

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

Meeting Date: November 16, 2021

Consent

Regular

Ordinance

Public Hearing

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: A) Emergency Use License Agreement (“Agreement”) and;

B) First Amendment to the Emergency Use License Agreement (“Amendment”) with HW Spring Training Complex, LLC (the “LLC”), which allowed the County to use designated areas of the Ballpark of the Palm Beaches (“Ballpark”) for COVID-19 testing.

Summary: Due to the COVID-19 pandemic, Palm Beach County issued a local state of emergency on Friday, March 13, 2020. Pursuant to the terms of the First Restated Sports Facility Use Agreement with the LLC, County has the right to enter into a license agreement with the LLC to use the Ballpark facility in the event of a declared federal, state, or local emergency. On March 30, 2020, the County entered into the Agreement with the LLC to utilize certain parking lot areas at the Ballpark to conduct COVID-19 testing. The Agreement sets forth the rights and responsibilities of the County in utilizing the designated areas. The June 24, 2021 Amendment updated the specific designated areas at the Ballpark that had been used to conduct COVID-19 testing operations. Due to the Declaration of Emergency issued by Palm Beach County, the County Administrator or designee had the ability to enter into this Amendment. Additionally, the First Restated Sports Facility Use Agreement provides that the Facilities, Development and Operations Department Director had authority to enter into this type of use agreement. The executed documents are now being submitted to the Board of County Commissioners to receive and file. **(FDO Admin) District 7 (MWJ)**

Background & Justification: In 2015, as the County sought to develop and own a baseball stadium to be utilized by two professional sports franchises, it entered into the First Restated Sports Facility Use Agreement with the LLC, which set forth the LLC’s rights to use, occupy and operate the Ballpark. In this agreement, the County specifically reserved the right to use the Ballpark whenever there was a declared state of emergency.

Attachments:

1. Location Map
2. Emergency Use License Agreement
3. First Amendment to Emergency Use License Agreement

Recommended By:	<i>MD [Signature]</i>	<i>10/19/21</i>
	Department Director	Date
Approved By:	<i>[Signature]</i>	<i>10/27/21</i>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____
 Does this item include the use of federal funds? Yes _____ No _____

Budget Account No:

Fund _____ Dept _____ Unit _____ Revenue Source _____
 Fund _____ Dept _____ Unit _____ Revenue Source _____

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

* There is no fiscal impact associated with this item

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 10/21/21
 OFMB 10-21-21 *[Signature]*

[Signature] 10/25/21
 Contract Development and Control
 10-22-21 *[Signature]*

B. Legal Sufficiency:

[Signature] 10/26/21
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



EMERGENCY USE LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of 3/30/2020, 2020, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and the HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC").

WITNESSETH:

WHEREAS, the COUNTY, under Florida Statutes Chapter 252, is responsible for safeguarding the lives of its citizens during emergencies; and

WHEREAS, on October 15, 2015, COUNTY and LLC entered into the First Restated Sports Facility Use Agreement ("Use Agreement"), which set forth the terms and conditions for use of the baseball stadium, team facilities, practice fields, clubhouses and parking areas located at 5444 Haverhill Road, West Palm Beach, Florida 33407 (the "Facility"); and

WHEREAS, the COUNTY owns the Facility, but LLC has the exclusive right to use, occupy, and operate the Facility subject to the terms of the Use Agreement; and

WHEREAS, Section 5.3.6 of the Use Agreement provides that in the event of a declared federal, state, or local emergency, the COUNTY shall have the right to use the Facility for emergency purposes, with the exception of the Exclusive Use Areas (as defined in the Use Agreement);

WHEREAS, the COUNTY declared a state of emergency on March 13, 2020 and has renewed its declaration through April 3, 2020 (such declaration together with any subsequent renewals thereof, the "Declared Emergency"); and

WHEREAS, this Agreement sets forth the understanding between the parties regarding the COUNTY'S use of the Facility during the Declared Emergency for COVID-19.

NOW THEREFORE, in accordance with the mutual covenants hereinafter set forth and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 PURPOSE OF AGREEMENT

Section 1.01 Recitals

The parties affirm and incorporate the recitals set forth above.

Section 1.02 Purpose

The purpose of this Agreement is to set forth the understanding between the parties regarding the COUNTY'S use of the Facility during the Declared Emergency for COVID-19.

Section 1.03 Administration of Agreement

The COUNTY's Director, Facilities Development & Operations ("FDO Director"), or her designee, shall be responsible for all aspects of the administration of the terms and conditions of this Agreement concerning the COUNTY's obligations, unless otherwise determined by the County Administrator. The County shall assign an Incident Commander who will act as the on-site contact. The contact information for the Incident Commander shall be sent to the LLC's General Manager for any matters most effectively handled on-site.

The LLC's General Manager of the Facility ("LLC's General Manager") shall be responsible for all aspects of the administration of the terms and conditions of this Agreement concerning the LLC'S obligations.

All capitalized terms not defined herein shall have the meaning set forth in the Use Agreement.

ARTICLE 2 COUNTY'S RIGHT TO POSSESSION AND EXCLUSIVE USE DURING DECLARED EMERGENCY

Section 2.01 County's Possession and Exclusive Use

During the Declared Emergency, County shall have exclusive use and possession of the following areas at the Facility ("Designated Areas") (see Exhibit "A" attached hereto and incorporated herein by reference):

- a. Use of all southern parking lots at the Facility, including any ingress and egress points deemed necessary by COUNTY. Specifically, the COUNTY will be using all of the southern parking lots to facilitate the COUNTY's response to the COVID-19 emergency. Access to the southern parking lots will be from Military Trail and Haverhill Road as determined by COUNTY. The COUNTY shall coordinate with the City of West Palm Beach (the "City") and shall separately secure the City's concurrence for the use of the City park.
- b. Use of Parking Lot E and the adjacent pathway between Parking Lot E and all southern parking lots. Specifically, the COUNTY will be using Parking Lot E to park up to 110 working staff vehicles each day. Access to Parking Lot E will be from Military Trail. The COUNTY acknowledges that its use of Parking Lot E is not exclusive and that the LLC may allow egress to and from, and vehicle parking in Lot E.

- c. Use of southern restroom tower, located between Parking Lot E and southern parking lots at the Facility. Specifically, the COUNTY will be using the southern restroom tower to accommodate working staff only.
- d. The LLC's Security Officer shall open the gate to Parking Lot E and the southern parking lots each morning of the COUNTY's use and the COUNTY shall post a security officer at the Parking Lot E gate to ensure only working staff access, and authorized delivery vehicles enter, Parking Lot E. The identical process will be used at all other perimeter gates. At the end of each day's use, the LLC's Security Officer shall lock the gates. The Incident Commander shall notify LLC Security Officer as to the start time for the next use and when each day has been completed. The COUNTY may leave equipment/vehicles parked in Parking Lot E and/or on the southern parking lots overnight.
- e. As the emergency situation evolves, COUNTY may designate other areas of the Facility for emergency use in accordance with Section 5.3.6 of the Use Agreement (other than Exclusive Use Areas) in order to respond to the Declared Emergency. In such case, the FDO Director will notify the LLC's General Manger, and COUNTY's emergency use of such additional Designated Areas will be subject to the terms and conditions of this Agreement.

Section 2.02 COUNTY's Rights and Responsibilities When in Possession of the Designated Areas

- a. The COUNTY shall make reasonable efforts to notify LLC's Manager at least eight (8) hours in advance of any expanded use of the Facility it may need to implement emergency response as the emergency situation evolves, pursuant to section 2.01 (b) above.
- b. COUNTY shall inspect, document and photograph the existing conditions of the Designated Areas prior to use by COUNTY. The Incident Commander and the LLC General Manager, or designee, shall meet during the event mobilization to discuss the existing conditions and document the expectations for restoration at the conclusion of the COUNTY's use and possession of the Designated Areas.
- c. The COUNTY shall provide all staff, equipment, supplies and logistics support to oversee and manage its use of the Designated Areas.
- d. During COUNTY's use and possession of the Designated Areas, the COUNTY shall be responsible for operations and security in the Designated Areas, including, but not limited to, COUNTY staff and volunteers.

- e. The COUNTY shall be responsible for managing any vehicle queuing process, including providing all traffic control and enforcement necessary to prevent traffic backups on Military Trail and Haverhill Road.
- f. The COUNTY is solely responsible for the safekeeping of all equipment and supplies it brings into the Designated Areas and for the security of the COUNTY's employees, vendors, and invitees while using the Designated Areas.
- g. The COUNTY shall use the Designated Areas in their "as is" condition and shall not alter or modify the Designated Areas without LLC approval.
- h. The COUNTY shall pick up any and all trash and remove all trash from the Designated Areas. The COUNTY shall place all bagged trash, garbage and debris in the designated dumpster closest to Parking Lot E.
- i. During COUNTY's use and possession of the Designated Areas, it may obtain and install all necessary equipment and emergency power required to effectively respond to the Declared Emergency.
- j. During COUNTY's use and possession of the Designated Areas, the COUNTY shall be responsible for the costs of any damage to the Facility caused by its use of the Designated Areas. The COUNTY shall promptly restore and repair any and all damage to the Designated Areas and upon surrender of the Designated Areas, shall return the Designated Areas to the same condition found and as documented pursuant to Section 2.02(b) prior to their use. If the COUNTY doesn't promptly begin restoration or repair after the COUNTY surrenders the Designated Areas, then the LLC shall notify the COUNTY of damage not restored; and if the COUNTY does not begin restoration within ten (10) days of such notice then the LLC may restore and repair any and all damage to the Designated Areas to the same condition found and as documented prior to the COUNTY's use and the LLC shall invoice the COUNTY for such costs to restore and repair the Designated Areas. The COUNTY shall pay such costs within thirty (30) days of receipt of invoice. The provisions of this paragraph (j) shall survive termination or expiration of this Agreement.

Section 2.03 Security Requirements at the Designated Areas.

- a. The COUNTY shall provide and pay for adequate supervision and security and shall strictly enforce all rules, regulations, and safety procedures that are required by law or regulation and that are required in general for the safe and orderly use of the Designated Areas. At all times the Designated Areas shall be under the control, supervision and security of the COUNTY, however and without assuming any liability for equipment loss or damage, the LLC agrees to continue its routine patrol of Parking Lot E and the southern parking lots during the hours when the gates are locked.

- b. The COUNTY shall be responsible for determining and implementing the appropriate staffing, security and service levels required to manage each and every activity in the Designated Areas, 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, and other criteria to assess the staffing and support requirements for activities in the Designated Areas.
- c. It shall be the responsibility of the COUNTY to coordinate with the City so that the use of the Designated Areas does not interfere with City property located adjacent to the Designated Areas. It shall be the responsibility of the COUNTY to ensure that activities in the Designated Areas are conducted in such a manner so as not to interfere with the use of adjacent properties beyond the boundaries of the Facility.
- d. The COUNTY shall take reasonable precautions to prevent nuisances originating from the Designated Areas. The COUNTY has the sole responsibility for, and shall respond to and defend any third party claims, actions, etc. concerning nuisances originating from the Designated Areas.

Section 2.04 LLC Responsibilities when COUNTY Uses Facility

- a. Upon the COUNTY providing notice of use to the LLC, the LLC shall make reasonable efforts to ensure that the Designated Areas are reasonably free of obstructions and available to COUNTY within eight hours of the COUNTY's notice.
- b. The LLC shall be responsible for cleaning the Southern Restroom Tower on a daily basis. The LLC will bill the COUNTY the actual invoiced amount but in no case more than forty dollars (\$40.00) per day for cleaning, beginning Monday, March 30, 2020 and continuing through the termination of this Agreement. The LLC shall invoice the COUNTY for such costs and the COUNTY shall pay such costs within thirty (30) days of receipt of invoice.

**ARTICLE 3
INSURANCE/LIABILITY**

Section 3.01 Insurance

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, the COUNTY acknowledges to be self-insured for liabilities under Florida's sovereign immunity statute with current monetary waiver limits of \$200,000 per person and \$300,000 per occurrence; or such limits that may change and be set forth by the legislature.

Section 3.02 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 Declared Emergency, 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 (as defined in the Use Agreement), 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.

The provisions of this Section 3.02 shall survive the termination or expiration of this Agreement.

**ARTICLE 4
LENGTH OF TERM**

This Agreement shall take effect as of March 30, 2020 and remain in effect for the entirety of the Declared Emergency.

**ARTICLE 5
MISCELLANEOUS**

Section 5.01 Successors and Assigns

The COUNTY and the LLC each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the LLC shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

Section 5.02 Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 5.03 No Third Party Beneficiaries

The Teams are intended third party beneficiaries of this Agreement. Except for the Teams, no provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or LLC.

Section 5.04 Independent Contractor

The LLC is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. In all respects the LLC's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The LLC does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

Section 5.05 Access and Audits

The LLC shall maintain adequate records to justify all charges, expenses, and costs incurred as a result of this Agreement, if any, for at least five (5) years after completion or termination of this Agreement. The COUNTY, upon reasonable notice, shall have access 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.

Section 5.06 Office of the Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Office of 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 relation to this Agreement 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 in violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 126.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 5.07 Non-Discrimination

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the LLC warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry,

marital status, familial status, sexual orientation, gender identity and expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

Section 5.08 Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Section 5.09 Notice

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

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

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5603

With copy to:

Palm Beach County Attorney's Office:
301 North Olive Ave.
West Palm Beach, Fl. 33401

City of West Palm Beach
Attn: Brent Bloomfield, Assistant Fire Chief Emergency Management
500 North Dixie Highway
West Palm Beach, FL. 33401

If sent to the LLC, notices shall be addressed to:

Matt Slatius, General Manager
FITTEAM Ballpark of the Palm Beaches
5444 Haverhill Road
West Palm Beach, Florida 33407

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

And

Alan H. Gottlieb, Manager
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: James R. Crane, Chairman

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

Either party hereto may change the address for service of Notices required or permitted hereunder upon three (3) days' prior written notice to the other party.

Section 5.10 Entirety of Contractual Agreement

The COUNTY and the LLC agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Section 5.11 Governmental Regulations

The LLC and COUNTY shall comply with all laws, ordinances and regulations of all County, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, applicable to the terms of the Agreement contemplated herein. LLC and COUNTY are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the terms of this Agreement.

Section 5.12 WAIVER OF JURY TRIAL

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LICENSE AGREEMENT.

Section 5.13 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.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

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

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

By: *Audrey Wolf*
Audrey Wolf, Director
Facilities Development & Operations

APPROVED AS TO LEGAL SUFFICIENCY:

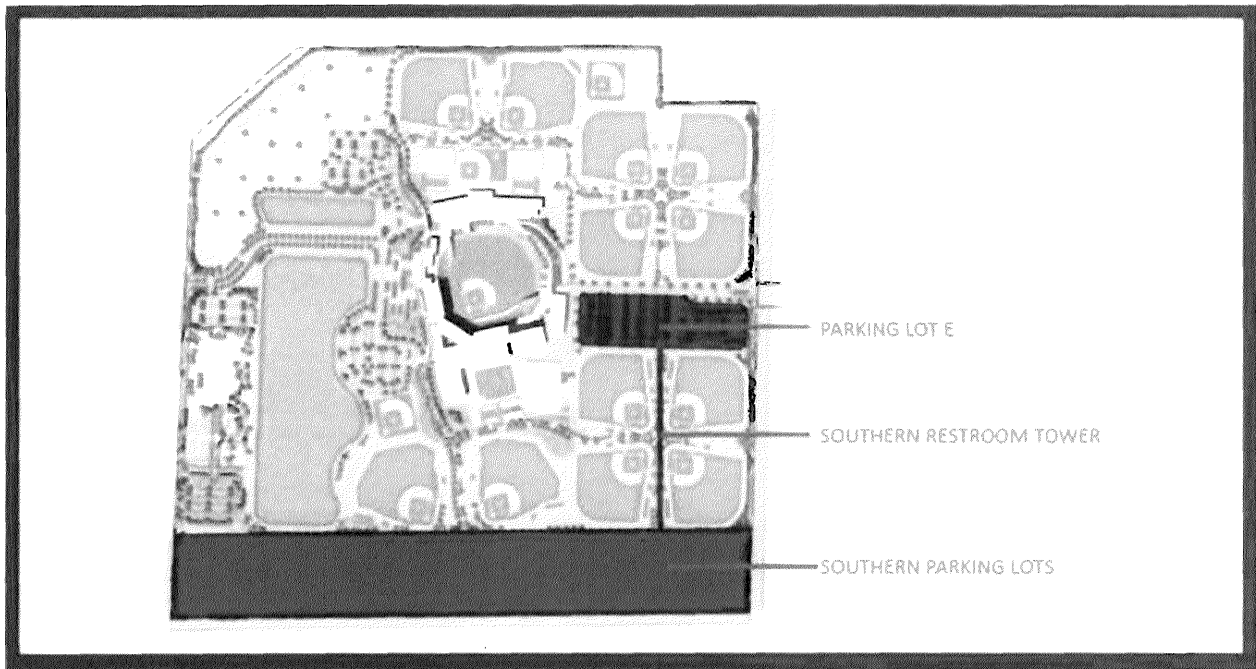
By: */s/ Michael W. Jones*
County Attorney

**LLC:
HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC")**

By: DocuSigned by:
Alan Gottlieb
B2D2715636214BB...
Alan H. Gottlieb, Manager

By: DocuSigned by:
Giles Kibbe
9B7E4262178D40F...
Giles Kibbe, Manager

EXHIBIT "A"



**FIRST AMENDMENT
TO EMERGENCY USE LICENSE AGREEMENT**

This First Amendment (the "First Amendment") dated June 24, 2021 is by and between Palm Beach County, a political subdivision of the State of Florida (the "County") and the HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC") (together, the "Parties").

RECITALS

- I. WHEREAS, the County and the LLC executed that certain Emergency Use License Agreement on or about March 30, 2020 (the "Agreement") to set forth the understanding between the parties regarding the County's use of Designated Areas of the Facility during the Declared Emergency for COVID-19;
- II. WHEREAS, under the Agreement the Designated Areas of County use were the southern parking lots, Parking Lot E, the adjacent pathway between Parking Lot E and the southern parking lots, and the southern restroom tower (collectively "Premises #1");
- III. WHEREAS, on or about June 1, 2020, the County moved its use to Parking Lot B ("Premises #2") at the request of the LLC;
- IV. WHEREAS, on February 16, 2021, the County moved its use to the eastern portion of the southern parking lots ("Premises #3") at the request of the LLC; and
- V. WHEREAS, the County and the LLC desire to amend the terms and conditions of the Agreement to document previous and current changes to the County's use of the Designated Areas of the Facility during the ongoing Declared Emergency.

Accordingly, the parties hereby agree to amend the Agreement as follows:

1. Recitals: The above recitals are true and correct and incorporated herein.
2. Governing Order; Definitions: In the event of a conflict between this First Amendment and the Agreement, the terms of this First Amendment shall control. Unless otherwise set forth herein, all capitalized terms set forth in this First Amendment shall have the same meanings ascribed to them in the Agreement.
3. Premises #1 Completed Obligations:
 - a. Upon the County's transfer to Premises #2 on or about June 1, 2020, the Parties agreed that the LLC shall not be responsible for the cleaning services and associated invoicing described in Section 2.04(b) of the Agreement for the remainder of the Term.
 - b. After the County's transfer to Premises #2 on or about June 1, 2020, the parties conducted a joint inspection of Premises #1 to determine the need for the County to restore and repair Premises #1 under Section 2.02(j) of the Agreement. The parties agreed on the work needed for repair and restoration of Premises #1 to its original condition. The LLC obtained quotes for the agreed upon work. The work was authorized by the County and performed by contractors hired by the LLC. The County and the LLC found the work to be in conformance and the County issued payment/reimbursement to the LLC. The parties acknowledge and agree that the County has met its obligations under Section 2.02(j) of the Agreement with respect to the use of Premises #1.
4. Premises #2 Completed Obligations:
 - a. Upon the County's transfer to Premises #3, effective February 16, 2021, it remains that the LLC shall not be responsible for the cleaning services and associated invoicing described in Section 2.04(b) of the Agreement.
 - b. After the County's transfer to Premises #3 on February 16, 2021, the parties conducted a joint inspection of Premises #2 to determine the need for the County to restore and repair Premises #2 under Section 2.02(j) of the Agreement. The LLC determined that no repair or restoration was needed. The parties acknowledge and agree that the County has met its obligations under Section 2.02(j) of the Agreement with respect to the use of Premises #2.

5. Premises #3 Restoration Obligations: The parties acknowledge and agree that the County's use of Premise's #3 ended on May 24th, 2021, and the parties are currently determining the need for restoration and repair of Premises #3 in accordance with Section 2.02(j) of the Agreement.
6. Applicability of Agreement: Accordingly, the obligations set forth in the Agreement shall be considered applicable as follows:
 - a. Applicable with respect to Premises #1 from the effective date of the Agreement until the date of the County's transfer to Premises #2 (on or about June 1, 2020);
 - b. Applicable with respect to Premises #2 from the date of the County's transfer to Premises #2 (on or about June 1, 2020) until February 16, 2021;
 - c. Applicable, as amended in this First Amendment, with respect to Premises #3 from February 16, 2021 through the end of the Term.
7. Amendments to Agreement: The language of the Agreement shall be amended to reflect the County's use of Premises #3 as follows:
 - a. Section 2.01 (County's Possession and Exclusive Use) shall be modified as follows:
 - i. Reference to "southern parking lots" in Subsection 2.01(a) shall be deleted and replaced with "Premises #3".
 - ii. Subsection 2.01(b) shall be deleted in its entirety and replaced with "Reserved."
 - iii. Subsection 2.01(c) shall be deleted in its entirety and replaced with "Reserved."
 - iv. Subsection 2.01(d) shall be deleted and replaced with the following language:


"The LLC's Security Officer shall open the gate to Parking Lot E, the southernmost parking lot, each morning of the COUNTY's use and the COUNTY shall post a security officer at the Parking Lot F gate to ensure only working staff access, and authorized delivery vehicles enter, the southern parking lots. At the end of each day's use, the LLC's Security Officer shall lock the gates. The Incident Commander shall notify LLC Security Officer as to the start time for the next use and when each day has been completed. The COUNTY may leave equipment/vehicles in the southern parking lots overnight."
 - b. Section 2.02 (COUNTY'S Rights and Responsibilities When in Possession of the Designated Areas) shall be modified as follows:
 - i. Reference to Section 2.01(b) in Subsection 2.02(a) shall be deleted.
 - ii. Reference to "Parking Lot E" in Subsection 2.02(h) shall be deleted and replaced with "Premises #3."
 - iii. The following shall be added as Subsection 2.02(k):

"The COUNTY is solely responsible for providing, cleaning, and maintaining portable restrooms on-site."
 - c. Section 2.03 (Security Requirements at the Designated Areas) shall be modified as follows:
 - i. Reference to "Parking Lot E" in Subsection 2.03(a) shall be deleted.
 - d. Section 2.04 (LLC Responsibilities when COUNTY Uses Facility) shall be modified as follows:


- i. Subsection 2.04(b) shall be deleted in its entirety.
- e. Exhibit A shall be deleted in its entirety and replaced with the attached revised Exhibit A.
- 8. Except as expressly modified by this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same document.

The County and the LLC have executed and delivered this First Amendment as of the date set forth above.

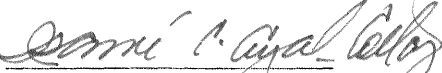
**PALM BEACH COUNTY, a political subdivision
of the State of Florida**

By: 
Verdenia Baker, County Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

By: 
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By: 
Director, Facilities Development & Operations

**LLC:
HW Spring Training Complex, LLC, a
Florida Limited Liability Company (the "LLC")**

By: Alan H. Gottlieb
Alan H. Gottlieb, Manager

DocuSigned by:
By: Giles Kibbe
Giles Kibbe, Manager

EXHIBIT A



Rev. 4/27/21

Certificate Of Completion

Envelope Id: CD724B8C23A04448A8D893AA2D72D676	Status: Completed
Subject: Please DocuSign: 2021_Amend_No._1_to_Emg._Use_Agreement_(062421)_V4_FINAL.docx.pdf	
Powerform ID:	
Source Envelope:	
Document Pages: 4	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	
Envelope Stamping: Enabled	
Time Zone: (UTC-06:00) Central Time (US & Canada)	Envelope Originator: Jessi Merlo 501 Crawford Street Houston, TX 77002 jmerlo@astros.com IP Address: 98.195.122.213

Record Tracking

Status: Original Aug 26, 2021 10:20	Holder: Jessi Merlo jmerlo@astros.com	Location: DocuSign
------------------------------------------	------------------------------------------	--------------------

Signer Events

Giles Kibbe
gkibbe@astros.com
SVP and General Counsel
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Giles Kibbe
9B7E4262178D40F...
Signature Adoption: Pre-selected Style
Using IP Address: 12.88.250.66

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Accepted: Jun 3, 2016 | 14:36
ID: e5ceef5b-bed0-41e8-a35e-bfa7b018e15d

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Signature

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Editor Delivery Events

Status

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Agent Delivery Events

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Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

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Betsy Philpott
betsy.philpott@nationals.com
Vice President & General Counsel
Washington Nationals
Security Level: Email, Account Authentication (None)

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Jackie Rowley
jrowley@ballparkpalmbeaches.com
Finance Manager
HW Spring Training Complex, LLC
Security Level: Email, Account Authentication (None)

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ID: ff466e33-e44f-44d3-985e-32a41f5c84dc

Witness Events**Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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- ii. send us an e-mail to alerts@astros.com and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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- Until or unless I notify Houston Astros, LLC as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Houston Astros, LLC during the course of my relationship with you.

**FIRST AMENDMENT
TO EMERGENCY USE LICENSE AGREEMENT**

This First Amendment (the "First Amendment") dated June 24, 2021 is by and between Palm Beach County, a political subdivision of the State of Florida (the "County") and the HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC") (together, the "Parties").

RECITALS

- I. WHEREAS, the County and the LLC executed that certain Emergency Use License Agreement on or about March 30, 2020 (the "Agreement") to set forth the understanding between the parties regarding the County's use of Designated Areas of the Facility during the Declared Emergency for COVID-19;
- II. WHEREAS, under the Agreement the Designated Areas of County use were the southern parking lots, Parking Lot E, the adjacent pathway between Parking Lot E and the southern parking lots, and the southern restroom tower (collectively "Premises #1");
- III. WHEREAS, on or about June 1, 2020, the County moved its use to Parking Lot B ("Premises #2") at the request of the LLC;
- IV. WHEREAS, on February 16, 2021, the County moved its use to the eastern portion of the southern parking lots ("Premises #3") at the request of the LLC; and
- V. WHEREAS, the County and the LLC desire to amend the terms and conditions of the Agreement to document previous and current changes to the County's use of the Designated Areas of the Facility during the ongoing Declared Emergency.

Accordingly, the parties hereby agree to amend the Agreement as follows:

1. Recitals: The above recitals are true and correct and incorporated herein.
2. Governing Order; Definitions: In the event of a conflict between this First Amendment and the Agreement, the terms of this First Amendment shall control. Unless otherwise set forth herein, all capitalized terms set forth in this First Amendment shall have the same meanings ascribed to them in the Agreement.
3. Premises #1 Completed Obligations:
 - a. Upon the County's transfer to Premises #2 on or about June 1, 2020, the Parties agreed that the LLC shall not be responsible for the cleaning services and associated invoicing described in Section 2.04(b) of the Agreement for the remainder of the Term.
 - b. After the County's transfer to Premises #2 on or about June 1, 2020, the parties conducted a joint inspection of Premises #1 to determine the need for the County to restore and repair Premises #1 under Section 2.02(j) of the Agreement. The parties agreed on the work needed for repair and restoration of Premises #1 to its original condition. The LLC obtained quotes for the agreed upon work. The work was authorized by the County and performed by contractors hired by the LLC. The County and the LLC found the work to be in conformance and the County issued payment/reimbursement to the LLC. The parties acknowledge and agree that the County has met its obligations under Section 2.02(j) of the Agreement with respect to the use of Premises #1.
4. Premises #2 Completed Obligations:
 - a. Upon the County's transfer to Premises #3, effective February 16, 2021, it remains that the LLC shall not be responsible for the cleaning services and associated invoicing described in Section 2.04(b) of the Agreement.
 - b. After the County's transfer to Premises #3 on February 16, 2021, the parties conducted a joint inspection of Premises #2 to determine the need for the County to restore and repair Premises #2 under Section 2.02(j) of the Agreement. The LLC determined that no repair or restoration was needed. The parties acknowledge and agree that the County has met its obligations under Section 2.02(j) of the Agreement with respect to the use of Premises #2.

5. **Premises #3 Restoration Obligations:** The parties acknowledge and agree that the County's use of Premise's #3 ended on May 24th, 2021, and the parties are currently determining the need for restoration and repair of Premises #3 in accordance with Section 2.02(j) of the Agreement.
6. **Applicability of Agreement:** Accordingly, the obligations set forth in the Agreement shall be considered applicable as follows:
 - a. Applicable with respect to Premises #1 from the effective date of the Agreement until the date of the County's transfer to Premises #2 (on or about June 1, 2020);
 - b. Applicable with respect to Premises #2 from the date of the County's transfer to Premises #2 (on or about June 1, 2020) until February 16, 2021;
 - c. Applicable, as amended in this First Amendment, with respect to Premises #3 from February 16, 2021 through the end of the Term.
7. **Amendments to Agreement:** The language of the Agreement shall be amended to reflect the County's use of Premises #3 as follows:
 - a. Section 2.01 (County's Possession and Exclusive Use) shall be modified as follows:
 - i. Reference to "southern parking lots" in Subsection 2.01(a) shall be deleted and replaced with "Premises #3".
 - ii. Subsection 2.01(b) shall be deleted in its entirety and replaced with "Reserved."
 - iii. Subsection 2.01(c) shall be deleted in its entirety and replaced with "Reserved."
 - iv. Subsection 2.01(d) shall be deleted and replaced with the following language:

"The LLC's Security Officer shall open the gate to Parking Lot E, the southernmost parking lot, each morning of the COUNTY's use and the COUNTY shall post a security officer at the Parking Lot F gate to ensure only working staff access, and authorized delivery vehicles enter, the southern parking lots. At the end of each day's use, the LLC's Security Officer shall lock the gates. The Incident Commander shall notify LLC Security Officer as to the start time for the next use and when each day has been completed. The COUNTY may leave equipment/vehicles in the southern parking lots overnight."
 - b. Section 2.02 (COUNTY'S Rights and Responsibilities When in Possession of the Designated Areas) shall be modified as follows:
 - i. Reference to Section 2.01(b) in Subsection 2.02(a) shall be deleted.
 - ii. Reference to "Parking Lot E" in Subsection 2.02(h) shall be deleted and replaced with "Premises #3."
 - iii. The following shall be added as Subsection 2.02(k):

"The COUNTY is solely responsible for providing, cleaning, and maintaining portable restrooms on-site."
 - c. Section 2.03 (Security Requirements at the Designated Areas) shall be modified as follows:
 - i. Reference to "Parking Lot E" in Subsection 2.03(a) shall be deleted.
 - d. Section 2.04 (LLC Responsibilities when COUNTY Uses Facility) shall be modified as follows:

i. Subsection 2.04(b) shall be deleted in its entirety.

e. Exhibit A shall be deleted in its entirety and replaced with the attached revised Exhibit A.

8. Except as expressly modified by this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same document.

The County and the LLC have executed and delivered this First Amendment as of the date set forth above.

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

By: Verdenia Baker
Verdenia Baker, County Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By: [Signature]
Director, Facilities Development & Operations

LLC:

**HW Spring Training Complex, LLC, a
Florida Limited Liability Company (the "LLC")**

By: Alan H. Gottlieb
Alan H. Gottlieb, Manager

DocuSigned by:
By: Giles Kibbe
Giles Kibbe, Manager

EXHIBIT A



Rev. 4/27/21

Certificate Of Completion

Envelope Id: CD724B8C23A04448A8D893AA2D72D676

Status: Completed

Subject: Please DocuSign: 2021_Amend_No_1_to_Emg_Use_Agreement_(062421)_V4_FINAL.docx.pdf

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Source Envelope:

Document Pages: 4

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 0

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501 Crawford Street

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Houston, TX 77002

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jmerlo@astros.com

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Signer Events

Giles Kibbe

gkibbe@astros.com

SVP and General Counsel

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Signature

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Betsy Philpott

betsy.philpott@nationals.com

Vice President & General Counsel

Washington Nationals

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Jackie Rowley

jrowley@ballparkpalmbeaches.com

Finance Manager

HW Spring Training Complex, LLC

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Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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