

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

Blue Sheet No. 20050186

1. REQUESTED MOTION:

ACTION REQUESTED: Consider approval and authorize the Chairman's signature on (1) an Amended Lease Agreement with the Boston Red Sox for their Spring Training at the City of Palms Park, and (2) an Amended License Agreement among the County, the City of Fort Myers and the Red Sox for use of the parking areas at the City of Palms Park.

WHY ACTION IS NECESSARY: All property interests in real property whether given or taken must be approved by the Board of County Commissioners.

WHAT ACTION ACCOMPLISHES: Updates the Lease and License Agreements for Red Sox Spring Training at the City of Palms Park.

2. DEPARTMENTAL CATEGORY: C12C
COMMISSION DISTRICT # 2

3. MEETING DATE: February 22, 2005

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER Lease / License Agreement

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT County Attorney
 - C. DIVISION
- BY: David M. Owen
County Attorney

7. BACKGROUND:

On November 25, 2003, the County approved entering into a fifteen (15)-year Lease Agreement with the Boston Red Sox for their Spring Training activities at the City of Palms Park Stadium and Minor League Complex. The Agreement was executed by the County on February 25, 2004.

(BACKGROUND CONTINUED - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<u>2/9/05</u>	OA <u>2/9/05</u>	OM <u>2/9/05</u>	RISK <u>2/9/05</u>	GC <u>2/9/05</u>	<u>2-10-05</u>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
COUNTY ADMIN: [Signature]
2/9/05
COUNTY ADMIN
FORWARDED TO: [Signature]
2/10/05
4:20 PM

CO. ATTY.
FORWARDED
TO CO. ADMIN.
[Signature]

BACKGROUND: (Continued)

In the interim, and after previously entering into a Parking License Agreement with the City of Fort Myers on November 4, 2003 which needed further updating to bring the License Agreement current with certain facts and agreements since made between the City and the Red Sox in December, 2003, the Amended Parking License Agreement is also being brought for Board approval.

Neither document has any revisions adverse to the County, and each has been executed by the Red Sox and the City of Fort Myers and the Red Sox (License), respectively.

The revisions can be found at:

a) Lease Agreement:

Pages 6 (Paragraph 4.A.), and 6-7 (Paragraph 4.C), relating to parking at the Stadium and referencing the new Amended License Agreement, and

b) License Agreement:

Pages 1-2 (Paragraphs 1. and 2., A. and B.), 3 (Paragraph 4.) and 5 (Paragraph 13.) relating to revisions by and between the City and the Red Sox.

“Black-line” versions of the documents are attached to the bluesheet for your convenience. The originals will be held by Public Resources until Board of County Commissioners’ approval.

**CITY OF PALMS STADIUM AMENDED LEASE AGREEMENT
BETWEEN LEE COUNTY AND
THE BOSTON RED SOX BASEBALL CLUB,
LIMITED PARTNERSHIP**

THIS STADIUM AMENDED LEASE AGREEMENT (this "Lease"), is made and entered into on this _____ day of _____, 2005 by and between **LEE COUNTY**, a political subdivision and charter county of the State of Florida, ("County"), and the **BOSTON RED SOX BASEBALL CLUB, LIMITED PARTNERSHIP**, a Massachusetts limited partnership, ("Red Sox"), collectively called the "Parties" hereto.

WITNESSETH:

WHEREAS, the Red Sox is the sole owner of the Boston Red Sox professional baseball franchise, and desires a lease for Spring Training at the City of Palms Stadium, commencing with the Spring Training season for 2004; and,

WHEREAS, the Red Sox are willing to engage in Major League Spring Training in Lee County, Florida, for the Term as defined herein; and

WHEREAS, the lease of the City of Palms Stadium and its appurtenances by the Team will further improve and promote gainful employment and tourism within Lee County and enhance the economic prosperity of Lee County, the State of Florida and their residents; and

WHEREAS, the County is the owner of the facilities at City of Palms Stadium and its appurtenances and has the legal authority to enter into this Agreement as provided by Chapter 125, F.S., and other relevant provisions of general law.

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

1. **TERM.** The term of this Lease shall extend for a period of fifteen (15) years commencing with

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the calendar year 2004 and continuing through the calendar year 2019 (the "Term"). During the Term, the Red Sox shall engage in regularly-scheduled Major League Spring Training exclusively in Lee County, Florida, at the City of Palms Stadium, commencing with the 2004 Major League Spring Training season. In the ninth (9th) year of this Lease Premises the Parties agree to meet and endeavor in good faith to renegotiate the revenue, expenditure and rental provisions hereof in order to adjust for any material inequities in the financial terms of this Lease in order that such provisions, if modified in writing, will be effective for the remaining six (6) years of the Term.

- (A) The Red Sox agree that in the event the Parties do not renew this Lease beyond the Term, it will use its commercially reasonable efforts to assist the County in finding a suitable substitute tenant. The Red Sox will notify the County no later than the last day of the last Spring Training game of the 2018 season, if it does not desire to use the Leased Premises for an additional term.
- (B) For the purpose of this Lease, the term "Spring Training" shall be deemed to include that time each year reasonably required for the preparation of the Leased Premises (as defined below), planning for the start of Spring Training, for additional Minor League player training between the end of Major League Spring Training and the commencement of the Minor League season, and a reasonable period for the "winding down" of Spring Training activities by the Red Sox. 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.
- (C) The Red Sox 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 Red Sox 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 obtain an additional recognized Minor League franchise for the Leased Premises. In the event 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 Minor League franchise, the County shall notify the Red Sox in reasonable detail of 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. The Red Sox 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 Red Sox to the Leased Premises. No later than the expiration of such six-month period, the Red Sox shall notify the County in writing of either (1) its consent to the use of the Leased Premises by such third party or (2) its exercise of the right of first refusal pursuant to 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 (x) in any manner that interferes with the exclusive rights granted to the Red Sox under this Lease or (y) on any term or condition more favorable to such third party than is provided to the Red Sox under this Lease unless such term or condition is provided by the County to the Red Sox.

- (D) The County agrees that if it at time during the 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 other third party any terms or conditions more favorable to such third party than the terms or conditions provided to the Red Sox under this Lease for the use of the Leased Premises or any stadium or complex for Major League Spring Training or Minor League operations ("More Favorable Provisions"), the County shall promptly offer the Red Sox 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 Red Sox, and the Red Sox do hereby rent and lease from County, the following (the “Leased Premises”):
- (A) The Major League Stadium located at 2201 Edison Ave. and the Minor League complex located at 4301 Edison Ave. , in each case, 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”), that are more particularly 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, on a year-round basis, the right to use the Leased Premises on an exclusive basis for its Gulf Coast League events and activities, player rehabilitation programs, player development activities, Instructional League events and activities, and all other similar events related to the operations of Red Sox professional baseball activities, (the “Team’s Exclusive Baseball Activities”);
 - (D) The exclusive right to use, on a year-round basis throughout the Term, the offices, clubhouse area and other locations (the “Team’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 Red Sox as included in the Team’s Exclusive Use Areas, but in each case subject

to the written approval of the County, which approval shall not be unreasonably withheld;

- (E) During the Term and for so long as same has not been terminated by reason of a Red Sox Default (as defined below), no professional baseball activities or organizations other than Red Sox Spring Training related activities, including without limitation, any activities that would require the Red Sox to share the Leased Premises for Spring Training or Minor League operations, shall be conducted without the prior written consent of each of the County and the Red Sox; 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 Major League Stadium shall have a seating capacity of not less than eight thousand two hundred (8,200) ticketed patrons. The Red Sox 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 Red Sox on an annual basis during the Term. All Gross Revenues From Ticket Sales shall be the sole and exclusive property of the Red Sox, unless otherwise specified herein.

- (A) For purposes of this Lease, "Gross Revenue 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 to the purchaser and required to be remitted by the Red Sox 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 Red Sox shall provide (1) the County, at no charge, with fifty (50) 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 Lee County for purposes of promoting tourism, the location of which shall be the discretion of the Red Sox, and (2) the City of Fort Myers with eight (8) admission tickets for each Spring Training game at not charge for use of the suite designated as the Mayor's Box.

4. **PARKING.**

- (A) Parking for events at the Major League Stadium shall be in accordance with the attached Amended License Agreement between the City of Fort Myers ~~and~~ Lee County and the Red Sox dated as of ~~November 3, 2003~~ _____, a copy of which is attached as Exhibit "C" hereto (the "Amended Parking License Agreement"). As provided in the Amended Parking License Agreement, the County has secured the rights to certain parking spaces adjacent to and surrounding the premises for use by patrons attending events at the Major League Stadium. The County agrees to provide, or cause to be provided, the parking spaces and operations described in the Parking License Agreement. The County agrees to consult with the Red Sox in good faith to improve the quality of service of any third party conducting parking operations for events at the Major League Stadium and to use good faith to assist the Red Sox in securing such improved services.
- (B) By the terms of the Amended Parking License Agreement, attached hereto and incorporated herein, the City of Fort Myers has agreed to grant to the Red Sox the right to operate the parking and collect and retain all parking fees and related revenues derived from Spring Training activities.
- (C) To the extent not otherwise granted to the Red Sox pursuant to that certain Amended

License Agreement as stated above, the County grants to the Red Sox the right to operate the parking and collect and retain all parking fees and related revenues derived from Spring Training activities in accordance with the terms of the Amended Parking License Agreement. The County shall retain the exclusive use of the parking area, without charge, after Spring Training for county baseball and non-baseball events.

- (D) Notwithstanding any other provisions of this Lease to the contrary, parking spaces in paved areas immediately adjacent to the Major League Stadium will be made available at all times and without charge to authorized representatives or personnel of the Red Sox, to its visiting professional baseball teams, and to VIP/Press: provided, however that parking spaces designated for County staff shall be reserved solely for County staff. The Red Sox shall have the full use of the parking areas at the Minor League Complex for Spring Training and all other professional baseball or related events.

5. **CONCESSIONS**. The Red Sox or its designee shall control the sale of all foods, beverages, tobacco, merchandise, novelties and logo items mentioned below and the like (commonly called “concessions”) on the premises. The Red Sox shall be free to contract with a third party to operate such concessions on terms and conditions approved by the Red Sox in its sole discretion to long as the Red Sox cause such third party to conduct such concession operations in accordance with applicable County ordinances and regulations.

- (A) The Red Sox agree to consult periodically with the County concerning concession and advertising prices. The Gross Revenues From Concessions shall be the sole and exclusive property of the Red Sox. Gross Revenues From Concessions shall mean total concession 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 Red Sox, or its designee, may, during the Term, publish and sell or dispense scorecards, yearbooks and novelty items carrying the logo or marks of the Red Sox or of any other Major League team on the premises, and the revenues derived from the sale of such logo items, scorecards and yearbooks, shall be included in the calculation of Gross Revenues From Concessions.
- (C) The Red Sox, or its designee, shall be responsible for paying all costs and expenses of concessions operations. As the concessionaire, the Red Sox 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 Red Sox agree 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 Red Sox of any non-Red Sox events for which it desires that the Red Sox provide concessions operations no less than fifteen (15) business days prior to the date of such event. The Red Sox may provide such operations for any event requested by the County, but shall not be obligated to provide such operations. Should the Red Sox elect not to provide such concession operations, subject to the final approval of the Red Sox, 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 Red Sox 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-Red Sox 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 of the Red Sox approval), and (2) the net revenue available to the Red Sox 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.

- (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 Red Sox 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 Red Sox 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. Concession equipment and all other equipment acquired by the Red Sox (or its designee) shall be the property of the Red Sox (or its designee) both during and after the Term. The County acknowledges and agrees that all concessions equipment on the Leased Premises as of the date hereof belongs to the Red Sox or its designee.
- (G) The Red Sox shall maintain standards of cleanliness and product quality consistent with high quality industry standards at a Major League Spring Training facility. The Red Sox 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.**

- (A) All gross revenues derived from the scoreboard message center advertising during any of the events or activities sponsored by the Red Sox 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 Red Sox. The Red Sox shall have the exclusive right to sell advertising in connection with the foregoing.

(B) 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(B) 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 Red Sox to breach any exclusivity granted to a naming rights or presenting sponsor pursuant to Section 7 below, unless the Red Sox have expressly approved such advertising in writing.

(C) The Red Sox and the County shall be responsible for the payment of all costs and expenses related to the production and maintenance of advertising signage to the extent such Party receives the revenues therefrom, provided, however, that the message center shall be maintained by the County in accordance with Section 13 hereof.

(D) The County shall use all reasonable, lawful and permissible efforts to assist the Red Sox in obtaining 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.

7. **NAMING RIGHTS.** The Parties acknowledge that pursuant to Section 1, paragraph 11 of the Interlocal Agreement between Lee County and the City of Fort Myers for the Transfer, Operation and Maintenance of City of Palms Downtown Stadium, Practice Fields and Minor League Complex dated as of November 3, 2003, (the "City-County-Agreement"), the City of

Fort Myers has granted the County the right to sell naming rights to the Major League Stadium, subject to the approval of the City. The County agrees that it shall not sell or otherwise assign naming and/or presenting sponsorship rights (or assign the right to sell such rights) to all or any portion of the Major League Stadium without (a) the participation, including economic participation, which economic participation shall be mutually agreed upon by the County and the Red Sox and (b) the approval of the Red Sox, which approval shall not be unreasonably withheld.

8. **LEASE PAYMENTS.** As consideration for this Lease and as rent due to the County for the lease of the Leased Premises to the Red Sox, the Red Sox use of same, the Red Sox agrees to pay to the County a guaranteed annual lease payment for each year during the Term and commencing in 2004 in the amount of Three Hundred Thousand Dollars (\$300,000.00). The Club shall be responsible for six percent (6%) of such amount in accordance with Florida Statute §212.031. 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, 2019 payment. Notwithstanding the foregoing, the Red Sox shall be entitled to a credit of Seventy-Five Thousand Dollars (\$75,000.00) against the payment due June 1, 2004 in consideration of costs paid by the Red Sox for capital expenditures to restore the field to Major League playing condition prior to the date hereof. Furthermore, pursuant to Section 1, paragraph 13 of the City-County Agreement, the Red Sox shall permit the County, on behalf of the City, to continue to collect One Dollar (\$1.00) (per ticket) for admission to any Red Sox Major League Spring Training games at the Major League Stadium until December 31, 2004. The Red Sox shall collect such amount and shall be responsible for remitting such amount to the City on behalf of the County.

9. **FANTASY CAMPS.**

(A) In the event the Red Sox or its designee or assignee shall hold or conduct any fantasy

camp at the Facility at any time during the Term, the Red Sox shall pay no additional costs to the County for the use of the Facility for such fantasy camp.

(B) The Parties agree that the Red Sox and its designees and assigns shall not be entitled to use the Facility for up to three (3) weeks a year for fantasy camps pursuant to Section 9(A) above. The County reserves the right to conduct fantasy camps at the Major League Stadium when not occupied by the Red Sox with reasonable notice given to the Red Sox, which notice shall not be less than 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 Red Sox, nor shall the County conduct such fantasy camps at any time during which it would interfere with the Red Sox 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 Red Sox and shall maintain the equipment necessary therefor. The Red Sox shall retain any and all broadcasting and television rights for any games played by the Red Sox at the Major League Stadium.

11. **GAMES PLAYED.** The Boston Red Sox 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 Red Sox following the conclusion of the Spring Training schedule, and prior to the immediate ensuing Major League Baseball championship season, or any game approved by the Office fo the Commissioner of Baseball to be played at an independent site where the Red Sox shall be designated as the “home team” for the purpose of that game. The Red Sox shall endeavor in good faith to schedule no less that three (3) night games during each Spring Training period.

12. **OPERATING MAINTENANCE AND CAPITAL IMPROVEMENTS.**

(A) OPERATING MAINTENANCE.

- (1) Throughout the 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 Red Sox. 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 professional baseball standards, generally. 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 hours to ensure minimum interruption with Red Sox activities.
- (3) The Red Sox shall be responsible for providing janitorial services for the Team's Exclusive Use Areas.
- (4) In connection with any operations at the Leased Premises, the Red Sox shall

have the right to cause the County to use products and/or services of its corporate partners 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 shall establish an account (the "Capital Improvements Fund") for mutually agreed upon capital improvement projects to benefit the Leased Premises. No later than January 1 of each calendar year during the Term, the County shall contribute to the Capital Improvement Fund an amount equal to the amount contributed by the Red Sox as of such date in respect of each such calendar year. In no event shall the Red Sox contribute less than Twenty-Thousand Dollars (\$20,000.00) for any calendar year during the Term; provided, however, in the event the principle balance of the Capital Improvement Fund (including interest thereon) reaches Two Hundred Fifty Thousand Dollars (\$250,000.00), neither the Red Sox 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 \$250,000.00.
- (2) The County shall be responsible for and undertake capital improvements to the Leased Premises in accordance with the terms herein and in conformity with high quality 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 Red Sox.

- (3) The Red Sox 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 Red Sox an estimate of the cost of the capital improvements on such list no later than February 15th of the applicable year. The Red Sox shall have 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 Red Sox and the County.
- (4) In addition to the County's contributions to the Capital Improvements Fund and as inducement for the Red Sox to enter into this Lease, the County hereby agrees to complete the projects identified on Exhibit "D" attached hereto (each such project individually referred to herein as a "County Capital Improvement" and collectively hereinafter referred to as 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 Spring Training in the year specified on such Exhibit D. 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 a County Capital Improvement shall principally benefit (x) the Team's Exclusive Baseball Activities and/or (y) a Team's Exclusive Use Area, the Red Sox 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.

13. **EQUIPMENT**. Throughout the Term, the County shall be solely responsible for providing all equipment necessary to operate the Leased Premises for purposes contemplated herein except as expressly provided herein with respect to concession and novelty equipment. In addition, the County shall be responsible throughout the Term for the cost of replacing any equipment not in good and working order.

14. **TOURIST PROMOTION**. Lee County and the Red Sox agree to develop an ongoing promotional partnership for the purpose of promoting Spring Training games and ticket sales thereof, and promote other tourism opportunities in Lee County.
 - (A) In connection with each regularly scheduled Red Sox Spring Training cablecast from the Major League Stadium (including pre-game and post-game shows), the Red Sox shall cause its cable telecast rights holder to provide six (6) spot audio/video announcements each of a duration of no less than thirty (30) seconds. These spots shall be prerecorded and supplied by the County at its own expense, shall be solely for the purpose of promoting and advertising the unique tourism attributes and attractions of Lee County, and shall be subject to the prior written consent of the Red Sox, which consent shall not be unreasonably withheld. In no event may the County sell such spots to third party advertisers.

(B) The Red Sox shall provide the County with the following Fenway Park advertising and promotional opportunities during each year of the Term:

(1) One (1) full page four-color advertisement in each of the six (6) regular season editions of the official Red Sox magazine. Lee County shall be responsible for creating such advertisement, but the Red Sox shall have final approval over such advertisement, which approval shall not be unreasonably withheld or delayed. Such advertisement shall be solely for the purpose of promoting and advertising the unique tourism attributes and attractions of Lee County and in no event may be sold by the County to any third party advertiser.

(2) Lee County shall be entitled to one (1) VIP event prior to a Red Sox home game at Fenway Park, which shall include game tickets and food and beverage service for fifteen (15) guests. The date of such event shall be mutually agreed upon by the Parties but subject to availability as determined by the Red Sox in its sole discretion.

(3) The Red Sox shall offer the County the opportunity to have a promotional location at one (1) pre-season ticket sales event at Fenway Park during the Term, but only in the event the Red Sox elect to hold such event.

(C) The Red Sox shall provide the County with the following Major League Stadium advertising and promotional opportunities during each year of the Term:

(1) One (1) "Lee Island Coast" promotional day to be held in conjunction with one home game at the Major League Stadium during Red Sox Spring Training. The Lee Island Coast 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. In conjunction with such promotional day, Lee County may provide promotional giveaway items for game attendees subject to the approval of the Club, which approval shall not be unreasonably withheld or delayed. Lee County shall be responsible for the cost of creating such items and staffing such item giveaway, but such items shall be subject to the prior approval of the Red Sox, which shall not be unreasonably withheld or delayed.

- (D) The County shall use reasonable efforts to promote the presence of the Red Sox baseball operations by all reasonable methods incidental to regular tourist promotional activities conducted by the County. In addition, the County shall use reasonable efforts to promote ticket sales for Red Sox events at the Major League Stadium.

15. **SERVICES AND PERSONNEL.**

- (A) The Red Sox shall hire and be responsible and pay for concession, ticketing, advertising and other personnel necessary to service patrons attending: (1) the Major League Spring Training games (2) Red Sox baseball activities, and (3) Red Sox-related events presented at the Major League Stadium. Such personnel shall include, but are not limited to, ushers, ticket takers, concession workers, first aid attendants, and other related personnel. The Red Sox personnel shall be responsible for maintaining their respective work areas in a neat and orderly fashion. Notwithstanding anything to the contrary contained herein, the staffing of parking operations shall be the responsibility of the County in accordance with the Parking License Agreement.
- (B) The County shall provide adequate fire protection staff for the Leased Premises.
- (C) The Red Sox shall provide security within the Major League Stadium for any Red Sox related activities held therein. The Red Sox will hire off-duty members of the Fort

Myers City Police Department to provide such security services and shall pay such off-duty members the prevailing rate as set by the City for the Police Department. In addition, at all times during Spring Training, the Red Sox shall be responsible for providing security personnel to staff for the Team's Exclusive Use Areas.

16. **VIOLATION OF LAWS.**

- (A) Except as provided in Section 22 below, the Red Sox 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 Red Sox and located on or about the Leased Premises (the "Red Sox Assets"). Should any improvements to the Red Sox Assets made by the Red Sox become subject to taxes, the Red Sox 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 Red Sox, (ii) upon the Leased Premises; (iii) upon any interest in this Lease or any possessory right which the Red Sox may have in or to the Leased Premises, or (iv) in the improvements thereon by reason of the Red Sox 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 the Red Sox operation hereunder. Notwithstanding the foregoing provisions, the Red Sox 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 Red Sox therein if it so desires.
- (B) The Red Sox 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. **RED SOX ALTERATIONS.**

- (A) The Red Sox 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 Red Sox 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 Red Sox, its assigns, agents or employees, and to pay, or cause to be paid to the County, the costs for 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 Red Sox.
- (B) Upon the termination of this Lease, the Red Sox shall return to the County all equipment and personal property of the County in the exclusive possession of the Red Sox, 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 Red Sox, its agents, assigns or employees.
- (C) Immediately prior to and following Spring Training during each year of the Term, the County and the Red Sox 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 Red Sox thereon. The Red Sox 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 Red Sox or its assigns, agents or employees. The County shall promptly pay to the Red Sox

any monies owed for damage to the Red Sox property on the Leased Premises that was discovered as a result of such inspections. Any damage not caused by the Red Sox shall be promptly repaired by the County.

18. **UTILITIES.** Except as 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 Red Sox shall reimburse the County for electrical costs incurred to provide field lighting for any evening games played by the Red Sox at the Major League Stadium during the Term, and shall be responsible for electricity charges related to the Team's Exclusive Areas. The County will provide separate electrical meters for all such locations.

19. **USE.**

(A) During the Term, the Red Sox shall be entitled to peacefully have and enjoy the exclusive use of the Major League Stadium and Minor League 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 during Spring Training, the Red Sox 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 Team'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 Team's Exclusive Use Areas. In any case, the County shall notify the Red Sox of any such use

and the Red Sox shall have the right to object to any such use if the Red Sox determine that (a) such use would interfere with the Team'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 Team's Exclusive Use Areas.

- (B) The Red Sox 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 19. No later than November 15 of any year during the Term, the Red Sox 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 Red Sox exercise the right of first refusal for Minor League baseball in accordance with Section 1(C) hereof, the Red Sox shall provide the County with such Minor League game schedule no later than February 1 of any applicable year during the 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) office space for sports development offices, (ii) the exhibition, presentation and broadcasting (or other transmission) of other amateur or professional sporting events, (iii) exhibitions and tournaments, (iv) musical performances, (v) theater performances and other forms of live entertainment, (vi) public ceremonies, (vii) fairs, markets, fireworks displays, shows, or other public or private exhibitions and activities related thereto.

The County shall be solely responsible for all costs and expenses resulting from the use of the Leased Premises for any non-Red Sox 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-Red Sox use of the Leased Premises except as provided in Section 5 with respect to concession and novelty operations.

(D) In no event shall the County use any Red Sox property or equipment without the express written consent of the Red Sox. The County shall promptly repair or replace any damaged property or equipment owned by the Red Sox 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 Red Sox 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 Team'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 Red Sox 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 Red Sox shall manage the agreed upon operations for the Spring Training games, including ticket sales and distribution of tickets. The Red Sox will 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 Red Sox 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 Red Sox shall not require County's consent hereunder. The Red Sox 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 that (1) as of the date hercof, it has and shall continue to have throughout the Term, all ownership interests in the Leased Property, (2) as such, has the full authority to grant the Red Sox 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 Lee County and the State of Florida. It is the intent and understanding of the Parties that the leasehold interest held by the Red Sox 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, all or any portion of its leasehold interest or other rights or benefits held by the Red Sox 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 Red Sox and the members, partners, officers, employees, affiliates, representatives and agents fo the Red Sox (the "Red Sox 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, maintcnance 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 Red Sox 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 Red Sox, 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 Red Sox, which approval shall not be unreasonably withheld or delayed.

- (B) The Red Sox shall indemnify, defend, and hold harmless the County from and against any and all claims, actions, damages, liability, costs and expenses, including reasonable attorney's fees and court costs, arising out of the use of the Leased Premises by the Red Sox or any of its agents, employees, or contractors (the "Red Sox Parties") or arising out of the actions, omissions to act, or negligence of the Red Sox or any third party using the Leased Premises for professional baseball activities or related events with permission from or the approval of the Red Sox in accordance with its rights hereunder, or the Red Sox 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 Red Sox agree to defend all actions to which such indemnity applies and to conduct the defense thereof at the Red Sox sole expense and by the Red Sox counsel. The Red Sox 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 or delayed.

(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) Property damage insurance in an amount not less than \$1,000,000.00;
- (3) Commercial general liability insurance with a limit of \$1,000,000.00; and
- (4) The Red Sox shall name the County as an additional insured on all comprehensive general liability insurance policies as required herein and shall issue certificates evidencing such insurance policy to the County no less than thirty (30) days prior to Spring Training each year.

24. **DISPUTES.** The Parties agree to attempt to settle by mediation any controversy that may arise between the Red Sox 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 legal 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 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. If the Leased Premises shall be unavailable for more than one Spring Training period during the Term, the Red Sox 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 Red Sox to continue their use of the Leased Premises for Spring Training. Accordingly, the Red Sox agree 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 Red Sox shall endeavor in good faith effort to cause personnel and players to participate in a reasonable number of cooperative activities involving the promotion and development of professional baseball in Lee 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 Main, 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 Red Sox:
Boston Red Sox Baseball Club, Limited Partnership
4 Yawkey Way
Boston, MA 02215
Attn: Executive Vice President, Business Affairs

With a copy to:
Boston Red Sox Baseball Club, Limited Partnership
4 Yawkey Way
Boston, MA 02215
Attn: Chief Legal Officer

For notices to the County:
Director of Lee County Parks and Recreation
Lee County Manager
Post Office Box 398
Fort Myers, Florida 33902-0398

With a copy to:
Lee County Attorney
P. O. Box 398
Fort Myers, Florida 33902-0398

In addition to the formal notices required by this Lease, the Red Sox 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 matters covered by this Lease.

In similar fashion, the Red Sox shall designate one person who shall be authorized to represent the Red Sox in such matters. In the absence of the Red Sox making a specific designation to the contrary, this person shall be the person named above by the Red Sox to receive all notices.

28. **PERMITS.** The Red Sox, 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 Red Sox 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 Facilities and compliance with building codes. The Red Sox, 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 Red Sox in applying for all such permits or licenses. To the extent permitted by law, the County will assist and cooperate with the Red Sox 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 Red Sox of any of the following events (collectively hereinafter referred to as the "Red Sox Defaults"):

- (1) If the Red Sox desert or vacate the Leased Premises;
- (2) If, by order of a competent authority, a receiver, liquidator or trustee of the Red Sox 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 Red Sox shall be adjudicated or determined to be bankrupt or insolvent, or if the Red Sox 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 Red Sox fail to make any payments to the County pursuant to this Lease within one hundred twenty (120) days following written notice of such payment default, or
- (4) If the Red Sox breach 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 Red Sox diligently pursues such cure, the Red Sox shall be allowed such agreed upon time period to cure such default.

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

- (1) The County shall have the right to re-enter or repossess the Leased Premises by force, summary proceedings, surrender or otherwise, and may dispossess and remove the Red Sox, or other occupants thereof, without being liable for any prosecution therefor, provided, however, that the County shall have no right to the Red Sox Assets and the Red Sox shall have the right to remove all Red Sox Assets from the Leased Premises.
- (2) The County shall have the right to re-let 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 Red Sox Default. Should the County incur necessary and reasonable expenses in enforcing its rights hereunder, specifically including reasonable attorney's fees and court costs, said reasonable expenses shall be borne by the Red Sox.

- (C) The Red Sox 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 March 31, 2007 of the County's failure to complete all County Capital Improvements specified in Exhibit D, which County Capital Improvements specified in the notice are not completed by January 31, 2008 unless the Red Sox (a) extend 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 Red Sox, the Red Sox 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 Red Sox, 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 Red Sox shall be relieved of all liabilities and obligations accruing after the effective date of termination.

(D) The Red Sox 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 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 Red Sox as the County's sole remedy against the Red Sox and any other person or entity relating to such termination of this Lease:

- (1) One lump-sum payment equal to the unamortized principal balance, as of the effective date of the termination of the Lease, of the County's outstanding debt on any bonds issued to generate the Capital Improvements Fund. Such payment shall be due no later than five (5) business days following the effective date of the termination of this Lease; and
- (2) (a) Subject to subparagraph (2)(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 no later than 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, 2009, (ii) Nine Hundred Thousand Dollars (\$900,000.00) if such termination occurs as of December 31, 2010, (iii) Eight Hundred Thousand Dollars (\$800,000.00) if such termination occurs as of December 31, 2011, (iv) Seven Hundred Thousand Dollars (\$700,000.00) if such termination occurs as of December 31, 2012, (v) Six Hundred Thousand Dollars (\$600,000.00) if such termination occurs as of December 31, 2013, (vi) Five Hundred Thousand Dollars (\$500,000.00) if such termination occurs as of December 31, 2014, (vii) Four Hundred Thousand Dollars (\$400,000.00) if such termination occurs as of

December 31, 2015, (viii) Three Hundred Thousand Dollars (\$300,000.00) if such termination occurs as of December 31, 2016, (ix) Two Hundred Thousand Dollars (\$200,000.00) if such termination occurs as of December 31, 2017, (x) One Hundred Thousand Dollars (\$100,000.00) if such termination occurs as of December 31, 2018, and (xi) Zero Dollars (\$0) if such termination occurs after December 31, 2019.

(b) Notwithstanding the foregoing subparagraph (2)(a), if the County does not grant its approval to a proposed assignment of this Lease and rights and obligations of the Red Sox hereunder to an owner or operator of another Major League baseball club, and the Red Sox then terminate this Lease pursuant to this Section 29(D), the Red Sox shall have the option to pay the Premium as and when set forth in subparagraph (2)(a) above or, in the alternative, to pay the Premium by making annual payments only in such years following the effective date of termination of this Lease, up to and including 2018, in which no Major League baseball team plays Spring Training home games at the Major League Stadium. Each such annual payment (collectively, the “Annual Premium Payments”) equal to a fraction the numerator of which is the Premium and the denominator of which is the total number of calendar years after termination of the Lease up to and including 2018, plus interest (with interest to be calculated at the prime rate plus 200 basis points, compounded and adjusted annually). Each Annual Premium Payment shall be paid, if and to the extent applicable, not later than March 31 of each calendar year during which such payment is to be made.

- (3) The Parties agree that the amounts specified in this Section 29(D) constitute reasonable and just compensation for the Red Sox exercise of the termination right provided for herein, and the Red Sox hereby promise 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 Red Sox, 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 expiration of the Lease, the County shall cause to be paid to the Red Sox one half 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 Red Sox 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 unavailability of the Leased Premises is known by the Red Sox. In the event the Red Sox elect 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 Red Sox shall be entitled to 50% of any Capital Improvements Fund 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 Red Sox do 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 Red Sox 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 Spring Training season during the Term, the County shall promptly repair and rebuild the Leased Premises. In such event, all Red Sox 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 Red Sox must find an alternative location for Spring Training, the County shall make reasonable efforts, if requested by the Red Sox, to make a temporary Spring Training facility available to the Red Sox.
- (E) Except to the extent provided for in this paragraph or elsewhere in this Lease, neither the monies payable by the Red Sox nor any of the Red Sox other obligations under any provisions of the Lease shall be affected by any damage to or destruction of the Leased Property 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 it shall be held to include and apply also to the heirs, personal representatives, executors, administrators, successors and assigns of such Party as 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 the City of Fort Myers and the Red Sox, 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 (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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the ____ day

of _____, 200____.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

WITNESSES:

THE BOSTON RED SOX
4 Yawkey Way
Boston, MA 02215

By: _____

By: _____
Executive Vice President

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF MAJOR LEAGUE STADIUM LAND AREA AND
MINOR LEAGUE COMPLEX LAND AREA

STADIUM LAND AREA

PARCEL A A tract of land located in Section 24, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida, consisting of Lots 1-12 and 17-23, Block 10, of the Stadler's Central Heights Subdivision as recorded in Plat Book 4, at Page 64 of the Public Records of Lee County, Florida; and all of Block B, Cosmos Realty Corporation Subdivision as recorded in Plat Book 5, at Page 73, of the Public Records of Lee County Florida. Said Block B being a resubdivision of Lots 13-16, Block 10, of said Stadler's Central Heights Subdivision. Said tract is bounded on the north by Hoople Street, on the south by Crawford Street, on the east by Jackson Street, and on the west by Broadway. Subject to easements, restrictions, and reservations of record.

PARCEL B A tract of land located in Section 24, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida, consisting of Lots 1-12 and 17-23, Block 11, of the Stadler's Central Heights Subdivision as recorded in Plat Book 4, at Page 64 of the Public Records of Lee County, Florida; and all of Block C, Cosmos Realty Corporation Subdivision as recorded in Plat Book 5, at Page 73, of the Public Records of Lee County, Florida. Said Block C being a resubdivision of Lots 13-16, Block 11, of said Stadler's Central Heights Subdivision. Said tract is bounded on the north by Crawford Street, on the south by Lafayette Street, on the east by Jackson Street, and on the west by Broadway. Subject to easements, restrictions, and reservations of record.

PARCEL C A tract of land located in Section 24, Township 44, South Range 24 East, City of Fort Myers, Lee County, Florida, consisting of Lots 1-12 and 17-23, Block 14, of the Stadler's Central Heights Subdivision as recorded in Plat Book 4, at Page 64 of the Public Records of Lee County, Florida; and all of Block D, Cosmos Realty Corporation Subdivision as recorded in Plat Book 5, at Page 73, of the Public Records of Lee County, Florida. Said Block D being a resubdivision of Lots 13-16, Block 14, of said Stadler's Central Heights Subdivision. Said tract is bounded on the north by Lafayette Street, on the south by Edison Avenue, on the east by Jackson Street, and on the west by Broadway. Subject to easements, restrictions, and reservations of record.

MINOR LEAGUE COMPLEX AREA

A tract of land located within the Northeast Quarter (NE 1/4) of Section 20, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida, being also within the Fort Myers Estates Subdivision as recorded in Plat Book 6, at Page 44, of the Public Records of Lee County, Florida, and being more particularly described as follows:

BEGINNING at the southwest corner of Lot 13, Block 8, of Fort Myers Estates Subdivision, as recorded in Plat Book 6, at Page 44, of the Public Records of Lee County, Florida, said corner being located along the north right-of-way line of Edison Avenue (60 feet wide); thence run easterly along said north right-of-way line of Edison Avenue for 1,270 feet to the southeast corner of Lot 24, Block 24, of said subdivision; thence continue easterly for 25 feet to the east line of said Section 20; thence run northerly along the east line of Section 20 for 690 feet; thence run westerly for 25 feet to a point on the east line of Lot 24, Block 22, of said subdivision, said point being 50 feet northerly of the southeast corner of said Lot 24; thence continue westerly and parallel to the south line of Lot 24 for 53 feet to the east line of Lot 23, Block 22; thence run northerly along the east line of said Lot 23 for 80 feet to the northeast corner of Lot 23; thence run westerly along the north line of Lot 23 for 50 feet to the northeast corner of Lot 22, said corner also being the southeast corner of Lot 10, Block 22; thence run northerly along the east line of said Lot 10 for 80 feet; thence run westerly and parallel to the south line of Lots 6-10 for 250 feet to the east line of Lot 5, Block 22; thence run northerly along the east line of Lot 5 for 50 feet to the northeast corner of Lot 5; thence continue northerly across Sarasota Avenue (60 feet wide) to the southeast corner of Lot 17, Block 21, of said subdivision; thence continue northerly along the east line of Lot 17 and Lot 5 for 260 feet to the northeast corner of Lot 5; thence run westerly along the north line of Lot 5 and Lot 4 for 75 feet; thence run northerly across Palm Beach Avenue (60 feet wide) to a point on the south line of Lot 16, Block 20 of said subdivision, that is 25 feet westerly of the southeast corner of said Lot 16; thence continue northerly and parallel to the east line of Lot 16 for 90 feet; thence run westerly and parallel to the north right-of-way line of Palm Beach Avenue for 842 feet to the west line of Lot 13, Block 4 of said subdivision, said line also being the east right-of-way line of Jacksonville Street; thence run southerly along the east right-of-way line of Jacksonville Street for 1,370 feet to the Point of Beginning. Subject to easements, restrictions, reservations, and rights-of-way of record. Containing 35.58 acres, more or less, including platted rights-of-way.

EXHIBIT C

PARKING LICENSE AGREEMENT