

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

6D7

Meeting Date: August 20, 2024

Consent
 Ordinance

Regular
 Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

A) Settlement Agreement with HW Spring Training Complex, LLC (LLC), the Houston Astros, LLC (Astros), and the Washington Nationals Baseball Club, LLC (Nationals) providing for resolution of a dispute regarding the Force Majeure clause of the First Restated Sports Facility Use Agreement (Use Agreement) (R2015-1523) for the operation of the Cacti Park of The Palm Beaches; and

B) Amendment 1 to the Use Agreement which clarifies the LLC's payment obligations for the Team Improvement Areas Fee during national emergencies, Force Majeure events, and labor disputes, incorporates more favorable terms offered to Jupiter Stadium, Ltd. (JSL) under the Second Restated Sports Facility Use Agreement (R2022-0521) for the operation of the Roger Dean Chevrolet Stadium (RDCS) and incorporates sponsorship benefits into the Use Agreement.

Summary: On October 20, 2015, the County entered into the Use Agreement with the LLC for the management and operation of the Ballpark of the Palm Beaches (BPPB)(currently known as Cacti Park of The Palm Beaches) for the use of the Astros and the Nationals (collectively, the Teams) as a professional sports franchise for their joint spring training and other related uses. Under the Use Agreement, the LLC must annually pay the County a Team Improvement Areas Fee for the use of the Team Improvement Areas (i.e., as defined in the Use Agreement). The Year 3 Team Improvement Areas Fee was \$2,143,134 and was due from the LLC on October 30, 2020. The LLC paid \$989,136 to the County on October 30, 2020, citing the Article 28 Force Majeure provision of the Use Agreement and the conditions created by the COVID19 pandemic for its non-payment of the remaining balance of the Year 3 Team Improvement Areas Fee. The County disputed the applicability of Article 28 to the LLC's payment obligation and, after lengthy discussions with the LLC, sent the LLC a notice of default on September 29, 2021. During this time, a dispute also arose regarding the responsibility for the renewal and replacement costs for groundskeeping equipment used at BPPB. This Settlement Agreement disposes of the outstanding disputes without admission of responsibility by either party by: (1) extending the term of the Use Agreement for an additional twenty-eight (28) weeks; (2) requiring payment of the pending amount of the Year 3 Team Improvement Areas Fee within thirty (30) calendar days of approval by the Board of County Commissioners (BCC) of this Settlement Agreement; (3) releasing the LLC, the Teams, and the County from their respective marketing obligations under Article 12 of the Use Agreement for the 2020 and 2021 seasons; (4) allocating a 50/50 responsibility over the groundskeeping equipment renewal/replacement costs; (5) allowing the LLC to submit reimbursement requests to the County for the County's share of renewal/replacement costs of qualified items that have been previously paid by the LLC (limited to those incurred by the LLC after October 1, 2023); and (6) modifying the Use Agreement through Amendment 1 to clarify the LLC's payment obligations for the Team Improvement Areas Fee during national emergencies, Force Majeure events, and labor disputes. Unrelated to the Settlement Agreement, and for convenience and ease of reference, the County, HW and the Teams, agreed to include in Amendment 1 to the Use Agreement certain modifications to the Use Agreement related to sponsorship benefits and to more favorable terms offered to JSL under the Second Restated Sports Facility Use Agreement (R2022-0521) for the operation of RDCS. **FDO Admin (District 7) (MWJ)**

Background & Policy Issues: Staff recommends approval of the Settlement Agreement to resolve the open disputes outside of a judicial proceeding and approval of Amendment 1 to the Use Agreement to clarify the LLC'S payment obligations, incorporate more favorable terms offered to JSL, and address sponsorship benefits.

Attachments:

- 1. Location Map
- 2. Settlement Agreement (3 copies)
- 3. Amendment 1 to Use Agreement

Recommended By: *Erin C. Neal-Cellos*
Department Director

7/23/24
Date

Approved By: *HCBaker*
County Administrator

8/14/24
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

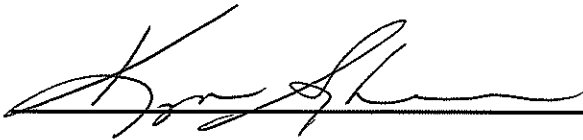
Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$1,153,998)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$1,153,998)</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
		Yes	<u>X</u>	No	_____
Is Item Included in Current Budget:					
Is this item using Federal Funds?		Yes	_____	No	<u>X</u>
Is this item using State Funds?		Yes	_____	No	<u>X</u>

Budget Account No: Fund *2078* Dept. *810* Unit *400* Revenue *6937*

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

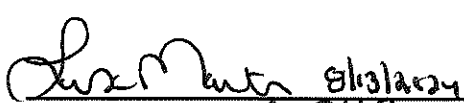
The revenue of \$1,153,998 is the settlement amount due from the balance of Year 3 Team Improvement Area Fee. The County's share of renewal/replacement costs is captured through the annual budgeting process.


C. Departmental Fiscal Review:



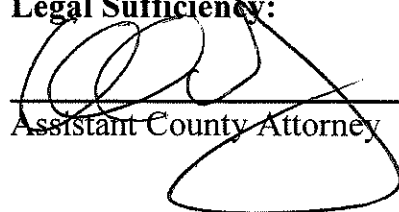
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:


OFMB *JA 8/13/24*
ESW 8-13-24


Contract Development and Control
Not 8/13/24

B. Legal Sufficiency:


Assistant County Attorney *8/14/24*

C. Other Department Review:

Department Director

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

ATTACHMENT 2
Settlement Agreement (3 copies)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Settlement Agreement”) dated _____ is entered into by and among Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the “County”), HW Spring Training Complex, LLC, a Florida Limited Liability Company (the “LLC”), the Houston Astros, LLC, a Texas Limited Liability Company (the “Astros” or “Team”), and the Washington Nationals Baseball Club, LLC, a Washington, DC Limited Liability Company (the “Nationals” or “Team”). Each of the County, the LLC, the Astros and the Nationals may be referred to herein as a “Party” or collectively as the “Parties”.

WITNESSETH

WHEREAS, the County is the owner of that certain facility, including a stadium, two-team training facilities, practice fields, clubhouses, dedicated on-site parking areas, and other appurtenances and improvements commonly known as the Ballpark of the Palm Beaches (collectively the “Facility”);

WHEREAS, in order to develop and construct the Facility, the County entered into that certain First Restated Developer Agreement dated October 20, 2015 (R2015-1522) with the LLC (the “Developer Agreement”) under which the LLC coordinated and administered all aspects of the design, permitting, construction, development and delivery of the Facility;

WHEREAS, the County entered into that certain First Restated Sports Facility Use Agreement dated October 20, 2015 (R2015-1523) with the LLC (the “Use Agreement”) under which the LLC manages and operates the Facility for the use of the Astros and the Nationals as a professional sports franchise facility for their joint spring training and other uses as permitted in the Use Agreement;

WHEREAS, under the Use Agreement the LLC must annually pay the County a Team Improvement Areas Fee for the Teams’ use of the Team Improvement Areas; under Article 6 of the Use Agreement, the Year 3 Team Improvement Areas Fee was \$2,143,134 and was due from the LLC on October 30, 2020. The LLC paid \$989,136 to the County on October 30, 2020, citing the Article 28 Force Majeure provision of the Use Agreement for its non-payment of the remaining balance of the Year 3 Team Improvement Areas Fee; the County disputed the applicability of Article 28 to the LLC’s payment obligation and, after lengthy discussions with the LLC, sent the LLC a notice of default on September 29, 2021;

WHEREAS, during this time, a dispute also arose regarding the responsibility for the renewal and replacement costs for groundskeeping equipment used at the Facility;

WHEREAS, the Parties hereto now desire to settle certain outstanding disputes under the Use Agreement and now desire to agree to amend the Use Agreement to clarify certain issues and address others.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants

hereinafter set forth and for such other good and valuable consideration, the receipt of which the Parties hereto expressly acknowledge, the Parties covenant and agree to the following terms and conditions:

1. Recitals. The Parties represent that the foregoing recitals are true and correct and incorporated herein by reference.

2. Definitions. Any capitalized term not defined in this Settlement Agreement shall have the same definition and meaning as used in the Developer Agreement and the Use Agreement.

3. Effective Date. This Settlement Agreement shall become effective when signed by the Parties and approved by the Palm Beach County Board of County Commissioners ("Board").

4. No Admission of Liability. Each Party understands and agrees that this Settlement Agreement is intended to compromise disputed claims and defenses, to avoid litigation, and that this Settlement Agreement shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability or wrongdoing being expressly denied by each Party.

5. Settlement of Claims/Disputes and Release.

a. Extension of the Term of the Use Agreement. The Parties agree that under Sections 3.1 and 24.1 of the Use Agreement, the Term of the Use Agreement is extended for an additional 28 weeks beyond the end of the 2048 Spring Training Season and that the Use Agreement will be modified to reflect this extended Term.

b. Payment of the Remaining Balance of the Year 3 Team Improvement Areas Fee. The Parties agree that the LLC will pay to the County, within thirty (30) calendar days of Board approval of this Settlement Agreement, the remaining balance of the Year 3 Team Improvement Areas Fee in an amount of \$1,153,998, without interest.

c. 2020 and 2021 Marketing Obligations. The Parties agree that the LLC, the Teams and the County are released from their marketing obligations under Article 12 of the Use Agreement for the 2020 and 2021 seasons.

d. Use Agreement Modifications As Part of the Settlement. The Parties agree to include in Amendment 1 to the Use Agreement, as set forth in **Exhibit A**, certain modifications to the Use Agreement in order to extend the Term and to clarify the LLC's payment obligations for the Team Improvement Areas Fee during national emergencies, Force Majeure events, and Labor Disputes.

e. R/R Project Costs Associated with Groundskeeping Equipment/Reimbursement Requests.

(i) R/R of Groundskeeping Equipment. The Parties agree that beginning in the County's fiscal year 2024, the County and the LLC will share the R/R Project costs for renewal and replacement of Groundskeeping Equipment equally (50/50 split of

the R/R costs). The Parties agree that this 50/50 split on the R/R costs for Groundskeeping Equipment will be documented on the R/R Project Schedule submitted by the LLC for approval by the County. "Groundskeeping Equipment" shall mean the equipment outlined in Section 14 of the R&R schedule.

(ii) Reimbursement Requests. Once the R/R Project Schedule is approved by the County, the LLC may submit reimbursement requests to the County for the County's share of renewal and replacement costs of qualified items that have previously been paid by the LLC. Reimbursement requests for R/R of Groundskeeping Equipment will be limited to those incurred by the LLC after October 1, 2023 (i.e. the beginning of the County's fiscal year 2024).

f. Release. Each Party to this Settlement Agreement hereby releases each other Party, its officers, employees, and agents from any claim related to the subject matter of this Section 5 of the Settlement Agreement arising out of facts occurring prior to the date hereof. Provided, however, that this paragraph will not operate to release the Parties from performance under this Settlement Agreement or for any claims arising out of facts occurring after the date hereof.

6. Use Agreement Modifications Unrelated to the Settlement. For convenience and ease of reference, the Parties agree to include in Amendment 1 to the Use Agreement as set forth in **Exhibit A**, certain modifications to the Use Agreement for more favorable terms offered to Jupiter Stadium, Ltd. and also include certain modifications to the Use Agreement for Sponsorship Benefits Packages.

7. Additional Actions. The Parties shall in good faith work together and take such other actions as are reasonable to implement this Settlement Agreement, including but not limited to the execution of all documents necessary to effectuate this Settlement Agreement.

8. Representations and Warranties. The Parties to this Settlement Agreement, and the attached exhibit, represent, warrant, and agree as follows:

a. Each Party agrees that the consideration received in connection with this Settlement Agreement is fair, adequate and substantial and consists only of the terms set forth in this Settlement Agreement.

b. Each Party to this Settlement Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its obligations under this Settlement Agreement, and that no approvals or consents of any other persons or entities are necessary in connection herewith.

c. The Parties have each received independent legal advice from attorneys of their choice with respect to the advisability of making this Settlement Agreement and the release provided herein. This Settlement Agreement is based upon such advice, after each Party's respective independent attorneys were provided with a full and fair opportunity to review

the Settlement Agreement and consult with their respective clients regarding the terms contained herein.

d. This Settlement Agreement is intended to be final and binding upon the Parties and, with the exception of any obligation created under the Settlement Agreement, is further intended to be effective as a full and final accord and satisfaction among them of the claims released herein regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, duress, coercion, or any other circumstances whatsoever relating to the subject matter of this Settlement Agreement, except as otherwise provided herein. The Parties each rely upon the finality of this Settlement Agreement as a material factor inducing the other Party's execution of this Settlement Agreement.

e. Except as otherwise provided herein, there are no other agreements or understandings between the Parties relating to the matters and release referred to in this Settlement Agreement. The mutual obligations and undertakings of the Parties expressly set forth in this Settlement Agreement are the sole and only consideration of this Settlement Agreement, and no representations, promises, or inducements of any nature whatsoever have been made by the Parties other than as appear in this Settlement Agreement or the exhibit hereto.

f. This Settlement Agreement has been read carefully by each of the Parties and its contents are known and understood by the Parties. This Settlement Agreement is signed freely and voluntarily by each of the Parties hereto.

9. Attorney Fees. Each Party will be responsible for its own attorney's fees and costs incurred prior to the execution of this Settlement Agreement, and throughout the performance of this Settlement Agreement. In the event of any litigation concerning this Settlement Agreement, each Party shall bear its respective attorney's fees and costs.

10. Meet and Confer. The Parties agree to meet and confer in good faith in an effort to resolve any dispute arising under this Settlement Agreement before commencing any legal action or proceeding with respect to such dispute.

11. Binding on Successors and Assigns. This Settlement Agreement shall be binding on the Parties hereto, their assigns, transferees, heirs, and other successors in interest.

12. Notices. All notices and elections to be given or delivered by or to any Party hereunder, shall be in writing and shall be delivered in accordance with Article 25 "Notices" in the Use Agreement.

13. Construction. The Parties acknowledge that this is a negotiated Settlement Agreement; all Parties were represented by counsel of their choosing, and as such, none of the terms of this Settlement Agreement shall be construed against any Party on the basis that such Party, or its counsel, drafted this Settlement Agreement.

14. Headings. The headings used in this Settlement Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

15. Amendment. No waiver, modification, alteration, or amendment to this Settlement Agreement shall be valid unless signed by the Party against which such modification, alteration, or amendment seeks to be enforced.

16. Merger. All negotiations, written and oral communications, and correspondence relating to this Settlement Agreement are merged herein. The Parties agree and acknowledge that there have been no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, among or between the Parties about the subject matter of this Settlement Agreement other than those set forth herein.

17. Entire Agreement. This Settlement Agreement contains the entire agreement and complete settlement of the Parties, and no other statements, promises or understandings of either Party may alter the plain meaning of the terms of this Settlement Agreement.

18. No Third-Party Beneficiaries. This Settlement Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and assigns. The Parties shall be the sole parties entitled to enforce the terms of this Settlement Agreement. This Settlement Agreement shall not be deemed to create any third party enforcement rights.

19. Governing Law and Venue. This Settlement Agreement shall be governed by and construed according to the laws of the State of Florida. This Settlement Agreement is enforceable in law or equity by any Party as a contract. Jurisdiction and venue for any dispute related to or arising out of this Settlement Agreement shall be exclusively in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

20. Severability. The Parties agree that no provision of this Settlement Agreement shall be severable from any other provision of this Settlement Agreement.

21. Time of the Essence. Time is of the essence with regard to the performance of each provision of this Settlement Agreement.

22. Governing Order. The terms and provisions of this Settlement Agreement shall control over the terms and provisions of the Use Agreement. To the extent not specifically amended by this Settlement Agreement, the terms of the Use Agreement shall remain in full force and effect.

23. Waiver of Defense of Substantial Performance. The full and complete performance of each of the conditions, terms and provisions set forth in the above sections is essential to the agreement of each of the Parties to enter into this Settlement Agreement, such that each Party hereby waives any defense of substantial performance to any claim that it has failed to fully and completely perform any of the conditions or obligations imposed upon it pursuant to the Settlement Agreement.

24. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Settlement Agreement on behalf of the County; an authorized official of the LLC has made and executed this Settlement Agreement on behalf of the LLC; and an authorized official of each Team has made and executed this Settlement Agreement on behalf of each Team.

ATTEST:
JOSEPH ABRUZZO
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida, BOARD
OF COUNTY COMMISSIONERS


By: _____
Deputy Clerk

By: _____
Maria Sachs, Mayor

APPROVED AS TO LEGAL
SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Assistant County Attorney

By: 
Isami C. Ayala-Collazo, Director
Facilities Development & Operations

WITNESS:

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

By: Betsy Philpott
Witness Signature

By: 
Alan H. Gottlieb, LLC Manager

Betsy Philpott
Print Witness Name

WITNESS:

**WASHINGTON NATIONALS BASEBALL CLUB,
LLC, a Washington, DC Limited Liability Company**
By: Nine Sports Holdings, LLC, its Managing Member
By: Lerner Sports Group, LLC, its Managing Member

Betsy Philpott

By: 
Alan H. Gottlieb, Chief Operating Officer

Print Name: Betsy Philpott

WITNESS:

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

By: *Merlo*
Jessi Merlo (Jul 29, 2024 10:01 CDT)
Witness Signature

By: *Giles Kibbe*
Giles Kibbe, LLC Manager

Jessi Merlo
Print Witness Name

WITNESS:

**HOUSTON ASTROS, LLC, a Texas
Limited Liability Company**

Merlo
Jessi Merlo (Jul 29, 2024 10:01 CDT)

By: *Giles Kibbe*

Print Name: **Jessi Merlo**

Name: **Giles Kibbe**

Title: **SVP and Gen. Counsel**

ATTACHMENT 3
Amendment 1 to Use Agreement (3 copies)

**SETTLEMENT AGREEMENT
EXHIBIT A**

**AMENDMENT No. 1
TO THE FIRST RESTATED
SPORTS FACILITY USE AGREEMENT**

This is AMENDMENT NO. 1 (“Amendment”) dated _____ to the FIRST RESTATED SPORTS FACILITY USE AGREEMENT (R-2015-1523) dated October 20, 2015, (the “Use Agreement”) by and among Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the “County”), HW Spring Training Complex, LLC, a Florida Limited Liability Company (the “LLC”), the Houston Astros, LLC, a Texas Limited Liability Company (the “Astros” or “Team”), and the Washington Nationals Baseball Club, LLC, a Washington, DC Limited Liability Company (the “Nationals” or “Team”).

W I T N E S S E T H

WHEREAS, the County is the owner of that certain facility, including a stadium, two-team training facilities, practice fields, clubhouses, dedicated on-site parking areas, and other appurtenances and improvements commonly known as the Ballpark of the Palm Beaches (collectively the “Facility”);

WHEREAS, in order to develop and construct the Facility, the County entered into that certain First Restated Developer Agreement dated October 20, 2015 (R2015-1522) with the LLC (the “Developer Agreement”) under which the LLC coordinated and administered all aspects of the design, permitting, construction, development and delivery of the Facility;

WHEREAS, under the Use Agreement, the Facility is managed and operated by the LLC for the use of the Astros and the Nationals as a professional sports franchise facility for their joint spring training and other uses as permitted in the Use Agreement;

WHEREAS, the County has entered into that certain Settlement Agreement, of even date herewith, with the LLC and the Teams in order to settle certain disputes and claims among the parties under the Use Agreement; and as part of the Settlement Agreement the parties have agreed to amend certain provisions of the Use Agreement to extend the Term of the Use Agreement and to clarify the LLC’s payment obligations for the Team Improvement Areas Fee during national emergencies, Force Majeure events and Labor Disputes;

WHEREAS, unrelated to the settlement, under Section 30.2 of the Use Agreement, if the County restates or amends the First Restated Sports Facility Use Agreement with Jupiter Stadium, Ltd. (JSL), (R2011-0694), then the County must provide the LLC with a copy; and if the LLC reasonably believes any of the terms of the restated use agreement with JSL are more favorable, then LLC must notify the County within 21 days;

WHEREAS, on May 17, 2022, the County approved the Second Restated Sports Facility

Use Agreement (R2022-0521) with JSL (“JSL Restated Use Agreement”); and the County notified the LLC on May 25, 2022 that the County had approved the JSL Restated Use Agreement; whereupon the LLC on June 16, 2022 notified the County of the terms it reasonably believes are more favorable; and

WHEREAS, the parties hereto now desire to amend the Use Agreement to extend the term, clarify the LLC’s payment obligations, substitute the more favorable terms and provide language for sponsorship benefits packages.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants hereinafter set forth and for such other good and valuable consideration, the receipt of which the parties hereto expressly acknowledge, the parties covenant and agree to the following terms and conditions:

- 1. Recitals.** The foregoing recitals are incorporated herein by reference.
- 2. Definitions.** Any capitalized term not defined in this Amendment shall have the same definition and meaning as used in the Developer Agreement and the Use Agreement.
- 3. Use Agreement Modifications Required Under the Settlement Agreement.** The Use Agreement is modified as follows:

Section 3.1 of the Use Agreement is amended to add the following sentence:

This Agreement is extended until October 16, 2048, unless sooner terminated pursuant to the provisions of this Agreement.

Section 24.1 of the Use Agreement is revised as follows:

24.1 Generally. In the event that a national emergency or the United States being in a state of war or operation of law prevents the LLC from using the Facility for all or part of an entire Full Spring Training Season in any of the years covered under the Term, the County agrees that the LLC shall not be obligated to perform under this Agreement, except for the payment obligations set forth in Article 6 hereof, until such emergency or contingency ceases. In the event that said national emergency or the United States being in a state of war or operation of law results in (a) the County being released from its obligation to pay the debt service for a specified period under the terms of the bond documents for the County Bonds, or (b) the County’s obligation to pay the debt service being postponed until a later date, then the LLC’s payment obligations set forth in Article 6 hereof shall be released and or postponed in the same manner, and to the same extent, as the County. In the event of such suspension, this Agreement shall be automatically extended beyond the Term for an amount of time equal to the duration of such suspension.

The first sentence of Article 28 of the Use Agreement is deleted in its entirety and replaced with the following:

Except as otherwise provided herein, neither party shall be in default under, or breach of, this Agreement to the extent it is unable to perform due to an event of Force Majeure, provided however, that the parties must comply with the requirements of Article 17, and provided however that the LLC must comply with the payment obligations set forth in Article 6 hereof. However, in the event that said Force Majeure results in (a) the County being released from its obligation to pay the debt service for a specified period under the terms of the bond documents for the County Bonds, or (b) the County's obligation to pay the debt service being postponed until a later date, then the LLC's payment obligations set forth in Article 6 hereof shall be released and or postponed in the same manner, and to the same extent, as the County.

Article 29 of the Use Agreement is revised as follows:

In the event of a lockout, strike, or other labor dispute involving Major League Baseball ("Labor Dispute"), the LLC will continue to be obligated to provide Repair and Maintenance, Renewal and Replacement and Capital Improvements to the Facility, but the LLC will be permitted to scale down its operations of the Facility until such time as the Labor Dispute is resolved and the LLC can commence Major League Baseball operations at the Facility. Notwithstanding the foregoing, in the event of a Labor Dispute which prevents the LLC from using the Facility for a Full Spring Training Season, this Agreement shall be automatically extended beyond the initial Term for an additional Full Spring Training Season. The parties agree that this Article 29 does not affect either party's payment obligations under this Agreement.

4. Use Agreement Modifications Required for More Favorable Terms. In accordance with section 30.2 of the Use Agreement, the following modifications to the Use Agreement for more favorable terms will be retroactive to May 17, 2022. The Use Agreement is modified as follows:

Article 2 definition of "Emergency R/R Project" is deleted in its entirety and replaced with the following:

"Emergency R/R Project" shall mean any R/R Project that is not scheduled to be made pursuant to the R/R Project Schedule, but where the asset (or component thereof) that is the subject of such R/R Project would not be functional in accordance with its standard operating specification without the applicable repair or replacement.

New Section 5.3.6.3 is added to Article 5 of the Use Agreement:

5.3.6.3 If any Declared Emergency and subsequent use of the Facility for County-determined emergency purposes occurs during the Spring Training Season, the Teams shall be permitted to play their respective Major League Spring Training Home Games at an alternative facility during such use of the Facility by the County.

Section 10.1.2 of the Use Agreement is revised as follows:

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

10.1.2.1 The first R/R Project Schedule shall be submitted no later than the Final Completion date. The R/R Project Schedule shall include each and every item with a fixed asset number whether physically tagged or not, its projected year for renewal or replacement and the estimate cost of the renewal or replacement task.

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

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

New Section 10.1.6 is added to Article 10 of the Use Agreement:

10.1.6 For reasons other than repair condition, and as part of the annual R/R Project Schedule update, the LLC may request that the LLC be allowed to replace Personal Property owned by the County, identified as a Public Use Improvement, and initially acquired using the taxable bond proceeds, earlier than originally scheduled. Said replacement shall be at the LLC's sole cost and expense. The LLC will then be credited in an amount equal to the actual replacement cost of the Personal Property in the future year that the Personal Property was originally slated for replacement on the R/R Project Schedule. The credit will be realized by purchase order issued to the LLC no later than December 30th of the initially scheduled fiscal year.

5. **Use Agreement Other Modifications.** The Use Agreement is modified as follows:

New Section 12.5 is added to Article 12 of the Use Agreement:

12.5 Sponsorship Benefits Package. In consideration for the payment obligations required from the County under this Agreement, the LLC may, in addition to the other rights and benefits provided by the LLC to the County hereunder, provide the County with such additional rights and benefits for baseball games and other events at the Facility (including, without limitation, tickets, advertising, hospitality, and/or other rights or benefits) as determined solely by the LLC each year during the Term. The value of said additional rights and benefits shall not exceed the amount of the County's payment obligations under this Agreement.

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

7. **Full Force and Effect.** Except as specifically modified herein, the terms and conditions of the Use Agreement are hereby confirmed and remain in full force and effect.

8. **Integration and Merger.** This Amendment, together with the Use Agreement and the Operative Agreements (as that term is defined in the Use Agreement), shall constitute the full and complete understanding between the parties as to the matters addressed herein. There are no oral understandings, terms or conditions, and no party has relied on any representation, express or implied, not contained in this Amendment, the Use Agreement and/or the Operative Agreements. All prior understandings, terms or conditions (including those set forth in the Amendment), whether with a party to this Amendment or any partner of a party, are deemed to merge in this Amendment, and this Amendment cannot be changed or supplemented except by an agreement in writing and signed by the parties to this Amendment

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Amendment on behalf of the County; an authorized official of the LLC has made and executed this Amendment on behalf of the LLC; and an authorized official of each Team has made and executed this Amendment on behalf of each Team.

ATTEST:

**PALM BEACH COUNTY, A
POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS**

**JOSEPH ABRUZZO, Clerk &
Comptroller**

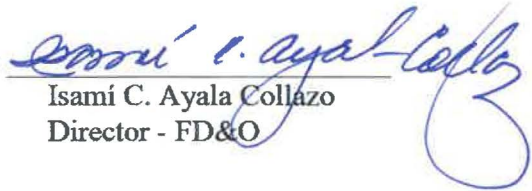
By: _____
Deputy Clerk

By: _____
Maria Sachs, Mayor

**APPROVED AS TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Assistant County Attorney

By: 
Isami C. Ayala Collazo
Director - FD&O

WITNESS:

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

By: Betsy Philpott
Witness Signature

By: 
Alan H. Gottlieb, LLC Manager

Betsy Philpott
Print Witness Name

WITNESS:

**WASHINGTON NATIONALS BASEBALL CLUB,
LLC, a Washington, DC Limited Liability Company**
By: Nine Sports Holdings, LLC, its Managing Member
By: Lerner Sports Group, LLC, its Managing Member

Betsy Philpott

By: 
Alan H. Gottlieb, Chief Operating Officer

Print Name: Betsy Philpott

WITNESS:

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

By: 
Jessi Merlo (Jul 29, 2024 10:01 CDT)
Witness Signature

By: 
Giles Kibbe, LLC Manager

Jessi Merlo
Print Witness Name

WITNESS:

**HOUSTON ASTROS, LLC, a Texas
Limited Liability Company**


Jessi Merlo (Jul 29, 2024 10:01 CDT)

By: 

Print Name: **Jessi Merlo**

Name: **Giles Kibbe**

Title: **SVP and Gen. Counsel**