become effective only when signed by all parties.

21. Term. The term of this Easement shall extend as long as the Facility exists and operates on the adjacent parcel; provided, however, that this Agreement may be terminated at any time hereafter with the consent of the parties, by written instrument duly executed and acknowledged by all of the parties and duly recorded in the Public Records of Palm Beach County, Florida.

22. Time of Essence. The parties expressly agree that time is of the essence in this Easement.

23. Construction. The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

24. Entire Understanding. This Easement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

25. Covenants Running with the Land and Binding Effect. This Easement shall run with the land and shall be binding upon Grantor, all parties entitled to use or possession of the Easement Area by or through Grantor, and its successors and assigns unless or until this Easement is terminated as herein provided.

26. Recordation. This Easement shall be recorded in the Public Records of Palm Beach County, Florida.

[Signatures on following page.]

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IN WITNESS WHEREOF, the parties have executed this Temporary Construction Easement as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

ATTEST:

GRANTOR:

By: _____
Hazeline F. Carson, City Clerk

CITY OF WEST PALM BEACH, a
municipal corporation of the State of Florida

By: _____
Geraldine Muoio, Mayor

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality

(City Seal)

By: _____

ATTEST:

GRANTEE:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Director, Facilities Development & Operations

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Department Director

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EXHIBIT "A"
LEGAL DESCRIPTION - CITY PARK:

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N.04°55'38"E., ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S.88°08'01"E. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925, AND THE POINT OF BEGINNING; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 49.68 FEET; THENCE S.85°04'22"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 352.18 FEET; THENCE N.48°24'36"E., A DISTANCE OF 36.28 FEET; THENCE N.04°55'38"E., A DISTANCE OF 24.03 FEET; THENCE N.41°35'28"W., A DISTANCE OF 50.95 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF SAID HAVERHILL ROAD; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 669.39 FEET; THENCE S.85°04'12"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 177.91 FEET; THENCE S.86°00'00"E., A DISTANCE OF 323.67 FEET; THENCE S.04°33'50"W., A DISTANCE OF 922.84 FEET; THENCE S.86°00'41"E., A DISTANCE OF 217.70 FEET; THENCE S.02°27'51"W., A DISTANCE OF 390.13 FEET TO A POINT OF INTERSECTION WITH A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE N.88°08'01"W. ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 531,433 SQUARE FEET/12.200 ACRES MORE OR LESS.

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EXHIBIT "B"
LEGAL DESCRIPTION
EASEMENT AREA

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER OF SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N.04°55'38".E, ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S.88°08'01"E. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925; THENCE CONTINUE S.88°08'01"E, ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET; THENCE N.02°27'51"E., A DISTANCE OF 357.11 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N.02°27'51"E., A DISTANCE OF 33.01 FEET; THENCE N.86°00'41"W., A DISTANCE OF 258.34 FEET; THENCE N.38°08'31"W., A DISTANCE OF 27.09 FEET; THENCE N.01°53'25"E., A DISTANCE OF 29.08 FEET; THENCE N.88°06'36"W., A DISTANCE OF 244.18 FEET; THENCE S.04°55'38"W., A DISTANCE OF 24.03 FEET; THENCE S.88°06'36"E., A DISTANCE OF 198.08 FEET; THENCE S.38°08'31"E., A DISTANCE OF 76.09 FEET; THENCE S.86°00'41"E., A DISTANCE OF 273.87 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

County Final 7-31-15 1756 hrs

EXHIBIT I
TEMPORARY CONSTRUCTION EASEMENT

Prepared by & Return to:
Ross Hering
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, FL 33411-5605

PCN: _____

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made _____ by and between the CITY OF WEST PALM BEACH, a municipality duly organized and existing by virtue of the laws of the State of Florida, and PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County").

RECITALS

WHEREAS, City is the owner of the land described in Attachment "A" attached hereto (the "City Park Property"); and

WHEREAS, County and City have entered into an Interlocal Agreement providing, among other things, for County's development of a Park on the City Park Property; and

WHEREAS, pursuant to the Interlocal Agreement, the City is required to grant the County a Temporary Construction Easement to construct the Park Improvements on the City Park Property (sometimes hereinafter referred to as "Easement").

Now, therefore, for and in consideration of the sum of TEN DOLLARS (\$10.00) and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City does hereby grant to the County, a Temporary Construction Easement upon the City Park Property for the purpose of constructing the hereinafter defined Park Improvements, and for construction staging during construction of the Major League Baseball Spring Training Facility upon the terms and conditions hereinafter set forth.

1. **Definitions.** All capitalized terms used herein shall have the definitions provided in Attachment "B" hereto and in the Interlocal Agreement.

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2. **Park Improvements.** County shall construct those improvements set forth in the Scope of Work attached hereto as Attachment "C" (the "Park Improvements"). Said work shall be performed by County at its sole cost and expense.
3. **Construction Staging.** County shall have the right to utilize the City Park Property for storage and staging of construction vehicles, equipment and materials to be utilized in the construction of the Park Improvements and the Facility.
4. **Conditions to Right of Usage.** All Park Improvements shall be designed and constructed at County's sole cost and expense, except for those expenses identified in Section 3I of Attachment "B" of this Easement, and within the confines of the City Park Property in accordance with the approved plans and all permits and applicable statutes, rules, regulations, codes and ordinances, including but not limited to the Community Service Planned Development approved by City which includes the City Park. The parties shall adhere to the design and construction procedures set forth in Attachment "B" to this Easement.
5. **Use Limitation.** County acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that County may not utilize the City Park Property for any purpose not specifically permitted hereby.
6. **Diligent Prosecution.** County and City agree to diligently pursue their respective responsibilities hereunder to completion.
7. **Term.** The term of this TCE shall extend until the earliest of either; 1) Final Acceptance, or 2) March 1, 2018. The term may be extended by mutual agreement of the parties.
8. **Access.** City acknowledges that during construction of the Park Improvements and the Facility, the City Park Property will be a construction site under the exclusive control of the County. Representatives of the City, including the City's Development Services Department/Construction Services Division, shall follow the procedures for gaining access to a construction site that is customary in the industry and City's access shall be limited to conducting inspections required by applicable City codes and performing City's obligations hereunder. Upon Substantial Completion, County shall relinquish control of the City Park Property to City and shall perform only such additional work as required to achieve Final Completion and/or City Acceptance. The County shall provide City advance notice of all work to be performed on the City Park Property after City Substantial Completion.
9. **Prohibition Against Liens.** Neither City's nor County's interest in the City Park Property shall be subject to liens arising from County's or any other person or entity's use of the City Park Property, or exercise of the rights granted hereunder. County shall promptly cause any lien imposed against the City Park Property to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, County shall either require County's general contractor performing the work with regard to the City Park Improvements to furnish a

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payment and performance bond in accordance with Florida Statutes Section 255.05, naming City as an obligee or require such contractors to comply with County's Bond Waiver Program as set forth in County PPM #CW-F-016 as the same may be amended from time to time, which is hereby incorporated herein by reference. A certified recorded copy of any required payment or performance bond shall be delivered to City prior to commencement of construction.

10. Insurance. County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

County shall require its contractors, subcontractors and all persons performing work upon the City Park Property to provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the City Park Property Contractual Liability, Independent Contractors Contractual Liability, X, C, U and Broad Form Property Damage Liability coverages. The County may lower the coverage limits for subcontractors providing the County's contractor agrees to provide insurance for the difference between the subcontractor's reduced coverage and the amounts required by this paragraph.

Except for Workers Compensation and Automobile, all insurance policies shall name the City as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the City.

A Certificate of Insurance evidencing such insurance coverage shall be provided prior to the commencement of any work pursuant to this Easement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

11. No Dedication. The grant of Easement contained herein is solely for the use and benefit of County, and County's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the City Park Property for public use.

12. Time of Essence. The parties expressly agree that time is of the essence in this Easement.

13. Matters of Record. County hereby accepts this Easement on the City Park Property "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Park Property, and all other easements, restrictions, conditions, encumbrances and other matters of record.

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14. **Non-Discrimination.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, gender identity or expression, genetic information, or sexual orientation be excluded from the benefits of, or be subjected to, any form of discrimination under any activity conducted pursuant to this Easement.

Pursuant to Palm Beach County Resolution No. R2014-1421, as may be amended, City shall submit a copy of its non-discrimination policy which shall be consistent with the policy of the County as stated above. Should City not have a written non-discrimination policy, a signed statement affirming that its non-discrimination policy is in conformance with the policy of the County will be required.

15. **Palm Beach County Office of the Inspector General** Palm Beach County has established the Office of the Inspector General in the Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General including receiving access to records relating to Bid or any resulting contract.

16. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

17. **Entire Understanding.** This Easement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

18. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute

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binding notice given to such party:

County:

Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

With a copy not to constitute notice to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: 561-355-2225
Fax: 561-355-4398

City:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a copy not to constitute notice to:

City of West Palm Beach
Attn: City Attorney
PO Box 3366
West Palm Beach, FL 33402-3366

LLC (*not to constitute notice*):

Giles Kibbe
HW Spring Training Complex, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002

And

Arthur Fuccillo
HW Spring Training Complex, LLC

County Final 7-31-15 1756 hrs

Lerner Enterprises
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852

With copies to:

Houston Astros, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002
Attention: Reed Ryan

And

Washington Nationals Baseball Club, LLC
Mark D. Lerner
Vice Chairman & Principal Owner
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

And

Brian M. Seymour, Esq.
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, Florida 33401

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

19. **Default.** In the event County fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, City shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

20. **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

21. **Prohibition Against Assignment.** This Easement may not be assigned by County.

County Final 7-31-15 1756 hrs

22. **No Third Party Beneficiary.** The parties understand and agree that the LLC is a third party beneficiary to this Easement and will be damaged in the event of a breach hereof. Other than as to the LLC, no provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of County or employees of County or City.

23. **Effective Date of Easement.** This Easement shall become effective only when signed by all parties.

24. **Waste or Nuisance.** County shall not commit or suffer to be committed any waste upon the Park Property or any nuisance or other act or thing which may result in damage or depreciation of value of the City Park Property or which may affect City's fee interest in the City Park Property.

25. **Governmental Regulations.** County shall, at County's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to County or its construction of the Park Improvements on the City Park Property, and shall faithfully observe in the use of the Park Property all applicable municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the County's use of the City Park Property as set forth herein. County shall not store or dispose any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents, including any petroleum products, used or produced in County's activity, on the City Park Property or in any manner not permitted by law.

26. **Surrender of Premises.** Upon Final Acceptance by the City, County shall remove all of its personal property from the City Park Property.

27. **Dispute Resolution.** The County and the City will agree to make every reasonable effort to resolve disputes under this Easement prior to either party proceeding to terminate this Easement due to the default of the other party. Accordingly in the event of a dispute related to the performance of either the City or the County under this Easement, the City and County agree not to exercise their respective termination rights until they have engaged in an expedited dispute resolution process including mediation, the parameters of which are to be agreed upon by the parties. The process is initiated by delivery or written notice to the other party, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation sessions shall be within thirty (30) days from the initiating notice. The parties agree to share equally in the costs and expenses of the mediation and to each bear their own attorney's fee and costs thereafter.

County Final 7-31-15 1756 hrs

28. **LLC.** The City acknowledges and accepts that the County intends on contracting with HW Spring Training Complex, LLC (LLC) to implement each and every County obligation contained within this Agreement. The City recognizes that the LLC is a limited liability company whose sole managers are Arthur Fuccillo and Giles Kibbe. HW Spring Training Complex, LLC., a Florida Limited Liability Company, is formed under the laws of the State of Florida and validly authorized to do business as a limited liability company under Florida Law. All parties hereto agree that no manager, member, agent, or employee of the LLC shall have any liability or obligation whatsoever directly or indirectly, personal or authorize, under this Agreement under any legal or equitable theory.

All parties further agree that no manager, member, agent, or employee shall directly or indirectly have any liability or obligation under any related agreement or agreement entered into in connection herewith, nor under any related understanding or undertaking, except if and to the extent such person or entity shall have executed an agreement expressly agreeing to such liability. No party to this Agreement shall name or serve any manager, member, agent or employee of the LLC in any proceeding, suit or claim in violation of this paragraph. This paragraph shall not preclude any lawful claim against the LLC as a limited liability company.

IN WITNESS WHEREOF, the parties have executed this Temporary Construction Easement as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

ATTEST:

By: _____
Hazeline F. Carson, City Clerk

City:

CITY OF WEST PALM BEACH, a
municipal corporation of the State of Florida

By: _____
Geraldine Muoio, Mayor

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality

By: _____

(City Seal)

County Final 7-31-15 1756 hrs

ATTEST:

**SHARON R. BOCK
CLERK & COMPTROLLER**

By: _____
Deputy Clerk

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

COUNTY:

**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____
Director, Facilities Development & Operations

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Department Director

ATTACHMENT "A"

CITY PARK PROPERTY

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N.04°55'38"E., ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S.88°08'01"E. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925, AND THE POINT OF BEGINNING; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 49.68 FEET; THENCE S.85°04'22"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 352.18 FEET; THENCE N.48°24'36"E., A DISTANCE OF 36.28 FEET; THENCE N.04°55'38"E., A DISTANCE OF 24.03 FEET; THENCE N.41°35'28"W., A DISTANCE OF 50.95 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF SAID HAVERHILL ROAD; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 669.39 FEET; THENCE S.85°04'12"E., A DISTANCE OF 12.00 FEET; THENCE N.04°55'38"E. ALONG A LINE 12.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, A DISTANCE OF 177.91 FEET; THENCE S.86°00'00"E., A DISTANCE OF 323.67 FEET; THENCE S.04°33'50"W., A DISTANCE OF 922.84 FEET; THENCE S.86°00'41"E., A DISTANCE OF 217.70 FEET; THENCE S.02°27'51"W., A DISTANCE OF 390.13 FEET TO A POINT OF INTERSECTION WITH A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE N.88°08'01"W. ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 531,433 SQUARE FEET/12.200 ACRES MORE OR LESS.

ATTACHMENT "B"

PARK IMPROVEMENTS DESIGN AND CONSTRUCTION PROCEDURES

1. ADDITIONAL DEFINITIONS FOR THIS ATTACHMENT

- A. Park Facilities Program. A document, approved by the City Commission, which identifies the basic design components of the City Park, quantifies the functional capacity of the City Park components and features, graphically depicts the inter-relationships between the City Park elements, and identifies infrastructure components. The Parks Facilities Program is the basis for the design of the Park Improvements. The Park Improvements to be constructed by LLC on behalf of the County as part of the Park Facilities Program are identified in Attachment "C".
- B. City Project Manager. A point person designated by the City to coordinate on its behalf with respect to securing timely decisions, approvals (either approving or securing City approval), processing accounting approvals, authorizing City initiated change orders, and funding transfers, and to act as the point of contact for the County's Project Manager. Decisions/direction conveyed by the City Project Manager to County Project Manager shall be binding on the City.
- C. City Acceptance. The time when the City agrees in writing that the County has complied with the requirements for Substantial Completion and has fulfilled the remainder of the requirements of this Easement. It is also the date at which the City assumes all maintenance and operation responsibilities and liability for the Park pursuant to Section 12.6 of the Interlocal Agreement.
- D. Consultant. The designer(s) engaged by County to provide planning, architectural and engineering services for the Park Improvements through design and construction.
- E. Construction Change Request. A request made by the County to the City for any change (except for those changes made necessary to implement conditions imposed by regulatory agencies) to the approved Construction Documents.
- F. Construction Change Request Review Period. A period of ten (10) business days from the date when a Construction Change Request is submitted, by the County to the City; unless the Construction Change Request specifically identifies that a shorter response period is required. However, no Construction Change Request Review Period shall be less than three (3) business days. Prior to the conclusion of any Construction Change Request Review Period, the City may request one, one (1) business day extension.
- G. Construction Contract. The contract for construction management for the City Park Improvements between County, or its designee, and the Contractor.

- H. Contractor. The entity or entities which enter into the Construction Contract with County or the County's designee for the Park Improvements.
- I. County. Palm Beach County, a political subdivision of the State of Florida.
- J. County Project Manager. The person with primary responsibility for providing the County program management services contemplated by this Agreement. The County Project Manager will either be an employee of the LLC or a Consultant under contract with the LLC.
- K. Design Contract. The contract between County and the Consultant(s) for the design of the Park Improvements.
- L. Design Submittal Review Period. A period of two (2) weeks from the date when each review submittal is made pursuant to Section 2 of this Attachment is made by the County to the City for the purpose of review and comment. Prior to the conclusion of any Design Submittal Review Period, the City may request one, one (1) week extension.
- M. Interlocal Agreement. The Interlocal Agreement (R-2015-____) between County and City that provides the terms and conditions under which land will be exchanged for the purpose of constructing the Facility and City Park.
- N. Park. The City Park described in Section 12.6 of the Interlocal Agreement.
- O. Park Facilities Program Change. A request initiated by either the City or the County to deviate from the Park Facilities Program identified in Attachment "C" to this Temporary Construction Easement. The City may only request changes to the Park Facilities Program prior to its approval of the design development milestone documents. The County may request changes to the Park Facilities Program at any time, subject to City's approval. Both the City and the County shall not unreasonably withhold approvals for a Parks Facilities Program Change.
- P. Park Facilities Program Change Review Period. A period of two (2) weeks from the date when a request for Parks Facilities Program Change is submitted. Prior to the conclusion of any Parks Facilities Program Change Review Period, the reviewing party may request one, one (1) week extension.
- Q. Substantial Completion. The term Substantial Completion as used herein shall have the meaning ascribed thereto in the Construction Contract.

2. PROGRAM MANAGEMENT SERVICES OF THE COUNTY

A. General

- 1) The County shall provide program management services throughout the

planning, design and construction phases of the Park.

- 2) The County shall have the full authority to take all actions and make all decisions necessary to prosecute the work associated with awarded contracts. In such capacity, the County shall use its best professional judgment in determining which matters are of a nature and magnitude where consultation with and approval by the City must be obtained prior to authorizing any Consultant or Contractor action. Any changes that will result in a Park Facilities Program Change or result in an addition, deletion, or reduction in dimensions which impacts intended use to the Park Improvements identified in Attachment "C" shall require City approval.
- 3) The County shall the sole authority to select and then enter into contracts with any Consultant(s) or Contractor(s) it chooses to design and construct the Park Improvements provided that the Consultant(s) and/or Contractor(s) hold the licenses required by law.
- 4) The County shall enter into contracts with its Consultants and Contractors for all work in the Park. The Design Contract and the Construction Contract shall be identical to the County's applicable standard except in the instances identified in Attachment "D". Each shall name the City as an additional insured on all insurance policies and as a third party beneficiary to any performance and payment bond and guarantee. The City represents that it has reviewed the County's standard contract and same is acceptable to the City.
- 5) County shall be responsible for paying all costs associated with, and for obtaining all development approvals, and permits required for, the construction of the Park.
- 6) The County and its Consultants shall prepare a schedule for the design and construction of the Park which would provide for construction of the Park contemporaneously with the construction of the Facility and achieves Substantial Completion of the Park no later than the Substantial Completion of the Facility.
- 7) The County shall only authorize a Parks Facilities Program Change after; either 1) receiving prior written approval from the City, which approval by the City shall not be unreasonably withheld, or 2) the Parks Facilities Program Change Review Period having expired. The parties will cooperatively work together to resolve any issues regarding the review of all change requests.
- 8) The County shall only authorize a Construction Change Request after; either 1) receiving prior written approval from the City, or 2) the Construction Change Review Period having expired; which approval by the City shall not be unreasonably withheld. The parties will cooperatively work together to resolve any issues regarding the review of all change requests.

9) The County shall be solely responsible for the review, approval and payment to the Contractor for completeness and conformance with contract requirements.

B. Design Phase Services

- 1) Prior to the kick-off of the design phase of the Park, the County, the Consultant shall meet with the City to discuss each and every aspect of the Parks Facilities Program. The County will be responsible for maintaining meeting minutes and distributing same to all appropriate parties.
- 2) All equipment incorporated into any work covered by the Construction Contract shall be new and consistent with either; 1) the City's adopted equipment and/or play surface materials that are City standard, 2) are installed at other City parks, or 3) equipment /materials that are of comparable quality and craftsmanship as installed at other City parks.
- 3) County Project Manager will provide to the County and the County will provide to City, for review and approvals, the design submittals at each of the following milestone: (schematic design [30% design], design development [60% design] and construction documents [97% design]). Such design submittals shall include a lighting plan, irrigation plan and landscape plan in appropriate level of detail for the respective design submittal. The City shall have no longer than the Design Submittal Review Period to return comments to the County. In the event that no comments are received at the end of the Design Submittal Review Period, the submittal will be deemed approved, the City shall have no further recourse and the County will authorize the LLC to continue with the design, or onto construction. After conclusion of the Design Submittal Review Period, the LLC will be released to commence the next phase of the design, and/or construction at the conclusion of the design.
- 4) Between the 5th and 8th day of the Design Submittal Review Period, County Project Manager and Consultant shall meet with City to review design submittals, including plans, and specifications.
- 5) County Project Manager shall review all comments of City as it relates to the design submittals with the Consultant(s) to ensure the Consultant(s) address each comment and incorporate changes approved by City, if any, into the Park Improvements.
- 6) The County shall obtain all regulatory approvals for the Park Improvements and as otherwise required by applicable regulatory agencies.
- 7) The County shall monitor the compliance of Consultant(s) with the terms of their professional services agreement(s). The County shall promptly advise City of any potential changes which deviate from the Parks Facilities Program or that

may impact the scope of work and consider input of City in resolving said issues including proposing options, when available, for City consideration.

C. Construction Phase Services

- 1) The County shall provide the City with 10 days written notice prior to the commencement of construction.
- 2) The County shall arrange for and conduct a pre-construction conference(s), for attendance by the Consultant, City representatives and the Contractor.
- 3) The County shall receive and review the Contractor(s) proposed construction schedule and schedule updates. The County shall advise City of any matters affecting the construction schedule.
- 4) The County shall review all Construction Change Requests from the Contractor. The City shall be advised of any such requests that the County determines also constitute a Park Facilities Program Change. To the extent the Construction Change Request also constitutes a Parks Facilities Program Change Request, County will obtain approval by the City prior to the County proceeding. The Park Facilities Program Change Review Period will apply to all such requests.
- 5) The County shall be solely responsible for ensuring that the work is proceeding in accordance with this Easement. Any shop drawings, progress reports, testing results or other similar documents which are required by the Construction Contract shall be made available to the City Project Manager upon request at any time within one (1) year after Substantial Completion. City Project Manager shall have the right to visit the construction site when coordinated with County-scheduled site visits, or when requested by City in advance and coordinated with the County Project Manager. Such visits typically shall not exceed one visit per month. In the event of a Park Facilities Program Change, City may request more frequent site visits. During the site visits, City can provide input to the County Project Manager regarding construction progress but shall not provide feedback or communicate directly with the Contractor.
- 6) The County shall conduct the Substantial Completion and Final Acceptance inspections as those terms are defined in the Construction Contract and shall be solely responsible for determining when Substantial Completion and Final Acceptance have been achieved. The City Project Manager will be provided notice of the Substantial Completion and Final Acceptance inspections. No acceptance testing of any equipment or systems constructed for the Park shall be conducted or occur without the City's knowledge and participation. The County shall consider any comments of the City Project Manager prior to certifying Substantial Completion and Final Acceptance to its Contractor.

7) Upon Substantial Completion of the Park Improvements: 1) County's contractor's right to use the Park property for storage and staging shall cease; 2) City shall have full use and control of the Park property; and 3) County shall assign to City all warranties provided by County's contractor for the Park Improvements, and thereafter County shall not have any further responsibility for maintenance or repair of the City Park or City Park Improvements, excepting the portion of the loop trail within the City Park. Upon Substantial Completion, the County's Contractor shall only be further responsible for completing those items on the punchlist and for performing warranty as obligated by its contract. All warranties begin at the date of Substantial Completion.

3. RESPONSIBILITIES OF CITY

- A. City shall designate a City Project Manager.
- B. City shall not directly communicate with the Consultant(s) or Contractor(s) with regard to the Park but shall instead communicate with the County Project Manager.
- C. City Project Manager shall be the County's single point of contact and coordinate the City's review and approval of the Design Submittals, Park Facilities Program Changes and Construction Change Requests pursuant to the requirements of the Easement.
- D. Upon request and using the surveys, data, or other technical information provided by the County, City Attorney Office shall prepare easement and other similar documents in a form acceptable to the City and the grantee necessary for utilities or to comply with regulatory conditions of approval for the Park.
- E. City acknowledges and agrees that it must provide timely feedback and approvals in order for the project to be accomplished in a cost efficient, timely manner.
- F. City shall plan and organize any groundbreaking and/or ribbon cutting ceremony for the Park at a time acceptable to County. The County's involvement in coordinating the time for such ceremony is solely to ensure that such does not interfere with Major League Baseball Spring Training and is otherwise appropriately coordinated with any scheduled use of the Facility such that any and all activities can be successfully accomplished without undue conflict or consequence for another.
- G. City shall be solely responsible for responding to all letters, emails, calls or inquiries of any type relating to the Park from constituents. Upon request, the County Program Manager shall provide reasonable information to support the City's response.
- H. The City shall not respond to any request for information, inquiry or other communication from a regulatory agency regarding the construction of the Park Improvements without first coordinating with the County Program Manager.

I. City shall fund the following costs associated with the development of the Park.

- Any direct or indirect costs or expenses of the City's employees, including travel expenses.
- The costs associated with preparing easements and other similar documents pursuant to this Easement.
- Any direct or indirect costs or expenses for attorneys retained by the City, even if such costs or expenses are for work performed related to the development of the Park.
- All costs or expenses associated with consultants retained by the City relating to the Park.
- All costs and expenses associated with any groundbreaking and/or ribbon cutting ceremony for the Park.

4. City Acceptance

A. Within 30 days following Substantial Completion, the County's Project Manager will schedule a City Acceptance on-site walkthrough with the City's Project Manager and other City representatives, as City deems necessary. At the on-site walkthrough, the County's Project Manager shall demonstrate that; 1) the requirements of Substantial Completion have been met and 2) the requirements of this Easement have been met. It is anticipated that there will be a Preliminary City Acceptance and a Final City Acceptance. Upon written acceptance of Preliminary City Acceptance, the City will accept the Park Improvements for beneficial occupancy.

B. At a minimum, and at the conclusion of the onsite walk through, the County Project Manager shall turnover to the City Project Manager all:

- keys and blanks;
- operations and maintenance manuals for all equipment;
- manufacturers certifications and warranties;
- operations and maintenance training related literature, software and back-up disks;
- spare parts as well as any specialty tools; and
- project record drawings and specifications submitted in accordance with the requirements Construction Contract.

C. If City Acceptance is not obtained at the on-site walkthrough, the City may either; 1) agree to an extension for the County to comply with all or one of the requirements, or 2) agree to Conditional City Acceptance and place the incomplete items on a punchlist to be completed by County or County's contractor prior to City Final Acceptance.

D. County shall not certify final acceptance to County Contractor until City has provided written acceptance to County.

E. When; 1) the County or County Contractor has completed any punchlist items from the City Acceptance punchlist as set forth in Section 4.C. and 4.B above, 2) the As-Built drawings have been received, and 3) all other requirements of Final Acceptance have been met; the City shall provide a written letter stating that all requirements for City Acceptance have been achieved. City Acceptance will not occur until such time that the County and City agree that the requirements of this Temporary Construction Easement have been fulfilled.

ATTACHMENT "C"

PARK IMPROVEMENTS

LLC, on behalf of County, will use good faith efforts to obtain regulatory approvals necessary for the installation of the identified Park Improvements. To the extent a waiver(s) is required by the City for the installation of the Park Improvements, LLC will seek such waiver(s). LLC shall not be required to install any of the Park Improvements for which a waiver and/or any other regulatory approval is required but which is not approved.

1. 100 car parking lot
2. Connection to overflow parking
3. 40'x40' Main Pavilion – vending opportunity, restroom, storage & recirculating pump room
4. Park gateway plaza
5. Multi-Use 10' Fitness Trail
6. *Vortex*, splash pad with at least four (4) large vertical spray elements – minimum 30' diameter
7. Landscape Structures Boundless Playground
 - a. Play structure and surface not to exceed 2,500 SF
 - b. Playground equipment including four (4) play apparatuses
 - c. 50' x 50' Shade Structure
8. Split Rail Fence along Park Boundary with Lake (660 LF)
9. Four (4) Basketball Courts – Lighted - *Muscoe*
10. Internal Park Walking Trail (1450 LF)
11. Two (2) 20' x 20' square picnic pavilions
12. Soccer gateway plaza
13. Landscape buffer along Haverhill Road
14. Multi-purpose lawn
15. Two (2) Soccer Fields (70yds. x 110yds.) –
16. Park entry
17. Ten (10) *DuMor 98* benches with center arm rest
18. Eight (8) Exercise stations - As determined by the Developer
19. Two (2) Drinking Fountain – *Most Dependable model 440sm*
20. Two (2) Bike Racks – *DuMor 83*
21. Eight (8)-*Uline* picnic tables
22. Three (3) *DuMor 24* steel grills
23. Lighting throughout Park for safety
24. Signage – Monument sign (Comparable to Currie Park sign) Park name TBD

All of the above shall be new and comparable in quality and craftsmanship as the equipment/brands identified.

ATTACHMENT "D"

**APPROVED DEVIATIONS FROM COUNTY STANDARD CONSTRUCTION
CONTRACT**

1. GC 29 The subsurface building materials are not required to be new, however are required to be of equal or better grade than that used at the Facility.

EXHIBIT J
COUNTY DEED

PREPARED BY AND RETURN TO:

Ross C. Hering

PALM BEACH COUNTY

PROPERTY & REAL ESTATE MANAGEMENT DIVISION

2633 Vista Parkway

West Palm Beach, FL 33411-5605

PCN: _____

Closing Date: _____

Purchase Price: _____

COUNTY DEED

This COUNTY DEED, made _____, by PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose legal mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, "County", and CITY OF WEST PALM BEACH, a municipal corporation of the State of Florida, whose legal mailing address is 401 Clematis Street, West Palm Beach, FL 33401, "City".

WITNESSETH:

That County, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) to it in hand paid by City, the receipt whereof is hereby acknowledged, has granted, bargained and sold to City, its successors and assigns forever, the following described land lying and being in Palm Beach County, Florida:

See Exhibit "A" attached hereto and made a part hereof.

Reserving, however, unto County, its successors and assigns, an undivided three-fourths ($\frac{3}{4}$) interest in, and title in and to an undivided three-fourths ($\frac{3}{4}$) interest in, all the phosphate, minerals, and metals that are or may be in, on, or under the said land and an undivided one-half ($\frac{1}{2}$) interest in all petroleum that is or may be in, on, or under said land. The aforementioned reservation of phosphate, mineral, metals and petroleum rights shall not include, and County hereby expressly releases, any and all rights of entry and rights of exploration relating to such phosphate, mineral, metals and petroleum rights.

IN WITNESS WHEREOF, County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor or Vice Mayor of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(OFFICIAL SEAL)

By: _____
Assistant County Attorney

EXHIBIT "A"

COUNTY PROPERTY

Parcel 1: PCN 74-43-43-21-01-043-0062

The West one half of Lot 6, Block 43, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida, Less and except the road right-of-way as described in that Order of Taking recorded in O.R. Book 2748, Page 627, Public Records of Palm Beach County, Florida, more particularly described as follows:

A parcel of land in West Palm Beach, Palm Beach County, Florida, more particularly described as follows:

From a point of beginning being the Northwest corner of Lot 6, Block 43, West Palm Beach (Original Townsite), an addition to the City of West Palm Beach, Florida, according to the Plat thereof recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida; run East along the North line of said Lot 6, a distance of 30 feet; thence South along a line 30 feet East of and parallel to the West line of said Lot 6, a distance of 108.15 feet, to the beginning of a curve concave to the Northeast, radius 25 feet, central angle 78°27'47"; thence along the arc of said curve a distance of 34.24 feet; thence South along a line 50 feet East of and parallel to the West line of said Lot 6, a distance of 20.48 feet to a point on the South line of said Lot 6; thence West along the South line of said Lot 6, a distance of 50 feet, to the West line of said Lot 6; thence North along the West line of said Lot 6, a distance of 153 feet, to the Point of Beginning.

Parcel 2: PCN 74-43-43-21-01-043-0031

Lot 4 and the West one half of Lot 3, Block 43, Less the North 20 feet for road right-of-way, and the West one half of Lot 7, Block 43, Less the South 20 feet for road right-of-way, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 3: PCN 74-43-43-21-01-043-0071

The East one half of Lot 7, Block 43, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 4: PCN 74-43-43-21-01-043-0020

Lot 2, Less the North 20 feet for Evernia Street right-of-way, and the East one half of Lot 3, Block 43, Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 5: PCN 74-43-43-21-01-034-0051

The West 90 feet of Lot 5, Block 34, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

Parcel 6: PCN 74-43-43-21-01-034-0042

The West one half of Lot 4, Less the North 20 feet for road right-of-way, and the East 30 feet of Lot 5, Less the North 20 feet for road right-of-way, Block 34, Map of the Town of West Palm Beach, according to the Plat thereof as recorded in Plat Book 1, Page 2, Public Records of Palm Beach County, Florida.

EXHIBIT K
RESTRICTIVE COVENANT

This Instrument Prepared by
And Should Be Returned to:

Nancy DeSimone Urcheck, Esq.
City of West Palm Beach
Office of the City Attorney
401 Clematis Street
West Palm Beach, FL 33401
Legal No. 03981

Will Call Box 186

Parcel Nos. _____

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT ("Restrictive Covenant"), is hereby made this _____ day of _____, 20____, by and between the **CITY OF WEST PALM BEACH**, a municipality duly organized and existing by virtue of the laws of the State of Florida, hereinafter referred to as "City", and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County".

WHEREAS, City is the owner of the land described in Attachment "A" attached hereto (the "Property"); and

WHEREAS, City and County entered into that certain Interlocal Agreement which provides, among other things, for conveyance of the Property to the County; and

WHEREAS, County and City agreed to establish a buffer within the south 400 feet of the Property (the "Buffer Area"), the use of which shall be restricted to grassed pervious open space, multipurpose athletic fields, and parking, as provided in the Interlocal Agreement; and

WHEREAS, the Interlocal Agreement requires County to execute and record a Restrictive Covenant restricting the use of the Buffer Area; and

WHEREAS, in consideration for the City's entry into the Interlocal Agreement and conveyance of the Property, to the County, County has agreed to restrict the use of the Buffer Area as hereinafter provided.

NOW, THEREFORE, County declares that for the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, that it does hereby covenant and restrict the Buffer Area as follows:

1. **Definitions.** All capitalized terms used herein shall have the definitions provided in the Interlocal Agreement.
2. **Covenant Running with the Land.** The covenants and restrictions of this Restrictive Covenant are express conditions of the conveyance of the Property to County by City and shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the City for a term of thirty (30) years from the date this Restrictive Covenant is recorded in the Public Records of Palm Beach County, Florida, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless mutually terminated by County and City.
3. **Covenants and Restrictions.**
 - a. The use of the Buffer Area is restricted to grassed, pervious open space, multipurpose fields, and/or overflow parking.
 - b. Use of the Buffer Area for parking shall be limited to 40 days per year, inclusive of the Major League Baseball spring training season, unless extended by mutual agreement of the parties.
 - c. Any additional use of the Buffer Area beyond those set forth in this Restrictive Covenant and the Interlocal Agreement shall be subject to City's approval.
4. **Modification.** Any modification or amendment to this Restrictive Covenant shall only effective upon written consent of the City.
5. **Governing Law and Venue.** This Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. Venue in any action, suit or proceeding in connection with this Restrictive Covenant shall be in a state court of competent jurisdiction in Palm Beach County, Florida.
6. **Severability.** If any provision of this Restrictive Covenant or the application thereof to any person or entity or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Restrictive Covenant, and the application of such provision to persons and entities or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Restrictive Covenant shall be valid and enforceable to the fullest extent permitted by law.
7. **No Third-Party Beneficiaries.** Nothing in this Restrictive Covenant shall confer upon any person or entity, other than County and City any rights or remedies under or by

reason of this Restrictive Covenant.

- 8. **Remedies.** The parties acknowledge that City has no adequate remedy at law in the event of violation of the terms of this Restrictive Covenant and, as a result, agree that in such event, City shall be entitled to the equitable remedies of specific performance and/or injunctive relief. Failure by City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. This provision shall survive the expiration of this Restrictive Covenant.

IN WITNESS WHEREOF, the parties have executed this Restrictive Covenant as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

ATTEST:

City:

By: _____
City Clerk

CITY OF WEST PALM BEACH, a
municipal corporation of the State of Florida

By: _____
Geraldine Muoio, Mayor

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality

(City Seal)

By: _____

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Department Director

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss.:
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, _____, _____, of Palm Beach County, as an act of the County. _____ is personally known to me and did not take an oath.

Signature of Notary Public

(Print, type or stamp name)

[seal]

Commission No: _____

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss.:
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Geraldine Muoio, Mayor of the City of West Palm Beach, Florida, as an act of the City. The Mayor is personally known to me and did not take an oath.

Signature of Notary Public

(Print, type or stamp name)

[seal]

Commission No: _____

ATTACHMENT "A"
BUFFER AREA

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER OF SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE N 04° 55' 38" E, ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 50.07 FEET; THENCE S 88° 08' 01" E ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 50.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925, THENCE CONTINUE S 88° 08' 01" E, ALONG SAID PARALLEL LINE, A DISTANCE OF 576.73 FEET TO THE POINT OF BEGINNING; THENCE N 02° 27' 51" E, A DISTANCE OF 390.13 FEET; THENCE N 86° 00' 41" W, 217.70 FEET; THENCE N 04° 33' 50" E, 1.83 FEET TO A POINT OF INTERSECTION WITH A LINE 450.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE S 88° 08' 01" E ALONG SAID PARALLEL LINE, A DISTANCE OF 2306.95 FEET TO THE INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE S 03° 41' 15" W, ALONG SAID WEST RIGHT-OF-WAY LINE, 400.20 FEET TO THE INTERSECTION WITH A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE N 88° 08' 01" W, ALONG SAID PARALLEL LINE, 2080.84 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

CONTAINING 835,320 SQUARE FEET/19.176 ACRES MORE OR LESS.

**EXHIBIT L
NON-DISCRIMINATION POLICY**

Pursuant to Resolution R-2014-1421, as may be amended, it is the policy of the Board of County Commissioners of Palm Beach County that Palm Beach County shall not conduct business with nor appropriate any funds to any organization that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

All entities doing business with Palm Beach County are required to submit a copy of their non-discrimination policy which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. In the event an entity does not have a written non-discrimination policy, such entity shall be required to sign a statement affirming their non-discrimination policy is in conformance with Palm Beach County's policy.

Check one:

Grantor hereby attaches its non-discrimination policy which is consistent with the policy of Palm Beach County, or

Grantor does not have a written non-discrimination policy; however Grantor affirms that its non-discrimination policy is in conformance with the above.

GRANTOR:

Signature

Name (type or print)

Title

PREPARED BY AND RETURN TO:
Ross Hering, Director
PALM BEACH COUNTY
PROPERTY & REAL ESTATE MANAGEMENT DIVISION
2633 Vista Parkway
West Palm Beach, FL 33411-5605

**EXHIBIT M
LICENSE**

THIS LICENSE, made _____, granted by **THE CITY OF WEST PALM BEACH** (hereinafter referred to as "City"), whose mailing address is 401 Clematis Street, West Palm Beach, FL 33401 in favor of **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, (hereinafter referred to as "County").

RECITALS:

WHEREAS, the City of West Palm Beach is the owner of the Water Catchment Area located in Palm Beach County, Florida (the "Water Catchment Area") for public water supply purposes and for environmental, education and conservation purposes, pursuant to the Special Laws of the Florida Legislature, Ch. 67-2169 ("The Special Act"), as amended; and the Water Catchment Area serves as natural surface water supply source for the City of West Palm Beach and has been designated as a Class I potable water supply protected by State and Federal laws; and the M-Canal is part of the City's Water Catchment Area; and

WHEREAS, The Special Act allows for uses of the Water Catchment Area that are not inconsistent with The Special Act or any applicable laws or regulations governing Class I potable water supplies and for the City to grant licenses for such uses; and

WHEREAS, Grantee has requested and Grantor has agreed to grant to Grantee a non-exclusive license over and upon that portion of Water Catchment Area legally described on **Attachment "1"** attached hereto (the "License Area"); and

WHEREAS, this License is being granted in accordance with the Interlocal Agreement between Palm Beach County and the City of West Palm Beach regarding the development and operation of a Major League Baseball Spring Training Facility dated _____ (the "Interlocal Agreement").

NOW THEREFORE, in consideration of the grants, agreements and covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. City hereby grants to County, a non-exclusive license over and upon the License Area for installation of pipes for the conveyance of reclaimed water, a berm and fencing ("Facilities"), which uses are consistent with the allowances of the Special Act. County may also install temporary irrigation for berm vegetation during a 180-day grow-in period. This grant shall permit County the authority to enter upon the License Area at any time to install, operate, maintain, service, construct, reconstruct, remove, relocate, repair, replace, improve and inspect the Facilities in, on, over, under and across the License Area. Maintenance shall not include the application or use of pesticides, herbicides, fertilizers or any chemical applications.
3. County acknowledges and agrees that County's use and enjoyment of its interest in the License Area is and shall be strictly limited to that specifically granted herein. County further agrees to exercise the rights granted hereunder in a manner which minimizes the impact upon City's use and enjoyment of City's Property/Water Catchment Area.
4. County shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage, pay any liabilities, damages, and fines, and perform any required environmental clean-up and remediation arising out of County's exercise of the rights granted hereby and restore the License Area, any improvements not existing or constructed hereinafter therein, to the condition it was in prior to such damage, using materials of like kind and quality.
5. This License shall inure to the benefit of and shall burden County, and its agents, successors and assigns.
6. Neither City's nor County's interest in the License Area shall be subject to liens arising from County's use of the License Area, or exercise of the rights granted hereunder. County shall promptly cause any lien imposed against the License Area to be discharged or transferred to bond.
7. City hereby retains all rights relating to the License Area not specifically conveyed by this License including the right to use the License Area and any improvements now existing or constructed hereinafter therein,
8. To the extent permitted by law and subject to and conditional upon the limitations set forth in Section 768.28, Florida Statutes, the County, its successors and assigns, shall indemnify and hold the City harmless from and against any and all loss, suit, action, legal or administrative proceeding, claim, demand, damage, liability, interest, costs and/or expense of whatsoever kind of nature due to personal injury, property

damage and/or environmental damage arising in any manner directly or indirectly related to County's use of the License Area.

9. It is mutually agreed that the license contained herein is for the use and benefit of County, its successors, and assigns and is not intended and shall not be construed as a dedication to the public of any portion of the License Area for public use.

10. County use of the License Area shall not be inconsistent with or violate "The Special Act" or any applicable laws or regulations governing Class I potable water supplies or the Water Catchment Area.

11. Upon completion of installation of the Facilities, County shall provide to the City's Public Utilities Director, as-built surveys or drawings of the Facilities located in the License Area.

12. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this License and the same shall remain in full force and effect.

13. This License shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Palm Beach County, Florida. This License shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

14. This License contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment will be effective except in writing signed by all parties.

15. This License shall not be revoked unless the County defaults in its obligations under this License or County's use of the License Area is inconsistent with or violates the Special Act, or any applicable laws or regulations governing Class I potable water supplies or the Water Catchment Area, presently in effect or as may be amended; or interferes with the City's use or maintenance of its property or facilities located therein. The City shall provide the County with written notice of any inconsistent use or interference and allow thirty (30) days time for the County to cure any such inconsistency or interference. However, in the event of an emergency affecting water quality in the Water Catchment Area, upon notice from the City, the County shall be required to take immediate action to cure any such emergency. City acknowledges that this License is granted for the particular purpose of locating the licensed Facilities, that the County will expend substantial amounts of money carrying out those particular purposes, and that said expenditures will be specifically made in reliance on the granting of this License.

16. All notices required hereunder shall be in writing and shall be addressed to the following representatives of the parties:

As to the City:

City Administrator
City of West Palm Beach
401 Clematis St.
West Palm Beach, FL 33401

As to County:

Palm Beach County
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

17. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this License by reference.

18. Any subsequent conditions, representations, warranties or agreements to this License shall not be valid and binding upon the parties unless they are in writing and signed by both parties and executed in the same manner as this instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, City and County have executed this License Agreement, or have caused the same to be executed as of the day and year first above written.

ATTEST:

By: _____, City Clerk

City:
CITY OF WEST PALM BEACH, a
municipal corporation of the State of
Florida

By: _____
Geraldine Muoio, Mayor
(City Seal)

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality

By: _____, City Attorney

County:

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(OFFICIAL SEAL)

By: _____
Assistant County Attorney

**ATTACHMENT 1
LICENSE AREA**

EXHIBIT N

TAXES

14.1 Generally. The parties agree that the use of the Facility is as a sports facility with permanent seating and as a stadium. The parties reasonably believe that the Facility, the LLC's interest therein and operation thereof, are presently immune from Ad Valorem and/or real estate taxes as the Site and the Facility are owned by County. Provided the Facility is used primarily as a public sports facility, the County and the LLC agree to reasonably cooperate together in: 1) maintaining or obtaining an Ad Valorem and/or real estate tax immunity throughout the Term, and 2) challenging or contesting any real estate taxes, Ad Valorem assessments or similar real estate taxes that impact the LLC's interest in or operation of, the Facility. Notwithstanding the above, the LLC shall have sole liability and responsibility for all Ad Valorem or real estate taxes or assessments that are imposed or assessed against the Site, the Facility, the LLC's interest therein, and/or the LLC's operation thereof, except as otherwise set forth in Section 14.2. The LLC shall have sole responsibility and liability for all lawful taxes, assessments, licenses and charges on the operations at the Facility including, but not limited to, all lawful taxes, assessments, licenses and/or charges on Personal Property and Capital Improvements located at the Facility, as well as on goods, merchandise, equipment and property owned by the LLC and/or the Teams and located in or about the Facility for which an exemption is not available. It is the parties express intention that the LLC shall have sole liability for back taxes, penalties, fines or fees that may result from an audit or review of the LLC's operations at the Facility. This provision shall in no way be construed as restricting the County or the LLC from contesting the legality of any tax or assessment and the County agrees to use good faith efforts to assist the LLC in contesting any such tax, imposition or assessment.

14.2 It is the intent of the County to not have the LLC be financially impacted by the assessment of Ad Valorem taxes. If, in the future, any Ad Valorem real property taxes are imposed or assessed against the Site, the Facility, the LLC's interest therein and/or the LLC's operation thereof the County agrees to pay all such Ad Valorem real property taxes when due. The County's obligation to pay the Ad Valorem taxes pursuant to this Section 14.2, is solely contingent on; 1) the LLC providing evidence of the tax bill (if applicable) to the County within 5 working days of receipt, and 2) the City of West Palm Beach agreeing to reimburse the County for Ad Valorem taxes due to the City pursuant to Section 35 of the Interlocal Agreement. If necessary to meet the intent of this provision, the parties will agree to alternative arrangements to meet said intent.