A decorative graphic on the right side of the page features three overlapping circles of varying sizes, each with a dark blue center and a lighter blue outer ring. Two thin, light blue diagonal lines intersect at the top left, forming a large 'V' shape that frames the circles.

**JACKIE ROBINSON
BALLPARK AMENDED AND
RESTATED LEASE BETWEEN
THE CITY OF DAYTONA
BEACH AND BIG GAME
FLORIDA, LLC.**

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JACKIE ROBINSON BALLPARK AMENDED AND RESTATED LEASE

The Parties to this Amended and Restated Lease (“Lease”) are the City of Daytona Beach, a Florida municipal corporation (“CITY”), and Big Game Florida, LLC (the “CUBS” or “LESSEE”), a Florida limited liability company and successor-in-interest to Friends of Daytona Baseball, LLC (“Friends”).

WITNESSETH:

WHEREAS, the CITY and **Friends** previously entered into a written lease, approved by City Ordinance No. 00-34 (hereinafter the “Original Lease”) of the historic structure and grounds known as Jackie Robinson Ballpark for the purpose of enhancing opportunities to fund the Jackie Robinson Ballpark’s historic renovation while providing for the continued operation of the Jackie Robinson Ballpark as a civic, recreational, and sports venue; and

WHEREAS, the CITY and **Friends** previously entered into the Amended and Restated Lease of the Jackie Robinson Ballpark approved by City Ordinance No. 02-221 (hereinafter the “First Amended Lease”), to provide **Friends** the opportunity to further explore opportunities to fund the Jackie Robinson Ballpark’s historic renovation; and

WHEREAS, the CITY and **Friends** previously entered into the Second Amended and Restated Master Lease, approved by City Ordinance No. 04-466 (hereinafter the “Second Amended Lease”) for the Jackie Robinson Ballpark, to remedy ongoing problems in Ballpark operations and renovation; and

WHEREAS, the CITY and LESSEE entered into a 2011 Master Lease approved by City Ordinance No. 11-14 for the Jackie Robinson Ballpark for a term ending December 31, 2012. The Parties now wish to enter into a long term lease based on the terms and conditions expressed herein; and

WHEREAS, LESSEE is an affiliate of the Chicago Cubs and that association is of mutual benefit to both the Cubs and the CITY, and the Chicago Cubs have made known their dissatisfaction with certain outdated inadequate facilities such as the clubhouse and administrative office areas and it is necessary for the LESSEE to expand the offices and clubhouse space at the Jackie Robinson Ballpark to retain that affiliation; and

WHEREAS, it is also evident that guest facilities including restrooms, concessions, and other outdoor amenities common to professional stadiums are lacking and in need of enhancement, and

WHEREAS, the CITY’s goals in operating the Jackie Robinson Ballpark include the generation of sufficient revenue to pay for Ballpark operations, maintenance, and repair; and

WHEREAS, the City Commission for the CITY has determined that the terms and conditions of this Lease are for a valid public purpose.



NOW THEREFORE, based upon the foregoing recitals, the mutual covenants and promises contained herein, and the other consideration set forth below, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I -- INTENT; LEASED PROPERTY; DEFINITIONS

Section 1.01. Intent.

The intent of this Lease is described in the foregoing recitals, which are incorporated herein and made a part hereof by reference.

Section 1.02. Leased Property.

(a) Leased Property. The property subject to this Lease includes the CITY owned Jackie Robinson Ballpark located at 105 Orange Ave., Daytona Beach, Florida, ("Stadium") and the CITY owned building across from the Stadium located at 110 East Orange Ave. Daytona Beach, Florida ("110 Office Building"). The Leased Property is more particularly described in Exhibit A ("Leased Property"). LESSEE agrees that it has fully inspected the Leased Property and accepts the condition of the Leased Property in "AS IS" condition with no warranties or promises express or implied being made by or on behalf of the CITY.

(b) Stadium. "Stadium" is defined as the baseball field, batting cage, dugouts, bullpen, warning tracks, and outfield and base line walls (collectively to this point, "Ballfield"), viewing deck, bleachers, locker rooms, FSL Building, and all other improvements within the Leased Property excluding the 110 East Orange Ave Office Building described in Section 1.02(a), the 110 East Orange Ave Office Building Parking described in Section 1.02(d), and the Parking Areas described in Section 3.04.

(c) Office Buildings. The Leased Property includes the office space currently subleased to the Florida State League of Professional Baseball Clubs, Inc. ("FSL") located east of the Ballfield on the Leased Property ("FSL Building"). The FSL Building and the 110 Office Building shall be collectively referred to as the "Office Buildings".

(d) 110 Office Building Parking. LESSEE will have license to use 12 parking spaces in the CITY parking lot adjacent to the 110 Office Building. The CITY will designate 12 parking spaces in that lot for Daytona Beach Cubs Staff Parking only. The remaining parking spaces in the CITY parking lot adjacent to the 110 Office Building may be designated for CITY parking as the CITY deems appropriate.

(e) Fixtures. All of LESSEE's personal property that is not permanently affixed to the Leased Property shall remain the property of LESSEE and shall be removable at any time, including upon the expiration of Lease. All personal property not removed from the Leased Property by LESSEE upon the expiration of the Lease, and all fixtures (which LESSEE is not entitled to so remove), including all installations, additions, partitions, hardware, light fixtures, and building improvements, temporary or permanent, in or upon the Leased Property, whether placed there by LESSEE or CITY, shall be the CITY's property, without compensation,

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allowance, or credit to Lessee.

ARTICLE II – TERM

Section 2.01. Lease Term.

This Lease shall be for a Term commencing on the Effective Date and ending December 31, 2022 (“Lease Term”). This Lease may be renewed upon mutual consent of the Parties. The “Effective Date” of this Lease shall be January 1, 2013, except that Section 5.01 and Section 5.06(a), relating to LESSEE’s Capital Improvements, shall become effective as of the latest date on which all Parties shall have executed this Lease.

ARTICLE III – USE

Section 3.01. LESSEE’s Permitted Uses.

(a) The Stadium shall be used by LESSEE primarily as a baseball facility for a professional baseball team, including all activities customarily associated therewith, all in compliance with applicable laws and regulations.

(b) The Office Buildings shall be used by LESSEE for office space, or as office space for the FSL, or for other baseball related business activities. The FSL Building may also be used by the LESSEE for concessions upon the expiration or termination of the FSL sublease, subject to compliance with applicable laws and regulations.

(c) LESSEE may continue to sublease or sublicense the Stadium to Bethune Cookman University (“BCU”) for BCU’s intercollegiate baseball team provided that, (i) BCU’s use shall be subject to all terms and conditions concerning LESSEE’s use hereunder, and (ii) any written agreements for BCU’s use after the Effective Date of this Lease shall be subject to review and approval by the City Manager for the CITY.

(d) LESSEE may continue to sublease the FSL Building to FSL for office space provided that, (i) FSL’s use shall be subject to all terms and conditions concerning LESSEE’s use hereunder, and (ii) any written agreements for FSL’s use after the Effective Date of this Lease shall be subject to review and approval by the City Manager for the CITY.

(e) LESSEE may use the Stadium for baseball events (other than by a professional baseball team) and non-baseball events provided such uses:

- (1) are consistent with Section 3.01(a) requiring that the Stadium be used by LESSEE primarily as a baseball facility for a professional baseball team;
- (2) do not violate any federal, state, or local laws or regulations, including CITY laws and regulations;

- (3) are not inconsistent with the Stadium's dedication as a civic, sports, and recreational facility;
- (4) are not for an immoral or improper purpose; and
- (5) are approved by the CITY prior to the event, which approval shall not be unreasonably withheld.

Section 3.02. Concessions.

LESSEE shall have the exclusive right to sell concessions for all events in the Stadium, except as provided in Section 3.02(a) below.

(a) For CITY Events, as provided in Section 3.03(b), the CITY shall receive twenty percent (20%) of LESSEE's gross concession revenue for the event. LESSEE will pay CITY's portion of concession revenue as provided herein within 30 days of the CITY Event. CITY, or CITY's agent, will have the right to sell concessions at CITY Events to the extent the CITY's concessions are not in conflict with the LESSEE's Concessions. "LESSEE's Concessions" for purposes of this Section are defined as sale of food, beverage, and merchandise items typically sold by LESSEE at LESSEE's baseball events, including without limitation beer, sodas, bottled water, peanuts, Cracker Jacks, pretzels, pizza, hotdogs, hamburgers, jerseys, and caps.

Section 3.03. CITY's Retained Right of Use.

(a) Farmers' Market. The CITY, or its agent, may continue to use without cost or expense to CITY a portion of the Leased Property lying outside the outfield fence and more particularly described on Exhibit A, for a weekly farmer's market held Saturday between 7:00 a.m. and 1:00 p.m., including the Parking Areas. Such use shall not be deemed to conflict with LESSEE's rights hereunder, subject to the following conditions:

- (1) The CITY shall be responsible for cleaning and maintenance and for risk of loss or damages arising from the use; and
- (2) The CITY shall take steps to ensure that the farmer's market does not interfere with LESSEE's use of the Stadium batting cages.

(b) CITY Events. CITY may conduct CITY Events at the Stadium subject to the requirements and limitations provided herein.

(1) LESSEE shall permit the CITY's use of the Stadium for CITY Events upon CITY's request, and payment of a CITY Event fee of \$500.00 per event, provided the use shall not interfere with LESSEE's use of the Stadium for minor league training, practices, FSL games, other professional or college baseball games, or any non-baseball events that, at the time of the CITY'S request, have been firmly scheduled by LESSEE. For purposes herein, "firmly scheduled" means that LESSEE has communicated the scheduled use to the CITY in accordance with Section 3.06 below.

(2) CITY shall be responsible for returning the Stadium to LESSEE after each CITY Event in condition ready for the LESSEE's use as soon after any such CITY Event as practicable, but in any event no later than twenty-four (24) hours prior to the start of any scheduled LESSEE event. The LESSEE shall not be entitled to any revenues for any CITY Events in the Stadium, except as expressly provided in this Lease. CITY shall provide janitorial services needed for each CITY Event, and shall clean all trash and debris associated with a CITY Event so that the Stadium is returned to the condition that it was in prior to the event. At all other times, the LESSEE shall be responsible for providing required cleaning and janitorial services.

(3) CITY shall be solely responsible for losses, damages, claims, and causes of action, legal or equitable, including attorneys' fees and costs if recoverable, filed by third parties, respecting these CITY Events, and CITY agrees to bear sole responsibility for such losses, damages, claims, including attorneys' fees and costs if recoverable, regarding the CITY's negligence associated with these CITY Events.

Section 3.04. Parking Areas.

LESSEE, or its agent, shall have the right to use public parking facilities for LESSEE's scheduled games or events in the vicinity of the Stadium as identified in Exhibit B ("Parking Areas"). LESSEE's use of the Parking Areas is subject to the limitations and requirements of the Amended and Restated Memorandum between City of Daytona Beach and The County of Volusia. LESSEE will allow all persons using the City Island Tennis Facility or City Island Park and not attending LESSEE's schedules games or events to park, without charge, in the Parking Areas, and will reserve 30 parking spaces for such use. LESSEE may use the Parking Areas, without cost or expense to LESSEE, provided, however, that the CITY retains the right to undertake maintenance, repairs, or to otherwise temporarily alter, modify, or reduce access to all or a portion of such Parking Areas as the CITY in its reasonable discretion may determine to be necessary. CITY shall in all instances endeavor to avoid the undertaking of repairs, modification, alterations, modifications, and reductions of such access during LESSEE's games or events. LESSEE may collect a reasonable parking fee from the public during the LESSEE's use of the Parking Areas as provided herein.

Section 3.05. Policing, Traffic, and Crowd Control.

LESSEE shall be responsible for policing, traffic, and crowd control within the Leased Property, Parking Areas, and outside the Stadium in relation to LESSEE's use of the Stadium. LESSEE shall be responsible for policing pedestrian crowds and lines to ensure that waiting customers do not impede vehicular traffic flow on public streets or become disorderly. CITY shall not be required to furnish police protection for LESSEE's events in excess of normal and routine patrol protection provided in business and residential sections in the CITY. In the event that large crowds or FSL requirements make additional police protection necessary, LESSEE shall pay all costs of same.



Section 3.06. Coordination with the CITY.

LESSEE shall provide CITY (i) the minor league baseball schedule, immediately upon minor league approval; (ii) the schedule of any other professional baseball teams or any college teams who are authorized to use the Stadium within 14 days after receipt of same, and in any event no less than 60 days prior to the commencement of the team's season; and (iii) notice of all other LESSEE-scheduled uses upon confirmation, and in any event no less than 90 days prior to the event. In addition, LESSEE shall meet and confer regularly at mutually agreeable times with the CITY's designee, to coordinate the scheduling of the various events proposed to be held within the Stadium, and any other events which the CITY may from time to time desire to hold within the Downtown Redevelopment Area in general, or on City Island, so as to minimize conflicts with such events; and to assist in promoting an overall recreation and sports program for all citizens of the CITY. If CITY sponsored events within the Downtown Redevelopment Area, or on City Island occur on the same day as the LESSEE's games or events, the CITY will use its best efforts to accommodate traffic flow and parking for LESSEE's games or events, and to avoid closure of public roads, or otherwise restrict vehicular traffic on public roads which provide direct access to the Stadium or Parking Areas during LESSEE's Exclusive Use Period.

Section 3.07. Complimentary Tickets.

In partial consideration of the CITY's various obligations hereunder, LESSEE agrees to provide the CITY with 30 complimentary tickets, free of charge, to each professional baseball game to be held within the Stadium. These will be provided to the Office of the City Manager at least 10 days prior to each such game.

ARTICLE IV – RENT

Section 4.01. Rent.

LESSEE shall pay Rent to the CITY, consisting of Base Rent, Percentage Rent, and Additional Rent as follows:

(a) Base Rent. Base rent is \$55,000.00 annually. During the Term of this Lease, Base Rent will be increased on an annual basis by 1.5% over the previous Lease Year Base Rent.

(1) Monthly installments for Annual Base Rent of \$4,583.33 shall be payable to the CITY in advance on the first day of each month during the Lease Term.

(b) Percentage Rent. Percentage rent is 5% of the amount by which Gross Revenue derived from the Leased Property exceeds the threshold of \$3,000,000.00 per Lease Year.

(1) Lease Year. "Lease Year" means the consecutive 12 month period beginning on the Effective Date, or the anniversary of the Effective Date.

(2) Gross Revenue. "Gross Revenue" means all revenue received by LESSEE related to business operations conducted on or from the Leased Property, including ticket sales,

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food and beverage concessions, parking fees, advertising, sale of naming rights, payments for subleases or licenses, and sale of goods and merchandise. Gross Revenues shall exclude, (i) the sale of used equipment, trade fixtures or other capital assets, (ii) interest, service, or sales carrying charges collected separately from the selling price and paid by customers to LESSEE for extension of credit, (iii) capital contributions, (iv) insurance proceeds, (v), bad checks and/or debts, *provided that*, if subsequently collected, said checks and/or debts shall be included within Gross Sales in the calendar year in which subsequently collected, (vi) returns of merchandise from customers, and (vii) the amount of any city, county, state or federal sales, luxury, excise, gross receipts taxes or other similar taxes by whatever name called on the sale of products, merchandise or services which is both (x) added to the selling price or absorbed therein and (y) paid to the taxing authority by LESSEE. Gross revenues shall not be deemed cumulative from one Lease Year to any succeeding Lease Year; rather, they shall be computed separately for each Lease Year on an accrual basis in accordance with generally accepted accounting principles. If, at any time, there is a bona fide dispute between the Parties regarding what constitutes the Gross Revenues on which Percentage Rent is to be based, the failure to pay the Percentage Rent on the amount of Gross Revenue in dispute shall not be a default hereunder provided that the undisputed Percentage Rent is timely paid and that any additional Percentage Rent due is paid upon resolution of any such dispute.

(3) Payment of Percentage Rent. On or before sixty (60) days following the end of each Lease Year, LESSEE shall deliver to the CITY a statement signed by a responsible accounting representative of LESSEE setting forth on a Lease Year basis either (i) that LESSEE's Gross Sales have failed to reach the threshold for payment of Percentage Rents, or alternatively (ii) the amount of Percentage Rent due for the preceding Lease Year. At this time, any Percentage Rent then due will be paid to the CITY.

(4) Records. LESSEE will, with respect to business done on the Leased Property, keep true and accurate accounts, records, books and dates (hereinafter called "Records"), in a form satisfactory to the CITY, and showing total Gross Revenues attributable from the Leased Property. Tenant shall record at the time of sale, all receipts from sales or other transactions using a cash register or computer system that cumulatively numbers and records all receipts, such receipts to provide for and show the computing and totaling of daily sales made and the daily gross receipts of the business done on or from the Leased Property. Tenant shall keep (i) full and accurate books of account and records, including without limitation, a sales journal, general ledger, and all bank account statements showing deposits of Gross Revenue, (ii) all cash register detail tapes or computer records with regard to all transactions, and (iii) detailed original records of all Gross Sales Adjustments.

(5) Inspection of Records: Audit. LESSEE shall keep safe and intact for at least two (2) years after the end of each Lease Year all of LESSEE's records, sales slips, and other materials LESSEE is required to maintain hereunder with respect to Gross Revenues. The CITY, its employees, agents, and representatives, upon five (5) business days advanced written notice, will have the right to inspect and examine all such records to ascertain the amount of LESSEE's Gross Revenues derived from the business conducted

on the Leased Property. Any such inspection of records will occur at LESSEE's office during normal working hours, without removal of records therefrom, and provided no interruption of business activity occurs. LESSEE agrees to allow the CITY to review, upon written request, true and complete copies of its retail sales and use tax returns at the time such is filed with the State of Florida relative to its operations at the Leased Property. The CITY may, once in any Lease Year, and once within two (2) years after the expiration of any Lease Year, cause an audit to be made, at the CITY's expense, by certified public accountant of the CITY's selection, to ascertain the amount of LESSEE's Gross Revenues derived from the business conducted on the Leased Property. Any such audit will occur at LESSEE's office without removal of records therefrom, and during normal business hours. If the inaccuracy determined for any Lease Year exceeds five percent (5%) in favor of LESSEE, then LESSEE shall pay the reasonable costs of conducting the audit in addition to any unpaid Percentage Rent.

(c) Taxes. LESSEE shall pay as Additional Rent all federal, state, and local taxes and assessments due in connection with the Lease and LESSEE's operation hereunder, including any state sales tax due on this Lease, except that CITY will pay any Ad Valorem taxes imposed pursuant to Florida Statutes, Chapter 212, or otherwise.

ARTICLE V – REPAIRS, MAINTENANCE, AND ALTERATIONS

Section 5.01. LESSEE's Build-Out Improvements for the 110 Office Building.

LESSEE shall, at its sole cost and expense, complete any build-out improvements, including interior walls, flooring, ceiling improvements, plumbing, electrical installations, light fixtures, interior painting, and HVAC, required by LESSEE to conduct its operations. LESSEE's build-out improvements for the 110 Office Building are included in the costs and expenses associated with the Capital Improvements described in Section 5.06(a). Prior to submitting permit applications, LESSEE shall provide to the CITY the plans and specifications for the build-out improvements, and shall also provide prior to construction any revised plans and specifications, for the CITY's written approval, which shall not be unreasonably withheld. LESSEE shall obtain all necessary permits for construction of the build-out improvements. All build-out improvements shall be new or first quality and (other than furniture, furnishings, office equipment and other personal property not affixed to the 110 Office Building) shall not be subject to any lien, encumbrance, chattel mortgage, title retention or security agreement. Build-out improvements shall be performed only under the supervision of a licensed architect, licensed professional engineer, or licensed general contractor reasonably satisfactory to CITY. LESSEE shall save CITY harmless from and against all expenses, liens, claims, or damages to either property or person which may or might arise by reason of the making of any such build-out improvements.

Section 5.02 CITY's Maintenance Obligations.

(a) CITY, at CITY's expense, will:

(1) make, or cause to be made, structural repairs to exterior walls, structural columns, roof, and structural floor which collectively enclose the Office Buildings and Stadium, and maintain the structures on the Leased Property in good repair including, without limitation, flooring, interior walls, ceiling, interior doors, windows, plumbing lines, electrical, heating, ventilating, and air conditioning exclusively serving the Leased Property, unless such maintenance or repair was necessitated by reason of the negligence or willful misconduct of LESSEE, its servants, agents, employees, contractors, customers, or invitees; or by reason of the failure of LESSEE to perform or observe any conditions contained in this Lease; or caused by alterations, additions or improvements made by LESSEE, and

(2) repair or replace all doors, windows and plate glass in or about the Leased Property when damaged or broken, unless such maintenance or repair was necessitated by reason of the negligence or willful misconduct of LESSEE, its servants, agents, employees, contractors, customers, or invitees; or by reason of the failure of LESSEE to perform or observe any conditions contained in this Lease; or caused by alterations, additions or improvements made by LESSEE.

(3) maintain CITY property adjacent to the Leased Property, the Parking Areas, and any common plumbing, electrical, mechanical, or other exterior building systems serving the Leased Property in first-class, clean and safe condition.

(b) CITY will not be liable to LESSEE for any damage to any merchandise, trade fixtures, leasehold improvements, personal property, or other property of LESSEE in the Leased Property caused by water leakage from water lines, sprinkler, or heating or air conditioning equipment, sewer lines, or the roof membrane, occurring within or without the Leased Property.

(c) LESSEE will immediately provide written notice to CITY of any maintenance need or requested repair. The LESSEE shall be responsible for any damages caused by unreported maintenance needs or repairs.

Section 5.03 LESSEE's Maintenance Obligations.

Except for the items to be performed by CITY under Section 5.02, LESSEE, at LESSEE's expense, will maintain the Leased Property as a first class public sports facility including:

(a) maintain the Leased Property in a first-class, clean, and safe condition and in good repair, and

(b) LESSEE shall keep the Leased Property and LESSEE's equipment and fixtures in or on the Leased Property in good repair, in clean, safe and sanitary condition, except for normal wear and tear, and shall suffer no waste or injury thereto, and

(c) maintain the Ballfield in conformance with industry practice, and otherwise in a condition that allows the Ballfield to comply with the Facility Standards set forth in the Professional Baseball Agreement between Major League Baseball and the National Association

of Professional Baseball Leagues, beginning ten days before the Baseball Team's season schedule begins and ending upon the expiration of the Baseball Team's season schedule, including playoffs, if applicable, including the following:

- (1) Annual and seasonal aeration, chemical treatment, fertilization, field testing, irrigation, and top dressing, and other periodic activities needed to maintain the useful life of Ballfield as commonly practiced;
 - (2) Preparing the Ballfield for practice and games, including by dressing, marking, and dragging the field, and by installing bases;
 - (3) Tarping the Ballfield to protect from rain;
 - (4) Removing debris from the Ballfield;
 - (5) Repairing Ballfield elements damaged by LESSEE's maintenance work or use of field for baseball activities, including seasonal replacement of sod in and around home plate, re-sodding divots and other areas of damaged grass, and periodic replacing or rebuilding of the pitcher's mound, warning track, and other clay areas of the Ballfield.
 - (6) Repair and maintenance of irrigation systems on the Leased Property, provided however, that CITY will reimburse LESSEE, upon written request after the end of the Lease Year for any reasonably necessary costs for repair and maintenance of the irrigation systems in excess of \$300.00 per Lease Year, to the extent that CITY's total reimbursement costs under this Section does not exceed the amount of Rents paid for the previous Lease Year, except that CITY will not provide reimbursement where such costs were due to LESSEE's failure to use proper care.
- (d) CITY will provide LESSEE with maintenance equipment as identified in Exhibit C ("Ballfield Maintenance Equipment"), for LESSEE's use in Ballfield maintenance. LESSEE is responsible for repair and maintenance of all Ballfield Maintenance Equipment subject to the following conditions:
- (1) LESSEE will keep the Ballfield Maintenance Equipment in good condition and repair, subject to normal wear and tear. CITY will reimburse LESSEE upon written request after the end of the Lease Year for any reasonably necessary repair and maintenance costs for the Ballfield Maintenance Equipment in excess of \$3,000.00 per Lease Year to the extent that CITY's total reimbursement costs under this Section does not exceed the amount of Rents paid for the previous Lease Year, except that CITY will not provide reimbursement where such costs were due to LESSEE's failure to use proper care.
 - (2) LESSEE is responsible for obtaining and servicing any hand-held equipment and tools, such as rakes, tampers, hand shovels, and weed whackers, necessary for Ballfield maintenance, not provided in Exhibit C. CITY will reimburse LESSEE upon written request after the end of the Lease Year for any reasonably necessary costs for obtaining

or servicing hand-held equipment and tools in excess of \$2,000.00 per Lease Year to the extent that CITY's total reimbursement costs under this Section does not exceed the amount of Rents paid for the previous Lease Year, except that CITY will not provide reimbursement where such costs were due to LESSEE's failure to use proper care.

(3) As referenced in Exhibit C, some of Ballfield Maintenance Equipment shall be for LESSEE's exclusive use, and others shall be for LESSEE's and the CITY's joint use. The CITY may store the joint use equipment offsite, or may allow such equipment to be stored on the Leased Property. If stored on the Leased Property, the CITY may from time to time remove the joint use equipment from the Leased Property as the CITY deems fit for uses that do not conflict with LESSEE's Ballfield maintenance; and to this end, LESSEE shall ensure that such equipment is stored in a location within the Leased Property to which the CITY has unfettered access. The Parties agree to cooperate with each other in good faith as to the scheduling of joint use for Ballfield Maintenance Equipment.

Section 5.04 Waste; Cleaning, Repair and Maintenance Due to Negligence.

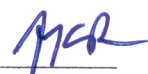
In their respective uses of the Leased Property, neither the CITY nor LESSEE shall suffer or permit waste to be committed on the Leased Property. Notwithstanding the foregoing, neither Party shall be obligated to clean, maintain, or repair where the need to clean, maintain, or repair was caused by the other Party's negligent failure to meet its obligations hereunder.

Section 5.05. Use of Third-Party Contractors.

Nothing herein shall prohibit either Party from utilizing the services of third parties to fulfill their respective cleaning, maintenance, and repair obligations.

Section 5.06. Alteration, Razing and Removal of Improvements.

(a) LESSEE's Capital Improvements – CITY's Contribution. LESSEE will construct various capital improvements to the Leased Property in substantial conformance with the construction narrative attached hereto as Exhibit D ("Capital Improvements"). All construction plans for the Capital Improvements, and any change orders or amendments thereto, shall be approved in writing by the City Manager prior to submitting any required permit applications. LESSEE, with the full cooperation and assistance of the CITY, shall obtain all necessary permits for construction of the Capital Improvements. LESSEE has estimated the cost for construction of the Capital Improvements to be \$1,250,000. CITY will pay 52% of LESSEE's total actual documented costs to construct the Capital Improvements by providing a reimbursement to LESSEE of up to \$650,000.00 of the LESSEE's actual documented cost for construction of the Capital Improvements. At various times during construction, LESSEE will provide to CITY a written request for reimbursement of 52% of construction costs, up to \$650,000.00, indicating the total labor, material, and soft costs related to construction of the Capital Improvements, certified by LESSEE's contractor or construction manager, together with documented proof of LESSEE's payment of such costs. The required request for reimbursement, certification, and proof of payment shall be provided in a form acceptable to the CITY. CITY shall pay all monies



due LESSEE under this provision within thirty (30) days of receipt of the documentation described above.

(b) Except as approved for construction of the Capital Improvements, LESSEE will not make any material alterations, renovations, improvements, or other installations in, or to, any part of the Leased Property unless and until LESSEE shall have obtained the CITY's written consent thereof.

Section 5.07. Consistency with Grant Awards.

All cleaning, maintenance, alterations, and repairs done by LESSEE shall be consistent with any restrictive covenants contained in any Federal, State, or Local Grant Award Agreements made for the Leased Property, including ECHO grants, and the grant from the State of Florida Department of State, Bureau of Historic Preservation, recorded with the Clerk of the Circuit Court of Volusia County, Florida, on February 23, 2000), incorporated by reference herein.

ARTICLE VI -- UTILITIES

Section 6.01. Utilities.

(a) LESSEE will pay all costs related to provision of utilities to the Leased Property, not to include Parking Areas. CITY shall receive all utility bills in the CITY's name for the Leased Property and forward any utility bills on the Leased Property to LESSEE within twenty five (25) days of receipt. As to any utilities for which CITY is the provider, the CITY shall not charge LESSEE anymore than the same wholesale rate as other similar commercial enterprises.

(b) LESSEE will be entitled to a reimbursement from the CITY of up to \$50,000 for LESSEE's utility costs incurred from the Effective Date to the end of the first Lease Year. Within 60 days of the end of the first Lease Year, LESSEE will submit to CITY a written request for the utilities reimbursement with documented proof of LESSEE's payment of such costs in a form acceptable to the CITY. CITY shall pay all monies due LESSEE under this provision within thirty (30) days of receipt of the documentation described above.

(c) CITY shall have no liability to LESSEE for any loss, damage, expense, or inconvenience which LESSEE may sustain or incur by reason of any failure, interruption, curtailment, cessation, inadequacy, or defect in the character, quantity, or supply of the utilities furnished to the Leased Property.

(d) CITY will use its best efforts to make available to LESSEE reclaimed water for use in its irrigation of the Ballfield.

ARTICLE VII -- WAIVER OF LIENS AND ENCUMBRANCES

Section 7.01. No Encumbrances.

Neither the CITY nor the LESSEE shall, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Property. Whenever and as often as any mechanic's or other lien is filed against the Leased Property, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work done by or on behalf of LESSEE within or about the Leased Property, the LESSEE shall discharge the same of record within sixty (60) days after the date of filing.

Section 7.02. LESSEE's Right to Contest Liens.

The LESSEE shall have the right to contest any lien provided that the LESSEE (i) within said sixty (60) day period stated above notifies the CITY in writing of the LESSEE's intention to do so, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Leased Property or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim, and (v) thereafter promptly procures record release or satisfaction thereof. The CITY may permit the lien so contested by the LESSEE to remain unpaid during the period of such contest and any appeal therefrom unless the CITY shall notify the LESSEE that, in the opinion of counsel, by nonpayment of any such items, the interest of the CITY in the Leased Property will be materially endangered or any part thereof will be subject to loss or forfeiture, in which event the LESSEE shall promptly discharge such lien.

ARTICLE VIII -- INSURANCE

Section 8.01. Comprehensive General Liability Insurance.

The LESSEE shall obtain and maintain throughout the term of this Lease, comprehensive general liability insurance including coverage for premises operations, independent contractors, products/completed operations, and personal injury and advertising injury on an occurrence basis insuring the LESSEE. The insurance policy shall name the CITY as an additional insured. The limits of liability shall be no less than \$1,000,000 for premises operations, \$1,000,000 per occurrence and not less than \$2,000,000 for general aggregate.

Section 8.02. Workers' Compensation Insurance.

The LESSEE shall obtain and maintain throughout the term of this Lease, worker's compensation insurance which complies fully with the Florida Workers' Compensation law and which includes Employers' liability insurance of a limit of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease-each employee. This insurance shall include occupational disease provisions. The foregoing Workers' Compensation Insurance may be provided through a self-insurance program approved by the Florida Department of Insurance.

Section 8.03. Automobile Liability Insurance.

The LESSEE shall obtain and maintain throughout the term of this Lease, automobile liability insurance which shall insure claims against damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the LESSEE on or in connection with the Leased Property. Limits of insurance shall be no less than \$1,000,000 combined single limit. The insurance policy shall name the CITY as additional insured.

Section 8.04. Liquor Liability Coverage.

The LESSEE shall obtain and maintain, in the event beer or any other alcoholic beverage is going to be sold at the Leased Property during any professional baseball game or at any other event, liquor liability insurance coverage with not less than One Million Dollars (\$1,000,000.00) of liability coverage.

Section 8.05. Property Insurance.

The CITY shall obtain and maintain property insurance for all buildings and structures on the Leased Property including, without limitation, improvements made while this Lease is in effect, insuring against loss covered by all risk insurance or special causes in an amount sufficient to replace all buildings and structures on the Leased Property to at least as good condition as existed prior to such loss. The CITY may satisfy its obligations hereunder through self-insurance.

Section 8.06. Certificates of Insurance.

LESSEE shall furnish evidence of all required insurance, for which LESSEE is responsible to obtain and maintain, in the form of Certificates of Insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates; and which shall contain the following language as to cancellation:

“In the event of cancellation of this policy/policies by the insurer or by any insured hereunder, this company shall give not less than thirty (30) days’ advance written notice to:

Risk Manager
City of Daytona Beach
PO Box 2451
Daytona Beach, Florida 32115”

As soon as is possible after the commencement of this Lease, the LESSEE shall provide the Risk Manager of the CITY a complete set of such Certificates and shall also supply replacement Certificates promptly upon their issuance. In the event such insurance shall lapse, the CITY expressly reserves the right to renew the insurance at the LESSEE’s expense; and this expense shall be deemed to be Additional Rent as that term is used in this Lease. If requested by the

CITY, the LESSEE will furnish copies of the insurance contracts to support the certificate of insurance and the copies of said insurance must be acceptable to the CITY.

All insurance policies carried or caused to be carried by the LESSEE shall be issued in the name of the LESSEE (and any subtenant(s) it designates) and the CITY as their respective interests may appear and shall contain a provision that such insurance may not be cancelled by the insurance company without at least thirty (30) days written notice to the CITY and the LESSEE. The LESSEE and the CITY shall each cooperate with the other in making all adjustments of loss and in executing all proofs of loss, in the LESSEE's name and the CITY's name.

Section 8.07. Successors and Assignees.

The obligations imposed by this Article shall be binding on any successors or assignees of the CITY or LESSEE, and may be satisfied by any sub-lessee providing such insurance only upon the prior written reasonable approval of the CITY's Risk Manager.

Section 8.08. Sublessees and Concessionaires.

LESSEE shall require all sublessees and all concessionaires to provide, to the extent commercially practicable, liability insurance of the types and in the amounts that LESSEE is required to provide under this Lease, other than independent contractor's insurance. The CITY's Risk Manager may, in writing, agree to waive or reduce the insurance requirements for a particular sublessee or concessionaire upon LESSEE's written request.

ARTICLE IX -- INSPECTION AND SURRENDER OF LEASED PROPERTY

Section 9.01. Inspection by CITY.

The LESSEE, its agents, employees, or its sublessees, shall at all times while this Lease is in effect permit the CITY, its agents or employees, to enter the Leased Property at all reasonable times and view the conditions thereof; provided, however, that except in valid emergencies, the CITY, or its agents or employees, shall first provide LESSEE with reasonable advance written notice before inspecting the office area of LESSEE within the Leased Property.

Section 9.02. Surrender of Leased Property.

LESSEE will at the termination of this Lease, without demand, quietly and peaceably deliver up the possession of the said Leased Property and personal property to the CITY in as good condition as received at the commencement of the period, damage or destruction by fire, act of God, or condemnation, with reasonable wear, tear, and obsolescence excepted.

Section 9.03. Quiet Enjoyment, Possession and Use.

The CITY covenants that so long as the LESSEE shall not be in material default under this Lease, the LESSEE shall, from and after commencement of the Lease, and may peaceably and

quietly have, hold and enjoy the Leased Property, and that the CITY will defend the LESSEE's enjoyment and possession thereof against all parties.

ARTICLE X -- CASUALTY

Section 10.01. Rebuilding.

In the event of damage or destruction to any structure(s) and/or improvement(s) in the Leased Property during the term hereof, notwithstanding the cause or causes thereof, the CITY shall forthwith repair, restore, or reconstruct the same to at least as good condition as existed prior to the destruction or damage, provided however, that CITY shall only be responsible for repair, restoration, or reconstruction of the structure(s) and/or improvement(s) on the Leased Property if property insurance proceeds at the time of the Casualty are sufficient to complete all such repair, restoration, or reconstruction (such determination to be made solely by the CITY).

Section 10.02. Delay in Rebuilding or Repairing.

Should the CITY determine not to repair, restore, or reconstruct structure(s) and/or improvement(s) in the Leased Property as provided in Section 10.01, then this Lease may be terminated by written notice from either Party. Should the CITY determine to conduct repair, restoration, or reconstruction as provided in Section 10.01, and such work cannot be completed within four (4) months from the date of destruction or damage, barring and excepting unavoidable delay, then LESSEE may terminate this Lease upon written notice to CITY. In addition, if the CITY is unable to complete repair, restoration, or reconstruction of the structure(s) and/or improvement(s) in the Leased Property at least three (3) months before the beginning of the FSL Season, then LESSEE may terminate this Lease upon written notice to CITY.

Section 10.03. Rent Abatement.

If, as a result of the damage or destruction to any structure(s) and/or improvement(s) in the Leased Property, the Leased Property shall be rendered wholly or partially untenantable, and the Lease is not terminated as provided herein, then all Rents shall be abated proportionately as to the portion of the Leased Property rendered untenantable during the period of such untenantability; provided however, that the treshhold for payment of Percentage Rent shall be proportionately reduced by an amount equal to the amount obtained by multiplying the treshhold by a fraction, the numerator of which shall be the number of days the Stadium is closed and the denominator of which shall be 365 days; and provided further that Rents shall not be abated if the damage or destruction is caused by LESSEE's negligence or willful misconduct. CITY shall not be liable for interruption to LESSEE's business or for damage to or replacement or repair of LESSEE's personal property or to any leasehold improvements installed in the Leased Property, all of which damage, replacement, or repair shall be promptly undertaken and completed by LESSEE.

Section 10.04. Insurance Proceeds.

All insurance proceeds payable with respect to damages to the Leased Property (excluding proceeds for LESSEE's personal property) shall belong to and shall be payable to the CITY.

ARTICLE XI -- DEFAULT; NON-FORECLOSURE

Section 11.01. Events of Default.

Each of the following shall be "Events of Default" under this Lease:

- (a) The LESSEE fails to pay Rent when due under this Lease.
- (b) The LESSEE substantially fails to keep or perform any other material covenant or obligation herein contained on the LESSEE's part to be kept or performed, and the LESSEE fails to remedy the same within forty-five (45) days after the CITY has given the LESSEE written notice specifying such default (or within such additional period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within said 45-day period).
- (c) The LESSEE shall file a voluntary petition under any federal or state bankruptcy law, or an involuntary petition under any such law, is filed against the LESSEE, and the LESSEE, after full hearing, is adjudged to be bankrupt, insolvent, or unable to pay its debts as they mature; or the LESSEE makes an assignment for the benefit of its creditors; or a trustee or receiver, after full hearing, is appointed or retained to take charge of and manage a substantial part of the assets of the LESSEE; or any execution or attachment shall issue against the LESSEE whereupon the Ballpark, or any part thereof, or any interest therein of the LESSEE under this Lease shall be taken or attempted to be taken and the same is not released prior to the judicial sale thereunder (each of the events described in this Subparagraph being deemed a default under the provisions of this Lease).
- (d) The LESSEE abandons the Leased Property.
- (e) The LESSEE assigns or attempts to assign its rights and obligations under this Lease, without the CITY's written approval.
- (f) The player development contract between LESSEE and the Chicago Cubs or other Major League Baseball affiliated team, terminates and is not renewed.
- (g) The CITY substantially fails to keep or perform any other material covenant or obligation herein contained on the CITY's part to be kept or performed and the CITY fails to remedy the same within forty-five (45) days after the LESSEE has given the CITY written notice specifying such default (or within such additional period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within said 45-day period).

Section 11.02. General Remedies.

The CITY explicitly reserves any and all remedies that it may have as landlord under Florida law in the event of default by LESSEE. The LESSEE explicitly reserves any and all remedies that it may have as a tenant under Florida law in the event of a default by the CITY, including without limitation, the LESSEE's right, at its election, to terminate this Lease.

Section 11.03. Non-Exclusivity; Non-Waiver.

No remedy set forth in this Article is intended to be exclusive of any other remedy unless specifically provided in this Article and, unless specifically provided in this Article, every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity, or by statute. No delay or failure to exercise any right or power accruing upon either LESSEE's or CITY's default shall impair any such right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the CITY to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease.

ARTICLE XII -- TAKING AND DAMAGE

Section 12.01. Total Taking.

If the whole of the Leased Property is taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof by a public body invested with the power of eminent domain (such events, or any of them, to be hereinafter referred to as a "Taking"), or if the part of the Leased Property taken is so great that in the judgment of the LESSEE, acting in good faith, it will no longer be economically feasible to continue to conduct such business or other activity as was being conducted on the Leased Property at the time of the Taking (or contemplated to be conducted thereon after completion of construction being conducted thereon), then this Lease shall, at the option of the LESSEE, terminate effective upon the effective date of such Taking and the Rent shall be abated as of that date. The LESSEE's aforesaid option to cancel this Lease shall be exercised by notice to that effect given by the LESSEE to the CITY within thirty (30) days after the date the LESSEE surrenders possession of the Leased Property so taken.

Section 12.02. Partial Taking.

In the event of a Partial Taking of the Leased Property and this Lease is not terminated, then this Lease shall continue in full force, and there shall be no abatement or diminution in Rent payable hereunder.

Section 12.03. Temporary Taking.

If by reason of a Taking the LESSEE shall be temporarily deprived in whole or in part of the use of any portion of the Leased Property, the entire award made as compensation therefor shall

belong to the LESSEE, and there shall be no abatement or diminution of Rental Payments payable hereunder.

Section 12.04. Award.

Irrespective of whether this Lease shall be terminated after a Taking as aforesaid, or whether such Taking shall be in whole or in part, then as between the Parties hereto any and all awards paid or money received on account of the Taking or damage to the CITY's fee interest and to the LESSEE's leasehold estate, including without limitation, severance or other damage to the portion not taken, shall be apportioned between the CITY and the LESSEE as follows: the awards made for, or the portion of the award equitably attributable to, the Taking of any improvements shall belong to the LESSEE but subject to the rights of the CITY, and any award or so much of any award as is granted as compensation for the Taking of the Leased Property shall be divided between the CITY and the LESSEE in accordance with the value of their respective interests therein. In any such proceeding whereby all or part of the Leased Property is taken, whether or not the LESSEE elects to terminate this Lease, each party shall have the right to make claim against the condemning authority for the amount of the actual provable damage done to each of them by such proceeding as set forth in the preceding sentence. If the condemning authority shall refuse to permit separate claims to be made, then and in that event the CITY shall prosecute with counsel reasonably satisfactory to the LESSEE the claims of both the CITY and the LESSEE, and the proceeds of the award, after deducting all reasonable legal fees and other expenses incurred in connection with prosecuting such claims, shall be apportioned between the CITY and the LESSEE as hereinabove provided.

ARTICLE XIII – NOTICE

Section 13.01. Notice.

Notice under the terms of this Lease shall be deemed sufficiently given or served only if in writing and if and when delivered or tendered either in person or by depositing it in the United States Mail in a sealed envelope, registered or certified, with postage prepaid, addressed to the following party or person to be served. Notices shall be mailed as follows:

To the LESSEE: Big Game Florida, LLC
40 East Washington Street, Suite 1
Chagrin Falls, OH 44022
Attention: Thomas O. Callaghan, Counsel

To the CITY: City Manager
The City of Daytona Beach
P.O. Box 2451
Daytona Beach, Florida 32113

or to any such other address or representative, or both, as the party or person addressed above shall have previously designated by notice to the serving party given in accordance with this Section.

The City of Daytona Beach: HA

Big Game Florida, LLC: AKR

ARTICLE XIV -- ADVERTISING

Section 14.01. Advertising; Advertising Revenues.

Subject to the requirements and limitations contained herein, LESSEE may place advertising in, on, or about, the Stadium, including upon the outfield fences.

Section 14.02. Restrictions on Advertising.

All advertising shall fully comply with applicable CITY ordinances. No products may be advertised that are not suitable for family viewing. The CITY shall be provided with all proposed advertising material before placement upon the Stadium and CITY shall have the option of rejecting any advertising copy or advertiser that in the CITY's view is not suitable for a first-class, family-oriented ballpark venue, but the CITY agrees not to unreasonably withhold or delay its consent.

Section 14.03. Naming Rights.

The LESSEE may obtain a Stadium Naming Rights sponsor for the Stadium during the Lease Term. LESSEE will have no more than 5 externally facing Stadium Naming Rights signs. LESSEE's Stadium Naming Rights signs will be of a size, and at locations within the Leased Property as depicted in Exhibit E. The Stadium Naming Rights signs are required to legibly include "Jackie Robinson Ballpark" as part of the Stadium name, as for example, "[Sponsor] Field at Jackie Robinson Ballpark." The CITY shall be provided the name of any proposed Stadium Naming Rights sponsor and the CITY shall have the option of rejecting a Naming Rights Sponsor that in the CITY's view is not suitable for a first-class, family-oriented ballpark venue, but the CITY agrees not to unreasonably withhold or delay its consent.

Section 14.04. Signs, Decorations and Fixtures.

The LESSEE shall, with the prior approval of the CITY, which shall not be unreasonably withheld, have the right at its expense to place such exterior signs, decorations, and other fixtures on the Stadium as it deems necessary and proper in the conduct of its business so long as such signs, decorations, and fixtures comply with applicable CITY ordinances and regulations.

Section 14.05. Sale and Marketing of CITY Bottled Water.

LESSEE hereby agrees to sell and market the CITY's bottled water at all of the Cubs' home games, subject to provision of such water to LESSEE at the CITY's wholesale rate, except to the extent of conflict with LESSEE's existing vendor agreements.

ARTICLE XV -- HOLDING OVER

Section 15.01. Holding Over.

If LESSEE holds over after this Lease has terminated, the CITY will be entitled to twice the Base Rent for each calendar month or part of any calendar month included within the holdover period.

Section 15.02. Effect on Other Obligations.

The various obligations of LESSEE under this Lease, such as with respect to taxes, utilities, and insurance will apply during the holdover period regardless of termination of this Lease.

ARTICLE XVI – INDEMNIFICATION

Section 16.01. Indemnification.

(a) For and in consideration of \$10.00, receipt of which is hereby acknowledged, LESSEE, to the extent permitted by law, shall indemnify and hold harmless the CITY and its agents, officers, and employees from and against all claims, damages, losses and expenses, including without limitation, attorneys' fees, costs and expense, arising out of or resulting from LESSEE'S performance of this Lease, so long as the claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the LESSEE, or any subcontractor or anyone directly or indirectly employed by LESSEE or anyone for whose acts LESSEE may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder; except LESSEE shall not have to indemnify and hold harmless the CITY if such claim, damage, loss and expense is the result of the sole negligence of the CITY or of anyone directly or indirectly employed by the CITY or anyone for whose acts the CITY may be liable.

(b) For and in consideration of \$10.00, receipt of which is hereby acknowledged, and subject to state law, the CITY, to the extent permitted by law, shall indemnify and hold harmless LESSEE and its agents, officers, and employees from and against all claims, damages, losses and expenses, including without limitation, attorneys' fees, costs and expenses, arising out of or resulting from the CITY's performance of this Lease, so long as the claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the CITY, or any subcontractor or anyone directly or indirectly employed by the CITY or anyone for whose acts the CITY may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder; except the CITY shall not have to indemnify and hold harmless LESSEE if such claim, damage, loss and expense is the result of the sole negligence of LESSEE or of anyone directly or indirectly employed by LESSEE or anyone for whose acts LESSEE may be liable.

Section 16.02. Insurance Limitation.

The LESSEE's obligations to provide insurance under this Lease shall not be deemed a limitation on the LESSEE's agreement to save and hold harmless the CITY, and in the event the CITY

should become liable in an amount in excess of the limits of liability provided by the insurance, then the LESSEE shall save the CITY harmless from the whole thereof. The CITY agrees that the indemnification provisions of this Section shall not exceed the City's limits of liability for tort claims pursuant to F.S. § 768.28, and shall not extend to any loss or damage respecting LESSEE's concession operations at CITY Events.

ARTICLE XVII – MISCELLANEOUS

Section 17.01. Entire Agreement.

This Lease contains the entire agreement between the Parties and the terms of this Lease shall govern in the event of any conflict with any other agreement, ordinance, or document. Each party has relied on its own examination of this Lease and inspection of the subject matter of the Lease and on the advice of its own counsel and agents.

Section 17.02. Governing Law.

This Lease shall be construed in accordance with and governed by the laws of the State of Florida.

Section 17.03. Forum for Dispute Resolution.

It is the express intention of the parties that all legal actions and proceedings related to this Lease or to the Leased Property or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated and maintained in the state courts of the State of Florida. Should any part of this Lease be litigated, venue shall be proper only in the Circuit Court of Volusia County, Florida, and the LESSEE and CITY waive all rights inconsistent therewith.

Section 17.04. Mediation of Disputes.

Each Party agrees to submit to non-binding, pre-suit mediation any and all disputes arising under this agreement prior to commencing litigation regarding such disputes, and each party agrees to participate in good faith in any mediation proceeding initiated by any other Party. Mediation may be initiated at any time by a Party (the "Noticing Party") by giving written notice to mediate to the other Party (the "Noticed Party"), which notice shall state the Noticing Party's election to invoke mediation, a description of the matter or matters to be mediated, and the names of not less than five proposed mediators. The Noticed Party shall, within fifteen (15) days after receipt of the notice to mediate, select a mediator from the list of mediators set forth in the notice to mediate and notify the Noticing Party of his selection. Thereafter, the Noticing Party or his attorney shall coordinate the scheduling of the mediation conference with the Noticed Party and his attorney. Either party will have the right, without regard to the provisions of this Section and without regard to whether the mediation has been concluded, to commence litigation concerning any issues being mediated if a binding agreement resolving such issues is not reached within ninety (90) days after the date of the notice to mediate, unless the inability to resolve the issues within such period of time has resulted from a failure on the part of the Party commencing

litigation to comply with the provisions of this Section or to exercise good faith, in which case the litigation shall be subject to dismissal upon proof to the court of such grounds. The mediation otherwise shall be governed by and carried out and concluded in accordance with those provisions of the Florida Rules of Civil Procedure relating to mediation which are then in effect.

Section 17.05. Waiver of Trial by Jury.

THE LESSEE AND THE CITY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS LEASE, ANY SUPPLEMENT, ANY OTHER FINANCING DOCUMENT, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LEASE AND THE LESSOR/LESSEE RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS LEASE, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THE CITY AND THE LESSEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A LESSOR/LESSEE RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS LEASE AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR FUTURE DEALINGS. THE CITY AND THE LESSEE FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THEIR WAIVER WITH THEIR LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THE FINANCING DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LEASE OR DEVELOPMENT OF THE BALLPARK. IN THE EVENT OF LITIGATION, THIS LEASE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 17.06. Recording.

LESSEE may record this Lease in the Public Records of Volusia County, Florida, at LESSEE's sole expense.

Section 17.07. CITY Shall Not Unreasonably Withhold Consents and Approvals.

Wherever in this Lease it is provided that the CITY shall, may, or must give its approval or consent, or execute supplemental agreements, exhibits, or schedules, the CITY shall not unreasonably, arbitrarily, or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits, or schedules. The CITY'S rejection of a proposed assignment will not be deemed unreasonable if, in the CITY'S reasonable judgment, the proposed assignee lacks the capacity to meet the obligations of LESSEE

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hereunder, or requires amendments to be made to this Lease, or requires the CITY to waive any of its rights accruing under this Lease.

Section 17.08. Assignment.

This Lease may not be assigned by the LESSEE without the CITY's written consent. The CITY's consent to an assignment of LESSEE's rights and obligations under this Lease shall be conditioned upon the proposed assignee's meeting all financial requirements and requisite character qualifications necessary for approval by the FSL, National Association of Professional Baseball Leagues (Minor League Baseball), and the office of the Commissioner of Major League Baseball. For purposes herein, an assignment shall be deemed to include any transfer or attempted transfer of a controlling interest in LESSEE.

Section 17.09. No Third Party Beneficiary.

It is specifically agreed between the Parties executing this Lease that it is not intended by any of the provisions of any part of this Lease to establish in favor of the public or any member thereof, other than as expressly provided herein or as contemplated in this Lease, the rights of a third-party beneficiary hereunder, or to authorize anyone not a party to this Lease to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Lease. The duties, obligations, and responsibilities of the parties to this Lease with respect to third parties shall remain as imposed by law.

Section 17.10. Time is of the Essence.

Time is of the essence with respect to this Lease and each of its provisions.

Section 17.11. Successors and Assigns.

Except where expressly provided in this Lease, all of the provisions of this Lease shall bind and inure to the benefit of the parties and to their heirs, successors, representatives, executors, administrators, transferees, and assigns.

Section 17.12. Recitals.

The paragraphs outlined in the Recitals above are true and correct and made an integral part of this Lease.

Section 17.13. Counterparts and Facsimile Signatures.

This Lease may be executed in any number of counterparts, each of which shall be considered an original, and such counterparts shall together constitute one and the same instrument. Any signed copy transmitted by telephone facsimile machine or telecopier shall be treated in all respects as an original document. The signature of any party thereon shall be considered for these purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of

any Party, any facsimile or telecopy document shall be re-executed by all Parties in original form. No Party to this Lease may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Lease.

Section 17.14. Separable Provisions.

Each provision of this Lease shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Lease is determined to be invalid or contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Lease which are valid.

Section 17.15. Drafting and Interpretation.

The Parties and their counsel have cooperated in the preparation and drafting of this Lease and therefore in interpreting this Lease, the principle of construing language against the drafting party shall not apply.

Section 17.16. Replacement of Prior Lease; Prior Agreements Voided.

This Lease supersedes and replaces in the entirety the Original Lease, the First Amended Lease, and the Second Amended Lease. All other agreements or understandings made by and between the CITY and LESSEE prior to this Agreement are null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year written below.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK/
SIGNATURE PAGES FOLLOW]*

WITNESSES:

BIG GAME FLORIDA, LLC, a Florida limited liability company

Witness: [Signature]
Print Name: James L. Smith

By: [Signature]
Print Name: Andrew K. Rayburn
Title: Managing Member
Date: 9/11/12

Witness: [Signature]
Print Name: Chas Barz

STATE OF OHIO
COUNTY OF Cuyahoga

The foregoing instrument was acknowledged before me this 11th day of September, 2012, by Andrew K. Rayburn, as Managing Member of Big Game Florida, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.

[Signature] - LISA LEONARDI
Notary Public - STATE OF OHIO
my commission expires 11/8/2015

WITNESSES:

THE CITY OF DAYTONA BEACH, a Florida municipal corporation

Witness: Shirley G. Stickney
Print Name: Shirley G. Stickney

By: Derrick L. Henry
Derrick L. Henry, Mayor

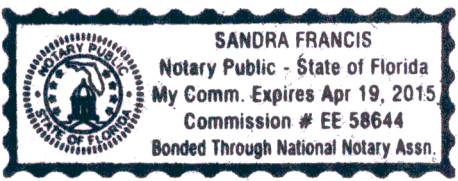
Witness: [Signature]
Print Name: [Signature]

Attest: Jennifer L. Thomas
Jennifer L. Thomas, City Clerk

Date: 12/10/12

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10th day of Dec., 2012, by Derrick L. Henry, as Mayor of the City of Daytona Beach, a municipal corporation, on behalf of the corporation. He is personally known to me.



Sandra Francis
Notary Public

Approved as to legal form:

By: [Signature]
Marie Hartman, City Attorney

EXHIBIT "A"
JACKIE ROBINSON BALLPARK LEASE



**THE CITY OF DAYTONA BEACH
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

950 BELLEVUE AVENUE • DAYTONA BEACH • FLORIDA • 32114
PHONE: (386) 671-8610 FAX: (386) 671-8620

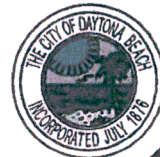


EXHIBIT "B"
JACKIE ROBINSON PAVED PARKING



THE CITY OF DAYTONA BEACH
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

950 BELLEVUE AVENUE • DAYTONA BEACH • FLORIDA • 32114
PHONE: (386) 671-8610 FAX: (386) 671-8620



EXHIBIT C

EQUIPMENT AND MATERIALS TYPICALLY USED FOR ROUTINE BALLFIELD MAINTENANCE

MOUND, HOME PLATE & BULLPEN CLAY
INFIELD MATERIAL
WARNING TRACK MATERIAL
TOPDRESSING SAND
DRAINAGE ROCK
HERBICIDE/INSECTICIDE
FUNGICIDE
FERTILIZER
SEED
LASER GRADING
CHIPCO CHOICE CUT IN
VERT-CUTTING
AERIFICATION
VITRIFIED CLAY
CLACINATED CLAY/DIAMOND DRY
FIELD CHALK
FIELD PAINT
HAND-HELD EQUIPMENT AND TOOLS*
SOD
SOIL REPORT – AGRIMUM FREE SERVICE
IRRIGATION PARTS/SERVICE*
SQUEEGEES
BASE PLUGS
BASE SET
HOME/TOE PLAT
PLATE TARP
PLATE MAT
BP TURF PROTECTOR
TARP REPAIR TAPE
MOUND TARPS
CLEAT CLEANERS
BP L-SCREEN
BP PORTABLE MOUND
BALLFIELD PROTECTIVE NETTING
INFIELD TARP

- See Section 5.03(d) of the Lease for maximum annual expenditures by LESSEE

EXHIBIT C

CITY OWNED EQUIPMENT AVAILABLE FOR ROUTINE BALLFIELD MAINTENANCE

1. The following equipment, which shall be housed at the Ballpark, is available for LESSEE's exclusive use:
 - A. Bunker Rake
 - B. Reel mower
 - C. Edger
 - D. Gator utility vehicle
 - E. Backpack blower
 - F. Drag mats
 - G. A 2-ton Roller

2. The following equipment, which shall typically be housed in the City facilities other than the Ballpark, are available for LESSEE's shared use with the City:
 - A. Small chemical sprayer
 - B. Top dresser
 - C. Tractor mount spreader
 - D. Hand spreader
 - E. Aerifier
 - F. Tractor

The Parties agree to work in good faith to coordinate the shared use of this equipment.

EQUIPMENT PROVIDED BY CITY FOR ROUTINE BALLFIELD MAINTENANCE

1. The following items shall be provided for LESSEE's exclusive use for routine Ballfield maintenance:
 - A. Bunker rake
 - B. Reel mower
 - C. Edger
 - D. Gator utility vehicle
 - E. Backpack blower
 - F. Drag mats
 - G. A 2-ton Roller

2. The following items to be provided by the CITY are joint use equipment as described in the Master Lease:
 - A. Small chemical sprayer
 - B. Top dresser
 - C. Tractor mount spreader
 - D. Hand spreader
 - E. Aerifier
 - F. Tractor

EXHIBIT D

Jackie Robinson Ball Park Renovation/Expansion Plans 2012-2013

Phase 1 Fall 2012

1. **Home Clubhouse:** Plans include constructing an approximate 800 sq ft structure attached to the north end of the home clubhouse that would be a player workout area as required by the Chicago Cubs. Currently players have to go offsite to conduct any kind of weight training workout. We also plan to renovate the current coach's offices and expand their space into the area currently occupied by a portion of the Daytona Cubs management staff.
2. **Replacement of Outfield Wall:** The current outfield wall is constructed entirely of wood. Its date of origin is undetermined and is a safety hazard to players. We plan to replace the current fence with a padded chain link fence that meets current professional baseball standards.
3. **Orange Ave Office Building:** The entire staff of the Daytona Cubs front office will move from their present office space in the home clubhouse and 3rd base grandstand to the building across the street at 110 Orange Ave. We will complete renovations and outfit the space to house our staff of 14-28 persons. Staff size varies depending on time of year and intern count.

Phase 2 Fall 2013

1. **New Orange Ave Entrance/Former Shuffleboard Area:** We plan to construct a new entrance gate at the southeast corner of JRBP to better accommodate flow of fans into the stadium and ease waiting lines at our current entrances. We plan to turn the former shuffleboard court into a space containing a picnic pavilion and gathering area similar to the current Riverwalk. We will also expand the ever popular "Kids Zone" as part of this phase.
2. **3rd Base Grandstand Renovation:** In the area beneath the 3rd base grandstand we will convert our current staff office space into an additional concession area. We also plan to renovate and expand the public restrooms in this area. This is necessary to alleviate the ever increasing restroom lines our fans are experiencing.
3. **Conversion of Current FSL Offices:** We will convert the space currently housing the FSL offices in the visitor clubhouse building to a food preparation area to serve groups/picnics in the ball park. The FSL offices will move across the street with the Daytona Cubs to a private space on the west end of the Orange Ave building.
4. **Purchase of New Concession Equipment:** With the addition of the above described concession space and food preparation area we plan to purchase the necessary equipment to expand service to our increasing fan base.

Estimated Cost to Complete:

\$1,250,000

EXHIBIT "E"



EXHIBIT "E"



EXHIBIT "E"



EXHIBIT "E"



**FIRST AMENDMENT TO THE JACKIE ROBINSON BALLPARK AMENDED AND
RESTATED LEASE**

The City of Daytona Beach, ("City") and Big Game Florida, LLC, ("Lessee") in consideration of the mutual obligations contained herein agree to this First Amendment to the Jackie Robinson Ballpark Amended and Restated Lease as follows:

1. The Jackie Robinson Ballpark Amended and Restated Lease was approved by City Resolution No. 12-253 ("Lease").
2. Section 3.04, Parking Areas, of the Lease is amended and replaced in its entirety with the following:

Section 3.04. Parking Areas.

(a) Lessee, or its agent, shall have the right to use public parking facilities for Lessee's scheduled games or events in the vicinity of the Stadium as identified in Exhibit B to the Lease ("Parking Areas"). Lessee will comply with all limitations and requirements of the Memorandum of Understanding between City of Daytona Beach and The County of Volusia, dated November __, 2012, concerning the City or Lessee's use of the Parking Areas ("MOU"), incorporated by reference as if fully stated herein and attached hereto as Exhibit 1. Lessee shall provide written notice to the City and the County at least 30 days in advance of its first use of the Judicial Parking Area for paid parking. The Lessee shall provide a copy of the insurance policy required by paragraph 9 of the MOU to the City and County prior to the Lessee's use of the Parking Areas. The insurance policy shall include that the City and County will receive 30 days notice prior to a change or cancellation of the policy. If Lessee fails to maintain insurance as required by paragraph 9 of the MOU, then the City will purchase such insurance at the Lessee' expense which shall be due as additional rent.

(b) Lessee agrees to indemnify and hold The County of Volusia harmless from and against any and all cost, damage, claim, liability or expense (including reasonable attorneys fees) incurred by or claimed against The County of Volusia, for any injury or damage to any person or property whatsoever, occurring in, or on, the Judicial Parking Area as referenced in the MOU, or relating to Lessee's use of the Judicial Parking Area, when such damage shall be caused in part or in whole by the neglect, fault, act, or omission of any duty with respect to the same by Lessee or its employees, and if such damage shall be caused by the neglect, fault, act or omission of Lessee's agents, contractors, business invitees, licensees, customers, clients, family members, or guests.

(c) Lessee will allow all persons using the City Island Tennis Facility, City Island Park, or City Island Library and not attending Lessee's scheduled games or events to park, without charge, in the Parking Areas, and will reserve 30 parking spaces for such use. Lessee may use the Parking Areas, without cost or expense to Lessee, provided, however, that the City retains the right to undertake maintenance, repairs, or to otherwise temporarily alter, modify, or reduce access to all or a portion of such Parking Areas as the City in its reasonable discretion may determine to be necessary. City shall in all instances endeavor to avoid the undertaking of

repairs, modification, alterations, modifications, and reductions of such access during Lessee's games or events. Subject to MOU terms and conditions, Lessee may collect a reasonable parking fee from the public during the Lessee's use of the Parking Areas as provided herein, and will be responsible for cleanup of the Parking Areas after such event.

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have executed this First Amendment to the Jackie Robinson Ballpark Amended and Restated Lease, effective as of the date of last signature below.

WITNESSES:

BIG GAME FLORIDA, LLC, a Florida limited liability company

Witness: [Signature]
Print Name: JAMES L. SMITH

By: [Signature]
Print Name: Andrew K. Rayburn
Title: Managing Member
Date: 11/8/12

Witness: [Signature]
Print Name: LISA LEONARIDES

STATE OF Ohio
COUNTY OF Cuyahoga

The foregoing instrument was acknowledged before me this 8th day of Nov, 2012, by Andrew K. Rayburn, as Managing Member of Big Game Florida, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.

LISA LEONARIDES
Notary Public, State of Ohio

[Signature]
Notary Public
My Commission Expires November 8, 2015

WITNESSES:

THE CITY OF DAYTONA BEACH, a Florida municipal corporation

Witness: [Signature]
Print Name: Shirley G. Stuber

By: [Signature]
Derrick L. Henry, Mayor

Witness: [Signature]
Print Name: Jennifer L. Thomas

Attest: [Signature]
Jennifer L. Thomas, City Clerk

Date: Dec 10, 2012

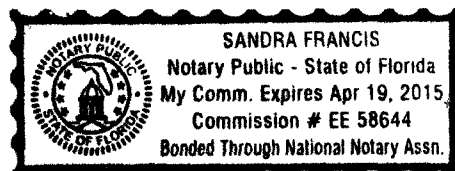
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10th day of Dec, 2012, by Derrick L. Henry, as Mayor of the City of Daytona Beach, a municipal corporation, on behalf of the corporation. He is personally known to me.

[Signature]
Notary Public

Approved as to legal form:

By: [Signature]
Marie Hartman, City Attorney



SECOND AMENDMENT TO THE JACKIE ROBINSON BALLPARK AMENDED AND RESTATED LEASE

The City of Daytona Beach, ("City") and Big Game Florida, LLC, ("Lessee") in consideration of the mutual obligations contained herein agree to this Second Amendment to the Jackie Robinson Ballpark Amended and Restated Lease as follows:

1. The Jackie Robinson Ballpark Amended and Restated Lease was approved by City Resolution No. 12-253 ("Lease").
2. The First Amendment to the Jackie Robinson Ballpark Amended and Restated Lease was approved by City Resolution No. 12-312.
3. Section 3.04, Parking Areas, of the Lease is amended and replaced in its entirety with the following:

Section 3.04. Parking Areas.

(a) Lessee, or its agent, shall have the right to use public parking facilities for Lessee's scheduled games or events in the vicinity of the Stadium as identified in Exhibit B to the Lease ("Parking Areas"). Lessee will comply with all limitations and requirements of the Memorandum of Understanding between City of Daytona Beach and The County of Volusia, approved by City Resolution No. 12-~~311~~, concerning the City or Lessee's use of the Parking Areas ("MOU"), incorporated by reference as if fully stated herein and attached hereto as Exhibit 1. Lessee shall provide written notice to the City and the County at least 30 days in advance of its first use of the Judicial Parking Area for paid parking. The Lessee shall provide a copy of the insurance policy required by paragraph 9 of the MOU to the City and County prior to the Lessee's use of the Parking Areas. The insurance policy shall include that the City and County will receive 30 days notice prior to a change or cancellation of the policy. If Lessee fails to maintain insurance as required by paragraph 9 of the MOU, then the City will purchase such insurance at the Lessee's expense which shall be due as additional rent.

(b) Subject to the MOU terms and conditions, Lessee may collect a reasonable parking fee from the public during the Lessee's use of the Parking Areas as provided herein, and will be responsible for cleanup of the Parking Areas after such event. Lessee shall remit to City all parking fees collected on a monthly basis with Lessee's rent payment as required in Section 4.01(a).

(c) At the time of Lessee's remittal of the parking fees, Lessee will also provide to City a statement of its costs of operating the Parking Areas and collecting the parking fees, including the actual costs of insurance related to the Parking Areas, sales tax paid on the parking fees, and the actual costs for labor and material directly related to collection of the parking fees and cleanup of the Parking Areas ("Parking Costs"), signed by Lessee's chief financial officer. Within 10 days of receipt of the statement, the City will disburse the funds collected as parking fees to Lessee as follows:


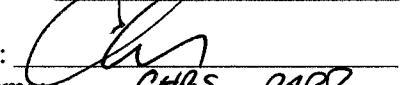
- (i) City will reimburse Lessee's Parking Costs.
- (ii) City will reimburse Lessee's actual costs to construct the approved Capital Improvements to the Ballpark pursuant Section 5.06, which have not been otherwise reimbursed under that Section, until all amounts are fully reimbursed.

(d) Lessee agrees to indemnify and hold The County of Volusia harmless from and against any and all cost, damage, claim, liability or expense (including reasonable attorneys fees) incurred by or claimed against The County of Volusia, for any injury or damage to any person or property whatsoever, occurring in, or on, the Judicial Parking Area as referenced in the MOU, or relating to Lessee's use of the Judicial Parking Area, when such damage shall be caused in part or in whole by the neglect, fault, act, or omission of any duty with respect to the same by Lessee or its employees, and if such damage shall be caused by the neglect, fault, act or omission of Lessee's agents, contractors, business invitees, licensees, customers, clients, family members, or guests.


(e) Lessee will allow all persons using the City Island Tennis Facility, City Island Park, or City Island Library and not attending Lessee's scheduled games or events to park, without charge, in the Parking Areas, and will reserve 30 parking spaces for such use. Lessee may use the Parking Areas, without cost or expense to Lessee, provided, however, that the City retains the right to undertake maintenance, repairs, or to otherwise temporarily alter, modify, or reduce access to all or a portion of such Parking Areas as the City in its reasonable discretion may determine to be necessary. City shall in all instances endeavor to avoid the undertaking of repairs, modification, alterations, modifications, and reductions of such access during Lessee's games or events.

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have executed this Second Amendment to the Jackie Robinson Ballpark Amended and Restated Lease, effective as of the date of last signature below.

WITNESSES:


Witness: 
 Print Name: James L. Smith
 Witness: 
 Print Name: CHRIS BAIRD

BIG GAME FLORIDA, LLC, a Florida limited liability company

By: 
 Print Name: Andrew K. Rayburn
 Title: Managing Member
 Date: 12/10/12

STATE OF OHIO
 COUNTY OF Cuyahoga

The foregoing instrument was acknowledged before me this 10 day of December, 2012, by Andrew K. Rayburn, as Managing Member of Big Game Florida, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.


 Notary Public

LISA LEONDARIDES
 Notary Public, State of Ohio
 My Commission Expires November 8, 2015

WITNESSES:

Witness: Shirley G. Stickney
Print Name: Shirley G. Stickney

Witness: Michelle J. Fearn
Print Name: Michelle J. Fearn

**THE CITY OF DAYTONA BEACH, a Florida
municipal corporation**

By: Derrick L. Henry
Derrick L. Henry, Mayor

Attest: Jennifer L. Thomas
Jennifer L. Thomas, City Clerk

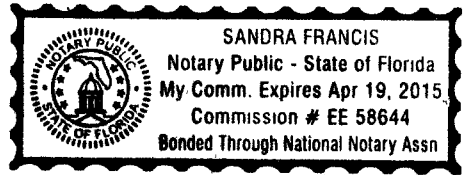
Date: 12/10/12

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10th day of Dec, 2012, by Derrick L. Henry, as Mayor of the City of Daytona Beach, a municipal corporation, on behalf of the corporation. He is personally known to me.

Sandra Francis
Notary Public

Approved as to legal form:
By: Marie Hartman
Marie Hartman, City Attorney





**AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF DAYTONA BEACH
AND
THE COUNTY OF VOLUSIA**

This Amended and Restated Memorandum of Understanding (this “Agreement”) is entered into this the 6th day of December, 2012, between THE CITY OF DAYTONA BEACH, a municipal corporation in the State of Florida (the “City”), whose mailing address is 301 South Ridgewood Avenue, Daytona Beach, Florida 32114 and THE COUNTY OF VOLUSIA, a political subdivision of the State of Florida (the “County”), whose mailing address is 123 West Indiana Avenue, DeLand, Florida 32720.

RECITALS:

WHEREAS, the City is the owner of Jackie Robinson Ballpark and surrounding lands described by County Parcel Identification Number 39-15-33-01-03-0064 (the “Ballpark”); and

WHEREAS, the City leases the Ballpark to Big Game Florida, LLC (the “Lessee”), and at the time of this writing is currently renegotiating that lease; and

WHEREAS, Big Game Florida, LLC owns and operates the Daytona Cubs; and

WHEREAS, the City lease with Lessee has historically allowed Lessee to sub-lease the Ballpark to Bethune Cookman University for the purpose of conducting intercollegiate baseball games; and

WHEREAS, the City and County recognize that the continued and regular use of the Ballpark by Lessee and the City for ballgames and other community events provides a great

public benefit for the citizens of Volusia County and The City of Daytona Beach, and otherwise enhances economic growth and increases Downtown Daytona Beach property values; and

WHEREAS, the County is the owner of the Volusia County Courthouse Annex (hereinafter, the “Judicial Center”) and surrounding parking area described by County Parcel Identification Number 39-15-33-01-03-0065 and located at 125 East Orange Avenue, Daytona Beach, Florida (collectively, for purposes of this Agreement, the “Judicial Parking Area”); and

WHEREAS, the Judicial Parking Area consists of 344 vehicle parking spaces, 8 of which are reserved for handicapped use; and

WHEREAS, the City wishes to have the option of charging parking fees to patrons of the Ballpark for use of the Judicial Parking Area; and

WHEREAS, the County wishes to grant the City the non-exclusive use of the Judicial Parking Area to conduct a Saturday farmer’s market during early voting periods and the authority to include the Judicial Parking Area in a lease with Lessee for the purposes of providing parking to Ballpark patrons under the terms stated herein; and

WHEREAS, the County operates a public library on City Island, adjacent to the Ballpark (the “Library”); and

WHEREAS, the City owns a parking lot facility south of City Island Library which is also included in County Parcel Identification Number 39-15-33-01-03-0064 (the “Library Parking Area”); and

WHEREAS, the Library Parking Area consists of 232 parking spaces, 6 of which are reserved for handicapped use, and the City has historically granted a non-exclusive right of use of all 232 of the Library Parking Area spaces for Library staff and patrons; and

WHEREAS, the City and the County entered into a Memorandum of Understanding with an effective date of July 14, 1994, governing the usage of the Library Parking Area (the "1994 MOU"); and

WHEREAS, the City hereby reaffirms the Library's nonexclusive right of use of the Library Parking Area for Library staff and patrons as originally memorialized in the 1994 MOU; and

WHEREAS, the City and the County now wish to restate and replace the 1994 MOU in the manner stated herein.

NOW THEREFORE, incorporating the above recitals as if fully stated herein, it is agreed by and between the parties that the City may allow use of, and Lessee may use subject to agreement with the City, the Judicial and Library Parking Areas as follows:

1. The City may charge parking fees for Ballpark patron use of the Judicial Parking Area for vehicle parking only related to Daytona Cubs baseball games, Bethune Cookman baseball games, or other events hosted by the Lessee at the Ballpark. Parking fees may be collected for use of the Judicial Parking Area no earlier than two hours before commencement of a Daytona Cubs baseball game and the Judicial Parking Area must be closed to Ballpark patrons two hours after the conclusion of the game. Notwithstanding any other provision of this Agreement, no charge for use of the Judicial Parking Area may commence before 5:30 P.M. on any weekday in which the Judicial Center is open and operating. The City shall include provisions to this effect in its lease with Lessee.
2. Ten (10) of the 344 parking spaces in the Judicial Parking Area shall be reserved for the after-hours needs of the Judicial Center staff, county staff, employees of the Seventh Judicial Circuit, employees of the Clerk of the Circuit Court, independent contractors under contract

with the County or the State of Florida, including but not limited to maintenance and janitorial staff, and any other person with rightful access to the Judicial Center. Owners of vehicles that are present in the Judicial Parking Area at or before the time parking charges are allowed shall not be asked to remove their vehicles or harassed in any manner. The City shall include provisions to this effect in its lease with Lessee.

3. The City may charge Ballpark patrons for access to the Judicial Parking Area during the time periods and for the purpose described in paragraph 1, but the City may not charge or otherwise restrict access to any employee or independent contractor of the Seventh Judicial Circuit, the Clerk of the Circuit Court or the County, or any court reporter or officer of the court, including but not limited to attorneys, judges, or any other person(s) who are rightfully accessing the Judicial Parking Area as a result of scheduled Judicial Center operations. The City shall not interfere with freight access to the Judicial Center located in the Parking Area. Any use of the Judicial Parking Area by the City shall be non-exclusive to the extent necessary for the proper continuation of Judicial Center operations and maintenance. The City may identify Lessee through written notice to the County as its designee for purposes of collecting fees from Ballpark patrons for parking in the Judicial Parking Area and for cleanup of the Judicial Parking Area in the manner required by paragraph four (4) of this Agreement. If Lessee assumes fee collection on behalf of the City as the City's designee, City may allow Lessee to retain funds equal to the costs of labor, material and insurance directly related to the collection and clean up duties assumed, but shall remit the remainder of the collected parking fee revenue to the City. The City shall include provisions to this effect in its lease with Lessee.

4. The City, or the Lessee acting as the City's designee, shall be responsible for cleaning the Judicial Parking Area and the Library Parking Area immediately after every Daytona Cubs and Bethune Cookman baseball game. The City or the Lessee (if designated) shall remove all paper or plastic litter, returning the Judicial Parking Area to its pregame condition. The City shall include provisions to this effect in its lease with Lessee and shall otherwise conduct operations in accordance with this paragraph.

5. The operational functions of the Library, including patron, employee, independent contractor and freight access, shall not be impeded during designated Library operating hours. In furtherance of this aim, the City and the Lessee shall reserve the westernmost two rows of parking spaces located north of Magnolia Avenue in the Library Parking Area for Library patron and staff use. Ballpark patrons for an event of any kind will not be allowed to use these reserved spaces. The City and Lessee shall make sure that vehicular access to the exterior book drop of the library remains unobstructed. Any use of the Library Parking Area by the City or the Lessee shall be non-exclusive to the extent necessary for the proper continuation of Library operations, community events being held at the Library, and maintenance. The City agrees to consider the needs of library patrons in approving any event which would impact the Library Parking Area, and to plan parking for such events without unreasonably restricting the use of the Library Parking Area by library patrons and staff. The City shall include the provisions in this paragraph which would affect Ballpark patrons utilizing the Library Parking Area in its lease with Lessee.

6. The City may use the Judicial Parking Area to conduct a Saturday farmer's market. during early voting periods, subject to the provisions of paragraph 2 herein. Immediately after each such use, the City shall cause the Judicial Parking Area to be returned to the same state of

cleanliness and repair as existed prior to the event, including removal of all waste at its expense. The City shall maintain or cause to be maintained commercial general liability insurance applicable only to the operation of the Saturday farmers market in the Judicial Parking Area which shall include the County as a named insured with limits of at least \$1,000,000.00 for personal injury liability and a general aggregate of \$2,000,000.00, provided, however, that the County shall be responsible for any extra premium cost resulting from the addition of the County as a named insured.

7. Parking spaces located north of Magnolia Avenue in the Library Parking Area will not be available for use by Ballpark patrons during those days in which the Library is being utilized as a voting precinct site for primary and general election voting, whether on any election day or during any early voting period. The City shall include the provisions in this paragraph which would affect Ballpark patrons in its lease with Lessee.

8. The City shall not host or approve a farmer's market or community events in the Library Parking Area during days in which the Library is being utilized as a voting precinct site for primary and general election voting, whether on any election day or during any early voting period. The City shall not issue an event permit for usage of the portion of the Library Parking area located north of Magnolia Avenue during the voting periods described herein.

9. The City, or the Lessee as its designee, shall provide prior, reasonable written notice of commencement of Judicial Parking Area parking charges for Ballpark patrons to the County, said notice containing the date and time of commencement. Effective upon commencement of the City or Lessee's charge to Ballpark patrons for access to the Judicial Parking Area and for those events described hereinabove in paragraph 1:

(a) The County shall be a named insured in an insurance policy purchased and maintained by the Lessee, valued at an amount of \$1 million per occurrence with a \$2 million aggregate limit. The insurance policy shall insure the County against loss as a result of property damage or human injury in the Judicial Parking Area in connection with Lessee's use of the Area for paid parking. The insurance policy required by this sub-paragraph (a) shall be maintained by Lessee regardless of which entity collects parking fees from Ballpark patrons for parking in the Judicial Parking Area.

(b) The Lessee shall carry a workers' compensation policy in a form consistent with Florida Statutes covering all Lessee employees or affiliates conducting work on County property. The insurance policy required by this sub-paragraph (b) shall be maintained by Lessee regardless of which entity collects parking fees from Ballpark patrons for parking in the Judicial Parking Area.

(c) The City shall require and obtain, on behalf of the County, an indemnification agreement from the Lessee indemnifying the County and holding the County harmless against all claims related to injuries to person or property arising from the use of the Judicial Parking Area by Ballpark patrons (the "Indemnification Agreement"). The form of the Indemnification Agreement must be acceptable to the County's legal department and risk management division.

The above provisions shall continue in effect until written notice is provided to the County by the City or the Lessee as the City's designee that the practice of charging a fee for parking in the Judicial Parking Area has been permanently discontinued. Intermittent discontinuation of the practice of charging parking fees by the City or Lessee to Ballpark patrons shall not result in relief from the requirements of this paragraph 9.

The City shall include provisions to this effect in its lease with Lessee.

10. If Lessee fails to maintain the insurance requirements or enter into and honor the indemnification agreement described in paragraph 9 herein, the City shall indemnify and hold the County harmless from any cost, loss, damage, or expense in connection with the Lessee's utilization of the Judicial Parking Area for paid parking. In the event Lessee fails to maintain insurance, City will maintain insurance, the expense of which the City may recover as additional rent from Lessee, in favor of the County in amounts equal to that assigned to Lessee in paragraph 9. Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of any of the parties hereto beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or which may be adopted. Except those powers expressly transferred herein to the City for use, administration and enforcement, the County shall have full authority to exercise any of its powers over the Judicial Parking Area, including but not limited to law enforcement and firefighting.

11. All notices required hereunder shall be by first class mail, except that any Notice of Termination shall be mailed return receipt requested. Any notice hereunder shall be addressed to the party intended to receive same at the following addresses:

City Manager
James V. Chisholm
City of Daytona Beach
301 South Ridgewood Avenue
Daytona Beach, FL 32114

County Manager
James Dinneen
County of Volusia
123 W. Indiana Avenue
DeLand, FL 32720

12. The term of this Agreement shall begin on the last date of execution by both parties, and shall continue indefinitely unless terminated in writing, such termination requiring 180 days written notice.

13. Unless otherwise amended in writing and executed by both parties, this Agreement sets forth the final, complete and exclusive agreement and understanding between the City and the County relating to the subject matter hereof and supersedes all proposals, understandings, representations, conditions, warranties, covenants, and all other communications between the parties (oral or written) relating to the subject matter hereof. This Agreement supercedes and replaces the 1994 MOU. This Agreement shall not be read to eliminate the historic right of use of the Library Parking Area by patrons and staff of the Library. Any ambiguity regarding the right of Library patrons and staff to utilize the Library Parking Area shall be resolved in favor of the Library.

14. The parties acknowledge, one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect to this Agreement. No modification or amendment hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

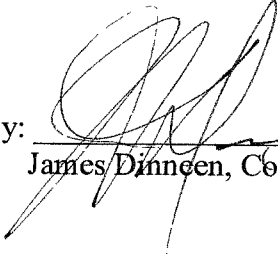
15. This Agreement shall inure to the benefit of and be binding upon respective parties' successors. The City shall include provisions consistent with this Agreement in its lease with Lessee. The City agrees that any successor to Lessee shall be bound by the benefits and burdens inuring to Lessee as required by this Agreement, and further agrees that any agreements or leases with successors in interest to Lessee shall contain provisions consistent with the requirements of this Agreement.

16. Any disputes arising from this agreement shall result in the implementation of the intergovernmental conflict resolution procedures outlined in Chapter 164, Florida Statutes.


IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month, and year written.

ATTEST:

COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA

By: 
James Dinneen, County Manager

By:


Joyce Cusack
Vice-Chair, County Council


This 6th day of Dec., 2012

ATTEST:

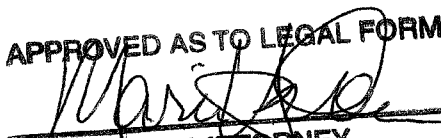
CITY COMMISSION
CITY OF DAYTONA BEACH,
FLORIDA

By: 
Jennifer L. Thomas
City Clerk

By:


Derrick L. Henry

This 7 day of DEC, 2012

APPROVED AS TO LEGAL FORM:

CITY ATTORNEY