

REVISED

5F-3

Agenda Item #:

TIME CERTAIN
11:00 A.M.

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

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

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Sports Facility Use Agreement (“Agreement”) with HW Spring Training Complex, LLC, (“LLC”) formed by the Washington Nationals Baseball Club, L.L.C., a Washington, D.C. Limited Liability Company (“Nationals”) and the Houston Astros, L.L.C., a Texas Limited Liability Company (“Astros”), to develop a two team Major League Baseball spring training complex (“Facility”) for use of the Facility for a term of approximately thirty one (31) years and use fees totaling \$68.8 Million Dollars over the term of the Agreement.

Summary: This Agreement sets forth the terms and conditions of the LLC’s use and operation of the Facility as a two-team spring training facility for a term of approximately thirty-one (31) years and payment of a Facility Use fee in the amount of \$39,160,960, a Parking Area fee of \$6,350,240 and a Concession License Fee of \$23,288,800, payable in annual installments according to an escalating schedule over the term of the Agreement, in order to cover debt service. Payments commence on the third anniversary of the issuance of the County Bonds and continue through the term of 30 years after the conclusion of the first full spring training season (approximately 31 years). The LLC is solely responsible for funding and performing routine repair and maintenance and for complying with and performing any required corrective action, including emergency repairs and maintenance, resulting from hazardous conditions, safety or regulatory requirements, defects, flaws or other issues or condition identified in an inspection. The County is responsible for funding renewal/replacement (R/R) projects for public use improvements which are identified in Exhibit B of the Agreement, except for improvements identified in Exhibit F of the Developer Agreement (County Standard Design and Construction Policy Deviations). The LLC is responsible for funding R/R projects that are not identified as County R/R projects. Capital improvements may be funded and performed by the LLC and if undertaken, become the R/R responsibility of the LLC. The LLC is entitled to receive and retain all revenue streams from its use and operation of the Facility other than profits stemming from County Events. The LLC has exclusive concessionaire rights and the LLC can retain all such revenues. All advertising revenue is the sole property of the LLC and the LLC controls all naming rights to the Facility but will include “of/at the Palm Beaches” at the end of the Facility name that is deemed acceptable to the LLC and subject to change from time to time. The Astros and the Nationals shall each provide the County with \$500,000 of tourism and marketing services annually at each Team’s home city stadium or to each Team’s home city audience. Each Team shall meet with the TDC annually to review and reach agreement on the promotional plan for the coming year. Jupiter Stadium Limited (JSL), which is the entity formed by the Miami Marlins and St. Louis Cardinals to operate Roger Dean Stadium is reviewing the negotiated contract and could claim more favorable terms” on the property taxes provision. *The approval of this Agreement is a companion to the Interlocal Agreement with the City of West Palm Beach, Developer Agreement, and three separate Agreements pertaining to reclaimed water serving the Facility. (FDO Admin) Countywide/District 7 (MJ)*

Background and Policy Issues:

CONTINUED ON PAGE 3

Attachments:

Sports Facility Use Agreement

Recommended By: Army Wolf 8/10/15
Department Director Date

Approved By: [Signature] 8/14/15
County Administrator 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	<u>_____*</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

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

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

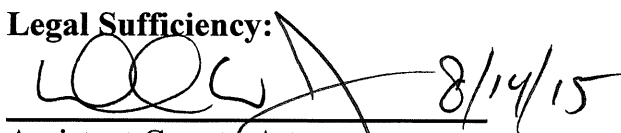
*The estimated debt service for the bond is estimated to be \$226,800,000 over the term of the bond and the Agreement. Of that \$50,000,000 will come from the State of Florida pursuant to FS 288.11631, \$68,800,000 from the Teams pursuant to this Agreement and the remainder of the funds \$108,000,000 from the TDC 1st Cent. In addition, the TDC 1st cent will be responsible for the annual property insurance premiums and the costs of renewal/replacement projects in the Public Use Improvement Areas.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 _____ OFMB 8/12	 _____ Contract Development and Control BWhell 8-13-15
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B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

The material components of the Agreement, and a summary of each, are provided in the following paragraphs.

Term of the Agreement

The Agreement is effective upon the date of execution by the Board and shall extend for a period of 30 years from and after the end date of the first full Major League Baseball (MLB) spring training season. This effectively makes the term of the Agreement 31 years. The conclusion of the first full MLB spring training season will be documented in a letter agreement between the LLC and the County.

Ownership

The Facility shall be owned in fee simple by the County. The LLC shall comply with all County policies and procedures pertaining to the tracking and disposition of fixed assets, and ownership of personal property is to be assigned as described below:

- Personal Property purchased with funding from the Program Budget shall become the property of the County.
- Property purchased to replace Personal Property shall become the Property of the County.
- Art installed in accordance with the County's Art in Public Places Program, either before or after Substantial Completion, shall become the property of the County.
- All Capital Improvements regardless of funding source shall become the property of the County.
- Personal Property installed as a Capital Improvement shall become the property of the County upon installation.
- Personal Property that is neither purchased from the Program Budget, subsequent County funding nor replacing County-funded Personal Property, and that is not affixed to the Facility, will remain the Personal Property of the LLC or the Team that purchases such Personal Property.

Use, Occupancy and Operation

The Astros and Nationals each agree to play all of their MLB spring training home games in the Facility. The LLC is given the exclusive right to use and occupy the Facility, subject to granting County rights to use the Facility, other than the Exclusive Use Areas, in accordance to a standard license agreement. Exclusive Use Areas are the Teams locker rooms, practice fields, designated parking areas and other ancillary areas identified in Exhibit D to the Agreement. The LLC shall manage and schedule all uses of the Facility and is solely responsible for all ongoing management requirements including parking, crowd control, on-Site medical support, security, and any additional requirements based on specific activities to be conducted at the Facility. County's use of the Facility outside of the MLB spring training season is subject to Facility availability.

The LLC's rights to use the Facility shall be in accordance with the following order of priority: 1) the LLC and the Teams on an exclusive basis for the MLB spring training season; 2) the LLC and the Teams for a Team Event; 3) the County for a County Event; and 4) third parties for Third-Party Events. Once an event is approved and scheduled by the LLC, that event cannot be cancelled as a result of a subsequently requested Team, County or Third Party Event, without the express written approval of the entity that is currently scheduled.

The LLC shall be solely responsible for managing and scheduling all MLB spring training home games, Team Events, County Events and Third-Party Events pursuant to the requirements of this Agreement. County Events and Third Party Events may be scheduled in advance subject to the availability of the Facility and the execution of a written license agreement for the use of the Facility by the County or a Third Party.

In order to maximize the use of the Facility during times other than the MLB spring training season and for early coordination of the next year's calendar of events, the LLC and the County shall meet annually during the month of September. In addition, each and every time that the County makes a formal bid/proposal for a sporting event that is to be held twelve (12) months or more after the date of the bid/proposal, the County shall first work collaboratively with the LLC prior to making the bid/proposal to develop a tentative plan for use of the Facility if the bid/proposal is accepted, and the LLC shall reserve such dates for the County until such time that County notifies the LLC that the bid/proposal was accepted or rejected. The County shall notify the LLC of the acceptance or rejection of the bid/proposal within five (5) business days of receiving notice of acceptance or rejection.

County will not be charged a license or use fee, but Third Parties may be required to pay a license, use, or related fee. County and third party users are subject to payment of LLC management fees pursuant to the LLC's standardized rate schedule for LLC employees, vendors or others providing services to support a County event. County assumes responsibility for personal injury or damage caused by County's use. Any admission fee charged by County will be collected by the LLC and offset against monies the County owes for LLC management fees. If gross revenues exceed the LLC management fees, the LLC will remit the difference to County, but if gross revenues are insufficient to cover the LLC management fees, County will remit the difference to the LLC within 30 days of receipt of an invoice from the LLC.

Page 4 – Background and Policy Issues Continued

For declared emergencies, subject to no conflict with pre-existing scheduled events, County may use the Facility for; 1) post disaster recovery purposes, and 2) a shelter for the homeless pursuant to Section 288.1166, Florida Statutes.

The use of the southernmost grass field area of the Facility (“Buffer Area”) is for overflow parking, as well as soccer or other organized recreational uses outside of the MLB spring training season. Parking in the Buffer Area is limited by the Interlocal Agreement with the City of West Palm Beach to 40 days per year, unless additional days are authorized at the City’s sole discretion. The 40 permissible days shall be allocated by the LLC in accordance to the following priorities; 1) MLB spring training, and 2) Team event, County event or Third Party events if justification for use is provided. Once the 40 days is exhausted, the LLC will request the City approve additional days of use based upon the justification provided to support the request, which may be granted or denied by the City.

Use Fees

The LLC shall pay County an annual Facility Use Fee, Parking Area Fee and a Concession License Fee commencing on the Fee Commencement Date, which is the third anniversary of the issuance of the County Bonds. The schedule for these annual payments, which progressively escalate over the course of the Term to account for customary inflation, is identified in the following table:

	Payments	Number of Required Payments	Annual Payment
Facility Use Fee	Commencement Date	8	\$1,252,240
	Year 9 to Year 20	12	\$1,423,000
	Year 21 to Year 28	8	\$1,508,380
	Total	28	\$39,160,960
Parking Area Fee	Commencement Date	8	\$203,060
	Year 9 to Year 20	12	\$230,750
	Year 21 to Year 28	8	\$244,595
	Total	28	\$6,350,240
Concession License Fee	Commencement Date	8	\$744,700
	Year 9 to Year 20	12	\$846,250
	Year 21 to Year 28	8	\$897,025
	Total	28	\$23,288,800

The fees may be adjusted, upward or downward, in the event that; 1) the LLC makes the Interest Election described in the Developer Agreement and/or 2) pre-construction savings reduce the amount of the County Bonds.

The LLC agrees to indemnify and hold County harmless from the payment of any sales tax due in connection with these annual fee payments.

Repair & Maintenance

The LLC is solely responsible for funding and performing routine repair and maintenance and for complying with and performing any required corrective action, including emergency repairs and maintenance. Repair and maintenance shall be performed on an ongoing routine basis as is reasonably required to prevent deterioration of the Facility and extend the useful life of the capital assets. Standards of repair and maintenance for the MLB amenities, including, but not limited to, the stadium and team facilities, shall be similar to first-class MLB facilities and that for the remainder of the improvements shall be consistent with public recreation facilities in Palm Beach County. All repair and maintenance shall be performed in a good and workmanlike fashion, utilizing good quality materials, supplies, components and replacement parts that are of equal or better quality than the quality of those being repaired or replaced, with all reasonable efforts made to preserve the aesthetics of the Facility consistent with the respective repair and maintenance standard for the improvement.

The County shall have the right, but not the obligation, to inspect the Site and Facility at reasonable times, upon reasonable request, or, at such time as the County has reason to believe that an emergency situation exists at the Facility and/or Site, to observe whether or not the LLC is performing its repair and maintenance obligations pursuant to this Agreement. The County Site inspections do not in any way eliminate, change, reduce, modify, transfer, or diminish the LLC's sole responsibility for: 1) the on-going operation of the Facility; 2) the assessment of the condition of the Site and Facility; and 3) the performance of corrective action as required to maintain the Site and the Facility in a safe condition. The LLC shall not be entitled to rely on any comments, recommendations, reports or the results of the County inspection, in lieu of conducting its own independent assessment and evaluation of the condition of the Site and the Facility.

Licensing, Inspection and Regulatory

The LLC's repair and maintenance responsibilities include emergency repair and maintenance or other corrective action to address hazardous or unsafe conditions arising from, or related to, licensing, permitting, inspection, audit, safety or regulatory requirements concerning the Site, Facility, and the LLC's operations, business, and/or use of the same, including but not limited to any City, County, State, Federal, OSHA or MLB law, rules, regulations, ordinances, or other requirements. This includes, but is not limited to, repair and maintenance arising in anticipation of, or as a result of an inspection, audit, licensing or regulatory requirement or other compliance-related event. The LLC's responsibilities in any Public Use Improvements, as demonstrated by Exhibit B to the Agreement, shall be subject to funding by County for R/R Projects for Public Use Improvements, if applicable. Any corrective work required that otherwise meets the requirements of an LLC R/R Project shall be reflected on the R/R Project Schedule (addressed later herein) as an LLC R/R Project; thereby being the sole funding responsibility of the LLC. Any corrective work required to comply with the requirements of any environmental permit or approval including monitoring and/or correcting groundwater issues will also be considered an LLC R/R Project.

The LLC is solely responsible for performing and funding any ADA requirements as well as all claims and litigation involving ADA compliance.

Renewal/Replacement (R/R)

The County and LLC have jointly determined the need for establishing and funding a program to address R/R Projects in order to ensure that age, use and deterioration of the Facility does not adversely impact its use or the cost to maintain the Facility over the term of the Agreement. The R/R Project Schedule shall project, at a minimum, R/R Project requirements for the upcoming Budget Year and the next nine (9) Budget Years thereafter. The County and the LLC both agree to cooperate in the development of an annual R/R Project Schedule so that the R/R Projects are undertaken in a timely manner to ensure that the asset is renewed/replaced prior to material degradation of the utility/appearance of the Facility, while recognizing periodic financial constraints of the County and the LLC. Material degradation of an asset occurs when; 1) the asset's condition is or may cause damage or increased costs to renew/replace other assets, 2) the asset's condition represents a hazardous condition that may increase liability, and/or 3) the asset has deteriorated in utility and appearance or has failed or is likely to fail. The R/R Project Schedule shall address the requirements of the Facility and shall contain two sections; County R/R Projects and LLC R/R Projects. The LLC shall perform ALL R/R projects, subject to the funding requirements below.

- The County is responsible for funding 100% of the County R/R Projects for Public Use Improvements when they are included in the approved R/R Project Schedule and are identified in Exhibit B of this Agreement, except for improvements identified in Exhibit F of the Developer Agreement (County Standard Design and Construction Policy Deviations), which are the sole responsibility of the LLC. The Agreement contains other language that may exempt projects being a County R/R responsibility in specific circumstances.
- The LLC is responsible for funding 100% of the LLC R/R Projects as identified on the approved R/R Project Schedule.

Capital Improvements

Any capital improvements made to the Facility in the future are to be funded and performed by the LLC and would become the R/R responsibility solely of the LLC. Any capital improvements would become the property of the County.

Revenues

The LLC is entitled to receive and retain all revenue streams from its use and operation of the Facility, other than profits stemming from County Events. The LLC agrees to not execute any agreements that prohibit County from using or providing incompatible products at no charge to event participants, but County cannot sell incompatible products during its events at the Facility. The LLC has the right to sell tickets, charge admission fees and assess a parking fee for events. The LLC has exclusive concessionaire rights and the LLC can retain all such revenues, including concession revenues from County Events. All advertising revenue is the sole property of the LLC and the LLC controls all naming rights to the Facility but will include “of/at the Palm Beaches” at the end of the Facility name that is deemed acceptable to the LLC and subject to change from time to time.

Tourist Promotions

The LLC shall utilize County’s Seal and Tourism Identity Logo in all in-County written marketing efforts, except for efforts that do not contain graphics, print or visual media and excluding merchandise to be sold and on-Site signage. The Astros and the Nationals shall each provide County with \$500,000 of tourism and marketing services annually at each Team’s home city stadium or to each Team’s home city audience. Each Team shall meet with the TDC annually to review and reach agreement on the promotional plan for the coming year.

Transfer of Team Ownership/Assignment of Agreement

A Team may transfer its interest in the LLC to another team provided; 1) the assignee Team can demonstrate equal or greater attendance, averaged over the last three spring training seasons, as compared to the original team, 2) the assignee team assumes 100% of the original teams obligations under the agreement, and 3) the assignee team executes a guaranty in the same form as the original guaranty.

Litigation and Indemnity

The LLC is solely responsible for all litigation, hearings, claims or demands to the extent such claim or demand concerns an obligation of the LLC under this Agreement or the Developer Agreement, excluding taxpayer funding challenges. The LLC agrees to indemnify County for all actions arising out of use and operation of the Facility, the condition of the Facility, and the LLC’s performance under the Agreement.

Insurance/Damage & Destruction of Facility

The County shall maintain property insurance for the Facility and be responsible for the deductible unless the LLC is responsible for the loss, in which case the LLC shall pay a deductible of up to \$100,000 in keeping with the term of the County’s coverage. In the event of a casualty loss, the County shall fund the repair and restoration of the Facility, except for defined LLC Restoration Areas which the LLC is obligated to restore. LLC Restoration Areas include, but are not limited to, property damaged as a result of deviations from County’s standard design and construction policies, property damaged as result of adding to, modifying or using a structure for other than its intended use, fields and fencing. In the event there is a substantial interruption in the LLC’s operations as a result of a casualty loss, the LLC’s obligations under the Agreement, including payment of fees, shall be suspended until the County funds the repair and restoration. If the repair and restoration is not funded within one year, the LLC will have the option to terminate the Agreement.

Termination

The LLC has the right to terminate the Agreement; 1) for any reason prior to the sale of the County Bonds, subject to repayment of 100% of the Actual costs paid by County under the Due Diligence Agreement; and 2) pursuant to the Interest Election, subject to the LLC reimbursing County 50% of the County’s Actual Costs to date of termination.

The County has the right to terminate the Agreement if the following conditions are not satisfied by March 1, 2016; 1) the full execution and effectiveness of the Operative Agreements, 2) receipt of the Funding Certification Letter from the State, and 3) approval of Major League Baseball, if required. The LLC shall reimburse the County 100% of the Actual Costs, paid by County if the Operative Agreements are not executed and effective, or if Major League Baseball does not approve the Agreement and 50% of the County’s Actual Costs if the Funding Certification Letter is not received.

More Favorable Terms

If, at any time during the Term, the County directly or indirectly enters into an agreement with another Major League Club for the operation and use of another stadium, other than any renewal, restatement, extension, amendment or renegotiation of the First Restated Sports Facility Use Agreement with JSL, (R2011-0694), which agreement includes among its terms the right to play more than two (2) MLB spring training season home games in the County during any MLB spring training season, the County shall provide the LLC with a copy of such agreement. If the LLC reasonably believes that the terms of such agreement are more favorable than the corresponding term(s) contained herein, the LLC shall have no longer than 21 days from the time that the LLC is provided such an agreement to so notify the County. In such event the more favorable terms shall be substituted for the corresponding term(s) of this Agreement for the remainder of the term, retroactive to the date the County entered into the agreement with the other Major League Club. Notwithstanding the foregoing, in the event such more favorable terms would impact the then applicable tax status of the County Bonds, the LLC shall not be entitled to such more favorable terms.

Substantially similar language is contained in the existing agreement with JSL. In a concerted effort to disclose the costs and any financial implications associated with this transaction, JSL was provided a copy of this Agreement for review for the purpose of securing a letter either releasing its right to substitute terms or identify those terms which it believed to be more favorable. Staff has requested a response by the time this item is considered by the Board of County Commissioners.

In the event the County renews, restates, extends, amends or renegotiates the First Restated Sports Facility Use Agreement with JSL, (R2011-0694) (the “Renewed Use Agreement”) during the term of this Agreement, the County will also be obligated to provide the LLC with a copy of the Renewed Use Agreement. If the LLC reasonably believes that any of the terms of the Renewed Use Agreement are more favorable than the corresponding term(s) contained in this Agreement, the LLC shall have no longer than 21 days from the time the LLC is provided a copy of the Renewed Use Agreement to notify the County. In such event, the more favorable terms shall be substituted for the corresponding term(s) of this Agreement for the remainder of the Term, retroactive to the date the County enters into the Renewed Use Agreement. Notwithstanding the foregoing, Section 5.5 (Buffer Area), Article 6 (Use Fees), Article 19 (Conditions Precedent), and Article 20 (Termination) of this Agreement shall be excluded from this provision. In the event such more favorable terms would impact the then applicable tax status of the County Bonds, the LLC shall not be entitled to such more favorable terms.

Taxes

State law presently exempts the Facility from ad valorem tax assessments. However, in the past there has been legislative discussion about assessing ad valorem taxes to private entities with beneficial ownership using public properties. While the actual amount of ad valorem taxes would be based upon the assessed value of the property, it is difficult to determine how the property would be assessed and hence the value of the improvements. The ad valorem taxes are as follows:

Governmental Entity	Certified Millage	Total Millage by Governing Agency	
County	4.7815		
County Debt	0.1914	4.9729	21.14%
City	8.3465		
City of West Palm DDA	1.00		
City of West Palm Debt	0.1838	9.5303	40.52%
School Local	2.498		
School State	5.096	7.594	32.29%
Children Services Council	.06745	.06745	.29%
F.I.N.D.	.0345	.0345	.15%
PBC Health Care District	1.08	1.0800	4.59%
SFWMD Everglades Construction Project	.0548		
South Florida Water Management District	.01577		
South Florida Water Management District – Okee Basin	.1717	.24227	1.03%
Total Millage	23.52142	23.52142	100%

Page 8 – Background and Policy Issues Continued

Essentially there are only three options to address this subject; 1) the LLC assumes full responsibility, 2) the County assumes full responsibility, or 3) the risk of future taxation is shared. Giving the LLC/Teams the ability to terminate this Agreement in the event of future taxation is not seen as a viable option in that if this Agreement were to be terminated, the financial liability of the Teams to the State pursuant to Florida Statute §288.11631 would be greater than the tax liability. Both the LLC and the County acknowledge that the likelihood of a law change is small, but the LLC was not willing to assume any risk associated with ad valorem taxes due to the significant annual fee amounts already being paid to the County for a facility in County ownership.

Due to Staff's belief that the risk associated with this legislative change being low and in order to move the transaction forward, the Agreement states that the County and the LLC agree to reasonably cooperate to; 1) maintain or obtain an Ad Valorem and/or real estate tax immunity throughout the Term, and 2) assist in the challenge or contest of any real estate taxes, Ad Valorem assessments or similar real estate taxes. After those efforts and in the event that the law does change making this property subject to Ad Valorem taxes, the County will assume the Ad Valorem tax liability associated with all governmental taxing entities other than the City of West Palm Beach, if and only if, the City agrees to reimburse the County for its share of the taxes. Similar language requiring the City to cover its share of the Ad Valorem taxes has been added to the Interlocal Agreement.

Staff believes that this language represents a more favorable term as defined in the Agreement with JSL and expect that JSL will request a substitution of this term into its agreement. Assuming that JSL does request the substitution and if the law is ever changed, the County would then be required to also fund all Ad Valorem taxes at Roger Dean Stadium, less those due the Town, if and only if, the Town of Jupiter agrees to fund its share.

Guaranty

A single guaranty is proposed by the LLC for both the Developer Agreement and Sports Facility Use Agreement and that guaranty unconditionally, absolutely and irrevocably guarantees to County all obligations imposed on the LLC through this Sports Facility Use Agreement.

After extensive negotiation, each team has offered a guaranty in the amount of 100 Million and no/100 Dollars, which is secured with a letter opinion from an appraisal firm or certified public accountant that one or both Teams combined have a net worth or fair value of equity of 100 Million and no/100 Dollars. The letter will be provided once every five years and in the remaining years, the Teams will provide a statement from an appraisal firm or certified public accountant that there has been no material change in the financial position of the guarantor over the last year. This would be a deviation from standard policy, which requires a letter of credit or bond be provided.

SPORTS FACILITY USE AGREEMENT

THIS SPORTS FACILITY USE AGREEMENT (the "Agreement") is made and entered into as of this _____, by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County") and HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC").

WHEREAS, the County is the owner of certain real property within the City of West Palm Beach, Palm Beach County, Florida, which property is legally described on **Exhibit A**; and

WHEREAS, the County desires to develop and own a stadium, including two-team training facilities, practice fields, clubhouses, dedicated on-Site parking areas, and other appurtenances and improvements, to be used by the Washington Nationals and the Houston Astros as a professional sports franchise facility for their joint spring training and other uses permitted herein; and

WHEREAS, the County desires to enter into this Agreement with the LLC, whereby the County grants to the LLC the rights to use, occupy and operate the Facility, as more particularly described herein, and the LLC desires to enter into this Agreement with the County for such purposes.

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations herein contained, the parties intending to be legally bound, hereby agree as follows:

ARTICLE 1 **RECITALS**

The foregoing recitals are incorporated herein and made a part hereof by this reference.

ARTICLE 2 **DEFINITIONS**

The following terms shall have the meanings specified in this Article 2 when capitalized and used in this Agreement. Some terms provided herein are used only in the Developer Agreement and are included herein for clarity. Capitalized terms not defined in this Article 2 shall have the meanings ascribed to them in this Agreement or in any other Agreement referenced herein. The meanings specified are applicable to both the singular and plural.

"Actual Costs" shall have the meaning set forth in the Developer Agreement.

"ADA" shall mean the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as may be amended from time to time.

"Affiliate" shall mean, with respect to the LLC, a Person that, directly or indirectly, controls, is controlled by, or is under common control with, the LLC.

“Approved R/R Project Schedule” shall mean each annual R/R Project Schedule approved for funding by the Board pursuant to each annual budget funding request.

“Art” shall mean those improvements installed at the Site and Facility pursuant to County’s “Art in Public Places” program.

“Art in Public Places Administrator” shall mean an employee within the Facilities Development and Operations Department designated by the County and indicated to the LLC as the individual with responsibility to implement the County’s “Art in Public Places” program.

“Astros” shall mean the Houston Astros, LLC, a Texas limited liability company.

“Astros’ Facilities” shall mean the land and improvements constituting the Houston Astros’ Major and Minor League clubhouses, administrative and storage areas, practice fields, batting cages and tunnels, bullpen pitching mounds, pitcher warm-up areas, Exclusive Parking Areas, and any other Exclusive Use Areas designated within the Facility by the LLC for the exclusive use of the Houston Astros.

“Board” shall mean the Board of County Commissioners of Palm Beach County.

“BOC” means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Clubs who are party to the Major League Constitution, and any successor organization thereto.

“Budget Year” shall mean the County’s annual fiscal year beginning on October 1 and continuing through September 30 of each year.

“Buffer Area” shall mean the area within the South 400’ of the Site to be used as grassed pervious open space, multipurpose athletic fields, and overflow parking as depicted on the Conceptual Plan and described in Section 12.7 of the Interlocal Agreement.

“Business Day” shall mean any day, except Saturday, Sunday or any national holiday or any other day recognized by the County as a holiday, or any other day during which County governmental offices are closed.

“Capital Improvements” shall mean any and all design, permitting, labor and/or materials related to any improvements beginning on the date of Substantial Completion, that add value to the Facility, including but not limited to any and all fixtures, fixed equipment, modifications to, and/or demolition of the Facility undertaken on, or after, the date of Substantial Completion of the Facility. Examples include, but are not limited to, the following: fixed equipment; physical enlargement or expansion of a structure or existing asset; physical improvement which creates an increase in capacity; or adapting a portion of the Facility to a new or different use, provided such use shall comport with the intended use of the Facility for public purposes; and/or a demolition of the improvements originally constructed. The term “Capital Improvements” for the purposes of this definition shall not include the Facility as initially constructed.

“Championship Season” shall mean the regular annual period of competitive and recorded play by the Major League Clubs or Minor League Clubs, as applicable to determine a champion.

“City” shall mean the City of West Palm Beach, a Florida municipal corporation.

“City Park” shall mean the land and improvements as described in **Exhibit I and Section 12.6 of the Interlocal Agreement**.

“City Park Improvements” shall mean the facilities and features described in **Exhibit I and Section 12.6 of the Interlocal Agreement** and including the loop trail feature as described therein.

“City Park Property” shall mean the approximately 12.2 acres legally described in **Exhibit A of the Interlocal Agreement**.

“Commissioner” shall mean the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any person succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

“Conceptual Plan” shall mean the general layout of proposed improvements to the Site and the City Park Property including the City Park, Facility and Buffer Area and which is attached as **Exhibit B to the Interlocal Agreement**.

“Concession License Fee” shall mean the amounts paid by the LLC as consideration for the Food and Beverage Concession Areas, payable annually, based on escalating schedule of annual payments as described in Article 6 herein.

“Concession Revenues” shall mean all the revenues received by the LLC from the sale of food and beverages, novelties, merchandise, publications, and the like at the Facility.

“Construction Contract(s)” shall mean the legally binding agreement(s) to be entered into by and between the LLC and the Contractor(s) (as such term is defined in the Developer Agreement) for the construction of the Facility, or any portion thereof, as such agreement(s) may be amended by the LLC, including through a Change Order authorized pursuant to Section 8.5 of the Developer Agreement.

“County Bonds” shall mean the County’s revenue bonds to be issued in connection with the Facility in one or more series yielding One Hundred Thirty Million Dollars (\$130,000,000) in net proceeds for development of the Facility and any refunding thereof.

“County Events” shall mean those non-profit and for-profit events to be conducted or sponsored by the County, including, but not limited to, events sponsored or supported by the Tourist Development Council, the Sports Commission, the Cultural Council, and/or other County sponsored community events.

“County Representative” shall mean the Director of the County’s Facilities Development & Operations Department, or such other persons as may be designated in writing by the County as its representative or liaison during the Term of this Agreement.

“County R/R Project” shall mean a R/R Project for a Public Use Improvement.

“County’s R/R Project Reserve” shall mean the monies set aside pursuant to Section 8.4.7 of the Development Agreement for County R/R Projects.

“County Seal” shall mean the seal adopted by Palm Beach County as its official seal.

“Cultural Council” shall mean the Palm Beach County Cultural Council.

“Day” shall mean each 24-hour period beginning and ending at 12:00 midnight Eastern Standard Time and shall include Saturdays, Sundays and all holidays, except that in the event that an obligation to be performed under this Agreement falls due on a day other than a Business Day, such obligation shall be deemed due on the next Day that County offices are open for business thereafter.

“Due Diligence and Planning Services Agreement” shall mean the Due Diligence and Planning Services Agreement R-2015-0358, executed on March 10, 2015 by and between County and the LLC for due diligence and planning services, as the same may be amended or supplemented from time to time.

“Developer Agreement” shall mean the Agreement R-2015 - _____, executed by and between County and the LLC, as the same may be amended or supplemented from time to time.

“Effective Termination Date” shall be seven (7) days after the defaulting party has received written notice of termination.

“Emergency R/R Project” shall mean any R/R Project that is not scheduled to be made pursuant to the R/R Project Schedule, but where the impact of delay associated with waiting until the approval of the updated R/R Project spreadsheet described in Article 10 herein would be detrimental to the interest, health, safety or welfare of the residents of County and the need was not artificially created by the LLC. The determination as to whether any particular project is an Emergency R/R Project shall be made only by the County, after consideration of the justification provided by the LLC.

“Environmental Resource Permit” or “ERP” shall mean the environmental resource permit issued for the Facility and City Park Improvements as set forth in Section 12.2 of the Interlocal Agreement.

“Exclusive Parking Areas” shall mean those areas designated in the Exclusive Use Areas designed for and/or used for the parking of Team related vehicles.

“Exclusive Use Areas” shall mean the areas that are identified in **Exhibit D** attached hereto which are reserved for the exclusive use of the Teams, unless otherwise set forth herein.

“Executive Council” means the Executive Council of Major League Baseball that is governed by Article III of the Major League Constitution, and any successor body thereto.

“Facility” shall mean a professional sports franchise facility for joint spring training of two Major League Baseball teams as well as minor league affiliates, including a stadium, two-team training facilities, practice fields, clubhouses, dedicated on-Site parking areas, and other appurtenances and improvements, intended for use by the Washington Nationals and the Houston Astros and for other tourism and community uses contemplated by the Operative Agreements, and shall also include, without limiting the foregoing, all improved and unimproved areas of the Site and any off-Site improvements required for regulatory approval.

“Facility Use Fee” shall mean the LLC’s agreed upon contribution to the County for the development, construction and operation of the Facility, excluding the Food and Beverage Concession Areas and Parking Areas, payable annually, based on an escalating schedule of annual payments as described in Article 6 herein.

“FD&O” shall mean the County’s Facilities Development & Operations Department.

“Fee Commencement Date” shall mean the date that is the third anniversary of the issuance of the County Bonds.

“Food and Beverage Concession Areas” shall mean any area at the Facility which will sell food and beverages.

“Force Majeure” shall have the meaning set forth in Article 28 herein.

“Full Spring Training Season” shall mean the use of the Facility by both Teams for the full period of Spring Training Season of each year.

“Funding Certification Letter” shall mean a letter from the Florida Department of Economic Opportunity certifying the County pursuant to Section 288.11631, Florida Statutes, as eligible to receive funding for the construction and development of the Facility in the amount of Two Million Dollars (\$2,000,000) per year for a total of Twenty-Five (25) years.

“Grapefruit League Teams” shall mean the professional baseball teams participating in the Spring Training Season played in Florida in preparation for the Championship Season.

“Gulf Coast League” shall mean a Minor League Baseball league that operates in Florida.

“Home City” shall mean the city where each team hosts opposing teams for Major League Regular Season games.

“Home City MLB Stadium” shall mean the MLB stadium in each team’s Home City.

“Interest Election” shall mean the LLC’s option, available at the time of County Bond issuance only if the true interest cost exceeds 4.78%, to either; 1) authorize the County to issue the County Bonds and to increase the LLC’s annual Facility Use Fee, Parking Area Fee, and Concession License Fee payments pro rata in an amount equal to the aggregate additional true

interest cost of the County Bonds allocable to the LLC due to the higher true interest cost, or 2) terminate the Agreement and reimburse the County 50% of the Actual Costs at the date of termination.

“Interlocal Agreement” shall mean Agreement R-2015- _____, between County and the City as the same may be amended or supplemented from time to time.

“LLC” shall mean HW Spring Training Complex, LLC, a Florida Limited Liability Company, formed under the laws of the State of Florida and validly authorized to do business as a limited liability company under Florida law.

“LLC Management Fees” shall mean the costs to compensate LLC employees, vendors, contractors or others for services relating to a County Event, including but not limited to; (i) setting up, scheduling and coordinating staff and services, cleaning up, and coordinating utilities; (ii) restoring the Facility to its pre-event condition, including but not limited to repairing any damage to the Facility caused by the County Event; and (iii) providing services during a County Event, including but not limited to providing security services.

“LLC Parties” shall mean the LLC and the Teams and each of their respective members, officers, directors, employees, agents, servants and representatives, of any and all of the foregoing.

“LLC Restoration Areas” shall mean any and all items, improvements, and land areas identified in **Exhibit E** hereto, all land areas and property identified as an LLC Restoration Area in **Exhibit F of the Developer Agreement**, and any personal property, equipment and/or any portion of the Facility damaged as a result of the deviations from County standard design and construction policies identified in **Exhibit F of the Developer Agreement**, shall be considered LLC Restoration Areas for the purposes of determining financial responsibility for claims including, but not limited to, damage to personal property, damage to the Facility, all property insurance claims and deductible costs and financial responsibility for repairs or restorations to property resulting from said deviations.

“LLC R/R Project” shall mean any project on the R/R Project Schedule which is not a County R/R Project.

“LLC’s R/R Project Reserve” shall mean the monies set aside pursuant to Section 8.4.7 of the Development Agreement for use for LLC R/R Projects.

“Loop Trail” shall mean the improvement located along the perimeter of the Site and in some places within the City Park as depicted in **Exhibit B of the Interlocal Agreement**.

“Major League Baseball” or “MLB” shall mean, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, the Executive Council and the Ownership Committee, and/or (b) the Major League Clubs acting collectively.

“Major League Club(s)” shall mean any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

“Major League Constitution” shall mean the Major League Constitution as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

“Major League Regular Season” shall mean the period of play each year, which begins on the first day of the Major League Baseball Championship Season through the last game of such season unless rescheduled by the MLB.

“Major League Spring Training Home Games” shall mean those games, as determined by MLB, to be played by Major League Clubs at the Facility during the Spring Training Season.

“Minor League Baseball” shall mean the professional baseball leagues which are members of the National Association of Professional Baseball Leagues, Inc. Each league is known individually as a Minor League.

“Minor League Baseball Season” shall mean the period of play each year, which begins on the first day of the Minor League Baseball Championship Season through the last game of such season, unless rescheduled by Minor League Baseball.

“Minor League Club(s)” shall mean the professional baseball clubs which are members of the respective Minor Leagues.

“MLB Approval” shall mean, with respect to the Major League Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such person(s)).

“MLB Entity” shall mean each of the BOC, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., the MLB Network, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, successors or assigns.

“MLB Governing Documents” shall mean the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League Constitution, (b) the Basic Agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of November 1, 2006, by and among Major League Baseball Properties, Inc., the various Major League Clubs and the BOC (and the Operating Guidelines related thereto).

“MLB Rules and Regulations” shall mean (i) the MLB Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any

other MLB Entity or the Major League Clubs acting collectively, including, without limitation, agreements or arrangements (A) entered into pursuant to the MLB Governing Documents, (B) relating to any commerce and/or the exploitation of intellectual property rights in any medium, including the Internet or any other medium of interactive communication, and (C) regarding the telecast, broadcast, cablecast (including pay, basic, expanded basic, pay-per-view and video-on-demand), recording (audio or visual), or other transmission or retransmission (including, but not limited to, transmission via the Internet or any other medium of interactive communication, now known or hereafter developed) of Major League Baseball games, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

“Nationals” shall mean the Washington Nationals Baseball Club, LLC, a Washington, DC Limited Liability Company.

“Nationals’ Facilities” shall mean the land and improvements constituting the Nationals’ Major and Minor League clubhouses, administrative and storage areas, practice fields, batting cages and tunnels, bullpen pitching mounds, pitcher warm-up areas, Exclusive Parking Areas, and any other Exclusive Use Areas designated for the exclusive use of the Nationals.

“Non-Eligible Costs” shall have the meaning set forth in the Developer Agreement.

“Official Baseball Rules” shall mean those certain playing rules of Major League Baseball, all as the same now exist or may be amended from time to time in the future.

“Operative Agreements” shall collectively refer to this Sports Facility Use Agreement, the Developer Agreement and the Interlocal Agreement.

“Parking Area Fee” shall mean the amounts paid by the LLC as consideration for the parking of vehicles, payable annually, based on an escalating schedule of annual payments as described in Article 6 herein.

“Parking Areas” shall mean any areas at the Facility that are not Exclusive Parking Areas and which are intended to be used for the parking of vehicles as identified in **Exhibit C** of this Agreement and which may be included in a County Event license agreement, if requested by the County pursuant to Section 5.3 hereof.

“Personal Property” shall mean tangible and intangible assets that have not been affixed and/or attached to the Facility.

“Professional Baseball Agreement” shall mean that certain Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Clubs, and the National Association of Professional Baseball Leagues, Inc., as the same now exists or may be amended from time to time.

“Program Budget” shall mean the total of Actual Costs and Non-Eligible Costs but not including Excluded Costs.

“Public Use Improvements” shall mean land areas along with all improvements, equipment, fixtures and furnishings that are the County’s renewal/replacement funding responsibility and that are specifically identified on **Exhibit B** herein, except for any improvements listed on **Exhibit F of the Developer Agreement** as not being the County’s Renewal/Replacement funding responsibility, even if they are located within Public Use Improvement areas.

“Reclaimed Water Agreement” shall mean Agreement R-2015-_____ which sets forth the terms and conditions for the extension of a reclaimed water pipeline to the Site and the City’s provision of reclaimed water to the Site.

“Repair and Maintenance” shall mean the labor and materials which are required to keep the Facility in good order and repair (normal wear and tear excepted) and which are routine, regular, and are generally predictable in nature, given the age of the Facility and the use of the Facility expressly not including any R/R Projects. Repair and Maintenance includes, but is not limited to, repairs of any value necessary to restore an improvement or equipment to working order only where the resulting repair is not intended to extend the life of the improvement or equipment by more than one year. Repair and Maintenance shall specifically include, but not be limited to; 1) damage to the Facility caused by vandalism, and 2) the routine maintenance of the Art as set forth in the Agreement for Art Services that the LLC is entering into for Art at the Facility.

“R/R Payment Request” has the meaning set forth in Section 10.4.5.

“R/R Project” or “Renewal/Replacement Project” shall mean the labor and materials necessary to renew, rehabilitate or replace a physical improvement, fixture, piece of equipment or any other physical asset of the Facility which is intended to extend the overall life of the improvement or equipment by over one year.

“R/R Project Bid Tabulation Sheet” has the meaning set forth in Section 10.4.3

“R/R Project Reserve” or “Renewal/Replacement Project Reserve” shall mean two lines in the Program Cost Estimate established pursuant to Section 8.4.7 of the Development Agreement which contain Construction Savings, if any, which upon Final Completion will be allocated to the LLC R/R Project Reserve and the County R/R Project Reserve in order to fund the initial R/R Project obligations of County and the LLC.

“R/R Project Schedule” shall mean the list of planned R/R Projects that are scheduled to be undertaken in the next ten years.

“R/R Purchase Order” has the meaning set forth in Section 10.4.3.

“SBE Vendor” shall mean a small business enterprise which has been certified by the County’s Office of Small Business Assistance.

“Site” shall mean the real property legally described in **Exhibit A** hereto.

“Sports Commission” shall mean the Palm Beach County Sports Commission.

"Spring Training Season" shall mean the period as determined from time to time by Major League Baseball, (which for purposes hereof shall be deemed to be from January 7th to approximately April 15th of each year unless continued or extended by Major League Baseball) during which time the Major League Clubs and the Minor League Clubs train for the next Championship Season. The Spring Training Season shall be deemed to include the time each year which is reasonably required for the preparation of the Facility and for a reasonable period to close that portion of that Facility solely related to spring training.

"Substantial Completion" shall have the meaning as set forth in the Construction Contract.

"TDC" shall mean Palm Beach County's Tourist Development Council.

"TDC Representative" shall mean the Director of the TDC or such other persons as may be designated in writing by the County as its representative or liaison during the Term of this Agreement.

"Team(s)" shall collectively mean the Houston Astros, L.L.C., a Texas Limited Liability Company and the Washington Nationals Baseball Club, L.L.C., a Washington, D.C. Limited Liability Company and their successors and assigns as authorized in this Agreement, and in the singular may refer to either entity individually.

"Team Events" shall mean all Major League Spring Training Home Games, Minor League Baseball games, Grapefruit League games, Gulf Coast League games, and any other baseball game, baseball related or non-baseball related event that is conducted or sponsored by the LLC, a Team or Teams at the Facility.

"Third-Party Events" shall mean any event that is not a County Event or a Team Event.

"Tourism Identity Logo" shall mean the County's tourism logo approved by the TDC.

ARTICLE 3 **TERM/EFFECTIVE DATE**

3.1 Term/Effective Date. This Agreement is expressly contingent upon execution by all parties and approval of the Board. It shall be effective upon the date of execution by the Board (the "Effective Date") and extend for a period of 30 years from and after the end date of the first Full Spring Training Season (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement. The end date of the first Full Spring Training Season will be documented in a letter agreement between the County and the LLC.

ARTICLE 4 **OWNERSHIP**

4.1 Ownership of the Facility. The Facility shall be owned in fee simple by the County. All County owned property shall be assigned a fixed asset identification number by the County's Fixed Asset Department upon receipt of the fixed asset equipment and fixture

information as required pursuant to the Construction Contract. The LLC shall comply with all County policies and procedures pertaining to the tracking and disposition of fixed assets. The LLC shall not have an ownership interest or have any possessory interest in the Facility except as set forth herein.

4.2 Ownership of Personal Property and Capital Improvements.

4.2.1 Personal Property purchased with funding from the Program Budget shall become the property of the County.

4.2.2 Property purchased to replace Personal Property described in Section 4.2.1 herein shall become the Property of the County.

4.2.3 Art installed either before or after Substantial Completion shall become the property of the County.

4.2.4 All Capital Improvements regardless of funding source shall become the property of the County.

4.2.5 Personal Property installed as a Capital Improvement pursuant to Article 9 of this Agreement, or otherwise attached or affixed to the Facility, shall become a Capital Improvement and the property of the County upon installation.

4.2.6 Personal Property that is neither purchased with County funding nor replacing County-funded Personal Property, and that is not affixed to the Facility, will remain the Personal Property of the LLC or the Team that purchases such Personal Property.

**ARTICLE 5
USE, OCCUPANCY AND OPERATION**

5.1 Grant of Use and Occupancy.

5.1.1 The County hereby grants to the LLC the exclusive right to use, occupy and operate, and permit all third-parties to use and to occupy, the Facility for all lawful purposes, provided, however, that the primary purpose is a professional sports franchise and public facility, and to retain all revenues derived from the operation of the Facility for the entirety of the Term, subject to the provisions of this Agreement. Further, the County shall not further restrict the LLC's use or rental of the Facility in any manner that is not otherwise prohibited in Palm Beach County generally, as of the date hereof.

5.1.2 The LLC shall cause the Teams to play all of their respective Major League Spring Training Home Games in the Facility during the Spring Training Season of each year during the Term, except to the extent that a Force Majeure Event renders the Facility temporarily or permanently unusable or unsuitable to conduct Major League Baseball Spring Training Home Games, subject to the requirements of Article 17 herein.

5.1.3 The rights to use the Facility shall be in accordance with the following order of priority: 1) the LLC and the Teams on an exclusive basis for Spring Training Season unless otherwise authorized pursuant to Section 5.3 herein; 2) the LLC and the Teams for a Team Event; 3) the County for a County Event; and 4) third parties for Third-Party Events. Once an event is approved and scheduled by the LLC, that event cannot be cancelled as a result of a subsequently requested Team, County or Third Party Event, without the express written approval of the entity that is currently scheduled, which permission may be granted or denied in the sole and absolute discretion of that entity.

5.1.4 The LLC shall be solely responsible for managing and scheduling all Major League Spring Training Home Games, Team Events, County Events and Third-Party Events pursuant to the requirements of this Agreement. County Events and Third Party Events may be scheduled in advance subject to the availability of the Facility and the execution of a written license agreement for the use of the Facility by the County or a Third Party as described in Articles 5.3 and 5.4 herein, respectively.

5.1.5 Notwithstanding anything provided herein, throughout the Term, the LLC will have year-round, 24-hour access to the Exclusive Use Areas (including during County Events and Third-Party Events), and the County shall not authorize or grant any other Person (including any other Major League Club) the right or license to use, occupy or conduct business from the Exclusive Use Areas, except, however, that County shall be entitled to use and permit others to use the Exclusive Use Areas as set forth in Section 5.3.7.

5.1.6 Throughout the Term, the LLC shall be granted, for the LLC and their invitees, access to and egress from the Facility, and the right to enter the Facility to the extent reasonably necessary for the Teams to exercise their rights and perform their obligations under this Agreement.

5.1.7 The County covenants and warrants that so long as no default exists under this Agreement after the expiration of any applicable notice and cure periods, the LLC, shall lawfully and quietly hold, occupy and enjoy the Facility during the Term hereof, without molestation or hindrance by County or any party claiming through or under County, expressly subject to the terms, limitations and conditions contained in this Agreement.

5.2 Security Requirements for the Facility.

5.2.1 The LLC shall provide adequate supervision and security and shall strictly enforce all rules, regulations, and safety procedures that are required by law or regulation and usual and customary for spring training facilities, or established by the LLC and that are required in general for the safe and orderly use of the Facility. At all times the Facility shall be under the control, supervision and security of the LLC.

5.2.2 The LLC shall be responsible for determining and implementing the appropriate staffing, security and service levels required to manage each and every activity at the Facility, including, but not limited to, the level of security support, police support, on-Site medical support, traffic control, and parking management support necessary, taking into

consideration the anticipated crowds, whether alcoholic beverages will be available, and other criteria to assess the staffing and support requirements for each event and activity.

5.2.3 It shall be the responsibility of the LLC to assure that the use of the Facility is conducted in such a manner so as not to interfere with the use of City Park or the use of adjacent properties beyond the boundaries of the Site.

5.2.4 The LLC shall take reasonable precautions to prevent nuisances originating from the Facility. The parties acknowledge that the use contemplated by this Agreement (during daytime and/or at night) includes lighting, crowd noise, music and other activities associated with baseball or the reasonable use of a baseball stadium. Notwithstanding same, the LLC has the sole responsibility for, and shall respond to and defend any third party claims, actions, etc. concerning nuisances originating from the Facility.

5.3 County Rights of Use.

5.3.1 County shall have the right to schedule and use the Facility, including the Buffer Area, at times during the calendar year other than the Spring Training Season, subject to the provisions of Article 5. County shall not have the right to schedule and use the Facility for County Events during the Spring Training Season, but may request the LLC authorize County's use of the Facility during the Spring Training Season, which use may be granted or denied in the LLC's sole and absolute discretion. County's right to use the Facility is subject to the terms and conditions of the license agreement described in Section 5.3.5 and availability of the Facility as set forth in Section 5.3.4.

5.3.2 Except as: i) described in Section 5.3.7; or ii) otherwise agreed in writing by the LLC in its sole and absolute discretion, the County's right to use the Facility shall not extend to the Exclusive Use Areas.

5.3.3 In order to maximize the use of the Facility during times other than the Spring Training Season and for early coordination of the next year's calendar, the LLC and the County shall meet annually during the month of September. Notwithstanding the annual meeting discussed herein, each and every time that the County plans to make a formal bid/proposal for a sporting event that is to be held twelve (12) months or more after the date of the bid/proposal, the County shall first work collaboratively with the LLC prior to making the bid/proposal to develop a tentative plan for use of the Facility taking into consideration scheduled Team Events. If the tentative plan for the use of the Facility is acceptable to the LLC, the County may make the formal bid/proposal and the LLC shall reserve such dates for the County until such time that County notifies the LLC that the bid/proposal was accepted or rejected. The County shall notify the LLC of the acceptance or rejection of the bid/proposal within five (5) Business Days of receiving notice of acceptance or rejection.

5.3.3.1 The Director of FD&O shall attend the first ten (10) annual meetings in order for the LLC and the County to jointly review event scheduling processes, procedures and priorities as established in Sections 5.3 and 5.4 hereto, and to identify and define improvements, changes and updates to those processes, procedures and priorities. The Director

of FD&O and the LLC shall have the ability to adopt mutually agreed upon amendments, changes and/or updates to the event scheduling processes, procedures and priorities established in Sections 5.3 and 5.4 herein by written agreement executed by the LLC and the Director of FD&O.

5.3.4 The County may request the scheduling of an event at any time with a minimum of ninety (90) days notice for any County Event that requires the LLC to restore the Buffer Area subject to the provisions of Section 5.5.3, and sixty (60) days notice for all other requests. The LLC will review the request in accordance to the provisions of this Article 5. Within thirty (30) days thereafter, the LLC will notify the County of approval, or rejection of all or a part of the schedule based on "pre-existing scheduled" or "generally known but not yet specifically scheduled" Team Events, or based on scheduled Third Party Events. In the event County's schedule is rejected in whole or in part, the County may submit a revised schedule, or upon the request of the County, the LLC shall coordinate a meeting date and time to review and revise the proposed schedule with the County. The County shall provide reasonable advance notice to the LLC of the cancellation of any County Event on the schedule. The LLC has the sole and absolute right to deny requests for County Events during the Spring Training Season. Events requested outside of Spring Training Season will be evaluated and responded to as set forth in this Section 5.3.4.

5.3.5 The LLC shall develop a standard form County Event license agreement for County Events which includes a standard fee structure for County Events. The form of the event license agreement shall be agreed upon by the parties prior to Substantial Completion of the Facility. The event license agreement shall include standard provisions consistent with the provisions of Sections 5.3.5.1 through 5.3.5.8 herein.

5.3.5.1 License Fee. The County shall not be charged any license fee or use fee for County Events.

5.3.5.2 LLC Management Fees. On or before January 1 prior to the first Spring Training Season and then updated annually thereafter, the LLC shall develop a standard fee structure for LLC Management Fees. The County shall, unless otherwise agreed, be responsible for paying all LLC Management Fees.

5.3.5.3 Liability. To the extent permitted by law, County shall be responsible for personal injury, loss of life, and/or damage to property caused by County's use of the Facility for a County Event, but not including personal injury, loss of life and/or damage to property resulting from; (1) known hazardous or unsafe conditions, or hazardous or unsafe conditions that reasonably should have been known in the exercise of reasonable prudence, and existing at the Facility prior to County's use of the Facility, even if the actual injury, loss of life or damage to property occurred during County's use, or (2) the actions or inactions of the LLC Parties, including but not limited to, actions or inactions related to the maintenance of the Facility. Additionally, the parties acknowledge and it is expressly understood that the foregoing shall not constitute; (i) an agreement by the County to indemnify the LLC, (ii) a waiver of sovereign immunity, (iii) a waiver of any right or defense that County has under Section 768.28, Florida Statutes, or any other statute, nor (iv) consent to be sued by third parties.

5.3.5.4 County Events Staged by Others. In the event any non-governmental entity is involved in staging a County Event, the County will cause such entity to procure commercial liability insurance coverage for such County Event to be provided by insurance companies acceptable to the LLC, with minimum policy limits of One Million Dollars (\$1,000,000.00) per occurrence or such other policy limits as are reasonably requested by the LLC based on the nature of any such County Event, naming the LLC, and its designees, as additional named insureds, and the County will cause proof of such insurance to be provided to the LLC upon demand.

5.3.5.5 Payment. Within thirty (30) days of receipt of an invoice and supporting documentation, County shall remit payment to the LLC for any damage occurring during County Events, whether or not such damage is caused by the County, its designee, its invitees, or someone other than the LLC, unless precluded by Section 5.3.5.3(1) or (2). The LLC is required to provide County with notice of such damage within seventy-two (72) hours after the conclusion of the County Event and allow County to inspect and document said damage upon request.

5.3.5.6 Admission Fees. If the County determines that an admission charge or other fee is to be charged, the LLC will collect such admission or fee and apply it to amounts due from the County to the LLC for LLC Management Fees. If gross revenues from admissions or fees from any County Event do not exceed (net of taxes) the amount due to the LLC, the County shall remit to the LLC the additional funds due for such County Event within thirty (30) days following the County's receipt of a written invoice and supporting documentation substantiating the amount due. In the event that such gross revenues from admissions or fees from any County Event exceed (net of taxes) the amount due to the LLC, the LLC shall remit to the County the difference between such gross revenues and the amount due to the LLC and documentation substantiating the amount remitted, within thirty (30) days following the County Event.

5.3.5.7 Use Restrictions. In no event shall the County be permitted to use the Facility in a manner that (a) causes, or may be reasonably expected to cause, any material damage to any playing surface or any part of the Facility; (b) interferes with use of the Exclusive Use Areas; or (c) involves a promotional sponsorship which requires the on-Site sale of a product with which the LLC has an exclusive sale or concession agreement consistent with the requirements of Section 11.1 hereof. Other than as set forth in this Agreement, County shall not grant any professional baseball team the right to use or play at the Facility.

5.3.5.8 Use of Team Personal Property. The County shall not use either Team's Personal Property or equipment in connection with County's use of the Facility for County Events, or otherwise, without the express written consent of such Team. The County shall reimburse the LLC for any Personal Property or Equipment owned by the Teams or any of their affiliates, concessionaires, licensees or employees, that is damaged during a County Event or by a third party to the extent such third party use was specifically authorized or permitted by the County, within thirty (30) days of receipt of substantiating documentation.

5.3.6 Use for Post Disaster Recovery Efforts. In the event of a declared federal, state, or local emergency as allowed by law (a "Declared Emergency") County shall have the right to use the Facility, but not including the Exclusive Use Areas, for County determined post disaster recovery purposes.

5.3.6.1 The LLC will not enter into any agreements, event permits or other contracts specifically obligating the Facility for use during or after a period of Declared Emergency, without the County's prior written approval which may be granted or denied in the County's sole and absolute discretion.

5.3.6.2 LLC and the County shall, at the time of any Declared Emergency use, enter into a County Event license agreement which shall contain the same liability provision as set forth in Section 5.3.5.3 herein and which includes the following language: "County shall be responsible for the costs of any damage to the Facility caused by its use".

5.3.7 Shelter Use During Declared Emergency. In the event of an emergency requiring the use of emergency shelters for the homeless pursuant to Florida Statutes §288.1166, the County shall have the right to designate and use all, or portions of the Facility, including the Exclusive Use Areas as determined by County in its sole and absolute discretion, as a shelter for the homeless pursuant to Florida Statutes §288.1166. County shall execute a license agreement for said emergency use with the specific provisions contained in Section 5.3.5.3 and 5.3.6.2. The County's right to use the Facility for an emergency shelter pursuant to Florida Statutes §288.1166 shall not apply to the extent:

A. The Facility is otherwise contractually obligated for a previously scheduled specific Team Event that is to be held despite the declaration of emergency; or

B. The County determines that its existing homeless assistance centers are sufficient to provide emergency shelter for the homeless during the period of a declared federal, state or local emergency.

5.3.8 County Responsibility For Security During Emergency Use. During County's emergency use of the Facility as described in Sections 5.3.6 and 5.3.7 herein, the County shall be solely responsible for performing and funding the security requirements for the County's use, consistent with the requirements of the LLC described in Section 5.2 herein, as to the licensed portions of the Facility.

5.4 Third-Party Events.

5.4.1 Applications and requests for Third-Party Events shall be accepted any time within a one (1) year period of the date of the proposed Third-Party Event, provided they do not interfere with Team Events or approved and scheduled County Events. Third-Party Events cannot be scheduled more than one year in advance without County's express written approval which may be granted or denied by County only if there is a conflict with an anticipated, but yet

to be scheduled, County Event. Once a Third Party Event is scheduled, it can only be rescheduled or cancelled with the consent of the Third-Party Event Applicant.

5.4.2 The LLC shall use the form of the County Event license agreement described in Section 5.3.5 for Third Party Events except: 1) the LLC shall be entitled to charge a license fee for the use of the Facility; 2) the LLC shall be entitled to charge for admission, participation and related fees and charges in connection with the operation of any Third Party Events at the Facility; and 3) if the Third Party Event is not sponsored by a governmental entity, the LLC shall require the Third Party provide insurance and indemnification provisions as set forth in Sections 5.4.2.1 and 5.4.2.2 below.

5.4.2.1 The LLC shall require commercial liability insurance coverage for such Third Party Event to be provided by insurance companies acceptable to the County, with minimum policy limits of One Million Dollars (\$1,000,000.00) per occurrence or such other policy limits as are reasonably requested by the County based on the nature of any such Third Party Event. The County shall be a named additional insured, and the LLC will cause proof of such insurance to be provided to the County upon demand.

5.4.2.2 For each Third Party Event, the Third Party Event operator shall protect, defend, reimburse, indemnify and hold the LLC and County, and their respective agents, designees, employees, and elected officials free and harmless at all times from and against all claims, liability, expenses, losses, costs, fines, damages or causes of action of every kind and character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during, as a result of, or in connection with the operator's use of the Facility. The Third Party operator assumes the risk associated with the use of the Facility and agrees to hold the LLC and County, and their respective agents, designees, employees, and elected officials free and harmless at all times from and against all claims, liability, expenses, losses, costs, fines, damages or causes of action of every kind and character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, due to their acts, errors or omissions resulting in bodily injury, including death, or damage to third party operator's property incident to or in connection with the third party operator's use of the Facility.

5.5 Buffer Area.

5.5.1 The County and the City intend that the Buffer Area be used only for parking when the remainder of the parking areas (pervious and non-pervious) are insufficient to meet the predicted parking demand. As such, the Interlocal Agreement limits the use of the Buffer Area for parking to forty (40) days per year unless extended by mutual agreement of the City and the County. The Buffer Area Year will commence on January 7 annually and continue through to January 6 of the following year. The LLC has sole responsibility for allocating the use of the Buffer Area during the Buffer Area Year, but agrees to allocate the use of the Buffer Area according to the following allocation priorities.

5.5.1.1 First priority shall be for Major League Spring Training Home Games. On any day during Spring Training Season that does not have a scheduled Spring

Training Home Game, the LLC shall manage the parking in such a way that Buffer Area will only be opened for parking use if all other parking areas are predicted to be full.

5.5.1.2 The remainder of the forty (40) days shall be allocated on a first reserved-first use basis to any Team Event, County Event or Third Party Event that provides written justification of why the remainder of the Parking Areas are insufficient to meet its expected parking demand, as well as any other information to support the request (such as anticipated economic or community impact of the event).

5.5.1.3 At such time that the forty (40) days is exhausted or is expected to be exhausted during the duration of an event, the LLC may approve the license agreement contingent upon obtaining approval from the City for the additional days of use of the Buffer Area. Using the justification provided by the event applicant, the LLC and/or the applicant shall seek that approval from the City on behalf of the event applicant with the County's approval hereunder.

5.5.2 The LLC shall be responsible for restoring the Buffer Area to its pre-Spring Training Season condition whereby the wear and tear and damage caused by its use as a parking area is no longer visible, and the Buffer Area is vegetated to a non-playable pasture condition. The Buffer Area shall be restored to such non-playable pasture condition no later than April 15th, annually, or at the conclusion of the Spring Training Season, whichever is later.

5.5.3 The LLC shall be responsible for preparing the Buffer Areas for regulation league play no later than 30 days prior to any applicable scheduled County Event, but no earlier than April 30th, annually.

5.5.4 Notwithstanding the above, the County shall be responsible for reimbursing the LLC for any damage to the Buffer Area following a County Event in accordance to Section 5.3 above.

ARTICLE 6

USE FEES

6.1 **Fee Commencement Date.** The LLC shall pay County an annual Facility Use Fee, Parking Area Fee and a Concession License Fee, as set forth in this Article 6, commencing on the Fee Commencement Date. Concurrent with the County's approval of the issuance of the County Bonds, the parties shall enter into a separate Memorandum of Fee Commencement Date confirming in writing the day, month and year of the Fee Commencement Date.

6.2 **Facility Use Fee.**

6.2.1 The Facility Use Fee payments shall be due on the Fee Commencement Date and each subsequent annual anniversary of the Fee Commencement Date.

6.2.2 The Facility Use Fee shall be \$39,160,960 payable in the annual payment amounts as shown in the following chart, subject to adjustments as provided in Section 6.5.2:

Payments	Number of Required Payments	Annual Payment
Facility Use Fee Commencement Date	8	\$1,252,240
Year 9 to Year 20	12	\$1,423,000
Year 21 to Year 28	8	\$1,508,380
Total	28	\$39,160,960

6.3 Parking Area Fee.

6.3.1 The Parking Area Fee payments shall be due on the Fee Commencement Date and each subsequent annual anniversary of the Fee Commencement Date.

6.3.2 The Parking Area Fee shall be \$6,350,240 payable in the annual payment amounts as shown in the following chart, subject to adjustments as provided in Section 6.5.2:

Payments	Number of Required Payments	Annual Payment
Parking Area Fee Commencement Date	8	\$203,060
Year 9 to Year 20	12	\$230,750
Year 21 to Year 28	8	\$244,595
Total	28	\$6,350,240

6.4 Concession License Fee.

6.4.1 The Concession License Fee payments shall be due on the Fee Commencement Date and each subsequent annual anniversary of the Fee Commencement Date.

6.4.2 The Concession License Fee shall be \$23,288,800 payable in the annual payment amounts as shown in the following chart, subject to adjustments as provided in Section 6.5.2:

Payments	Number of Required Payments	Annual Payment
Concession License Fee Commencement Date	8	\$744,700
Year 9 to Year 20	12	\$846,250
Year 21 to Year 28	8	\$897,025
Total	28	\$23,288,800

6.5 Miscellaneous.

6.5.1 **Liability for Financing.** Nothing herein shall be construed to make the LLC or the Teams liable to the County for the payment of any County Bonds or financing, and the LLC's rights and obligations hereunder shall be independent of the County's obligations under such County Bonds or financing. The LLC agrees to cooperate with the issuance of any County Bonds, including without any limitation, providing any disclosure of the LLC's public information reasonably required for purposes of the offering documents for such County Bonds.

6.5.2 Payment Adjustments.

6.5.2.1 If, at the time of issuance of County Bonds, the LLC makes the Interest Election to increase the Facility Use Fee, Concession License Fee and Parking Area Fee payments pro rata, such adjustments shall be payable over twenty-eight (28) years using the same proportionate payment distribution allocation as set forth in this Article 6.

6.5.2.2 Pre-Construction Cost Savings allocable to the LLC pursuant to Section 8.4.3 of the Developer Agreement shall be applied to reduce the Facility Use Fee, Concession License Fee and Parking Area Fee payments pro rata, such adjustments shall be payable over twenty-eight (28) years using the same proportionate payment distribution allocation as set forth in this Article 6.

6.5.2.3 The adjusted Facility Use Fee, Parking Area Fee, and Concession License Fee shall be set forth in a certificate of the County Representative delivered to the LLC at the time of issuance of the County Bonds.

6.5.3 The payment made pursuant to this Article 6 shall be made payable to the Board and shall be delivered annually to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402. In the event the LLC fails

to make timely payment of any fee, due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate of one percent (1%) per month (or the highest rate permitted by law, if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. County shall receive the payments payable hereunder free and clear of any and all impositions, liens, charges, and expense of any nature whatsoever relating to operation of the Premises, including without limitation those relating to taxes, if any, insurance, Repair and Maintenance, use, care or operation, except as specifically provided in this Agreement.

6.5.4 The LLC shall pay all sales, use and/or other taxes assessed by any governmental authority against the payments made pursuant to this Article 6, if any, even if such tax is intended to be imposed against County. The LLC shall pay before delinquency all non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Facility, or LLC's interest in the Facility or LLC's equipment and personal property located at the Facility.

6.5.5 The LLC shall be responsible for, and shall timely pay, all on-Site and off-Site municipal and utility service costs due in order to operate and maintain the Facility including, but not limited to, water, sewer, garbage and trash collection and such other costs and impositions as may be assessed or levied by a municipal taxing authority or utility service provider against the Facility or Site.

6.5.6 In the event the LLC pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

6.6 **Tax Indemnification.** The LLC shall indemnify and hold County harmless from and against the payment of any and all sales tax due to the State of Florida or any department or agency thereof in connection with the payments described in this Article 6, together with all interest, fines, penalties, costs or other charges thereon, regardless of when, or the party against whom, the same may be assessed or imposed.

ARTICLE 7

REPAIR AND MAINTENANCE AND COSTS OF OPERATION

7.1 **Generally.** Except as otherwise expressly provided herein, the LLC shall be solely responsible for all costs of, and the performance of, all of the Repair and Maintenance and operation of the Facility, as required to keep the Facility in good condition at all times, on a year-round basis.

7.2 **Repair and Maintenance.** With respect to the LLC's performance of Repair and Maintenance, the LLC agrees as follows.

7.2.1 Repair and Maintenance shall be performed on a regular, scheduled routine basis as is reasonably required to prevent deterioration of the Facility and extend the useful life of the capital assets. Standards of Repair and Maintenance for the MLB amenities, including, but not limited to, the Stadium and Team facilities, shall be similar to first-class MLB facilities and standards of Repair and Maintenance for the remainder of the improvements shall be consistent with public recreation facilities in Palm Beach County.

7.2.2 All Repair and Maintenance shall be performed in a good and workmanlike fashion, utilizing good quality materials, supplies, components and replacement parts that are of equal or better quality than the quality of those being repaired or replaced, with all reasonable efforts made to preserve the aesthetics of the Facility consistent with the respective Repair and Maintenance standard for the improvement.

7.2.3 All equipment Repair and Maintenance shall meet manufacturer's recommendations and established government safety and/or regulatory standards, if applicable.

7.2.4 All Repair and Maintenance and operation of the improved and unimproved areas of the Facility and Site, and shall comply with the land management practices and ERP as set forth in Section 12.2 of the Interlocal Agreement.

7.2.5 All Repair and Maintenance, operation and environmental monitoring (if any) of the Buffer Area shall comply with the land management practices and the ERP as set forth in Sections 12.2, 12.3, and 12.4 of the Interlocal Agreement as well as any subsequent requirements placed on the Buffer Area as a condition of a regulatory approval and/or permit.

7.2.6 The LLC shall routinely inspect the Facility and Site to ensure that there are no conditions which present a safety issue or hazard to any persons, including but not limited to visitors and players. If such a condition is found, it is the LLC's sole responsibility to immediately protect the area from use, to provide warning of the condition as may be reasonably necessary in order to ensure the safety of persons at the Facility, and to perform all work required to restore the area to a safe condition within a reasonable period of time, provided, however, that the LLC may seek reimbursement, if applicable, for Emergency R/R Projects for Public Use Improvements as set forth in Article 10 of this Agreement. The existence or non-existence of a right to reimbursement does not alter or limit the LLC's obligations to inspect, identify, secure, and/or correct all conditions that present a safety issue or constitute a hazard to persons at the Facility and Site.

7.2.7 The LLC shall provide FD&O with a bi-monthly report of all Facility Repair and Maintenance that was performed to Public Use Improvements during the preceding two months and all Facility Repair and Maintenance scheduled for Public Use Improvements during the upcoming two months no later than the twenty-fifth (25th) day of each even numbered month (February, April, etc.). The LLC shall provide the County with access to the Facility to perform routine maintenance inspections.

7.2.8 The LLC shall not voluntarily create, cause, or permit to be created any lien or encumbrance on the Facility and/or Site. In the event that a construction lien is filed against the Facility, the Site, other County property, or the City Park Property, in connection

with any work performed by or on behalf of the LLC, the LLC shall satisfy such claim, or transfer same to security, within forty-five (45) Days from the date of notice of such filing. In the event that the LLC fails to satisfy or transfer such claim within said forty-five (45) Day period, County may do so and thereafter charge the LLC, and the LLC shall promptly pay to County upon demand all costs incurred by County in connection with the satisfaction or transfer of such claim, including reasonable attorney's fees. Further, the LLC agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

7.3 The LLC shall assume all of County's continuing obligations pursuant to the Reclaimed Water Agreement.

7.4 **Inspection and Failure to Perform.**

7.4.1 The County shall have the right, but not the obligation, to inspect the Site and Facility at reasonable times, upon reasonable request, or, at such time as the County has reason to believe that an emergency situation exists at the Facility and/or Site, to observe whether the LLC is performing its Repair and Maintenance obligations pursuant to this Agreement. If, in the County's reasonable opinion, the LLC has not performed its Repair and Maintenance obligations pursuant to the terms hereinabove, the County shall provide written notice to the LLC stating the basis for such opinion, and the LLC shall have thirty (30) days from the date of receipt of such notice during which to perform such Repair and Maintenance as required hereunder, or to notify the County that it disagrees with the County's opinion. If the LLC disagrees with the County opinion, the LLC and County agree to utilize the dispute resolution process identified in Article 18 of this Agreement.

7.4.2 The LLC shall permit County, or its representatives or agents to schedule and conduct visits of the Site and Facility as reasonably required to enable County to fulfill its insurance and/or restoration obligations pursuant to Articles 16 and 17 of this Agreement.

7.4.3 The County Representative shall visit the Site pursuant to Article 7 and Article 10 of this Agreement to observe the condition of the Facility solely for the purposes of determining whether the Repair and Maintenance is being performed consistent with the requirements of Sections 7.2.1, 7.2.2, 7.2.4 and 7.4 herein, and for determining placement and/or costs for the R/R Project spreadsheet pursuant to Article 10 of this Agreement.

7.4.4 The County Site visits authorized herein do not in any way eliminate, change, reduce, modify, transfer, or diminish the LLC's sole responsibility for: 1) the on-going operation of the Facility; 2) the assessment of the condition of the Site and Facility; and 3) the performance of corrective action, including but not limited to, Repair and Maintenance, as required to maintain the Site and the Facility in a safe condition. The LLC shall not be entitled to rely on any comments, recommendations, reports or the results of the County Representative or the County agents' Site visits, in lieu of conducting its own independent assessment and evaluation of the condition of the Site and the Facility.

7.4.5 The County shall coordinate all scheduled inspections pursuant to this Section 7.4 with the LLC to prevent interference with any scheduled use of the Site.

ARTICLE 8

LICENSING, INSPECTION, REGULATORY AND ADA RESPONSIBILITIES

8.1 Licensing, Regulatory and Safety Inspections.

8.1.1 All corrective work required at the Facility will be performed and funded as either Repair and Maintenance or an R/R Project.

8.1.2 For funding purposes, if the corrective work is not Repair and Maintenance, and it addresses a construction flaw or failure or other issue and such construction item cannot be resolved by the LLC pursuant to Section 13.1.1 or Section 13.1.2 of the Developer Agreement, then such corrective work shall be deemed a County R/R Project for Public Use Improvements and an LLC Project for non-Public Use Improvements.

8.1.3 The LLC's Repair and Maintenance responsibilities set forth in Section 7.1 and its R/R Project responsibilities set forth in Article 10, includes performing all emergency Repair and Maintenance and/or R/R Project work or other corrective action required to address hazardous or unsafe conditions arising from, or related to, licensing, permitting, inspection, audit, safety or regulatory requirements concerning the Site, Facility, and the LLC's operations, business, and/or use of the same, including but not limited to, any City, County, State, Federal, OSHA or BOC law, rules, regulations, ordinances, or other requirements. This includes, but is not limited to corrective work arising in anticipation of, or as a result of an inspection, audit, licensing or regulatory requirement or other compliance-related event.

8.1.4 The LLC shall be solely responsible for funding any Repair and Maintenance required to correct any condition, hazard, defect, flaw or failure, or other issue or condition arising from, or related to, licensing, permitting, inspection, audit, safety or regulatory requirements concerning the Site, Facility, and the LLC's operations, business, and/or use of the same.

8.1.5 The LLC's performance of corrective work required by Section 8.1.2 which otherwise meets the requirements of a County R/R Project is expressly subject to funding by County, pursuant to the processes and procedures set forth in Article 10 hereto.

8.1.6 Any corrective work required by Section 8.1.2 or Section 8.1.3 which otherwise meets the requirements of an LLC R/R Project, shall be reflected on the R/R Project Schedule as an LLC R/R Project, including, but not limited to, any corrective work required to comply with the requirements of any environmental permit or approval including monitoring and/or correcting groundwater issues, and such shall be funded and performed by the LLC pursuant to the processes and procedures set forth in Article 10 hereto.

8.2 ADA.

8.2.1 Pursuant to the terms of the Development Agreement, the LLC is providing services as defined therein throughout the design and construction of the Facility and the Loop Trail, and the LLC has the responsibility of designing and constructing the Facility and the Loop Trail to be compliant with the requirements of the ADA. The LLC acknowledges that the LLC is solely responsible for ensuring the Facility and Loop Trail are designed and constructed in accordance to the requirements of the ADA pursuant to the Development Agreement.

8.2.2 The LLC is solely responsible for all ADA compliance requirements and all ADA complaints, litigation, claims or lawsuits, of whatsoever kind or nature, regardless of whether arising during the development of the Facility and prior to occupancy, or thereafter, and including claims from the Teams, guests, players, invitees, contractors, agents, or any other person or entity, and including, but not limited to, claims, litigation or lawsuits involving the Site, the Facility, the Loop Trail, Personal Property used at the Facility, and Capital Improvements, and regardless of whether arising from Facility design, use and operation, access or other issues.

8.2.3 The LLC shall advise the County of any change in law or regulation which may impact the compliance status of the Facility, and shall present the County with a plan for bringing the Facility into compliance. The LLC has the obligation to implement reasonable operating accommodations to achieve ADA compliance, but to the extent that modifications to the Facility are required, they will be considered Capital Improvements.

ARTICLE 9 CAPITAL IMPROVEMENTS

9.1 Capital Improvements.

9.1.1 All Capital Improvements proposed by the LLC to be made to the Facility shall require the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. If approved in writing by the County, all Capital Improvements proposed by the LLC to be made to the Facility shall be undertaken, performed and 100% funded by the LLC. The County shall have no obligation to reimburse or pay the LLC for any LLC Capital Improvement. In addition, all Capital Improvements shall be assumed to be LLC R/R Projects for the purposes of determining responsibility for funding the R/R Projects for the Capital Improvements, unless the County agrees, in its sole discretion, to accept the R/R responsibility for a Capital Improvement. If the County agrees to accept the R/R responsibility for a Capital Improvement, it shall be made as an affirmative statement included in the written approval for the Capital Improvement at which time it will become binding on the County.

9.1.2 The LLC shall submit detailed plans and specifications prepared by a design professional licensed in the State of Florida for all such Capital Improvements to the County for County's written approval prior to commencing work on same, including the

estimated project cost. The County's review of the LLC's proposed improvements shall be limited to the determination of whether the improvements are consistent with the terms of the Agreement and that the improvements do not interfere with or reduce the public's access to the Facility.

9.1.3 County shall provide a written response within ten (10) business days after receipt of request by the LLC, failing which County shall be deemed to have consented to such plans and specifications. Notwithstanding the foregoing, the County may request that the County be provided with additional time to provide the LLC with a written response as to whether the improvements restrict public access and are consistent with this Agreement.

9.1.4 All work done by the LLC shall be performed in a good and workmanlike manner using good quality materials and supplies and shall be diligently prosecuted to completion strictly in accordance with the approved plans and specifications. The LLC shall obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any Capital Improvements and shall perform all such Capital Improvements in compliance with all applicable laws, ordinances and regulations.

9.1.5 The LLC is solely responsible for all required licensing, safety inspections, Repair and Maintenance, and operation of all Capital Improvements, if applicable.

ARTICLE 10

RENEWAL/REPLACEMENT PROJECTS

10.1 Renewal/Replacement (R/R) Projects.

10.1.1 The County and LLC have jointly determined the need for establishing and funding a program to address R/R Projects in order to ensure that age, use and deterioration of the Facility does not adversely impact its use or the cost to maintain the Facility. The R/R Project Schedule shall project, at a minimum, R/R Project requirements for the upcoming Budget Year and the next nine (9) Budget Years thereafter. The R/R Project Schedule shall address the requirements of the Facility and shall contain two sections; County R/R Projects and LLC R/R Projects.

10.1.1.1 The County is responsible for funding 100% of the County R/R Projects for Public Use Improvements when they are included in the Approved R/R Project Schedule.

10.1.1.2 The LLC is responsible for funding 100% of the LLC R/R Projects as identified on the Approved R/R Project Schedule.

10.1.2 No later than January 15 of each year, the LLC shall submit to County, its proposed R/R Project Schedule for review. No later than May 31, the LLC will be notified of County Staff's recommendation for funding of County R/R Projects as part of the County staff's recommended annual capital budget request. No later than October 1, the LLC shall be notified of the appropriations for the Approved R/R Project Schedule.

10.1.2.1 The first R/R Project Schedule shall be submitted no later than January 15 of the year following the first Full Spring Training Season played at the Facility. The R/R Project Schedule shall include each and every item with a fixed asset number whether physically tagged or not, its projected year for renewal or replacement and the estimate cost of the renewal or replacement task.

10.1.2.2 For each subsequent annual submittal, the R/R Project Schedule shall be updated to reflect any changes made necessary as a result of mid-year modifications, differing physical field conditions which may accelerate or extend the replacement year, and/or updated project estimate. The LLC shall submit, with the updated R/R Project Schedule, a detailed written narrative for each and every R/R Project that was not included in the Approved R/R Project Schedule, providing an explanation as to why such R/R Project had previously not been included in the R/R Project Schedule. Within fourteen (14) days after the County's receipt of the updated R/R Project Schedule, representatives of FD&O and the LLC shall meet at the Facility ("On Site Meeting") in order to review and discuss the updated R/R Project Schedule and agree upon any changes to the updated R/R Project Schedule.

10.1.2.3 The County and the LLC both agree to cooperate in the development of the updated R/R Project Schedule so that the R/R Projects are undertaken in a timely manner to ensure that the asset is renewed/replaced prior to material degradation of the utility/appearance of the asset, while recognizing periodic financial constraints of the County and the LLC. Material degradation of an asset occurs when; 1) the asset's condition is or may cause damage or increased costs to renew/replace other assets, 2) the asset's condition represents a hazardous condition that may increase liability, and/or 3) the asset has deteriorated in utility and appearance or has failed or is likely to fail.

10.1.3 The LLC shall have an obligation to implement and fund the Approved R/R Project Schedule for each Budget Year, subject to County reimbursement, pursuant to this Article 10, to the LLC for its expenditures towards County R/R Projects on the Approved R/R Project Schedule.

10.1.4 The LLC must perform the Approved County R/R Projects within the funding amount identified on the Approved R/R Project Schedule, unless an increase in County R/R Project funding is approved in writing by the County prior to the LLC issuing a contract or purchase order pursuant to Section 10.4. Approved expenditures will be reimbursed in accordance to the terms and conditions set forth below.

10.1.5 The County's obligation to fund or reimburse the LLC for County R/R Projects in any Budget Year is limited to those County R/R Projects that are reflected on the Approved R/R Project Schedule.

10.2 Mid - Year Modifications to Approved R/R Project Schedule.

10.2.1 The LLC shall have the right to request mid-year modifications to the Approved R/R Project Schedule only for an Emergency R/R Project by submitting a written request for a mid-year modification. Such request for modification shall include the scope, cost, schedule for implementation and the justification for the Emergency R/R Project. The

justification for the Emergency R/R Project shall specifically indicate why the Emergency R/R Project cannot wait until the next funding cycle. The request shall also identify whether any or all of the implementation procedures need to be waived.

10.2.2 Notwithstanding the above, the LLC has the absolute obligation to immediately respond to emergencies, and/or situations that may pose a danger to the health and/or safety of persons or that may impact the integrity of the Facility.

10.3 R/R Project Reserves. The R/R Project Reserve was established pursuant to Section 8.4.7 of the Development Agreement and contains cost savings, if any, accomplished during the construction of the Facility and allocated to the LLC R/R Project Reserve and the County R/R Project Reserve in order to fund the initial R/R Project obligations of County and the LLC. The County and the LLC will each first use their respective R/R Project Reserves to fund their respective R/R obligations pursuant to this Agreement until the R/R Project Reserves are exhausted. The parties acknowledge that the R/R Project Reserves are a small portion, if any, of the funding that will be required to fund each party's R/R obligations pursuant to this Agreement.

10.4 Implementation of R/R Projects.

10.4.1 All R/R Projects shall be performed in a good and workmanlike manner using good quality materials and supplies, and components and replacement parts that are of equal or better quality than the quality of those being repaired or replaced and shall be performed through completion. The LLC shall obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any R/R Projects and shall perform all such R/R Projects in compliance with all applicable laws, regulations and ordinances. The LLC shall obtain the advance approval of the Art in Public Places Administrator for any R/R Project that involves Art.

10.4.2 The LLC shall use its standard purchasing practices for all contracts/purchase orders entered into in connection with R/R Projects; provided that all purchases are undertaken and awarded by a competitive process. Unless the LLC has included qualification based criteria in the bid and the LLC can reasonably demonstrate that the low bidder did not meet those qualification criteria, the only justifications for not choosing the low bidder are either: 1) an award to the next lowest bidder in order to contract with a Palm Beach County certified SBE vendor and the SBE vendor's bid does not exceed the low bidder's price by ten percent (10%), or 2) an award to the next lowest bidder in order to contract with a bidder meeting the Palm Beach County's definition of local business and the local business's bid does not exceed the low bidder's price by five (5) percent. Preferences are not cumulative and in the event of a conflict, the SBE preference is of higher priority.

10.4.2.1 Qualification Based Selection Criteria. When necessary, the LLC may use qualification based selection criteria as a pre-bid step or as part of a competitive selection provided that the qualification based selection criteria is objective, directly responsive to the work, and does not limit competition among qualified bidders.

10.4.2.2 Projects in Excess of \$200,000. The LLC shall obtain a payment and performance bond in conformity to the requirements of Florida Statute § 255.05 on the County's most current form and from a surety meeting the County's requirements for all projects in excess of \$200,000, or such monetary limit as in effect at the time of the R/R Project.

10.4.3 For each and every project designated as a County R/R Project on the Approved R/R Project Schedule and prior to the LLC entering into a contract or purchase order for any individual R/R Project, the LLC shall submit; 1) the scope of work that was used as the basis for the bid, 2) a bid tabulation sheet that sets forth the vendor/contractor name and bid amount for each bid response ("R/R Project Bid Tabulation Sheet"), and 3) a copy of the LLC's proposed contract or purchase order which identifies the final scope of work to be purchased and a copy of the vendor's/contractor's insurance certificate naming the County as an additional insured. Within seven (7) days of the County's receipt of the foregoing, the County will issue a purchase order to the LLC in the amount of the intended awardee's bid plus an additional five percent (5%) contingency ("R/R Purchase Order").

10.4.4 For any County R/R Projects, the same requirements and process set forth above in this Section 10.4 shall apply and be used in connection with the reimbursement to the LLC of the costs and expenses incurred by the LLC for all design, testing lab and construction services agreements as well as any permit fees paid to a governmental entity.

10.4.5 Requests for payment against R/R Purchase Orders shall be made at intervals determined by the LLC, but no more frequently than semi-monthly. Requests for payment against R/R Purchase Orders shall be made by the LLC to the County and shall include; 1) the R/R Purchase Order number, 2) a copy of the vendor's/contractor's request for payment or invoice, and 3) evidence of payment by the LLC. For the purposes of this Section, a copy of a check written by the LLC or a bank statement indicating electronic payment details including vendor's/contractor's name, shall constitute evidence of payment. Any request for payment which includes a request for use of contingency funds, shall include a copy of the change order issued by the LLC to the vendor/contractor and shall specifically identify: 1) the scope of work included in the change order; 2) the amount of the change order; 3) the new total contract amount; and 4) an explanation of the reason for the change order. Any final payment request against each R/R Purchase Order shall be marked accordingly. Once the County has received a request or payment on an R/R Purchase Order, together with the foregoing documentation ("R/R Payment Request"), the County shall within five (5) business days from receipt of the R/R Payment Request review the request and notify the LLC if such request is complete or deficient. If the R/R Payment Request is deficient the LLC shall resubmit its R/R Payment Request to the County and the County shall within five (5) business days from receipt of the subsequent R/R Payment Request review such submittal and notify the LLC if such submittal is complete or deficient. This process shall continue until such time as the County receives a complete R/R Payment Request. Once the County receives a complete R/R Payment Request, the County shall make payment against the R/R Purchase Order within twenty-one (21) Days.

ARTICLE 11
REVENUE STREAMS

11.1 Generally. The LLC shall be entitled to receive and to retain all revenue streams, now known or hereafter devised, in connection with the year-round operation of the Facility for any and all events at the Facility, except for County Events pursuant to Section 5.3 or as may otherwise be set forth in a written agreement for use of the Facility. Notwithstanding anything herein to the contrary, the LLC shall not enter into any contracts or agreements regarding the Facility that extend beyond the expiration of the Term of this Agreement. Additionally the LLC shall not enter into any agreements including, but not limited to, sponsorship agreements or donor agreements in exchange for naming rights, containing language that prohibits County from using, or providing incompatible products at no cost or charge to its event participants during a County Event, or in any way that restricts the promotional or advertising opportunities at County Events. The County acknowledges that the sale of products incompatible with the LLC's agreements is prohibited. Furthermore, the LLC shall include language in each and every contract or agreement regarding the Facility that the LLC enters into, that such contract or agreement is not binding upon the County and may be terminated in the event this Agreement is terminated. Without limiting the foregoing, the provisions of Sections 11.2 through 11.6 more specifically address certain revenue streams.

11.2 Ticket Sales. The LLC shall set ticket prices and entry fees for all events at the Facility, other than County Events, and shall be entitled to receive all revenue collected by the LLC. The LLC shall have the right to fix the charges for tickets in its sole discretion; provided, however, that the LLC's ability to charge admission, and the amount of any admission charges, shall be subject to all MLB Rules and Regulations, and any applicable Minor League rules, guidelines, regulations, requirements, directives and/or policies, as the same now exists or may be amended or adopted in the future. No direct or indirect ticket surcharges, franchise fees, charges, taxes, or, without limitation, other fees may be instituted or imposed by the County for admissions to baseball-related events at the Facility without the LLC's prior written consent, which consent may be withheld or conditioned in the LLC's sole discretion.

11.3 Parking. Except for County Events as set forth below, all revenues from all sources, including parking shall be retained by the LLC. The fees to be charged for such parking shall be determined by the LLC in its sole discretion. For County Events, the County shall only be charged the cost to prepare, manage and/or administer the parking for the County Event, and in no case shall the County be charged for the use of the Parking Areas.

11.4 Concessions. The LLC, or its designees, shall be the exclusive concessionaires and shall sell all concession items at all events held in and at the Facility and designated parking areas and retain all Concession Revenues, including Concession Revenues from all County Events. Subject to MLB Rules and Regulations, such concession stand items shall include but shall not be limited to, in the LLC's sole discretion, all foods, beverages (alcoholic and non-alcoholic), scorecards, programs, yearbooks, vending machines, merchandise, including but not limited to novelty items carrying the LLC's or one or both of the Teams' logos or the logo of any other Major League Club or Minor League Club, as well as any interactive games, video games, batting or pitching cages and other entertainment-oriented retail or food service items, including,

without limitation, any Spring Training Season related promotions and advertising, and any event-related activities scheduled by the LLC. The LLC's rights hereunder shall include, without limitation, the exclusive right to vend concession and novelty items from permanent or portable concession units located at the Facility, and, to the extent permitted by law, on public streets and ways abutting any portion of the Facility or the immediately adjacent parking areas. To the extent of the County's jurisdiction, the County agrees to deny any other person or entity the right to sell concessions, and novelty, food and beverage, and retail items in or at the Facility.

11.5 Advertising/Broadcasting.

11.5.1 All revenues received by the LLC from all advertising, promotions or sponsorships (including without limitation scoreboard/message center advertising during any of the events or activities at the Facility, annual billboard signage (e.g., outfield fence, concourses and other advertising signage at the Facility), marquee signage, naming rights, advertising rights and, without limitation, other rights with regard to the name of the Facility or any part thereof shall be the sole property of the LLC for the Term of the Agreement.

11.5.2 The LLC shall have and control all naming rights to the Facility and all parts thereof, but agrees "of the Palm Beaches" shall be added to the end of the name for the Facility. Naming rights shall not be subject to termination by the County until the date of the expiration of the Term or the earlier termination thereof. If necessary, the County shall assist the LLC in obtaining any permits or licenses required under the laws or regulations of any government authority and necessary to the scoreboard message center and billboard advertising. The County shall also not unreasonably withhold its approval of any such permits or licenses required under its laws or regulations, if necessary. Notwithstanding anything to the contrary in this Agreement, any advertising, signage, sponsorship or naming rights shall comply with all MLB Rules and Regulations.

11.5.3 The LLC shall receive all revenue from their respective radio broadcast, cablecast, televising, or other video and/or audio means of broadcasting or transmitting any or all portions of any games played by the Teams or any other Major League Clubs, Minor League Clubs, or any other teams, and the County shall not participate, in any manner, in determining when or whether said games shall be televised, cablecast or broadcast. The County will not directly or indirectly charge or impose special fees, permits or hook-up expenses to the LLC or its broadcasters, cable casters or telecasters. If any provisions of this Agreement conflict with any provisions of any agreement between Major League Baseball and any national rights holder (each such agreement a "National Rights Agreement"), the National Rights Agreement shall in all respects control.

11.6 Other Revenue. Except as otherwise provided in Section 5.3, the LLC shall be entitled to any and all fees from third-parties for use of the Facility during the Term, as well as any other monies, without limitation, generated pursuant to other revenue streams not enumerated above, provided however, that any agreements with other entities requiring construction, alteration, and related permitting approvals shall require the prior written consent of the County and shall require the LLC to enter into a written agreement with such entity.

ARTICLE 12
TOURIST PROMOTION

12.1 County Tourism Identity Logo and County Seal.

12.1.1 The County shall provide the LLC with the form of the County Seal and the Tourism Identity Logo upon request. County shall provide the LLC with copies of any update or revision to the County Seal and/or Tourism Identity Logo, and within ninety (90) days thereafter, the LLC shall update its marketing and promotional materials, including the County Seal or Tourism Identity Logo pursuant to Section 12.1.2 herein, to the newest version.

12.1.2 Unless precluded by MLB Rules and Regulations or the design of the Facility, the LLC will place the County's Tourism Identity Logo or County Seal, at the County's election, which shall be no larger than three (3) feet in diameter, in a visible location inside the stadium at the Facility.

12.1.3 Prior to the start of the Championship Season, the LLC shall cause the Teams to coordinate the placement and content of marketing services and promotions within each Home City MLB Stadium with the TDC. It is understood, however, that the exact placement and content of such marketing services and promotions will not be such to adversely impact either the stadium aesthetics or the Teams' baseball operations, and shall be in all instances subject to MLB Rules and Regulations. There shall be no changes to the colors of the Tourism Identity Logo or the County Seal used in such marketing services and promotions unless approved in advance by the TDC Representative and the County.

12.1.4 The LLC further agrees to place an appropriate County dedication plaque near the entrance of the stadium at the Facility.

12.1.5 The LLC shall cause the Teams to use the County Seal and County Tourism Identity Logo in all in-County marketing efforts, except for those marketing efforts that do not include any graphics, print or visual media and excluding merchandise and on-Site signage.

12.1.6 Notwithstanding anything in this Agreement to the contrary, in the event that the MLB Rules and Regulations preclude (i) the County from exercising the rights granted in this Article 12, and/or (ii) the LLC from performing its obligations as set forth in this Article 12, then the LLC shall provide the County with an alternative marketing tool that provides the County with benefits that are of equal or greater value to those that are provided for in this Article 12 and that are acceptable to the County in the County's reasonable discretion.

12.2 Astros' Obligations.

12.2.1 The LLC shall cause the Astros to annually provide tourism marketing and promotional services for the Facility valued at no less than \$500,000 annually, at the Astros' Home City MLB Stadium or to the Astros' Home City audience.

12.2.2 Three months prior to the start of the Spring Training Season, the LLC shall cause the Astros to present a draft promotional plan, including the content, proposed

placement and then current value of the materials and promotion to be provided in the Home City, to the TDC to come to a mutually agreeable plan.

12.2.3 This plan may be inclusive of social media channel strategy, digital promotions on Team websites, broadcast radio strategy for the radio networks and multi-lingual stations, broadcast television, traditional hospitality, ticketing and public relations opportunities for in-home market entertainment of potential business to business clients, e.g., travel agents, meeting planners, along with any local charity connections the Team is supporting, print programs, line-up cards, and welcome center materials to be used at Florida Welcome Centers for the drive market. A list of marketing assets that may be included in the promotional plan is attached hereto as **Exhibit F**.

12.2.4 For Major League Spring Training Home Games of the Astros, the LLC shall cause the Astros' radio rights holders to provide a minimum of one (1) live drop-in announcement promoting tourism in Palm Beach County. The TDC will provide factual talking points related to leisure traveler points of interest that can be used by game announcing personalities during the radio broadcast. The Tourist Development Council will provide for television broadcasts of Major League Spring Training Home Game including video content and "B" roll of tourism assets throughout Palm Beach County. The TDC shall submit the content required for all drop-in announcements by February 15th of each year.

12.2.5 In the event the Astros and the TDC cannot reach agreement on the promotional plan, the LLC shall cause the Astros to attend dispute resolution with County pursuant to Article 18 for the sole purpose of resolving the dispute on the content, placement and value of the services.

12.3 Nationals' Obligations.

12.3.1 The LLC shall cause the Nationals to annually provide tourism marketing and promotional services for the Facility valued at no less than \$500,000 annually, at the Nationals' Home City MLB Stadium or to the Nationals' Home City audience.

12.3.2 Three months prior to the start of the Spring Training Season, the LLC shall cause the Nationals to present a draft promotional plan, including the content, proposed placement and then current estimated value of the materials and promotion to be provided in the Home City, to the TDC to come to a mutually agreeable plan.

12.3.3 This plan may be inclusive of social media channel strategy, digital promotions on Team websites, broadcast radio strategy for the radio networks and multi-lingual stations, broadcast television, traditional hospitality, ticketing and public relations opportunities for in-home market entertainment of potential business to business clients, e.g., travel agents, meeting planners, along with any local charity connections the team is supporting, print programs, line-up cards, and welcome center materials to be used at Florida Welcome Centers for the drive market. A list of marketing assets that may be included in the promotional plan is attached hereto as **Exhibit F**.

12.3.4 For Major League Spring Training Home Games of the Nationals, the LLC shall cause the Nationals' radio rights holders to provide a minimum of one (1) live drop-in announcement promoting tourism in Palm Beach County. The TDC will provide factual talking points related to leisure traveler points of interest that can be used by game announcing personalities during the radio broadcast. The Tourist Development Council will provide for television broadcasts of Major League Spring Training Home Game including video content and "B" roll of tourism assets throughout Palm Beach County. The TDC shall submit the content required for all drop-in announcements by February 15th of each year.

12.3.5 In the event the Nationals and the TDC cannot reach agreement on the promotional plan, the LLC shall cause the Nationals to attend dispute resolution with County pursuant to Article 18 for the sole purpose of resolving the dispute on the content, placement and value of the services.

12.4 County's Obligation to Promote. The County shall use reasonable efforts to promote the presence of the Teams' baseball operations and to promote the sale of tickets to all events at the Facility, by all reasonable methods incidental with its regular tourist promotion activities. The TDC will provide for television broadcasts of Major League Spring Training Home Games through video content and "B" roll of film in Palm Beach County.

ARTICLE 13

TRANSFER OF TEAM OWNERSHIP/ ASSIGNMENT OF AGREEMENT

13.1 Assignment and Transfer of Interests. Except as hereinafter provided in Section 13.2, the LLC may not assign, convey, or transfer this Agreement without the written consent of the County, which may be granted or denied in County's sole discretion. The County shall not assign this Agreement without the written consent of the LLC.

13.2 Conditions for Approval of Transfer of Team and LLC.

13.2.1 Nothing herein shall prohibit or in any way prevent an owner of an interest in a Team (including its successors and assigns) from transferring all or any part of its respective ownership interest, at any time, subject, however, to the continuing obligations of the Team pursuant to the Guaranty set forth in Section 16.7 herein. In addition thereto, the Team itself, at any time, shall have the absolute and unconditional right to transfer its assets, inclusive of the asset representing the MLB franchise license and the Team's ownership interest in the LLC, provided however, the entity assuming the obligations of the transferring Team, or an Affiliate of such entity, meets the net worth requirements of the Guaranty set forth in Section 16.7, and such transfer shall not be effective unless and until the entity acquiring such assets, or its Affiliate, enters into a fully executed assignment and assumption of the Team Guaranty, specifically assuming all obligations secured by the Guaranty relating back to the original Guaranty execution date, and delivers same to the County. Transfer of Team ownership (either by transfer of ownership interest or sale of the MLB franchise license by the Team) in no way releases, extinguishes or alters the LLC's responsibilities pertaining to the Operative Agreements. Provided the transferring entity is not in default of the Operative Agreements at the time of transfer, a transfer of an MLB franchise license above and execution of the assignment

and assumption agreement, shall release, extinguish and forever discharge the obligations of the transferring ownership entity for any matter attributable to the transferring entity under the Operative Agreements from and after the date of transfer. The County agrees to provide any new owner, or potential acquirer of the Team or its assets (either by transfer of ownership interest or sale of the MLB franchise license, or interest in the LLC by the Team) with an estoppel certificate within fifteen (15) Business Days of receipt of written request from the LLC, setting forth the status of the Operative Agreements and any default(s) under the Operative Agreements, and if so, summarizing such default(s).

13.2.2 Nothing herein shall prohibit or in any way prevent an owner of an interest in the LLC, including its successors and assigns, from transferring all or any part of its ownership interest, at any time, to an Affiliate. In addition thereto, a Team (or Teams), (or its Affiliate), may assign or transfer its interest in the LLC (or the LLC, itself, may assign or transfer its interest in the Operative Agreements), to another Major League Club (or Major League Clubs) provided: 1) the proposed assignee(s) can demonstrate equal or greater attendance records at its current Spring Training Season facility, averaged over the last three (3) Spring Training Seasons, as compared to the assignor Team(s); and 2) the assignee Team(s) assumes 100% of the assignor's Team(s) obligations pursuant to the Operative Agreements beginning from the date of execution of this Agreement; 3) the assignee Team(s) meets the net worth or fair value of equity requirements of the Guaranty set forth in Section 16.7, and 4) the assignee Team(s) executes a Guaranty in the same form as the Guaranty set forth in Section 16.7 herein, specifically relating back to the original Guaranty execution date. The County reserves the right, in its sole discretion, to waive the attendance criteria established herein. Provided such Team(s) is not in default of the Operative Agreements at the time of transfer, such transfer shall release, extinguish and forever discharge the obligations of the transferring Team(s) for any matter attributable to the Transferring Team(s) under the Operative Agreements from and after the date of transfer. The County agrees to provide any such new owner, or potential acquirer of any interest in the LLC or its assets, with an estoppel certificate within fifteen (15) Business Days of receipt of written request from the LLC, setting forth the status of the Operative Agreements and any default(s) under the Operative Agreements, and if so, summarizing such default(s).

13.2.3 A Team may enter into written sub-use agreement(s) with other MLB Clubs for periodic uses of the Facility. Any such sub-use agreement shall in no way release or extinguish the obligations of the LLC pursuant to this Agreement or the obligations of the Team pursuant to the Guaranty executed by the Team as set forth in Section 16.7 herein.

13.3 Managers. The present managers of the LLC (Arthur Fuccillo and Giles Kibbe) shall have the absolute right without condition or restriction, to transfer their interests and/or responsibilities in the LLC to Affiliate entities or individuals. The County will be provided notice within thirty (30) days of such transfer.

ARTICLE 14

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.

ARTICLE 15

LITIGATION AND INDEMNITY

15.1 **Litigation.** The LLC shall be responsible for the defense of all litigation, hearings, claims, demands or suits, including appeals, or other liability, arising as a result of the development, operation, or use of the Site, Facility, and City Park, including such litigation, claims, demands, suits and proceedings where the County has been named as a Defendant or Respondent, to the extent such litigation, claim, demand or suit, concerns any obligation or duty of the LLC concerning the Site, Facility, and City Park, under any of the Operative Agreements and/or the Due Diligence and Planning Services Agreement. This includes, but is not limited to, claims, demands, accidents or injuries, suits, or other liability involving personal injuries at the Facility, including, but not limited to, driveways, sidewalks, entrances and exits from the Site and Facility. Notwithstanding the above, the LLC shall not be responsible for the defense of any taxpayer challenge to County or governmental funding of the Site, Facility and/or City Park. The

County agrees to be responsible for all litigation, hearings, claims, demands or actions, including appeals, or other liability, to the extent and limits provided in Florida Statutes, Section 768.28, arising solely from the actions of the County's employees. The parties acknowledge that the foregoing shall not; 1) constitute an Agreement by the County to indemnify the LLC; 2) be construed as a waiver of sovereign immunity, 3) constitute a waiver of any defense the County may have under Section 768.28, Florida Statutes, or any other statutes, or 4) constitute consent to be sued by third parties.

15.2 Indemnification.

15.2.1 The "County Indemnified Parties" means the County, including each of its respective agents, employees and elected officials.

15.2.1.1 The LLC agrees to protect, defend, reimburse, indemnify and hold County Indemnified Parties free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney's fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, for any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any Person, arising out of, or in incident to, or in connection with; (i) the use and operation of the Facility and all driveways, sidewalks, walkways, entrances and exits from the Site and Facility, (ii) any act or omission of the LLC Parties, (iii) the LLC's performance, non-performance or purported performance under this Agreement, and/or (iv) the condition of the Facility and Site caused by the LLC's failure to adequately repair and maintain the Facility and Site.

15.2.1.2 The LLC further agrees to hold harmless and indemnify County for fines, citations, court judgments, insurance claims, restoration costs, damages, or other liability resulting from the LLC Parties' activities pursuant to this Agreement, whether or not LLC was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving the LLC Parties' activities.

15.2.1.3 In case County shall be made a party to any litigation commenced against the LLC Parties or by the LLC Parties against any third party related to the LLC Parties' activities or obligations pursuant to this Agreement, then the LLC shall protect and hold harmless and pay all costs and reasonable attorney's fees incurred by County in connection with such litigation, and any appeals thereof.

15.2.1.4 The foregoing indemnification shall not apply to the extent any claims, liability, expenses, losses, fines and damages arises from the negligent or willful acts of the County Indemnified Parties.

ARTICLE 16 INSURANCE/ GUARANTY

16.1 Team Insurance. The LLC shall cause the Teams to secure and maintain during the Term, at no cost to the County, the following coverages covering its operations hereunder:

A. Worker's Compensation. Insurance covering all Team employees (including coaching staff and players) meeting statutory limits in compliance with the applicable state and federal laws.

B. Commercial General Liability. Coverage shall have minimum limits of \$5,000,000 per occurrence and \$10,000,000 in the aggregate for Bodily Injury Liability and Property Damage Liability, which limit can be evidenced by any combination of primary and excess coverage. This shall include Premises and Operations; Personal and Advertising Injury; Independent Contractors; Products and Completed Operations; Contractual Liability; Liquor Liability; and Athletic Participation coverage.

C. Automobile Liability. Coverage will include all licensed, over-the-road vehicles owned or used by the Team with minimum limits of no less than \$1,000,000.00 per accident.

16.2 LLC Insurance. The LLC shall secure and maintain, or shall cause to be secured and maintained, during the Term, at no cost to the County, the following coverages covering its operations hereunder, provided, however, that if the obligations are met by an Umbrella Policy, such policy shall be as broad as the primary:

A. Workers' Compensation. Insurance covering all LLC employees meeting statutory limits in compliance with the applicable state and federal laws.

B. Commercial General Liability. Coverage shall have minimum limits of \$5,000,000 per occurrence and \$10,000,000 in the aggregate for Bodily Injury Liability and Property Damage Liability, which limit can be evidenced by any combination of primary and excess coverage. This shall include Premises and Operations; Personal and Advertising Injury; Independent Contractors; Products and Completed Operations; Broad Form Contractual Liability; Liquor Liability; and Athletic Participation coverage.

C. Automobile Liability. Coverage will include all licensed, over-the-road vehicles owned or used by the LLC with minimum limits of no less than \$1,000,000.00 per accident.

D. Property Insurance for LLC Restoration Areas. The LLC shall insure the LLC Restoration Areas against damage or destruction by fire, flood, hurricanes, tornadoes, terrorism or other casualty under a standard "all risk" insurance policy. Insurance shall be for one hundred percent (100%) replacement value. In the event of a casualty, the LLC shall be responsible for paying the deductible.

16.3 Additional Requirements.

16.3.1 All insurance policies must be issued by an insurance carrier with an A.M. Best rating of A- and Class VII or better.

16.3.2 The LLC shall cause the County to be listed as an additional insured (and not as a named insured) for claims arising in connection with the LLC's operations on the Commercial General Liability Policy (using ISO Form CG2010 10 101 or its equivalent) and the

Automobile Policy. The Additional Insureds shall include "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). Coverage for the County as an additional insured shall apply on a primary basis irrespective of any other insurance, whether collectible or not, in connection with the operations of the LLC. No policy shall contain a self-insured retention, but may have a deductible.

16.3.3 Current valid insurance policies meeting the requirements herein identified shall be maintained during the Term. Renewal certificates shall be sent by the LLC to the County as soon as practicable after the policy is renewed. There shall also be a ten (10) day notification to the County in the event of cancellation of any stipulated insurance coverage.

16.4 County Insurance. The County shall secure and maintain during the Term the following coverage:

A. **Property Insurance.** The County shall insure the Facility, against damage or destruction by fire, flood, hurricanes, tornadoes, terrorism or other casualty under a standard "all risk" insurance policy ("Damage"), except as otherwise set forth in Section 17.2. Insurance shall be for one hundred percent (100%) replacement value. County shall be responsible for paying deductible costs, except that in the event the damage by fire or by other casualty is due to any fault or neglect of the LLC, then the LLC shall be responsible for paying a reasonable deductible, not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate.

B. **Renewal.** Current valid insurance policies meeting the requirements herein identified shall be maintained by the County during the Term. Renewal certifications shall be sent by the County to the LLC as soon as practicable after the policy is renewed. There shall also be a ten (10) day notification to the LLC in the event of cancellation of any stipulated insurance coverage.

C. **Other Insurance.** Without waiving the right to sovereign immunity as provided by Florida Statutes §768.28, County shall maintain, during the entire term hereof, self-insurance coverage or third-party insurance coverage for comprehensive general liability and automobile liability in the amount of Two Hundred Thousand Dollars (\$200,000) per person and Three Hundred Thousand Dollars (\$300,000) per incident or occurrence and Worker's Compensation insurance covering all County employees in accordance with Florida Statutes Chapter 440. In the event the Legislature should change the County's exposure by statute above or below the sums insured against, the County shall maintain insurance to the extent of that exposure. Upon request by the LLC, the County shall provide a statement or certificate of insurance evidencing its insurance, and/or self-insurance coverage.

16.5 Waiver of Sovereign Immunity. The County acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes §768.28 and acknowledges that such statute permits actions at law against the County to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury,

or death caused by the negligence or wrongful act or omission of an employee of County while acting within the scope of the employee's office or employment under circumstances in which County, if a private person, would be liable under the general laws of this State.

16.6 Waiver of Subrogation. The County and the LLC each hereby waive any and all rights of recovery against each other and their respective agents and employees for loss or damage to each other arising from any cause insured against under any policy of insurance required to be carried by such waiving party to the extent of all proceeds recovered thereunder.

16.7 Guaranty. The full and unconditional performance of the obligations of the LLC set forth in this Agreement is guaranteed by the Teams, pursuant to the Astros' Guaranty and the Nationals' Guaranty, which are attached to the **Developer Agreement as Exhibits I-1 and I-2** and incorporated herein by reference.

16.8 Notification to County. In the event of; 1) a life threatening or dangerous incident or injury where the LLC is made aware that medical attention was sought and occurred within a Public Use Improvement of the Facility, and/or; 2) any claim or action that names the County or alleges that the County has responsibility in whole or in part, the LLC shall notify the County's Risk Management Department and provide general information concerning the claim and cooperate with the County in investigating and taking such action as may be appropriate.

ARTICLE 17

DAMAGE/DESTRUCTION OF FACILITY

17.1 Casualty Loss.

17.1.1 If all, or any portion of the Facility, other than the LLC Restoration Areas, is damaged or destroyed by fire, flood or other casualty (a "Casualty Loss"), the County, shall fund the repair and restoration of that portion of the Facility to the greater of the condition existing immediately prior to such Casualty Loss or the condition required by Law, provided, however, that County is under no obligation to fund the repair and restoration of any work in regard to the LLC Restoration Areas, and provided that County is under no obligation to fund the repair or restoration of any property damage resulting from deviations from County's standard design and construction policies that are identified in **Exhibit F to the Developer Agreement**.

17.1.2 In advance of a named tropical storm or other local public service announcements of sustained winds in excess of 45 mph, the LLC has the responsibility and obligation for taking reasonable measures to prepare the Facility as if it was the owner of the Site and Facility. Particularly, the LLC shall be responsible for securing personal property, ensuring that all building openings are closed, installing wind protection devices that were purchased with funding from the Program Budget, and for removing construction materials and any other temporary equipment that may otherwise be stored on the Site. Within 48 hours of a wind event concluding, the LLC has the responsibility and obligation to; i) evaluate the site for damage to the Facility which is the financial responsibility of the County pursuant to Section 17.1.1, and ii) contact the County's Representative to review the evaluation described in i) above, and for

instructions for mitigating further damage to the Facility and proceeding with the repair and restoration of the Facility.

17.1.3 If, in the LLC's good-faith judgment, there is substantial interruption with the operation of the LLC's activities at the Facility as a result of a Casualty Loss which requires the LLC to temporarily utilize other facilities, or cancel scheduled events at the Facility, the LLC shall schedule spring training activities and the games of the Teams at other facilities and the LLC's obligations under this Agreement, including payment of the fees set forth in Article 6 herein, shall be temporarily suspended until the County has performed its obligation to fund the repair and restoration of the Facility as required in Section 17.1.1 to permit the intended use hereunder. If the Facility repair and restoration is not or will not be funded by County as required in this Article 17 within one (1) year of the date of the Casualty Loss, then the LLC will have the option to terminate this Agreement. The LLC shall provide written notice of termination pursuant to this Section 17.1.3 to the County, and upon such termination, the County and the LLC shall be relieved of their obligations hereunder, except as expressly provided herein to the contrary in this Agreement.

17.1.4 Upon receipt of County funding pursuant to Section 17.1.1 or 17.1.3, the LLC shall perform the repair and restoration diligently and expeditiously to the greater of the condition existing immediately prior to such Casualty Loss or the condition required by Law.

17.2 LLC Restoration Areas.

17.2.1 The repair and restoration of the LLC Restoration Areas following a Casualty Loss shall be the sole responsibility of the LLC. The LLC shall repair, restore and rebuild the LLC Restoration Areas as is required in order to resume use of the Facility for its intended use. County may consider, but is not required, to temporarily suspend the LLC's obligations pursuant to this Agreement in the event of a Casualty Loss to the LLC Restoration Areas.

17.2.2 All property damaged or destroyed as a result of deviations from County's standard design and construction policies identified in **Exhibit F to the Developer Agreement**, shall be considered LLC Restoration Areas for the purposes of determining financial responsibility for claims including, but not limited to, damage to personal property, damage to the Facility, all property insurance claims and deductible costs and financial responsibility for repairs or restorations to property resulting from said deviations.

17.2.3 All property damaged or destroyed as a result of the LLC adding to, modifying, or using a structure in a manner other than its intended use, or without first seeking any and all approvals and permits for the addition, modification, or use shall be considered LLC Restoration Areas for the purposes of determining financial responsibility for claims including, but not limited to, damage to personal property, damage to the Facility, all property insurance claims and deductible costs and financial responsibility for repairs or restorations to property resulting from said deviations. For clarity, this Section 17.2.3 is not intended as an exemplification of Section 17.2.2.

ARTICLE 18
DISPUTE RESOLUTION

18.1 Dispute Resolution. The LLC and the County agree to make every reasonable effort to resolve any dispute under this Agreement prior to either party's proceeding to file a lawsuit due to a default by the other party. Accordingly, in the event of a dispute related to the performance of either the LLC or the County under this Agreement, the LLC and the County agree not to file a lawsuit until they have engaged in an expedited dispute resolution mediation process, the parameters of which are to be agreed upon by the parties. The process is initiated by delivery of 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 attorneys fees and costs. The parties may mutually agree to extend the timeframes set forth in this Section.

ARTICLE 19
CONDITIONS PRECEDENT

19.1 Conditions Precedent. The obligations of the County under this Agreement are expressly subject to each of the following conditions precedent;

- A. The full execution and effectiveness of the Operative Agreements, including, specifically, the effectiveness of the Interlocal Agreement without the requirement of a referendum pursuant to Section 2-31(27)(f) of the City Code of Ordinances;
- B. The County's receipt of the Funding Certification Letter; and
- C. The approval of this Agreement by Major League Baseball, if required.

19.2 Failure of Conditions Precedent.

19.2.1 In the event the conditions precedent of Section 19.1 (A) and/or (C) are not satisfied or waived by March 1, 2016, and such failure of condition precedent is not the result of the LLC's or the County's failure to act consistently with the Operative Agreements, then either party may terminate this Agreement by written notice to the other party, and the LLC shall reimburse the County one hundred percent (100%) of the Actual Costs paid to the LLC pursuant to the Developer Agreement and the Due Diligence and Planning Services Agreement to the date of termination.

19.2.2 In the event the condition precedent of Section 19.1 (B) is not satisfied or waived by March 1, 2016, and such failure of condition precedent is not the result of the LLC's or the County's failure to act consistently with the Operative Agreements, then either party may terminate this Agreement by written notice to the other party, and the LLC will pay to County fifty (50%) of the Actual Costs paid by County to the LLC pursuant to the Developer Agreement and the Due Diligence and Planning Services Agreement, to the date of termination.

19.2.3 The parties may agree to an additional amount of time for compliance with Conditions Precedent.

19.2.4 Neither party may terminate pursuant to Section 19.1(A) without first discussing with the other party the option of extending the time to allow for the full execution and effectiveness of the Operative Agreements, including the option of extending the March 1, 2016 date to a date after the referendum required pursuant to Section 2-31(27)(f) of the City Code of Ordinances.

ARTICLE 20 **TERMINATION**

20.1 Termination by LLC.

20.1.1 The LLC shall have the right to terminate this Agreement, as follows:

A. For any reason prior to the sale of the County Bonds as set forth in Section 10.2 (A) of the Developer Agreement, subject to repayment of One Hundred Percent (100%) of the Actual Costs paid to the LLC pursuant to the Developer Agreement and the Due Diligence and Planning Services Agreement; or

B. Pursuant to the Interest Election, subject to the LLC reimbursing the County fifty percent (50%) of the Actual Costs, as set forth in Section 10.2 (B) of the Developer Agreement, as of the date of termination.

C. If the conditions precedent set forth in Section 19.1 are not satisfied or waived by March 1, 2016, then the provisions of Section 19.2 shall control the right to termination.

20.1.2 In the event of termination pursuant to this Section 20.1, payment by the LLC to the County shall be made to County within thirty (30) days of receipt of substantiated bills from County.

20.1.3 In the event that the LLC desires to terminate this Agreement pursuant to this Section 20.1, the LLC shall deliver to the County a written notice of termination, which shall be effective on the Effective Termination Date.

20.2 Termination by County.

20.2.1 The County shall have the right to terminate this Agreement if the conditions precedent set forth in Section 19.1 are not satisfied or waived by March 1, 2016. The provisions of Section 19.2 shall apply to the County termination pursuant to this Section 20.2.1.

20.2.2 In the event that the County desires to terminate this Agreement pursuant to this Section 20.2, the County shall deliver to the LLC a written notice of termination, which shall be effective on the Effective Termination Date.

ARTICLE 21
DEFAULT

21.1 Events of LLC's Default. The following shall be "Events of LLC's Default":

A. The filing by the LLC of a petition commencing a voluntary proceeding under the Federal Bankruptcy Code or any other federal, state or local law or statute pertaining to bankruptcy or insolvency; a general assignment by the LLC for the benefit of creditors; an admission in writing by the LLC of its inability to pay debts as they become due; the filing by the LLC of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in any insolvency, receivership or similar relief under any laws pertaining to bankruptcy or insolvency, or the filing by the LLC of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of a petition filed against it in any such proceeding; the seeking or consenting to, or acquiescence by the LLC in the appointment of any custodian, trustee, receiver or liquidator of it, or any part of its property; and the commencement against the LLC of any involuntary proceeding under the Federal Bankruptcy Code, or a proceeding under any law or statute pertaining to insolvency, which case or proceeding is not dismissed or vacated within ninety (90) days; or

B. The failure of the LLC in the performance of any material obligations under this Agreement, except for the payment obligation set forth in Article 6, provided that the County has provided the LLC with written notice of such failure, specifying with detail, the nature of such failure, and such failure is not cured within thirty (30) days following the receipt by the LLC of such written notice from the County, or, provided that such failure cannot be cured within such thirty (30) day period, if the LLC does not commence to cure such failure within such thirty (30) day period and thereafter diligently pursue the cure of such failure to completion; or

C. The failure of the LLC to make any payment obligation set forth in Article 6, provided that the County has provided the LLC with written notice of such failure, specifying with detail, the nature of such failure, and such failure is not cured within forty-five (45) days following the receipt by the LLC of such written notice from the County.

21.2 Events of County's Default. The following shall be "Events of County's Default": The failure of the County in the performance of any material obligations under this Agreement, provided that the LLC has provided the County with written notice of such failure, specifying with detail, the nature of such failure, and such failure is not cured within thirty (30) days, following the receipt by the County of such written notice from the LLC, or, provided that such failure cannot be cured within such thirty (30) day period, if the County does not commence to cure such failure within such thirty (30) day period and thereafter diligently pursue the cure of such failure to completion.

ARTICLE 22
REMEDIES

22.1 County Remedies for Events of LLC's Default.

22.1.1 Upon an Event of LLC's Default, for which a specific remedy is not set forth in this Agreement, County shall have the right to: (1) grant the LLC a reasonable period of time within which to cure such default during which time the LLC shall utilize the LLC's best efforts, including bringing suit, to remedy such default; or (2) seek dispute resolution pursuant to Article 18 herein to resolve said dispute, or (3) subject to the requirements of Section 18.1, bring an action for specific performance.

22.1.2 In the event the LLC fails to make a payment due as set forth in Section 21.1(C), the County shall have the right to: (1) grant the LLC an additional reasonable period of time within which to make the payment, with interest as set forth in Article 6; (2) seek performance pursuant to the Guaranty of each Team as set forth in Section 16.7; or (3) if such payment remains unpaid for ninety (90) days following the date of the notice of failure to pay pursuant to Section 21.1(C), terminate this Agreement by written notice to the LLC and the Teams, effective on the Effective Termination Date.

22.2 LLC Remedies For Events of County Default. Upon an Event of County Default, for which a specific remedy is not set forth in this Agreement, the LLC shall have the right to: (1) grant the County a reasonable period of time within which to cure such default during which time the County shall utilize the County's best efforts, including bringing suit, to remedy such default; or (2) seek dispute resolution pursuant to Article 18 herein to resolve said dispute, or (3) subject to the requirements of Section 18.1, bring an action for specific performance. In the event the LLC is unable to obtain specific performance of this Agreement for any reason, the LLC shall have such other remedies as available by law or in equity as a result of such default.

22.3 Florida Statute §288.11631. Notwithstanding anything herein to the contrary, the LLC shall comply with and remit any payments required under Section 288.11631, Florida Statutes.

ARTICLE 23
REPRESENTATIVES

23.1 County's Representative. The County's Representative or liaison during the performance of this Agreement shall be the Director of FD&O, or such other person who may be designated by the County in writing from time to time. Notwithstanding the foregoing, the County's Representative or liaison regarding the Renewal/Replacement Program shall be the Director of FD&O, or such other person as may be designated in writing from time to time.

23.2 LLC's Representative. The LLC's Representative or liaison during the performance of this Agreement shall be Giles Kibbe, Manager, or such other person who may be

designated by the LLC in writing from time to time, and Mark D. Lerner, or such other person who may be designated by the LLC in writing from time to time.

ARTICLE 24
SUSPENSION OF PLAY

24.1 Generally. In the event that a national emergency or the United States being in a state of war or operation of law prevents the LLC from using the Facility for all or part of a Full Spring Training Season in any of the years covered under the Term, the County agrees that the LLC shall not be obligated to perform under this Agreement until such emergency or contingency ceases. In the event of such suspension, this Agreement shall be automatically extended beyond the Term for an amount of time equal to the duration of such suspension; provided, however, that if such suspension lasts more than three (3) years, the parties agree to negotiate in good faith the period of the extension.

ARTICLE 25
NOTICES

25.1 Generally. 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, 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 national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a Business Day and on the next Business Day if transmitted after 5PM or on a day other than a 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:

For notice to the LLC:

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
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

For notice to the County:

County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, FL 33401

With Copies to:

County Attorney
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

And

Director of Office of Financial Management
301 North Olive Avenue, 7th Floor
West Palm Beach, FL 33401

And

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411

25.2 Change of Notice Address. Either party hereto may change the address for service of Notices required or permitted hereunder upon ten (10) days prior written notice. All Notices given hereunder shall be effective and deemed to have been duly given only upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon such date as the postal authorities shall show the Notice to have been delivered, refused, or undeliverable, as evidenced by the return receipt.

ARTICLE 26 **NON-DISCRIMINATION**

26.1 Warranty. The LLC warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

26.2 Policy. The LLC has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in R-2014-1421, as amended, or in the alternative, if the LLC does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that the LLC will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

ARTICLE 27 **SURRENDER OF FACILITY**

27.1 Return of Facility. At the termination of this Agreement, the LLC shall return the Facility to its original or subsequently improved condition (ordinary wear and tear, insured casualty, loss or damage by fire, elements or other causes, approved changes in design, or installation of Capital Improvements excepted), and return to the County all equipment and personal property of the County, in each case after inspection of the Facility, which inspection shall be made jointly by the County and the LLC. Promptly after such inspection at the termination of any occupancy, if any repairs to the Facility or the County's equipment or personal property are deemed to be necessary which result from the Facility and all of the County's equipment and personal property not being maintained to a standard that is consistent with the standards of maintenance for similar types of public recreation facilities that include public amenities in Palm Beach County, the LLC shall have the option to: (i) make necessary repairs; or (ii) pay to the County any damages due for damage to the Facility or to personal property (ordinary wear and tear, insured casualty, loss or damage by fire, elements or other causes, approved changes in design, or installation of Capital Improvements excepted), except to the extent said damage was caused by the assigns, agents, employees or officers of the County. In the event that the LLC and the County cannot agree on repairs to be made pursuant to subsection (i) or the amount of damage pursuant to subsection (ii), the LLC and the County agree to expeditiously submit the matter to dispute resolution pursuant to Article 18 of this Agreement.

27.2 Disposition of Non-County Property. The LLC shall have the right, upon termination of this Agreement, and within sixty (60) days thereafter, to remove from the Facility all movable property which is not permanently affixed to the structure and which is not owned by the County, and all concession equipment, all retail, restaurant food service, and catering equipment, fixtures and fit-out, and satellite television equipment, not owned by the County, whether or not such items are deemed movable and whether or not they are permanently affixed to the structure; provided, however, that the LLC will give the County thirty (30) days notice prior to such proposed removal of items, not owned by the County, permanently affixed to the structure; and provided further that the LLC's removal of such items shall not materially adversely affect the structural integrity of the Facility, in the opinion of a neutral third-party State of Florida-licensed engineer who will review such proposed removal at the LLC's and County's joint expense. The LLC agrees to repair any damage caused by such removal to the County's reasonable satisfaction. The LLC shall not remove any property which was placed on, constructed at, or affixed to, the Facility as a replacement or addition of property initially owned by the County.

ARTICLE 28 **FORCE MAJEURE**

Except as otherwise provided herein, neither party shall be in default under, or breach of, this Agreement to the extent it is unable to perform due to an event of Force Majeure, provided however, that the parties must comply with the requirements of Article 17. For the purpose of this Agreement, "Force Majeure" shall mean and include any act of God, accident, fire, riot or civil commotion, act of public enemy, failure of transportation facilities, enactment, rule, order or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local (except in the case of a rule, order or act by Palm Beach County), or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of the parties (excluding a strike, lockout, or other labor dispute involving Major League Baseball) which was not avoidable in the exercise of reasonable care and foresight. The party claiming the occurrence of a Force Majeure event shall promptly notify the other party of such occurrence, and the likely duration and termination thereof.

ARTICLE 29 **LABOR DISPUTE**

In the event of a lockout, strike, or other labor dispute involving Major League Baseball ("Labor Dispute"), the LLC will continue to be obligated to provide Repair and Maintenance, Renewal and Replacement and Capital Improvements to the Facility, but the LLC will be permitted to scale down its operations of the Facility until such time as the Labor Dispute is resolved and the LLC can commence Major League Baseball operations at the Facility. Notwithstanding the foregoing, in the event of a Labor Dispute which prevents the LLC from using the Facility for a Full Spring Training Season, this Agreement shall be automatically extended beyond the initial Term for an additional Full Spring Training Season.

ARTICLE 30
MORE FAVORABLE TERMS

30.1 New Major League Clubs in Palm Beach County. If, at any time during the Term, the County directly or indirectly enters into an agreement with another Major League Club for the operation and use of another stadium, other than renovation and/or redevelopment of the Roger Dean Stadium operated by Jupiter Stadium, Ltd., and any renewal, restatement, extension, amendment or renegotiation of the First Restated Sports Facility Use Agreement with Jupiter Stadium Ltd., (R2011-0694) as further described below, which agreement includes among its terms the right to play more than two (2) Spring Training Season home games in the County during any Spring Training Season, the County shall provide the LLC with a copy of such agreement. If the LLC reasonably believes that the terms of such agreement are more favorable than the corresponding term(s) contained herein, the LLC shall have no longer than 21 days from the time that the LLC is provided such an agreement to so notify the County. In such event the more favorable terms shall be substituted for the corresponding term(s) of this Agreement for the remainder of the Term, retroactive to the date the County entered into the agreement with the other Major League Club. Notwithstanding the foregoing, in the event such more favorable terms would impact the then applicable tax status of the County Bonds, the LLC shall not be entitled to such more favorable terms.

30.2 First Restated Sports Facility Use Agreement with Jupiter Stadium, Ltd. In the event the County renews, restates, extends, amends or renegotiates the First Restated Sports Facility Use Agreement with Jupiter Stadium, Ltd., (R2011-0694) (the "Renewed Use Agreement") during the Term hereof, the County shall provide the LLC with a copy of the Renewed Use Agreement. If the LLC reasonably believes that any of the terms of the Renewed Use Agreement are more favorable than the corresponding term(s) contained herein, the LLC shall have no longer than 21 days from the time the LLC is provided a copy of the Renewed Use Agreement to notify the County. In such event, the more favorable terms shall be substituted for the corresponding term(s) of this Agreement for the remainder of the Term, retroactive to the date the County enters into the Renewed Use Agreement. Notwithstanding the foregoing, Section 5.5 (Buffer Area), Article 6 (Use Fees), Article 19 (Conditions Precedent), and Article 20 (Termination) shall be excluded from this Article 30. In the event such more favorable terms would impact the then applicable tax status of the County Bonds, the LLC shall not be entitled to such more favorable terms.

30.3 The parties hereto acknowledge that the provisions of this Article 30 shall not apply to any Developer Agreement for the Roger Dean Stadium operated by Jupiter Stadium, Ltd.

ARTICLE 31
INSPECTOR GENERAL

County has established the Office of the Inspector General in 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 to audit, investigate, monitor, and

inspect the activities of the LLC, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 32
PUBLIC RECORDS

32.1 County Access to Records. The LLC shall maintain adequate records to justify all charges, expenses and costs incurred in estimating and performing the obligations of the LLC hereunder for at least three (3) years after completion of this Agreement. The County shall have access in Palm Beach County to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the LLC's place of business, provided that (a) the County notifies the LLC no less than Thirty (30) Days prior to the date of such inspection or audit, and (b) the number of such inspections or audit shall be limited to one (1) per calendar year. The LLC agrees to make available to the County, at the County's request, and at the County's sole cost and expense, all documents and materials pertaining to the obligations of the LLC and the operation of the Facility as required by this Section 32.1, if after three (3) years, then still in the possession of the LLC.

32.2 Public Access to Records. As applicable and legally required, the LLC shall comply with the requirements of §119.0701, Florida Statutes, as amended. Specifically, to the extent required by §119.0701, Florida Statutes the LLC shall:

A. Keep and maintain public records that ordinarily and necessarily are required by the County in order to perform the services as provided under this Agreement.

B. Maintain all public records in a readily accessible, organized format consistent with the requirement of identifying, retrieving and providing prompt and frequent access to records.

C. Provide the public with access to public records on the same terms and conditions that the County is by law required to furnish, and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.

D. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements pursuant to Florida Statute are not disclosed, including but not limited to, records that are exempt pursuant to § 255.047, Florida Statutes and §125.0104(9), Florida Statutes, except as may be authorized by law.

E. Redact part of a record if an exemption applies to part of a record, while producing the remainder of the record and providing the statutory exemption citation that exempts the portion of the record.

F. If responding that an entire record is exempt, respond by stating the basis of the exemption and providing the statutory exemption citation.

G. If requested, provide in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

H. Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the LLC upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

32.3 Breach of Agreement. Failure of the LLC to comply with the requirements of Section 32.2 herein shall be a material breach of this Agreement.

ARTICLE 33 **MLB REQUIREMENTS**

33.1 Conformity with Rules. The LLC represents and warrants that, to the best of its knowledge, the execution, delivery and performance by the LLC of this Agreement does not violate any provision of the MLB Rules and Regulations including, but not limited to, specifically, the Major League Rules, the Professional Baseball Agreement and the Official Baseball Rules.

33.2 Approval of Major League Baseball. This Agreement shall not be effective until such time as all applicable MLB Approvals have been obtained, which approvals may be withheld in their sole and absolute discretion. In all respects, this Agreement shall be subject to the then current rules and regulations of Minor League Baseball. Notwithstanding anything in the foregoing to the contrary, the LLC represents and warrants that the only MLB Approval required for this Agreement to be effective is the receipt of a no-objection letter from the BOC.

33.3 Rules and Regulations. Notwithstanding any other provision of this Agreement, the obligations of the LLC under this Agreement and any rights or exclusivities granted and received by the Astros or the Nationals (whether through the LLC or otherwise) hereunder shall in all respects be subordinate to the MLB Rules and Regulations as are applicable to all Major League Baseball Clubs. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. In the event there is any cost or liability in the issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations, such costs or liability shall not be borne by the County. In the event that any act or omission of the LLC, the Astros and/or the Nationals to comply with the MLB Rules and Regulations affects the rights of the County under this Agreement or deprives the County of the benefits of this Agreement, the parties will work in good faith to amend the terms of this Agreement to neutralize the effect. The LLC agrees in any event that if compliance by it with MLB Rules and Regulations results in a failure of the LLC to fulfill its obligations under this Agreement, the County may enforce remedies for the LLC's failure to fulfill its obligations as provided in this Agreement.

33.4 Territory. The territory within which the County and the LLC are granted rights and undertaking obligations hereunder are limited to the territory in which the Astros and the Nationals are permitted to grant the rights and undertake the obligations covered hereunder as established by MLB Rules and Regulations, as may be amended from time to time. Furthermore, nothing herein shall be construed as conferring on the County or any party hereunder rights in areas outside of such territory. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities.

ARTICLE 34 GENERAL PROVISIONS

34.1 Governing Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The parties acknowledge that personal jurisdiction upon proper service will be valid in the State of Florida, and that venue of all actions arising out of or related to this Agreement shall be proper only in a state court of competent jurisdiction in Palm Beach County, Florida.

34.2 WAIVER OF JURY TRIAL. THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY AND THE LLC TO ENTER INTO THIS AGREEMENT.

34.3 Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

34.4 Binding Effect. The covenants, terms, conditions, provisions and undertakings in this Agreement, shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties hereto as if they were in every case named and expressed and wherever reference is made to any of the parties hereto, it shall be held to include and apply also to the legal representatives, successors and assigns of such party as if in each and every case so expressed.

34.5 Further Instruments. The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition or assurance in this Agreement whenever the occasion shall arise and request for such instrument shall be made.

34.6 Integration and Merger. This Agreement, together with the Operative Agreements, shall constitute the full and complete understanding between the parties as to the matters addressed herein. There are no oral understandings, terms or conditions, and no party has relied on any representation, express or implied, not contained in this Agreement. All prior

understandings, terms or conditions (including those set forth in the Agreement), whether with a party to this Agreement or any partner of a party, are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented except by an agreement in writing and signed by the parties to this Agreement.

34.7 Severability. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

34.8 Compliance with Laws. None of the parties hereto shall in any manner, directly or indirectly, violate the laws, ordinances, rules or regulations of any federal, state, county, city, or other governmental authority or agency in connection with the development, construction, use, operation and occupancy of the Facility under the terms of this Agreement.

34.9 Exhibits. All exhibits referenced in this Agreement are incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

34.10 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment, or modification shall be in writing and duly executed by both parties hereto, and, unless such amendment or modification has received, in advance, all applicable MLB Approvals. No change, amendment or modification of this Agreement shall be deemed to be made by either party on the basis of any action or failure to act by either party or by the course of performance, course of dealing, or course of conduct of either party.

34.11 Financial Information. Except as may be required by federal, state or local law, rule or ordinance, and except as may be compelled or ordered in conjunction with any legal proceeding, this Agreement does not require the Guarantors to disclose or provide any financial information, other than the specific information set forth in paragraph five (5) of the Guaranties attached as Exhibits "I-1" and I-2" to the Developer Agreement.

34.12 Captions. The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

34.13 No Waiver. Any waiver by either party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party any right thereafter to insist upon strict adherence to that term or any other terms of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

34.14 Counterparts. Provided that all parties hereto execute an original of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

34.15 Nature of Parties' Obligations.

34.15.1 It is understood and agreed that the LLC is acting as an independent contractor in the performance of its services hereunder, and nothing herein shall be deemed to create a joint venture, agency or partnership relationship between the County and the LLC.

34.15.2 The obligation of the County to pay any amounts required under this Agreement shall constitute a revenue obligation of the County payable solely from legally available non-ad valorem revenues of the County and shall not in any way be construed to be a debt of the County in contravention of applicable constitutional, statutory or charter limitations or requirements concerning the creation of indebtedness of the County. Neither the County, the State of Florida, nor any political subdivision or agency thereof shall be obligated to pay any sums due under this Agreement from compelled levy of ad valorem or other taxes, and neither the full faith and credit nor the taxing power of the County, the State of Florida or any political subdivision or agency thereof are pledged for payment of such sums due under this Agreement.

34.16 LLC. All parties hereto recognize that the LLC is a limited liability company whose sole managers as of the date hereof, are Arthur Fuccillo and Giles Kibbe of the Teams. HW Spring Training Complex, LLC, a Florida Limited Liability Company, 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 present or future manager or member of this LLC shall have any liability or obligation whatsoever directly or indirectly, personal or otherwise, under this Agreement (other than pursuant to the Guaranties, if applicable, attached to the **Developer Agreement as Exhibits I-1 and I-2**) under any legal or equitable theory. All parties further agree that no manager or member 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 manager and member shall have executed an agreement expressly agreeing to such liability. No party to this Agreement shall name or serve any manager or member in any proceeding, suit or claim in violation of this paragraph. This paragraph shall not preclude any claim against the LLC as a limited liability company. The County agrees that the LLC may, in its sole discretion, convert from a limited liability company to a limited liability partnership or otherwise reorganize its legal structure ("Reorganization") without the necessity of any approval of the County; provided, however, that, (a) following such Reorganization, the Teams are the sole owners of all interests in the reorganized entity (the "Reorganized LLC"), and (b) upon any such Reorganization, the Reorganized LLC shall assume all rights and obligations of the LLC under this Agreement and shall provide County with written evidence of the same.

34.17 Time is of the Essence. In all matters concerning or affecting this Agreement, time is of the essence.

34.18 Annual Appropriations. The County's performance and obligation to pay under this Agreement is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

34.19 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 article, paragraph, sentence, clause, or provision hereof is 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.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in several counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single instrument, as of the day first written above.

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:**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Director,
Facilities Development & Operations

WITNESSES:

**HW SPRING TRAINING COMPLEX, LLC, a
Florida Limited Liability Company**

By: _____
Witness Signature

By: _____
Arthur Fuccillo, Manager

Print Witness Name

By: _____
Witness Signature

Print Witness Name

WITNESSES:

**HW SPRING TRAINING COMPLEX, LLC,
a Florida Limited Liability Company**

By: _____
Witness Signature

By: _____
Giles Kibbe, Manager

Print Witness Name

By: _____
Witness Signature

Print Witness Name

**EXHIBIT A - THE SITE
LEGAL DESCRIPTION**

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 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.

EXHIBIT B PUBLIC USE IMPROVEMENTS

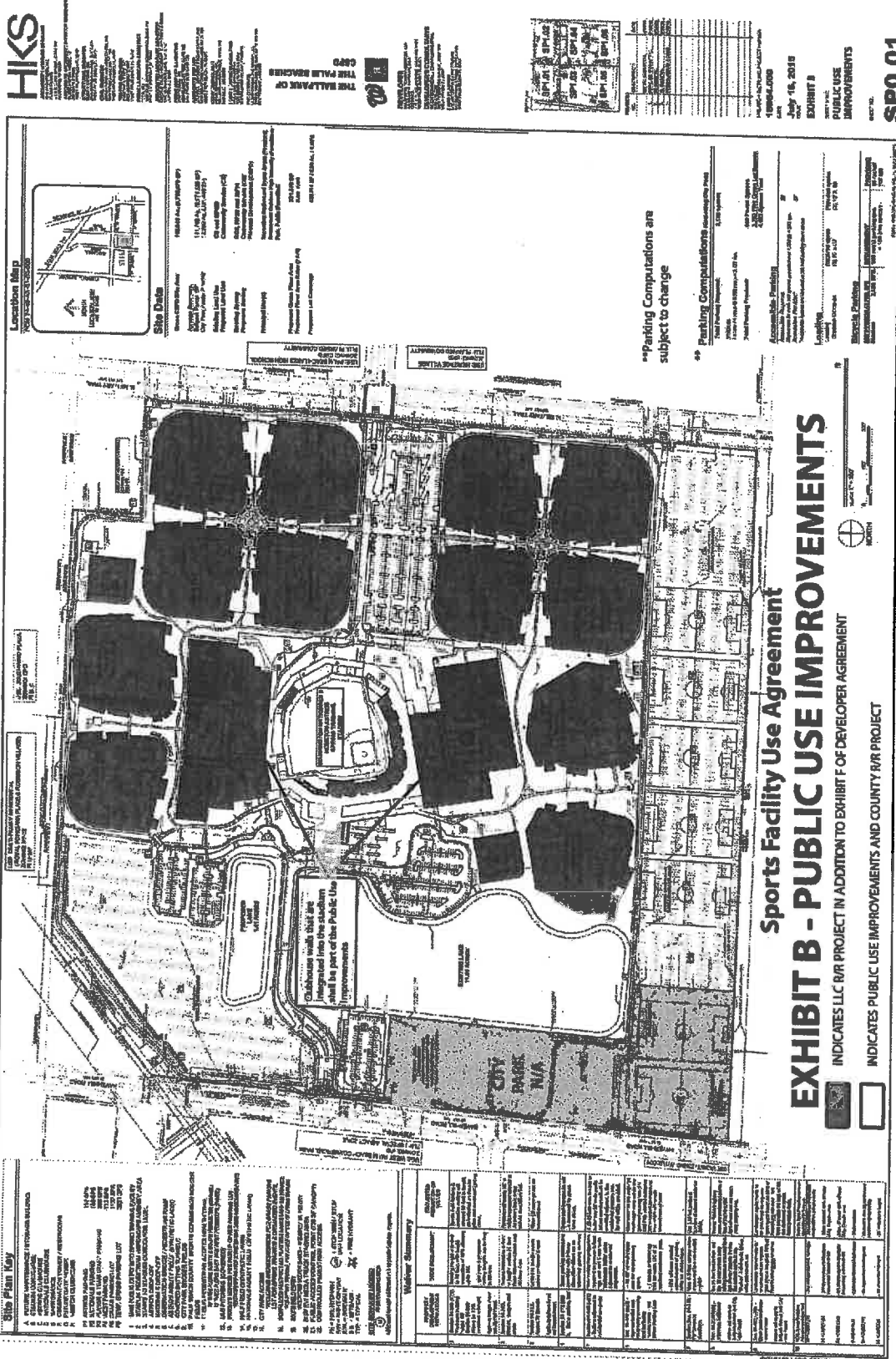




EXHIBIT C PARKING AREAS



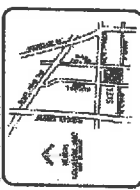
HKS
ARCHITECTS
PLANNERS
ENGINEERS

THE PALM BEACHES
CITY OF
12100 W. PALM BEACH BLVD., SUITE 300
PALM BEACHES, FL 33411
TEL: 561.835.4000
WWW.PALMBEACHESFL.GOV



10/16/2015
10/16/2015
10/16/2015
10/16/2015

Location Map
10/16/2015



Site Data

Project Name: [REDACTED]
Project No.: [REDACTED]
Site Address: [REDACTED]
City: [REDACTED]
County: [REDACTED]
State: [REDACTED]
Parcel No.: [REDACTED]
Zoning: [REDACTED]
Map No.: [REDACTED]
Scale: [REDACTED]

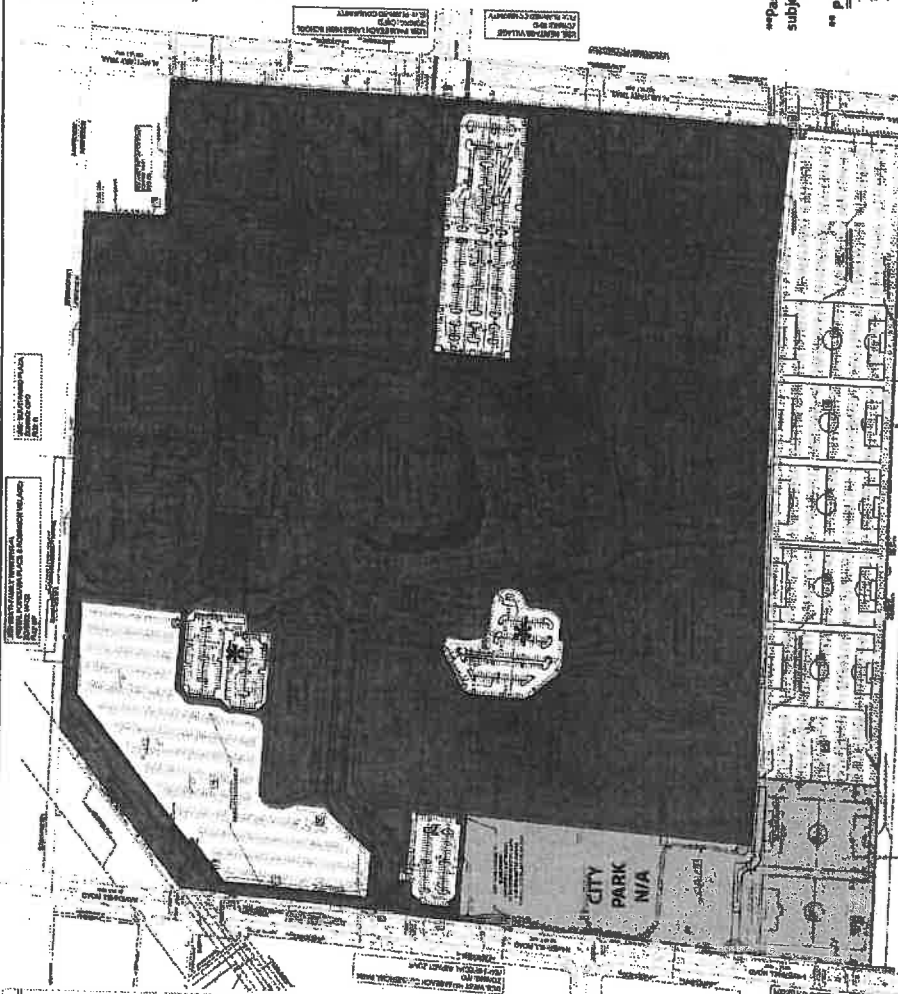
Parking Computations

10/16/2015

10/16/2015
EXHIBIT C
PARKING AREAS

Site Plan Key

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
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12. [REDACTED]
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14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]



Notes

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

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9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

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14. [REDACTED]

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21. [REDACTED]

22. [REDACTED]

Legend

- * REFERENCE EXHIBIT D FOR EXCLUSIVE PARKING AREAS
- INDICATES PARKING AREAS

Sports Facility Use Agreement

EXHIBIT C - PARKING AREAS

Parking Computations

10/16/2015

10/16/2015

10/16/2015

10/16/2015

Site Plan Key

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
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22. [REDACTED]

Notes

1. [REDACTED]

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16. [REDACTED]

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18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

EXHIBIT D EXCLUSIVE USE AREAS AND EXCLUSIVE PARKING AREAS

HKS
ARCHITECTS
10000 WESTGATE BLVD
SUITE 1000
DALLAS, TEXAS 75241
TEL: 972.382.8000
WWW.HKS.COM

THE BALLPARK OF THE PALM BEACHES
10000 WESTGATE BLVD
SUITE 1000
DALLAS, TEXAS 75241
TEL: 972.382.8000
WWW.HKS.COM

THE PALM BEACHES
10000 WESTGATE BLVD
SUITE 1000
DALLAS, TEXAS 75241
TEL: 972.382.8000
WWW.HKS.COM

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMITTING	07/16/2016	WJ
2	REVISIONS		
3	REVISIONS		
4	REVISIONS		
5	REVISIONS		
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July 16, 2016
EXHIBIT D
EXCLUSIVE USE AREAS
AND EXCLUSIVE
PARKING AREAS
SP0.01

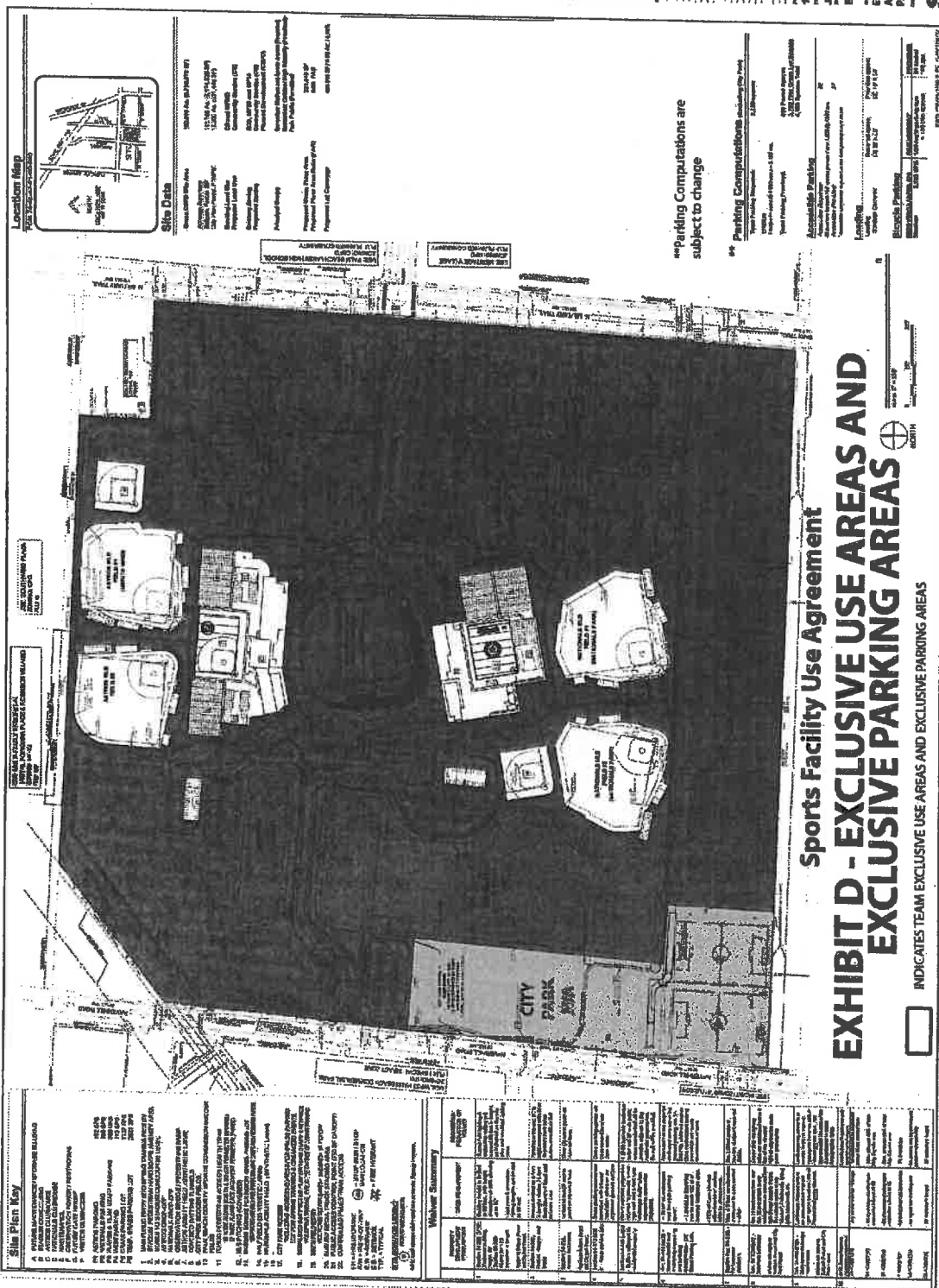


EXHIBIT E
LLC RESTORATION AREAS

The LLC Restoration Areas shall mean any and all items below for any type of loss.

- a. natural or manmade water bodies;
- b. earthened improvements such as, but not limited to landscaping, playing surfaces/subsurfaces and berms;
- c. fencing and netting;
- d. motorized vehicles and motorized equipment whether owned by the County or the LLC;
- e. personal property not attached or otherwise affixed to the Facility whether owned by the County or the LLC; and
- f. personal property attached or otherwise affixed to the Facility, which is NOT either; 1) installed interior to a fully enclosed building structure, 2) attached or affixed exterior to a fully enclosed building structure but is subject to wind loading requirements of the building code, or 3) affixed spectator seating in the stadium bowl (bleachers not included).

For any loss as a result of a wind event only, the County's property insurance will cover; 1) County owned Personal Property which is not affixed to the Facility, and/or 2) Personal Property attached or affixed exterior to a fully enclosed building structure but without being subject to wind loading requirements of the building code; providing that; 1) the specific article of Personal Property can be legally stored within a fully enclosed building structure, and 2) is placed there by the LLC prior to a wind event. It will be the LLC's sole responsibility to provide date and time stamped photographic documentation of the placement of such articles being located in the fully enclosed building structure in order to seek coverage pursuant to the County's property insurance.

EXHIBIT F BASEBALL MARKETING ASSETS

The following assets may be considered by the Teams for inclusion in the Annual Marketing Proposal:

Social:

- Social media channels (FB, Twitter, Vine, Instagram, etc.)
- Detail minimum number of posts (FB, Twitter, Vine, Instagram, etc.)
- Expected follower numbers (per channel) (FB, Twitter, Vine, Instagram, etc.)
- Opt-In's and access to share this database
- eNewsletters with fans, season ticket holders, etc
- Distribute our message "Discover the Palm Beaches Florida" to database
- Digital tools for fans (photo booths with email opt-ins)
- Any "giveaway" opportunities. Where fans "Tweet to Win" or similar programs
- Ticketing data with geographic information (access to ticket purchase credit card, zip codes, etc.)
- Players and/or coaches Tweet or Post – expand reach of Discover the Palm Beaches Florida

Digital:

- Winter promotions (i.e., January/ February), banner ads, etc. on Team websites pitching the upcoming spring season in the Palm Beaches. TDC will provide Banners
- 15 second Pre-roll videos on team's landing pages

Broadcast – Radio

- Define flagship stations
- Outline radio network (multiple stations in listening area)
- English and Spanish speaking stations
- Regular / fulltime color commentators available for "Live Reads" during play-by-play (example: Voice of the Astros... Voice of the Nationals...) Can they become "spokesperson" for The Palm Beaches?
- Sweepstakes/promotions for Fly-a-ways to Spring Training. These can be integrated into digital and social strategies.

Broadcast – TV

- Baseball signage behind home plate visibility
- Post-game or coach's shows to discuss Spring Training in the Palm Beaches
- Interview backdrops with Discover the Palm Beaches Florida and Team Logos step & repeat
- Dug out signage in view of cameras

- Regular /fulltime color commentators available for “Live Reads” during play-by-play (Voice of the Astros... Voice of the Nationals...)

Traditional Hospitality, Public Relations

- Convert these to B-2-B Assets
- Provide use spring training and regular season VIP suites and tickets for familiarization tours in County and in the Home City for travel agents, meeting planners, of Tourist Development Council Agencies
- Provide a minimum of 25 per game w/ amenities and unique “experiences”
- Chance for “Meet and Greet with players and/or coaches
- Coaches and/or players do “sessions” or “clinics” with local youth sports in Palm Beach County organized by Tourist Development Council Agencies (i.e. Little League Baseball clinics

Print

- Provide Discover the Palm Beaches Florida coverage in Spring Training Programs, and Lineup cards
- Provide Welcome Center materials for the drive market into Florida for Spring Training

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