

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20040932

1. REQUESTED MOTION:

ACTION REQUESTED: Request Board approve Amended and Restated Stadium Lease Agreement with the Minnesota Twins Baseball Club.

WHY ACTION IS NECESSARY: All legal agreements must be approved by the BOCC.

WHAT ACTION ACCOMPLISHES: Provides for extension of term for sixteen (16) years through 2020 with two five (5) year Renewable Terms (potentially through 2030).

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #**

A11A

3. MEETING DATE:

08-03-2004

4. AGENDA:

CONSENT
ADMINISTRATIVE
APPEALS

PUBLIC
WALK ON
TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

STATUTE
 ORDINANCE
 ADMIN.
CODE
 OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER
B. DEPARTMENT Parks and Recreation
C. DIVISION

BY: John Yarbrough, Dept. Director

John Yarbrough

7. BACKGROUND:

On May 29, 1989, the Board of County Commissioners entered into an agreement with the Minnesota Twins for the purpose of Spring Training. This agreement was for twenty (20) years. This will be an extension of sixteen "16" years, with two five (5) year renewable options, potentially through the year 2030. The existing agreement has been a positive benefit to both the residents of Lee County and our Tourists. The Minnesota Twins and Lee County now wish to extend this relationship through the attached "Amended and Restated Stadium Lease Agreement". (Please see attachment)

8. MANAGEMENT RECOMMENDATIONS: Recommend Board approval

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>by 7-19-04</i>	<i>Approved</i>			<i>[Signature]</i> 7/21/04	QA <i>[Signature]</i> 7/22/04	DM <i>[Signature]</i> 7/22/04	Risk <i>[Signature]</i> 7/22/04	GC <i>[Signature]</i> 7/22/04	<i>[Signature]</i> 7-22-04

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

Rec. by CoAtty
Date: *7/21/04*
Time: *11:40 am*
Forwarded To:
[Signature]
7/21/04

RECEIVED BY
COUNTY ADMIN *[Signature]*
7/21/04
4:40 pm
COUNTY ADMIN
FORWARDED TO: *[Signature]*
7/22/04
4:45 pm

**AMENDED AND RESTATED
STADIUM LEASE AGREEMENT
BETWEEN
LEE COUNTY
AND
MINNESOTA TWINS**

DATE: _____, 2004

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AMENDED AND RESTATED STADIUM LEASE AGREEMENT

THIS AMENDED AND RESTATED STADIUM LEASE AGREEMENT (this "Lease"), is made and entered into on this ____ day of _____, 2004 by and between **LEE COUNTY**, a political subdivision and charter county of the State of Florida, (the "County"), and **MINNESOTA TWINS**, a Minnesota general partnership (the "Club").

RECITALS

WHEREAS, the Club and the County entered into that certain agreement dated May 25, 1989, for the lease of the Lee County Sports Complex, a Major League Baseball Spring Training (defined below) and minor league baseball facility in Lee County, Florida ("**Agreement**"), for a period of twenty (20) years commencing with the calendar year 1991, inclusive; and

WHEREAS, the Club and the County have continuously operated under the Agreement from its date of commencement to the date hereof; and

WHEREAS, the Lee County Sports Complex has served the public purpose of promoting tourism, gainful employment and economic growth within Lee County, Florida and the State of Florida; and

WHEREAS, the Club and the County desire to amend and restate the Agreement for the purposes of, among other things, (i) reflecting the parties' current course of business dealings, and (ii) to establish the ongoing relationship between the Club and the County for an extended lease term; and

WHEREAS, the County has the authority to enter into this Amendment as provided by Chapter 125, Florida Statutes.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, **THE PARTIES HERETO AGREE AS FOLLOWS**:

- 1. TERM.** Pursuant to the Agreement, the Club has, beginning with the 1991 Major League Baseball Spring Training season, engaged in Major League Baseball Spring Training exclusively at the Lee County Sports Complex at and in the Leased Premises. This Lease amends and restates the prior Agreement and shall commence at the beginning of the Club's 2004 Spring Training season, and continue without interruption (except as may be provided herein) for a period of seventeen (17) years and conclude with the completion of the Club's 2020 Spring Training season (the "**Term**"). This Lease may be extended at the option of the Club for two separate, but consecutive, periods of five (5) years each (each, a "**Renewal Term**"). In order to exercise (i) the first five (5) year Renewal Term, the Club must provide written notice to the County of such option exercise on or before January 1, 2020, and (ii) the second five (5) year Renewal Term, the Club (A) must have exercised the first five (5) year Renewal Term, and (B) must provide written notice to the County of such option exercise on or before January 1,

2025. During the years 2010 and 2015 and, if the first five (5) year Renewal Term is exercised by the Club during the year 2020, the parties agree to meet and renegotiate the revenue, expenditure and rental provisions hereof in order to adjust for any inequities in the financial terms of this Lease in order that such provisions, if modified, will be effective for, as applicable, the last ten (10) and/or five (5) years of the Term, and if the first and/or second five (5) year extension option(s) are exercised, for the last five (5) or ten (10) years, as applicable, of the Renewal Term(s), respectively.

- (A) The Club agrees that in the event the parties do not renew this Lease beyond the Term or any Renewal Term, it will use its reasonable commercial efforts to assist the County in finding a suitable substitute tenant. The Club will notify the County on or prior to January 1, 2020 if it does not desire to use the facility for the first Renewal Term.
- (B) For the purpose of this Lease, the term "**Spring Training**" shall mean the training period during winter and early spring of any year during which the Club prepares for the next following Major League Baseball season, and shall be deemed to include time reasonably required for (i) the preparation of the Leased Premises (as defined below), (ii) planning for the start of Spring Training, (iii) additional minor league player training between the end of Major League Baseball Spring Training and the commencement of the minor league season, and (iv) a period for the "winding down" of Spring Training activities by the Club. It is anticipated by the parties that the foregoing time frame will be from approximately January 15 to approximately April 15 of each calendar year during the Term and any Renewal Term.
- (C) The Club shall also have the right of first refusal to use the Leased Premises for all minor league play (beyond that contemplated hereby) exercisable upon six (6) months prior written notice to the County. Any minor league use (outside of the permissible uses by the Club hereunder) between April 15 and December 31 of any calendar year shall be covered by a separate agreement made between the parties, which agreement shall include substantially the same basic terms and conditions as set forth herein. The parties shall endeavor in good faith using commercially reasonable efforts to maintain a recognized minor league franchise for the Leased Premises. In the event that (i) the Club does not at any time during the Term or any Renewal Term maintain a recognized minor league franchise for the Leased Premises, and (ii) the County intends to enter into an agreement with any third party for the use of all or any portion of the Leased Premises for such a minor league franchise, the County shall notify the Club in a writing which specifies in reasonable detail the terms and conditions upon which the County intends to provide the Leased Premises to such third party no later than eighteen (18) months prior to the intended effective date of such agreement, then the Club shall have six (6) months from the date of such notice from the County to elect to bring a minor league franchise affiliated with the Club to the Leased Premises. No later than the expiration of such six-month period, the Club shall notify the County in writing of either (x) its consent to the use of the Leased Premises by such third party, or (y) its exercise of the right of first refusal pursuant to this Section 1(C) of this Lease. Notwithstanding anything to the contrary contained in

this Lease, in no event may the County permit the use of the Leased Premises by a third party minor league franchise under this Section 1(C) either (i) in any manner that interferes with the exclusive rights granted to the Club under this Lease, or (ii) on any term or condition more favorable to such third party than is provided to the Club under this Lease, unless such term or condition is provided by the County to the Club.

- (D) Notwithstanding any contrary terms or conditions set forth in this Lease, the County shall not enter into any transaction or agreement, and shall not participate directly or indirectly in any transaction or agreement, or explicitly or implicitly consent with respect to any transaction or agreement, which contemplates as a party or as a direct or indirect beneficiary any minor league team that is during the Term or any Renewal Term either: (i) a minor league contractual affiliate of the Club, or (ii) a minor league team with exclusive minor league territorial rights within Lee County, which includes the Lee County Sports Complex, to play minor league baseball in any capacity to the exclusion of any other minor league baseball team, unless either:
 - (x) the Club has a replacement minor league team that is authorized under applicable league rules to play within the minor league territory that includes Lee County Sports Complex for the Term and any Renewal Term when and after the transaction, agreement or consent is proposed to be entered into or given, respectively, or
 - (y) the minor league team with whom the County is to contract, or on or for whose behalf a contract will be entered into which allows the minor league team to play in any Lee County facility, waives (and obtains any consent or waiver required of or by any league or other authority required) any right of exclusivity within the minor league territory that includes the Lee County Sports Complex for the remainder of the Term and any Renewal Term.
- (E) The County agrees that if it at any time during the Term or any Renewal Term, it grants (including, without limitation, any grant by the County's knowing acquiescence in a third party's exercise of rights not expressly granted to it) to any third party any terms or conditions more favorable to such third party than the terms or conditions provided to the Club under this Lease, or under any agreement with any affiliate of the Club, for the use of the Leased Premises or any stadium or complex for Major League Baseball Spring Training or minor league operations ("**More Favorable Provisions**"), the County shall promptly offer the Club and/or its affiliate(s) any such More Favorable Provisions as was, is, or will be available to such third party.

2. **LEASED PREMISES.** In consideration of and pursuant to the covenants, agreements, and conditions set forth herein, the County does hereby lease, let, demise, and rent unto the Club, and the Club does hereby rent and lease from the County, the following (the "**Leased Premises**" or the "**Premises**"):

- (A) The major league stadium and the minor league complex located at the Lee County Sports Complex, 14100 Six Mile Cypress Parkway, Ft. Myers, Florida, together with adjacent land and all other improvements from time to time located on the Premises and all appurtenances relating to any of the same (respectively, the "**Major League Stadium**" and the "**Minor League Complex**" and collectively, the "**Stadium Complex**"), that are more particularly described and set forth in **Exhibit A** attached hereto;
 - (B) The right to utilize on an exclusive basis for Spring Training purposes, all improvements located on the Premises for the period of time each year as described above;
 - (C) Throughout the Term and any Renewal Term, the right to use the Leased Premises for its events and activities, player training and rehabilitation programs, player development activities, instructional league and organizational meetings, events and activities, and all other similar events related to the operations of Club or its affiliates professional baseball activities, (the "**Club's Exclusive Baseball Activities**");
 - (D) The exclusive right to use, on a year-round basis throughout the Term and any Renewal Term, the offices, clubhouse area and other locations (the "**Club's Exclusive Use Areas**") as depicted on **Exhibit B** attached hereto and including any other areas on the Leased Premises that may be constructed or renovated following the date hereof which may be designated by the Club as included in the Club's Exclusive Use Areas, but in each case subject to the written approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned;
 - (E) During the Term and any Renewal Term, and for so long as same has not been terminated by reason of a Club Default (as defined below), the Club may conduct professional baseball activities by itself and in conjunction with organizations other than Club including, without limitation, activities for Spring Training and minor league operations. The Club shall not be required to share the Leased Premises, for any reason, with any third party unless provided in this Lease or in a separate written amendment to this Lease; and
 - (F) Uninterrupted access to and egress from the Leased Premises and any other improvements from time to time located on the Leased Premises including, without limitation, access to and egress from all areas owned, licensed or otherwise controlled by the County that are reasonably necessary for the Club to exercise its rights and perform its obligations under this Lease.
3. **TICKET SALES.** The Club shall set the Spring Training ticket prices, shall manage all ticketing operations, including ticket sales, and shall be entitled to receive the Gross Revenues From Ticket Sales collected by the Club on an annual basis during the Term or any Renewal Term. All Gross Revenues From Ticket Sales shall be the sole and exclusive property of the Club, unless otherwise specified herein.

- (A) For purposes of this Lease, "**Gross Revenues From Ticket Sales**" shall mean the total gross revenues from ticket sales less any taxes or charges imposed by any governmental, regulatory or taxing authority generally, included in the gross price of the ticket paid by the purchaser and required to be remitted by the Club as the portion of such receipts payable to the visiting team and to the governmental, regulatory or taxing authority.
- (B) In consideration of the benefits provided herein, the Club shall provide the County, at no charge, with an aggregate of eighty (80) (forty (40) of which shall be for suite use and the other forty (40) shall be reserved ticket seating) admission tickets (or such other lower number for any game as are actually requested by the County) for each Spring Training game to be used by the County for purposes of promoting tourism.
4. **PARKING.** The Club shall be responsible for collecting all parking fees and related revenues derived from Spring Training activities and all other professional baseball or related events, and shall retain all revenues derived therefrom. The County shall retain the exclusive use of the parking area, without charge, before and after Spring Training for county baseball and non-baseball events.
5. **CONCESSIONS.** The Club or its designee shall control the sale of all foods, beverages, merchandise, novelties, and logo items mentioned below and the like (commonly called "**Concessions**") on the Premises. The Club shall be free to contract with a third party to operate such Concessions on terms and conditions approved by the Club in its sole discretion so long as the Club causes such third party to conduct such Concessions operations in accordance with applicable County ordinances and regulations.
- (A) The Club agrees to consult periodically with the County concerning Concession prices. The Gross Revenues From Concessions shall be the sole and exclusive property of the Club. "**Gross Revenues From Concessions**" shall mean total Concessions revenues from all operations on the Leased Premises, including, but not limited to Spring Training operations, less all taxes and charges imposed by any governmental, regulatory, or taxing authority and subject to Sections 5(D) and 5(E) below.
- (B) The Club, or its designee, may, during the Term and any Renewal Term, publish and sell or dispense scorecards, yearbooks and novelty items carrying the logo or marks of the Club or of any other Major League Baseball team on the Premises, all of which shall be deemed to fall within the definition of "Concessions," and the revenues derived from the sale of such publications, logo items, scorecards and yearbooks, shall be included in the calculation of Gross Revenues From Concessions.
- (C) The Club, or its designee, shall be responsible for paying all costs and expenses of Concessions operations. As the concessionaire, the Club or its designee shall operate the Concessions in a manner consistent with industry standards, including providing a sufficient number of properly trained Concession personnel to provide the Concessions to those attending all events held at the Leased Premises. In

addition, the Club agrees to provide (or cause to be provided) a reasonable selection of quality items for purchase by those attending Spring Training events at the Leased Premises.

- (D) The County shall notify the Club of any non-Club events for which it desires that the Club provide Concessions operations no less than fifteen (15) business days prior to the date of such event. The Club may provide such operations for any event requested by the County, but shall not be obligated to provide such operations. Should the Club elect not to provide such Concessions operations, the County shall be free to contract with a third party to provide such Concessions operations, subject to the final approval of the Club, which approval shall not be unreasonably withheld or delayed (but which may include reasonable terms and conditions for the use of any equipment owned by the Club or its designee). Subject to Section 5(E) below, the County shall be entitled to retain the following amounts in respect of Concessions operations for any non-Club events: (1) all revenues from Concessions operated by an approved third party pursuant to this Section 5(D) (subject to any reasonable terms and conditions, including financial responsibility of the County for any damages incurred, of the Club approval), and (2) the net revenue available to the Club after deduction of any and all costs and expenses associated with such Concessions operations for the applicable event, including, without limitation, any commissions or allowances paid to a third party concessionaire. The County shall indemnify the Club for any damage or other costs incurred by the Club in connection with the County's operation of the Concessions.
- (E) Notwithstanding the foregoing, the County reserves the right to sell or allow third parties to sell novelty items only at County sponsored or authorized events at the Leased Premises or at events other than Spring Training or non-professional baseball uses held on the Leased Premises. The County or third parties may not sell novelty items that carry the Club logo or marks or the logo or marks of any other major league or minor league Club. The County or its designee shall retain all revenues from the sale of novelties in accordance with this Section 5(E).
- (F) The Club or its designee shall purchase and maintain all equipment reasonably necessary for the operation and sale of Concessions for Spring Training events held at the Leased Premises during the Term and any Renewal Term. Concession equipment and all other equipment acquired by the Club (or its designee) shall be the property of the Club (or its designee) both during and after the Term and any Renewal Term. The County acknowledges and agrees that all Concessions equipment on the Leased Premises as of the date hereof belongs to the Club or its designee.
- (G) The Club shall maintain standards of cleanliness and product quality consistent with high quality industry standards at a Major League Baseball Spring Training facility. The Club shall consult annually with the County as to these issues and as to pricing issues and shall give due consideration to the views of the County regarding these issues.

6. MESSAGE CENTER/BILLBOARD ADVERTISING AND MARQUEE CONSTRUCTION AND ADVERTISING.

(A) Message Center and Billboard Advertising.

- (1) All gross revenues derived from the scoreboard message center advertising during any of the events or activities sponsored by the Club or its designee at the Leased Premises, and all gross revenues derived from the sale of annual billboard or fixed signage (i.e., outfield fence and other advertising signage at the Leased Premises) shall be the property of the Club or its designee. The Club shall have the exclusive right to sell advertising in connection with the foregoing.
- (2) The County shall have the right to sell message center advertising during non-professional baseball uses or related events to the extent such events are held or sponsored by the County. All gross revenues derived from the sale of message center advertising in accordance with this Section 6(A)(2) shall be the sole and exclusive property of the County. In no event may the County sell any message center advertising to an entity if the sale of such advertising would cause the Club to breach any exclusivity granted to a naming rights, presenting or other sponsor pursuant to Section 7 below, unless the Club has expressly approved such advertising in writing.
- (3) The Club and the County each shall be responsible for the payment of costs and expenses related to the production and maintenance of advertising signage to the extent such party receives the revenues therefrom.
- (4) The County shall use all reasonable, lawful and permissible efforts to assist the Club in obtaining and maintaining any and all permits or licenses required under the laws or regulations of any governmental authority and necessary for the scoreboard message center and billboard or fixed signage advertising. The County shall also not act unreasonably to withhold its approval of any such permits or licenses required under its laws or regulations.
- (5) Should the Major League Scoreboard need replacing, the County and the Club agree to share in the costs of replacement.

(B) Message Marquee Construction, Advertising and Gross Revenues.

- (1) The Club may construct at its expense (except as described in Section 12(B)(5)) at any time prior to the Club's Spring Training arrival in the year 2006 a year-round outdoor message marquee (the "Message Marquee") for the Stadium Complex that will conform to the height, width, depth and other descriptive specifications set forth in and described in Exhibit D to this Lease. The Message Marquee, if constructed, will be permanently placed at the entrance to the Stadium Complex located at

14100 Six Mile Cypress Parkway at an exact location mutually agreeable to the County and the Club.

- (2) All gross revenues derived from Message Marquee advertising shall be the property of the Club.
- (3) The County shall have the right to utilize the LED signage on the Message Marquee for events or activities sponsored by the County. The County will not sell advertising on or for production on the Message Marquee.
- (4) The County shall be responsible for the payment of costs and expenses related to the maintenance of the Message Marquee.
- (5) The Club, with the good faith cooperation and assistance of the County, shall obtain and maintain any and all permits or licenses required under the laws and regulations of any governmental authority necessary to construct the Message Marquee. After construction, the County shall obtain and maintain any and all such permits or licenses. Any approvals required to be provided to the Club by the County shall not be unreasonably withheld, delayed or conditioned.

7. **NAMING RIGHTS.** The County agrees that it shall not sell or otherwise assign naming and/or presenting sponsorship rights to all or any portion of the Stadium Complex without the participation and approval of the Club.

8. **LEASE PAYMENTS.** As consideration for this Lease and as rent due to the County for the lease of the Leased Premises to the Club, the Club use of same, the Club agrees to pay to the County a guaranteed annual Lease payment for each year during the Term and any Renewal Term, and commencing in 2004 in the amount of Three Hundred Thousand Dollars (\$300,000.00), plus applicable state sales tax. Such payment shall be made to the County no later than June 1 of each year during the Term, commencing with the June 1, 2004 payment and concluding with the June 1, 2020 payment, and any year during any Renewal Term.

9. **FANTASY CAMPS.** In the event the Club or its designee or assignee shall hold or conduct any fantasy camp at the facility at any time during the Term or any Renewal Term, the Club shall pay no additional costs to the County for the use of the facility for such fantasy camp.

- (A) The parties agree that the Club and its designees and assigns shall be entitled to use the facility for up to three (3) weeks a year for fantasy camps pursuant to Section 9 above. The County reserves the right to conduct fantasy camps in the Major League Stadium when not occupied by the Club with reasonable prior notice given to the Club, which notice shall not be less than thirty (30) days. In no way shall the County promote (or permit others to promote) such fantasy camps as being affiliated with or sanctioned by the Club, nor shall the County conduct such fantasy camps at any time during which it would interfere with the Club rights to use the Leased Premises in accordance with this Lease.

10. **BROADCASTING.** The County shall equip the Major League Stadium for broadcast, cablecast and/or televising of any games played by the Club and shall maintain the equipment necessary therefor. The Club shall retain any and all broadcasting and television (cable and over-the-air) rights for any games played by the Club or its minor league teams at the Stadium Complex. The Club and its affiliates and agents shall not be charged any "hook-up" fees or similar charge for major and/or minor league baseball events. The County shall have the right to charge reasonable hook-up fees and other similar charges to visiting teams for major and/or minor league baseball events.
11. **GAMES PLAYED.** The Club will play each and every one of its regularly scheduled Spring Training home games exclusively at the Major League Stadium. Such exclusivity shall not include any exhibition games scheduled to be played by the Club during or following the conclusion of the Florida-based Spring Training schedule, and prior to the immediate ensuing Major League Baseball championship season, or any game approved by the Office of the Commissioner of Baseball to be played at a location approved by Major League Baseball. The Club shall endeavor in good faith to schedule no less than two (2) night games during Spring Training each year during the Term and any Renewal Term.
12. **OPERATING MAINTENANCE AND CAPITAL IMPROVEMENTS.**
 - (A) **OPERATING MAINTENANCE.**
 - (1) Throughout the Term and any Renewal Term, and except as otherwise expressly provided herein, the County shall, at its sole expense, provide all cleaning, repair and operational maintenance services for the Leased Premises in conformity with high quality industry standards, including the playing and practice fields located thereon at no expense to the Club. For purposes of this Lease, cleaning, repair and operational maintenance services shall mean those ordinary cleaning, maintenance and repair services necessary to keep the Premises in first-class good and working condition and are ordinary and recurring expenses for current repair and maintenance that do not improve an asset or add to its useful life, including, without limitation, painting, waterproofing and any expenditures that would otherwise be treated as capital in accordance with generally acceptable accounting principles but become necessary (a) as a result of the County's failure to conduct appropriate operational maintenance services pursuant to this Section 12(A), or (b) to maintain the Leased Premises in good working order.
 - (2) The Leased Premises shall be maintained by the County pursuant to the terms of this Lease and in accordance with the highest level of practiced professional baseball standards. The maintenance of the athletic fields located at the Leased Premises shall include, without limitation, fertilization, weed and vegetation control, and pest control and shall be done after normal game and Club practice hours to ensure minimum interruption with Club activities.

- (3) The Club shall be responsible for providing janitorial services for the Club's Exclusive Use Areas. The County and the Club shall share the cost of janitorial services for the Conference Room (as defined below) based on usage of the Conference Room; provided, however, the Club shall be solely responsible for Conference Room janitorial services during Spring Training.
- (4) In connection with any operations at the Leased Premises, the Club shall have the right to cause the County to use products and/or services of its corporate sponsors if such products and/or services are reasonably comparable in price and quality to other alternatives available to the County; provided, however, the County shall not be obligated to purchase such products and/or services if it would require the County to be in violation of any pre-existing written agreement with any third party or applicable law, including the County's obligations with respect to competitive bidding.

(B) CAPITAL IMPROVEMENTS.

- (1) The County and the Club have, pursuant to the Agreement, established an account (the "**Capital Improvements Fund**") for mutually agreed upon capital improvement projects to benefit the Leased Premises. On the date of this Lease, the Capital Improvements Fund balance is approximately \$40,000. The Capital Improvements Fund established pursuant to the Agreement shall be transferred intact for continuation and use in connection with this Lease. No later than January 1 of each calendar year during the Term and any Renewal Term, the County shall contribute to the Capital Improvements Fund an amount equal to the amount contributed by the Club as of such date in respect of each such calendar year. In no event shall the Club contribute less than twenty-thousand dollars (\$20,000.00) for any calendar year during the Term and any Renewal Term; provided, however, in the event the principle balance of the Capital Improvement Fund (including interest thereon) equals or exceeds two hundred fifty thousand dollars (\$250,000), neither the Club nor the County shall be required to make any contribution to the Capital Improvement Fund in accordance with this Section 12(B)(1) until the principle balance of the Capital Improvement Fund falls below \$250,000.
- (2) The County shall be financially responsible for and undertake capital improvements to the Leased Premises in accordance with the terms herein and in conformity with highest quality Major League Baseball industry standards. For purposes of this Lease, capital improvements shall mean those improvements that restore an asset or add to its useful life, or relate to assets having a useful life of more than twelve (12) months, in accordance with generally accepted accounting principles but shall expressly exclude capital expenditures to Concession and novelty equipment, portable Concession units, and equipment owned solely by the Club.

- (3) The Club shall provide to the County annually by January 1 a list of those capital improvements reasonably anticipated to be needed in the following fiscal year (October 1 to September 30.) The County shall provide the Club an estimate of the cost of the capital improvements on such list no later than February 15th of the applicable year. The Club shall have thirty (30) days to review the estimates and submit a final list of reasonable capital improvements for the following fiscal year to the County. The County shall complete all items on the final list submitted by the Club to the extent the costs of such items are payable from the Capital Improvements Fund. In the event that the actual cost of capital improvements agreed upon by the parties for the then current year exceeds the total amount contributed to the Capital Improvements Fund by the parties, the parties shall negotiate in good faith to agree upon any additional contributions to the Capital Improvements Fund to be paid by the Club and the County. The County shall annually, by January 1 of each year during the Term and all Renewal Terms, provide to the Club a written accounting and description of any and all capital improvements made to the Leased Premises and allocate the costs and expenses between direct County expenditures and those expenditures of the Capital Improvements Fund. The Capital Improvements Fund shall be reconciled in the same report.
- (4) The Club and the County hereby acknowledge that maintaining a baseball stadium suitable as the site for a Major League Baseball Spring Training program comparable to other currently constructed Major League Baseball stadiums used for Spring Training programs is of material importance to the County, the Club and Major League Baseball. Based on the foregoing, the Club and the County shall meet on a periodic basis, in no case not less than once in any two (2) year period during the Term, and once at the beginning of each Renewal Term, with respect to and review the design, specifications, quality and other attributes of the Stadium Complex in comparison to all Major League Baseball spring training stadiums constructed or renovated within the immediately preceding two (2) to five (5) year period, with emphasis on the latest Major League Baseball Spring Training stadium construction. The Club shall propose, based on such design, specification, attribute and quality review, "up-to-date" improvements for the Stadium Complex, those improvements necessary for the Stadium Complex to be brought up to current Major League Baseball Spring Training stadium standards (the "**MLB Stadium Standards**"). The MLB Stadium Standards will be reviewed, adopted and constructed on and within the Stadium Complex only in the event that either (i) at least fifty percent (50%) of all Major League Baseball spring training stadiums contain the improvements, or (ii) such improvements have been approved or constructed by the County in any other spring training facility to which the County is an owner or lessor. The requirement to meet such improvements shall be limited to the space available and viability of construction in and on the existing Stadium

Complex, with due regard for commercial reasonableness, including the availability of parking facilities. Under no circumstances shall the County be required to build a new spring training stadium to meet such improvement standards unless a new spring training stadium has been approved or constructed by or on behalf of the County for another Major League Baseball or comparable baseball team. The Club and the County will meet at least once each year during the Term to discuss in good faith new MLB Stadium Standards. Any such improvements to the Stadium Complex mutually agreed upon shall be added as an amendment to this Lease as an exhibit hereto. The maintenance account may be used for such improvements and renovations to the Stadium Complex. Notwithstanding the foregoing, all additional costs and expenses of such improvements and renovations to the Stadium Complex shall be the responsibility of the County. Any improvements and renovations to the Stadium Complex shall be completed, if feasible, by the beginning of the next Spring Training baseball season following the year of such review and discussion of the Stadium Complex's improvement and renovation.

- (5) In addition to the County's contributions to the Capital Improvements Fund and as inducement for the Club to enter into this Lease, the County hereby agrees to complete the projects described in Section 6 below (the "**County Capital Improvements**"). The County Capital Improvements shall be completed in conformity with high quality industry standards and no later than the first day of the Club's 2005 Spring Training. All costs and expenses related to the County Capital Improvements shall be the sole responsibility of the County and shall not be deducted from nor otherwise credited against the Capital Improvements Fund. To the extent that the County Capital Improvement shall principally benefit (x) the Club's Exclusive Baseball Activities, and/or (y) a Club's Exclusive Use Area, the Club shall have final approval over the design and specifications of each such capital improvement, which approval shall not be unreasonably withheld. The design and specification of any other capital improvements shall be mutually agreed upon by the parties.

In the event that the final and verified costs of construction incurred by the County for the County Capital Improvements described in Section 12(B)(5) are less than the approved County budget for the County Capital Improvements, any such savings (the "**Capital Improvements Savings**") will be paid to the Club to defray the construction cost of the Message Marquee described in Section 6(B). In the event the Club has not elected to construct and constructed the Message Marquee within one County budget cycle after completion of the construction and accounting for the County Capital Improvements, the County shall no longer be obligated to allocate the Capital Improvements Savings toward the Message Marquee.

- (6) Prior to the Club's Spring Training arrival in the year 2005, the County will construct at County expense, as a County Capital Improvement to the Stadium Complex, a year-round conference, rehabilitation and fitness training center (the "**Conference and Training Center**") located at the Stadium Complex in a mutually agreed location of sufficient size (not less than 6,000 square feet) to accommodate (i) both the major league and minor league players using the Stadium Complex during the Spring Training period, and (ii) a separate room within for (x) Club meetings during Spring Training, and (y) use in the periods before and after Spring Training by the Club and its designees and the County and its community members and organizations, on a scheduled basis (the "**Conference Room**"), as set forth and as specifically described in **Exhibit C** of this Lease.

In clarification of the foregoing, the Conference Room shall be designated as the Club's Exclusive Use Area only during the Spring Training period. All other areas within the Conference and Training Center shall be and are designated as the Club's Exclusive Use Area on a year-round basis. During the time periods before and after the Spring Training period the Club and the County shall cooperate in promotion of, scheduling for, and use of the Conference Room within the Conference and Training Center by the Club, the County and community members and organizations of or located in the County.

The Club will provide all furniture and equipment reasonably necessary for the proper use and operation of the Conference and Training Center, including tables and chairs, kitchen appliances, office furniture, benches, lockers, and exercise and rehabilitation equipment.

- (7) The parties will in good faith make best reasonable commercial efforts to research, study and maximize the seating capacity of the Major League Stadium. Within a period of five (5) years of the date of this Lease, the County shall provide to the Club a written plan to expand the seating capacity of the Major League Stadium so that such capacity will be equal or greater than the larger of (i) the average capacity of the Major League Baseball Spring Training stadiums or (ii) any Major League Baseball Spring Training stadium located in Lee County; provided, however, in no event shall such capacity exceed the reasonable engineering estimates of capacity in the existing Stadium Complex structure. The Club shall cooperate with the County in the development of the expansion plan and shall also coordinate any County interaction with Major League Baseball concerning the future construction and/or renovation of the Major League Stadium.

13. **EQUIPMENT**. Throughout the Term and any Renewal Term, the County shall be solely responsible for providing all equipment necessary to operate the Leased Premises for the purposes contemplated herein except as expressly provided herein with respect to

Concessions and novelty equipment. In addition, the County shall be responsible throughout the Term and any Renewal Term for the cost of replacing any equipment not in good and working order.

14. **TOURIST PROMOTION.** The County and the Club agree to develop an ongoing promotional partnership for the purpose of promoting Spring Training games and ticket sales thereof, and promoting other tourism opportunities in the County.

(A) Club Broadcasts.

(1) Twins Television:

- (i) Drop-Ins – During every Club Spring Training telecast or cablecast, the Club will provide the County with two 15-second announcer-read drop-ins (including graphics) promoting tourism in the County.
- (ii) Guest Appearance – During every Club Spring Training telecast or cablecast, the Club will provide the County with the opportunity for a County tourism representative to visit the booth for an in-game interview for a period of at least one-half inning for the purposes of promoting the County's tourism effort.

(2) Twins Radio:

- (i) Drop-Ins – During every Club Spring Training radio broadcast, the Club will provide two 15-second announcer-read drop-ins promoting tourism in the County.
- (ii) Guest Appearance – During at least six (6) Club Spring Training radio broadcasts, the Club will provide the opportunity for a County tourism representative to visit the booth for an in-game interview for a period of at least one-half inning for the purposes of promoting the County's tourism effort.

(B) The Club will provide the County with the following Hubert H. Humphrey Metrodome or any successor stadium (the "**Metrodome**") advertising and promotional opportunities during the Club's regular season play:

(1) Club Publications:

- (i) One (1) full-page, four-color ad in all issues of *Twins Magazine*.
- (ii) One (1) full-page, four-color ad in the *Twins Yearbook*.

(2) Club Scoreboard:

- (i) The opportunity to run one 30-second commercial spot promoting tourism in the County on the Metrodome color video board prior to every Club home game.

- (ii) Regular messages promoting County tourism on the Metrodome's black and white message board during every Club home game.
- (3) Hospitality:
 - (i) The County is entitled to one (1) VIP event in conjunction with a Club home game at the Metrodome, which shall include use of a private suite, game tickets and food and beverage service for up to sixteen (16) guests.
- (4) TwinsFest:
 - (i) The Club shall offer the County the opportunity to have a promotional location at the Club's annual off-season fan festival/ticket sales event at the Metrodome during the Term and any Renewal Term, but only in the event the Club elects to hold such event.
- (5) Direct Mail:
 - (i) Participation by the County in regular mailings to the Club's ticket holders (season, group, single-game, corporate). The mailings will be conducted at no cost to the County; however, the County will provide the appropriate brochures, fliers, etc.
- (6) Lee County Day:
 - (i) One (1) "Lee County Day" promotional day to be held in conjunction with one home game at the Major League Stadium during Club Spring Training. Lee County will be the "featured" partner for that game and receive exposure and pre-game promotion in the local market consistent with "standard" one-day sponsorship packages. The County is responsible for costs of any giveaway items.
- (C) The Club shall provide the County with the following Major League Stadium Spring Training-related advertising and promotional opportunities during each year of the Term:
 - (1) Youth Clinics. The Club will annually conduct, at no charge to the County or the participants, not fewer than four (4) youth baseball clinics in the County prior to the Spring Training period. The Club will provide the instructors and necessary equipment for the clinics. The clinics will be promoted as jointly presented by the Club and the Lee County Parks and Recreation Department. The Club retains the right to sponsorships for all clinics.
- (D) The County shall use reasonable efforts to promote the presence of the Club baseball operations by all reasonable methods incidental to regular tourist promotional activities conducted by the County.

15. **SERVICES AND PERSONNEL.**

- (A) The Club or its designee shall hire and be responsible and pay for Concessions, ticketing, advertising and other personnel necessary to service patrons attending: (i) the Major League Baseball Spring Training games, (ii) Club baseball activities, and (iii) Club related events presented at the Stadium Complex. Such personnel shall include, but are not limited to, ushers, ticket takers, Concessions workers, first aid attendants, and other related personnel. The Club personnel shall be responsible for maintaining their respective work areas in a neat and orderly fashion.
- (B) The County shall provide adequate fire protection staff for the Leased Premises.
- (C) The Club shall provide security within the Major League Stadium for any Club related activities held therein. The Club may hire off-duty members of the Lee County Sheriff's Department to provide such security services and shall pay such off-duty members the prevailing rate established by said police departments. In addition, at all times during Spring Training, the Club shall be responsible for providing security personnel to staff the Club's Exclusive Use Areas. The hiring of such security staff members shall be at the sole discretion of the Club.
- (D) The County shall continue to provide a sufficient number of members of the Lee County Sheriff's Department for traffic control and assistance with ingress and egress to and from the Stadium Complex for all Major League Baseball Spring Training games. The County will be responsible for all costs and expenses for such traffic control services.

16. **VIOLATION OF LAWS.**

- (A) Except as provided in Section 22 below, the Club shall pay all lawful taxes, assessments, licenses and charges on its operations, and on goods, merchandise, fixtures, appliances, equipment and property owned solely by the Club and located on or about the Leased Premises (the "**Club Assets**"). Should any improvements to the Club Assets made by the Club become subject to taxes, the Club agrees to pay any and all lawful taxes, assessments or charges which at any time may be levied by any federal, state, county, city or any tax or assessment levying body (i) against the Club, (ii) upon the Leased Premises, (iii) upon any interest in this Lease or any possessory right which the Club may have in or to the Leased Premises, or (iv) in the improvements thereon by reason of the Club use or occupancy thereof (but expressly excluding capital improvements made by the County pursuant to Section 12 herein). The County agrees that to the extent permitted by law, it will not support the levy of any new form of tax against Club operations hereunder. Notwithstanding the foregoing provisions, the Club shall have the right, in its own name or behalf or in the name and behalf of the County, after notifying the County of its intention to do so, to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax or assessment. This provision shall in no way be construed as restricting the County

from contesting the legality of such tax or assessment or assisting the Club therein if it so desires.

- (B) The Club shall not in any manner, directly or indirectly, violate the laws, ordinances, rules or regulations of any federal, state, county, city or other governmental authority or agency in connection with the use and occupancy of the Leased Premises under the terms of this Lease.

17. **CLUB ALTERATIONS.**

- (A) The Club shall not make any permanent alterations or permanent additions to the physical structure of the Leased Premises without first requesting and obtaining written approval from the County, which approval shall not be unreasonably withheld. The Club shall repair or cause to be repaired, any damage to the structures, water apparatus, electric lights, or any fixtures, appliances, furniture, lockers or other appurtenances of said Premises, which damages result from any gross negligence or willful misconduct of any of the Club, its assigns, agents or employees, and shall pay, or cause to be paid to the County, the costs of any reasonable and necessary repairs; provided, however, that, damage by the natural elements or ordinary wear and tear shall in no event be the responsibility of the Club.

- (B) Upon the termination of this Lease, the Club shall return to the County all equipment and personal property of the County in the exclusive possession of the Club, its assigns, agents or employees. All such equipment and property shall be in good condition, subject to ordinary wear and tear damage by the natural elements or damage caused by parties other than the Club, its agents, assigns or employees.

- (C) Immediately prior to and following Spring Training during each year of the Term and any Renewal Term, the County and the Club shall jointly perform an inspection of the Leased Premises that shall include an inventory of all equipment and personal property of the County and the Club thereon. The Club shall promptly pay to the County any monies owed for damage to the Leased Premises or County property thereon that was discovered as a result of such inspections, but only to the extent such damage was caused by the Club or its assigns, agents or employees. The County shall promptly pay to the Club any monies owed for damage to the Club property on the Leased Premises that was discovered as a result of such inspections. Any damage not caused by the Club shall be promptly repaired by the County.

18. **UTILITIES.** Except as otherwise provided herein, the County shall be responsible for the cost of all utilities in respect of the Leased Premises, including but not limited to, electricity, water, sewage, trash removal and telephone. Notwithstanding the foregoing, the Club shall reimburse the County for electrical costs incurred to provide field lighting for any evening games played by the Club at the Major League Stadium during the Term and any Renewal Term, and shall be responsible for electricity charges related to the

Club's Exclusive Use Areas. The County will provide separate electrical meters for all such locations.

19. **USE.**

- (A) During the Term and any Renewal Term, the Club shall be entitled to peacefully have and enjoy the exclusive use of the Stadium Complex during Spring Training without unreasonable interruption or interference by the County or any person claiming by, through and under the County, except to the extent that concurrent rights to use the Leased Premises may be exercised or granted to others by the County hereunder in accordance with the provisions of this Section 19. At any time throughout the Term and any Renewal Term, during Spring Training, the Club use shall be exclusive and the County may not use the Leased Premises for any purpose. Outside of Spring Training, the County has the right to use, or permit third parties to use the Leased Premises for any event so long as (a) such use would not interfere with the Club's Exclusive Baseball Activities, and/or (b) such use would not materially impair the condition of a playing field on the Leased Premises such that the field condition would no longer meet professional baseball standards, and/or (c) such use would not interfere with the Club's Exclusive Use Areas. In any case, the County shall notify the Club of any such use and the Club shall have the right to object to any such use if the Club determine that (a) such use would interfere with the Club's Exclusive Baseball Activities, and/or (b) such use would materially impair the condition of a playing field on the Leased Premises such that the field condition would no longer meet professional baseball standards, and/or (c) such use would interfere with the Club's Exclusive Use Areas.
- (B) The Club shall advise the County of its intended Spring Training schedule as soon as practicable each year following the confirmation of such schedule to enable the County to schedule events on the Leased Premises but only in accordance with the terms of this Section 18. No later than December 15 of any year during the Term and any Renewal Term, and subject to additional changes required by Major League Baseball, the Club shall furnish the County with its final Spring Training exhibition game schedule and any extended use requirements, if any, for the upcoming year. In the event the Club has an existing minor league baseball team and/or exercises the right of first refusal for minor league baseball in accordance with Section 1(C) hereof, the Club shall provide the County with such Minor League game schedule no later than February 1 of any applicable year during the Term and any Renewal Term.
- (C) The County may use the Leased Premises for the following public purposes subject to and in accordance with the provisions of this Lease: (i) the exhibition, presentation and broadcasting (or other transmission) of other amateur or professional sporting events, (ii) exhibitions and tournaments, (iii) musical performances, (iv) theater performances and other forms of live entertainment, (v) public ceremonies, (vi) fairs, markets, fireworks displays, shows, or other public or private exhibitions and activities related thereto, and (vii) pre-scheduled meetings in the Conference and Training Center.

The County shall be solely responsible for all costs and expenses resulting from the use of the Leased Premises for any non-Club related events, including without limitation, the cost of utilities, staffing, and any costs required to repair any damage occurring during such events. The County shall retain all revenue derived from such non-Club use of the Leased Premises except as provided in Section 5 with respect to Concessions and novelty operations.

- (D) In no event shall the County use any Club property or equipment without the express written consent of the Club. The County shall promptly repair or replace any damaged property or equipment owned by the Club or its concessionaire if such damage resulted from the County's use or any other third party's use of the Leased Premises to the extent such third party use was authorized or permitted by the County or resulted from the County's negligence.
- (E) The Club may not use the Leased Premises for any events or activities other than events or activities related to its professional baseball operations, associated with Spring Training events or activities, including entertainment therefore, the Club's Exclusive Baseball Activities, or as otherwise reasonably contemplated under this Lease without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed.

- 20. **OPERATIONS.** The parties hereby agree that the exclusive use of the Leased Premises by the Club during Spring Training includes operational jurisdiction over the various service providers, subcontractors, and other persons or entities who may be involved or working at the Leased Premises, but shall not include operational jurisdiction over any County employees unless expressly agreed by the parties. Accordingly, the Club shall manage the agreed upon operations for the Spring Training games, including ticket sales and distribution of tickets. The Club shall endeavor in good faith to cooperate with other parties using the Leased Premises, including the County, when managing personnel on the Leased Premises during Spring Training or otherwise in accordance with this Lease.
- 21. **ASSIGNMENT/SUBLEASE.** The rights granted to the Club pursuant to this Lease shall not be assigned, except with the prior written consent of the County; provided, however, that any assignment or transfer pursuant to the sale of all or substantially all of the assets and/or ownership interest of the Club shall not require County's consent hereunder. The Club shall have the right of first refusal to sublease the Leased Premises to a professional baseball minor league program as previously provided herein, provided such sublessee consents in writing to be bound by the provisions of this Lease. The County shall have the right to approve such sublessee and sublease agreement, provided that such approval shall not be unreasonably withheld.
- 22. **TAXES.** The County represents and warrants that (1) as of the date hereof, it has and shall continue to have throughout the Term and any Renewal Term, all ownership interests in the leased property, (2) as such, has the full authority to grant the Club the rights provided hereunder, and (3) this Lease has been entered into for the public purpose of promoting tourism, gainful employment and economic growth in the County and the State of Florida. It is the intent and understanding of the parties that the leasehold interest held by the Club pursuant to this Lease shall be exempt from ad valorem taxation

pursuant to Chapter 196.199, Florida Statutes. If, for any reason during the Term and any Renewal Term, all or any portion of its the leasehold interest or other rights or benefits held by the Club under this Lease becomes subject to ad valorem taxation, such tax shall be paid by the County as provided by law.

23. **HOLD HARMLESS/INSURANCE.**

- (A) Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the County shall indemnify, defend, and hold harmless the Club and the members, partners, officers, employees, affiliates, representatives and agents of the Club (the "**Club Indemnified Parties**"), from and against any and all claims, actions, damages, liability, costs and expenses, including reasonable attorneys' fees and court costs, arising out of the use, maintenance or operation of the Leased Premises by the County or any of its designees, lessees, agents, employees, or contractors, or arising out of the actions, omissions to act, or negligence of the County or any third party using the Leased Premises with permission from or the approval of the County in accordance with its rights hereunder, or the County's breach of any representation, warranty or agreement with the Club including, but not limited to, bodily injury, death and/or property damage or any other lawful expense. The County agrees to defend all actions to which such indemnity applies and to conduct the defense thereof at the County's sole expense and by the County's counsel, which counsel shall be satisfactory to the Club, but such approval shall not be unreasonably withheld or delayed. The County may not settle any suit, action or claim to which an indemnification obligation applies under this Section 23 without the prior written approval of the Club, which approval shall not be unreasonably withheld, delayed or conditioned.
- (B) The Club shall indemnify, defend, hold harmless the County from and against any and all claims, actions, damages, liability, costs and expenses, including reasonable attorneys' fees and court costs, arising out of the use of the Leased Premises by the Club or any of its agents, employees, or contractors (the "**Club Parties**") or arising out of the actions, omissions to act, or negligence of the Club Parties or any third party using the Leased Premises for professional baseball activities or related events with permission from or the approval of the Club in accordance with its rights hereunder, or the Club Parties' breach of any representation, warranty or agreement with the County including, but not limited to, bodily injury, death and/or property damage or any other lawful expense. The Club agrees to defend all actions to which such indemnity applies and to conduct the defense thereof at the Club's sole expense and by the Club counsel. The Club may not settle any suit, action or claim to which an indemnification obligation applies under this Section 23 without the prior written approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned.
- (C) Each party shall maintain insurance with a company or companies reasonably acceptable to the other, which company or companies shall have at least an A-Best rating. Each party agrees to maintain insurance policies as follows:

- (1) Workers' compensation insurance in an amount not less than is required by Florida law;
- (2) Commercial general liability insurance, including property damage with a limit of \$1,000,000.

24. **DISPUTES.** The parties agree to attempt to settle by mediation any controversy that may arise between the Club and the County regarding operation, maintenance and the rights or duties hereunder of either party, as hereafter provided, and the mediator will determine the controversy in accordance with the laws of the State of Florida as applied to the facts as found. Notwithstanding the foregoing, any controversy arising between the parties with respect to any monetary sums due and owing including, but not limited to, Lease payments and other monetary liabilities shall not be mediated and each party shall have available to it all other remedies available at law or in equity.

- (A) In any case hereunder in which it shall become necessary to resort to mediation, such mediation by the parties shall be conducted as provided for in this Section 24.
- (B) The party desiring mediation shall give written notice thereof to the other party, specifying in such notice, the specific question or questions to be mediated.
- (C) Within fifteen (15) days after service of such notice each party shall provide the other with the names of at least three (3) persons to act as a mediator in the matter. The mediator will be selected by the parties within fifteen (15) days following the exchange of names by mutual agreement. The mediator shall meet with the parties at all participants' convenience and mediate the matter. If unsuccessful, the parties may then utilize all lawfully available means to resolve the issue.

25. **SUSPENSION OF PLAY.** If for any reason beyond the control of the parties, including without limitation, as a result of any act of nature or force majeure, national emergency, state of war, or because of a labor strike, lock-out, or other cause of similar nature, the Leased Premises are unavailable for Spring Training in any of the years covered under the terms of this Lease, this Lease shall be regarded as suspended for the period of unavailability without liability to either party, and the Term or any Renewal Term, shall be extended for one (1) additional calendar year so long as the period of unavailability is no more than one (1) Spring Training period during the Term or any Renewal Term. If the Leased Premises shall be unavailable for more than one (1) Spring Training period during the Term or any Renewal Term, the Club shall have the right to terminate the Lease without any further liability to the County.

26. **PROMOTION.** The parties hereto expressly recognize and agree that the County is undertaking substantial financial responsibility to induce the Club to continue its use of the Leased Premises for Spring Training. Accordingly, the Club agrees to cooperate in good faith with the County in its effort to promote the development and success of Major League Baseball activities in the Lee County area. The Club shall endeavor in good faith to cause personnel and players to participate in a reasonable number of cooperative

activities involving the promotion and development of professional baseball in the County during Spring Training.

27. **NOTICES.** Any notice required to be given hereunder shall be in writing and shall be deemed received (i) upon actual receipt if sent by overnight delivery by a nationally recognized courier or by U.S. Postal Services Express Mail, postage prepaid, (ii) five (5) days after deposit if sent by U.S. certified mail, return receipt requested, or (iii) upon actual confirmed receipt if sent by facsimile copy:

For notices to the Club:

Dave St. Peter
President
Minnesota Twins
Hubert H. Humphrey Metrodome
34 Kirby Puckett Place
Minneapolis, MN 55415

With a copy to:

Michael J. Grimes
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157

For notices to the County:

Lee County Manager
Post Office Box 398
Fort Myers, Florida 33902-0398
Director of Lee County Parks and Recreation
Post Office Box 398
Fort Myers, Florida 33902-0398

With a copy to:

Lee County Attorney
Post Office Box 398
Fort Myers, Florida 33902-0398

In addition to the formal notices required by this Lease, the Club shall coordinate in good faith its activities hereunder with the County through the County's Director of Parks and Recreation, or such other person as the County Manager may designate from time to time. Pursuant to the notice provision above, it is hereby agreed that the said Director or other designee is authorized to represent the County with respect to all matters covered by this Lease. In similar fashion, the Club shall designate one person who shall be authorized to represent the Club in such matters. In the absence of the Club making a

specific designation to the contrary, this person shall be the person named above by the Club to receive all notices.

28. **PERMITS**. The Club, at its sole expense, shall comply with all laws, orders and regulations of federal, state and county authorities, and with any directions given by any public officer pursuant to law, which shall impose any duty upon the Club with respect to the Leased Premises. The County shall provide permits or licenses or take necessary corrective action to ensure the acquisition of any permit directly related to the County's repair, renovation or maintenance of the Leased Premises and compliance with building codes. The Club, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease and the County, when necessary, will join with the Club in applying for all such permits or licenses. To the extent permitted by law, the County will assist and cooperate with the Club in securing permits for the operation of the Leased Premises. The County shall also not act unreasonably to withhold its approval of any such permits or licenses required under its laws or regulations.

29. **TERMINATION**.

(A) The County may terminate this Lease upon thirty (30) days' written notice to the Club of any of the following events (collectively hereinafter referred to as the "Club Defaults"):

- (1) If the Club deserts or vacates the Leased Premises;
- (2) If, by order of a competent authority, a receiver, liquidator or trustee of the Club or any of its property shall be appointed and such receiver, liquidator or trustee shall not have been discharged within thirty (30) days of the making of such order, or if by decree of such authority the Club shall be adjudicated or determined to be bankrupt or insolvent, or if the Club shall file a petition in voluntary bankruptcy, shall make an assignment for the benefit of or enter into a composition with its creditors, shall seek to terminate its existence or shall otherwise seek to wind up its affairs;
- (3) If the Club fails to make any payments to the County pursuant to this Lease within one hundred and twenty (120) days following written notice of such payment default, or
- (4) If the Club breaches any material provision, agreement or obligation hereunder that is not cured within sixty (60) days of notice of such breach; provided, however, that if such breach cannot be cured within such sixty (60) day period, but the breach is capable of cure within a reasonable period of time which is acceptable to the County, and the Club diligently pursues such cure, the Club shall be allowed such agreed upon time period to cure such default.

(B) Upon the County's election to terminate the Lease following a Club Default:

- (1) The County shall have the right to reenter or repossess the Leased Premises by force, summary proceedings, surrender or otherwise, and may dispossess and remove the Club, or other occupants thereof, without being liable for any prosecution therefore; provided, however, that the County shall have no right to the Club Assets and the Club shall have the right to remove all Club Assets from the Leased Premises.
 - (2) The County shall have the right to relet the Leased Premises. Notwithstanding anything to the contrary contained herein, the County shall take all reasonable actions to mitigate any losses or damages caused by a Club Default. Should the County incur necessary and reasonable expenses in enforcing its rights hereunder, specifically including reasonable attorneys' fees and court costs, said reasonable expenses shall be borne by the Club.
- (C) The Club may terminate the Lease upon any of the following events (collectively hereinafter referred to as the "**County Defaults**"):
- (1) Upon written notice to the County no later than January 31, 2005, of the County's failure to complete all County Capital Improvements specified in **Exhibit C**, which County Capital Improvements specified in the notice are not completed by February 28, 2005 unless the Club (a) extends such cure period in writing, and (b) the specified County Capital Improvements are completed upon the conclusion of such extended cure period. If the County fails to complete such County Capital Improvements within the cure period or any extended cure period that may be granted by the Club, the Club shall be relieved of all liabilities and obligations accruing after the effective date of termination;
 - (2) Upon thirty (30) days' written notice to the County of any breach by the County of any material provision, agreement or obligation hereunder that is not cured within sixty (60) days of notice of such breach; provided, however, that if such breach cannot be cured within such sixty (60) day period, but the breach is capable of cure within a reasonable period of time which is acceptable to the Club, and the County diligently pursues such cure, the County shall be allowed such agreed upon time period to cure such default. If the County fails to cure such breach upon the agreed upon time period, the Club shall be relieved of all liabilities and obligations accruing after the effective date of termination.
- (D) The Club shall have the right, at any time and at its sole option, to terminate this Lease and all of its obligations hereunder upon written notice to the County on or before March 31 of any year during the Term and any Renewal Term, and the termination of the Lease shall be deemed effective as of December 31 of that calendar year. In the event of termination pursuant to this provision, the County will accept the following payments from the Club as the County's sole remedy against the Club and any other person or entity relating to such termination of this Lease:

(1) (a) Subject to subparagraph (1)(b) below, one lump-sum payment in the dollar amount equal to the full amount of the Premium (as defined below), which payment shall be due within five (5) business days following the effective date of the termination of the Lease. The "**Premium**" as used herein shall be based on the effective date of termination indicated as follows: (i) one million dollars (\$1,000,000.00) if such termination occurs before December 31, 2010, (ii) nine hundred thousand dollars (\$900,000.00) if such termination occurs before December 31, 2011, (iii) eight hundred thousand dollars (\$800,000.00) if such termination occurs before December 31, 2012, (iv) seven hundred thousand dollars (\$700,000.00) if such termination occurs before December 31, 2013, (v) six hundred thousand dollars (\$600,000.00) if such termination occurs before December 31, 2014, (vi) five hundred thousand (\$500,000.00) if such termination occurs before December 31, 2015, (vii) four hundred thousand dollars (\$400,000.00) if such termination occurs before December 31, 2016, (viii) three hundred thousand dollars (\$300,000.00) if such termination occurs before December 31, 2017, (ix) two hundred thousand dollars (\$200,000.00) if such termination occurs before December 31, 2018, (x) one hundred thousand dollars (\$100,000.00) if such termination occurs before December 31, 2019, and (xi) zero dollars (\$0) if such termination occurs after December 31, 2019.

(b) Notwithstanding the foregoing subparagraph (1)(a), if the County does not grant its approval to a proposed assignment of this Lease and rights and obligations of the Club hereunder to an owner or operator of another Major League Baseball club, and the Club then terminates this Lease pursuant to this Section 29(D), the Club shall have no obligation to pay the Premium as and when set forth in subparagraph (1)(a) above.

(2) The parties agree that the amounts specified in this Section 29(D) constitute reasonable and just compensation for the Club's exercise of the termination right provided for herein, and the Club hereby promises to pay to County, and the County hereby agrees to accept, the appropriate payment amount described above as liquidated damages, and not as a penalty, and as its sole and exclusive remedy related to the termination of this Lease by the Club, and the County waives all other rights and remedies in connection therewith.

(E) No more than thirty (30) days following the effective date of termination or following the expiration of the Lease, the County shall cause to be paid to the Club one-half (1/2) of the amount remaining in the Capital Improvements Fund; provided, however, the County shall have the right to withhold any amounts disputed in good faith until the settlement of any such dispute.

30. FIRE OR OTHER CASUALTY

(A) The County shall insure the Leased Premises against damage or destruction by fire or other casualty under the standard fire insurance policy with approved

standard extended coverage applicable to the Leased Premises. The County shall ensure that the Leased Premises are covered for 100% replacement value. If any part of either of the Leased Premises is damaged or destroyed by fire or other casualty insured under the standard fire insurance policy including approved standard extended coverage endorsement applicable to the Leased Premises, and the Leased Premises are unavailable for more than one (1) Spring Training year ("**Substantial Interference**"), then the Club may terminate this Lease by written notice to the County within one hundred twenty (120) days after the later date of such damage or destruction or the date the duration of unavailability of the Leased Premises is known by the Club. In the event the Club elects to terminate the Lease, each party shall be entitled to the proceeds of any insurance it has procured, there shall be an abatement of all monies due hereunder, and the Club shall be entitled to fifty percent (50%) of any Capital Improvements Funds available as of the date of such damage or destruction. Upon payment of any sums then owing by either party to the other, the parties shall be released from all future liability hereunder except for liability under the indemnity provisions hereof, which shall survive such termination.

- (B) If the Club does not elect to terminate this Lease as a result of Substantial Interference of either of the Leased Premises, then at its expense, the County shall restore the Leased Premises to as good as condition as existed previously and the Club shall not be released from any obligations hereunder except that there will be an abatement of all monies due hereunder for the period of unavailability.
- (C) If either of the Leased Premises is damaged or destroyed by fire or other casualty and the Leased Premises are unavailable for less than one (1) Spring Training season during the Term and any Renewal Term, the County shall promptly repair and rebuild the Leased Premises. In such event, all Club obligations hereunder shall be suspended during the time period for which the Leased Premises are unavailable.
- (D) If, during any period the Leased Premises are unavailable, the Club must find an alternative location for Spring Training, the County shall make reasonable efforts, if requested by the Club, to make a temporary Spring Training facility available to the Club.
- (E) Except to the extent provided for in this paragraph or elsewhere in this Lease, neither the monies payable by the Club nor any of the Club's other obligations under any provisions of the Lease shall be affected by any damage to or destruction of the Leased Premises by any cause whatsoever.

31. **GENERAL PROVISIONS.** This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

- (A) The covenants, terms, conditions, provisions and undertakings in this Lease, or in any renewals thereof, shall extend to and be binding upon the heirs, personal representatives, executors, administrators, successors and assigns of the respective parties hereto as if they were in every case named and expressed and wherever

reference is made to either of the parties hereto shall be held to include and apply also to the heirs, personal representatives, executors, administrators, successors and assigns of such party as if in each and every case so expressed.

- (B) The parties agree to execute and deliver any instruments in writing, which are necessary to carry out any agreement, term, condition or assurance in this Lease, whenever the occasion shall arise and request for such instrument shall be made.
- (C) The specified remedies to which the parties may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which the parties may be lawfully entitled in case of any breach or threatened breach of any provision or provisions of this Lease.
- (D) This Lease and any exhibits attached hereto contain the entire agreement and understanding between the parties and is a complete and exclusive statement of the terms thereof. This Lease shall supercede all prior oral and written understandings or agreements, terms or conditions relating to the Leased Premises, including the Public Facility Use Agreement by and between Lee County and the Club, dated December 18, 1991, and neither party has relied on any representation, express or implied, not contained in this Lease or the simultaneous or prior writings heretofore. Any amendment or modification of this Lease may not be changed or supplemented orally, but shall be in writing and signed by the parties.
- (E) Each of the parties represents and warrants that as of the date hereof and throughout the Term and any Renewal Term (1) it has all requisite authority to enter into this Lease and to perform its obligations hereunder, (2) that the execution and delivery of this Lease and the performance of its obligations hereunder have been duly authorized by all necessary action on the part of such party, and (3) upon due execution and delivery by such part, constitutes a legal, valid and binding obligation of the part, enforceable against such party in accordance with its terms.
- (F) If any term or other provision of this Lease is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Lease shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify the Lease so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.
- (G) At and upon the execution and delivery of this Lease by the Club and the County, the Agreement shall terminate. Thereafter, this Lease shall govern the relationship of the parties with respect to the Stadium Complex and the subject matter of this Lease; provided, however, that the Capital Improvements Fund

shall survive the termination of the Agreement and benefit the Club and the County hereunder.

32. **DEFINITIONS.** For purposes of this Lease and any Exhibits to this Lease, the following terms have the meanings specified:

"*Agreement*" shall have the meaning set forth in the Recitals to this Lease.

"*Capital Improvements Fund*" shall have the meaning set forth in Section 12(B)(1) of this Lease.

"*Capital Improvements Savings*" shall have the meaning set forth in Section 12(B)(6)(i) of this Lease.

"*Club*" shall have the meaning set forth in the Preamble to this Lease.

"*Club Assets*" shall have the meaning set forth in Section 16(A) of this Lease.

"*Club Defaults*" shall have the meaning set forth in Section 29(A) of this Lease.

"*Club Indemnified Parties*" shall have the meaning set forth in Section 23(A) of this Lease.

"*Club Parties*" shall have the meaning set forth in Section 23(B) of this Lease.

"*Club's Exclusive Baseball Activities*" shall have the meaning set forth in Section 2(C) of this Lease.

"*Club's Exclusive Use Areas*" shall have the meaning set forth in Section 2(D) of this Lease.

"*Concessions*" shall have the meaning set forth in Section 5 of this Lease.

"*Conference and Training Center*" shall have the meaning set forth in Section 12(B)(6)(i) of this Lease.

"*Conference Room*" shall have the meaning set forth in Section 12(B)(6)(i) of this Lease.

"*County*" shall have the meaning set forth in the Preamble to this Lease.

"*County Capital Improvements*" shall have the meaning set forth in Section 12(B)(4) of this Lease.

"*County Defaults*" shall have the meaning set forth in Section 29(C) of this Lease.

"*Gross Revenues From Concessions*" shall have the meaning set forth in Section 5(A) of this Lease.

"Gross Revenues From Ticket Sales" shall have the meaning set forth in Section 3(A) of this Lease.

"Lease" shall have the meaning set forth in the Preamble to this Lease.

"Leased Premises" shall have the meaning set forth in Section 2 of this Lease.

"MLB Stadium Standards" shall have the meaning set forth in Section 12(B)(4) of this Lease.

"Major League Stadium" shall have the meaning set forth in Section 2(A) of this Lease.

"Message Marquee" shall have the meaning set forth in Section 6(B)(1) of this Lease.

"Metrodome" shall have the meaning set forth in Section 14(B) of this Lease.

"Minor League Complex" shall have the meaning set forth in Section 2(A) of this Lease.

"More Favorable Provisions" shall have the meaning set forth in Section 1(E) of this Lease.

"Premises" shall have the meaning set forth in Section 2 of this Lease.

"Premium" shall have the meaning set forth in Section 29(D)(1) of this Lease.

"Renewal Term" or **"Renewal Terms"** shall have the meaning set forth in Section 1 of this Lease.

"Spring Training" shall have the meaning set forth in Section 1(B) of this Lease.

"Stadium Complex" shall have the meaning set forth in Section 2(A) of this Lease.

"Substantial Interference" shall have the meaning set forth in Section 39(A) of this Lease.

"Term" shall have the meaning set forth in Section 1 of this Lease.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the ____ day of _____, 2004.

ATTEST:

CHARLIE GREEN, CLERK OF COURT

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

By _____
Deputy Clerk

By _____
Chairman

APPROVED AS TO FORM

By _____
County Attorney

WITNESSES:

MINNESOTA TWINS
Hubert H. Humphrey Metrodome
34 Kirby Puckett Place
Minneapolis, Minnesota 55415

By _____
President

**[SIGNATURE PAGE TO AMENDED AND RESTATED STADIUM LEASE
AGREEMENT]**

EXHIBIT A
STADIUM LAND AREA

SITE LOCATION OF LEE COUNTY BASEBALL FACILITY

DESCRIPTION
PARCEL IN

NE-¼, SECTION 30, T. 45 S., R. 25 E.
LEE COUNTY, FLORIDA

A tract or parcel lying in the northeast quarter (NE-¼) of Section 30, Township 45 South, Range 25 East, Lee County, Florida which tract or parcel is described as follows:

From the southwest corner of the northeast quarter (NE¼) of said Section 30 run N 01° 10' 06" W along the west line of said northeast quarter (NE-¼) for 621.20 feet to the Point of Beginning.

From said Point of Beginning continue N 01° 10' 06" W along said west line for 1921.55 feet; thence run N 88° 55' 40" E parallel with the south line of said fraction for 2184.47 feet to an intersection with the curved northwesterly line of Six Mile Cypress Parkway as described in Official Record Book 1119 at Page 835; thence run southwesterly along said northwesterly line along the arc of a curve to the right of radius 5604.58 feet (chord bearing S 23° 42' 17" W) (chord 2116.37 feet) (delta 21° 45' 59") for 2129.15 feet; thence run S 88° 55' 40" W for 1294.31 feet to the Point of Beginning.

Containing 80.00 acres more or less.

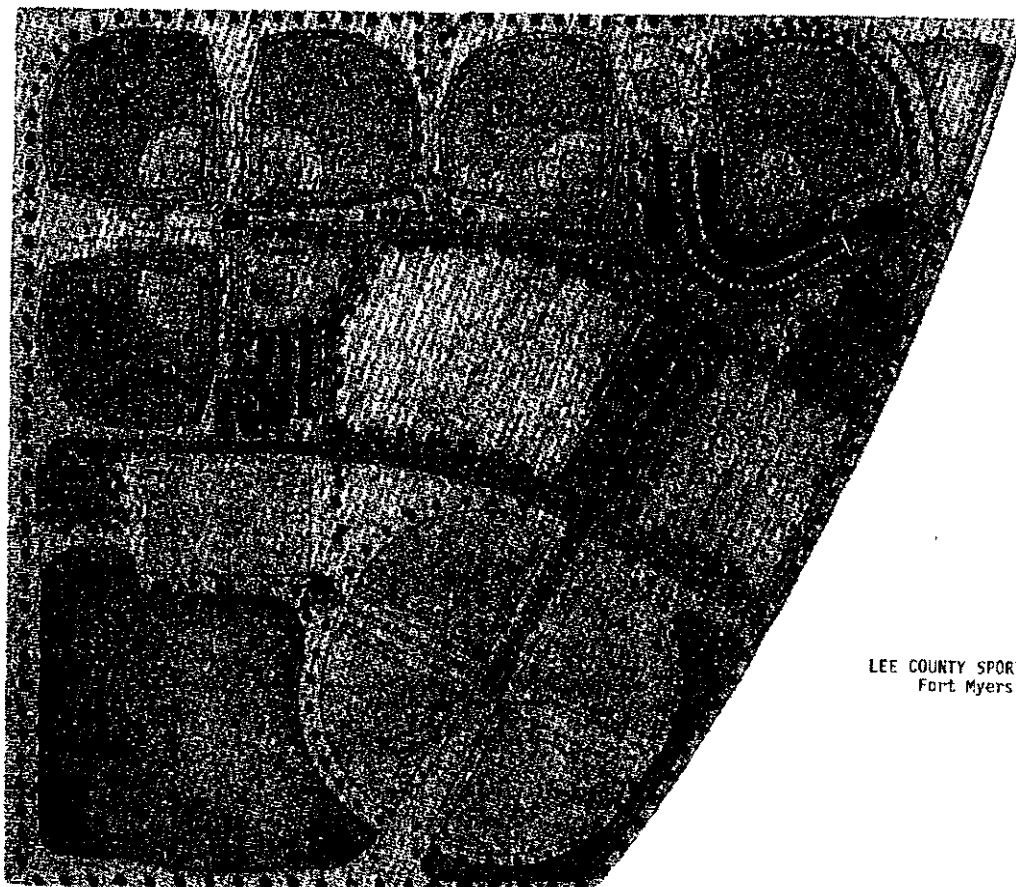
Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone derived from the Florida Department of Transportation centerline survey for Six Mile Cypress Parkway.

EXHIBIT B

CLUB'S EXCLUSIVE USE AREAS

EXHIBIT C

CONFERENCE AND TRAINING CENTER



LEE COUNTY SPORTS COMPLEX
Fort Myers, FL

EXHIBIT D

MESSAGE MARQUEE

1D MULTI-CAPACITY CLASSIFICATION OR THIS SIZE SIGN

PLAY FACE AND BACKED WITH FLUORESCENT
PINK GREEN WITH A LIGHT STUCCO TEXTURED FINISH

- EXACT COLORS TO BE SPECIFIED
- BACKGROUND PANEL IS PAN FORMED HIGH IMPACT ACRYLIC
- DISPLAY PANEL IS FLUORESCENT ILLUMINATED

MESSAGE CENTER DISPLAY:


- MONOCHROME (RED) LED TECHNOLOGY
- 16 X 64 POINT MATRIX
- LED CLUSTERS ARE ON 2.5" CENTERS
- 12 LED'S PER POINT / 10,000 MCD'S
- 2 LINES OF 17.5" HIGH CHARACTERS OR GRAPHIC COMBINATIONS AND FONTS
- 100% SOLID STATE ELECTRONICS

ADVERTISEMENT DISPLAY:

- COPY IS TO BE SPECIFIED
- DISPLAY PANEL IS FLUORESCENT ILLUMINATED FLAT, HIGH IMPACT ACRYLIC

GENERAL DISPLAY:

- DOUBLE FACE
- DISPLAY CABINETS ARE BEIGE
- PYLONS ARE 12" SQUARE TUBES A WITH LIGHT STUCCO TEXTURED GREEN FINISH
- ROOF GAP IS WHITE WITH BEIGE DIMENSIONAL ACCENTS
- DIMENSIONS ARE SUBJECT TO CHANGE DUE TO DETAIL DESIGN CONSIDERATIONS
- ONLY APPROVED SHOP DRAWINGS SHOULD BE USED FOR CONSTRUCTION PURPOSES



ABS SYSTEMS, INC. 11866 METRO PARKWAY, FORT MYERS, FL 33912 - (239) 939-7440 / (800) 226-7440

HAMMOND STADIUM & THE LEE COUNTY SPORTS COMPLEX
BY: FVH
DWG. NO: 90-B-4545
DATE: 2-17-04
SCALE: 1/4" = 1'-0"

THIS DESIGN IS AN EXCEPT REGISTERED OR
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