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CLERK, SUPREME COURT
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IN THE SUPREME COURT
STATE OF FLORIDA

DENNIS ROPER,
Appellant,

vs.

CASE NO. SC01-796
Circuit Court Case No. 0 1-460-CI-0 15

CITY OF CLEARWATER,
a municipal and public body corporate
and politic of the State of Florida,
Appellee.

_____ /

**ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA**

Hon. Crockett Farnell

=====

INITIAL BRIEF OF APPELLANT

=====

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PRELIMINARY STATEMENT

This is an appeal taken pursuant to Rule 9.030(a)(1)(B)(i), Rules of Appellate Procedure. This initial brief of Appellant is served with Appendix in accordance with Rule 9.11 O(i), Rules of Appellate Procedure. Reference to the Appendix shall be in the following form (A-). Reference to the Transcript shall be in the following form (T-p.____1.)_____

STATEMENT OF THE CASE

On or about January 19, 2001, Appellee filed his Complaint for Validation of Bonds.

On or about January 22, 2001, the Honorable Crockett Farnell issued his Order to Show Cause in the proceedings.

On or about February 13, 2001, Dennis Roper, Defendant, Taxpayer, property owner and citizen of the City of Clear-water, filed his Answer.

On or about March 1, 2001, the Honorable Crockett Farnell issued a Final Judgment, granting Appellee's relief sought by its Complaint.

On or about March 30, 2001, Appellant Dennis Roper filed his Notice of Appeal.

STATEMENT OF THE FACTS

1, Appellee, City of Clearwater, seeks to issue Revenue Bonds for the construction of a \$22,000,000 Sports Facility for use by the Philadelphia Phillies.

(A-1)

2. A \$14,000,000 Bond Issue shall be repaid utilizing \$7,000,000 from the State of Florida, and \$7,000,000 from Pinellas County. (A- 1)

3. Appellee will provide the approximately thirty (3 0) acres for the construction of the stadium, and also provide \$5,000,000 in additional construction costs for the stadium. (T-30)

4. The **Phillies** will contribute approximately \$3,000,000 toward construction costs of the project..

(T-30)

5. The land and facilities shall be owned, operated, maintained and repaired by Appellee. (A-1)

6. No ownership interest by way of lease or sale will inure to the Phillies.

(A-1)

7. There is no provision for the repayment of Appellee's \$5,000,000 from the Bond proceeds or by the Phillies. (A- 1; T intoto)

8. Clearwater's Charter requires a referendum for all projects in excess of \$1 ,000,000 for which revenue bonds are sought, except if the project is for industrial development.

9. Industrial revenue bonds are governed by ~~Chapter 159, Part II, Florida Statutes.~~

10. No referendum was held to authorize the issuance of the bonds sought by the Appellee.

ISSUE ON APPEAL

DOES THE PROJECT FOR WHICH APPELLEE SEEKS REVENUE BOND VALIDATION CONSTITUTE A PROJECT FOR INDUSTRIAL DEVELOPMENT SO AS TO EXEMPT IT FROM THE REFERENDUM REQUIREMENTS OF ARTICLE IX OF APPELLEE'S CHARTER.

SUMMARY OF THE ARGUMENT

While the project meets the definition of a "tourism facility" as defined by Section 159.27(11) Florida Statutes, the project as presented in the pleadings and proofs does not qualify as an industrial development project in accordance with Chapter 159, Part II, Florida Statutes, and therefore is not exempt from the referendum requirements of Article IX, Clear-water City Charter.

ARGUMENT

The Charter of the City of Clear-water contains the following provision:

“The fiscal management procedure shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall, in addition, contain a provisions requiring that revenue bonds for projects in excess of \$1 ,000,000.00 shall be put to public referendum with exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.” Article IX, City of Clear-water, City Charter.

Municipalities do not have inherent authority to incur bonded indebtedness.

Merrill vs. St. Petersburg, 109 So.3 15 (1926). They have only such authority as the legislature expressly or by necessary implication confers on them. Nuveen vs. Quincy, 156 So. 153 (1934). All doubts as to existence of such power being resolved against the municipality and in favor of the taxpayer and voter. State of Florida vs. Boca Raton, 172 So.2d 230 (Fla. 1965).

The limitation contained in Article IX of the City’s Charter is a limitation on the City’s authority to issue these bonds. State of Florida vs. Boca Raton, supra; Easterlin vs. City of New Port Richey, 105 So.2d 361 (Fla. 1958). Article IX requires that revenue bonds for projects in excess of \$1 ,000,000.00 be

approved by referendum of the voters. That language applies to all projects.

Article IX provides an exception to the referendum requirement for projects for “Industrial Development”. Since all bonds for projects in excess of \$1 ,000,000.00 need to be approved by referendum, the exception for Industrial Development contemplates a project qualifying as an Industrial Development project in accordance with Chanter 159, Part II, Florida Statutes.

From the pleadings and proofs of Appellee, it is clear that Appellee recognizes the governing authority of Chanter 159, Part II, Florida Statutes. Appellee specifically invokes Chapter 159, Part II in Sts Complaint. e paragraph 6, A-1).

Therefore, the project must meet not only the definition as set forth in Chapter 159.27(11), but also the other substantive criteria of Chapter 159, Part II, Florida Statutes. The substantive sections of Chapter 159, Part II, Florida Statutes, which are relevant to these proceedings are as follows:

Section 159.27(2)(a through e): Definition of Cost of Project;

Section 159.27(5): Definition of Project;

Section 159.27(11): Definition of Tourism Facility;

Section 159.27(18): Definition of Financing Agreement;

Section 159.29(2): Financing Agreements, Operation and Repair Requirements of Leased Project;

Section 159.29(3): Adequacy to meet Impacts of Project;

Section 159.29(4): Adequate Provision for Operation, Repair and Maintenance by Lessee of the Project;

Section 159.30(1): Prohibiting Project Financed to be Operated by Local Agency or other governmental agency; requirement that project either be sold, contracted to be sold or leased;

Section 159.30(1)(a): Requirement that Lessee shall at its own expense operate, repair, and maintain the project leased;

Section 159.30(1)(b): Requirement that Rent Payable under the lease will be in an amount sufficient to pay all interest, principal, redemption premiums on the bonds issued;

Section 159.30(1)(c): Lessee shall pay all other costs incurred by the local agency in connection with the financing construction, administration of the project;

Section 159.30(1)(e): Lessee's obligation to pay rent shall not be subject to

cancellation, termination, or abatement by the Lessee until such payment of the bonds or provision for such payment is made;

Section 159.33(2): Any and all monies advanced on behalf of any project which was derived from any tax source of the local agency shall be repaid from the bond proceeds or from the Lessee to the governmental entity which advanced same;

Section 159.34(2): Revenue bonds may be issued only if they are payable solely from the revenue derived from the sale, operation, or leasing of any project or other payments received under financing agreements with respect thereto.

All of the foregoing make it clear that all costs, interest, principal and repayments of whatever kind or nature arising out of the project shall be paid by the Lessee or purchaser of the "Industrial Development" project. Also, the project may not be owned or operated by the governmental entity.

As revealed by the pleadings and proofs in this cause, it is clear that the Project violates or is contrary to certain of the previously cited code provisions in that:

1. The City of Clearwater will manage, operate and own the facility. (See below A-1; Ex..E 2.46; 4.1; 8.4; 9.2; 9.4; 9.5; 9.7; 12.1.2; 12.1).

2. There is no lease or purchase to be entered into between The **Phillies** and the City of Clearwater. (See below A-1, Ex.E. 4.1).

3. The costs of utilities, maintenance, repair, taxes and insurance will be borne by the City. (See below A-1, Ex.E. 8.4; 9.2; 9.4; 9.5; 9.711.1; 11,2;12.1.2; 12.1).

4. There is not sufficient revenue from the use of the facility by the **Phillies** to pay for the bonds, maintenance, repairs and operation of the facility. (See below A- 1, Ex. E. 6)

5. Revenues are being paid to the **Phillies** when there is not adequate revenue to service the bonds. (See below A-1 Ex.E. 7)

6. The Appellee will spend Five Million (\$5,000,000) Dollars which is derived **from** other tax sources which are not being reimbursed from the Bond Proceeds or from the Lessee. The foregoing is a clear violation of Section 159.33 (2), Florida Statutes. (T-30, 3 1)

Appendix A- 1, Exhibit E, contains, in part, the following provisions:

2.46 "Sports Facility Manager" shall mean City's Park & Recreation Director or his or her designee.

4.1 Ownership of Sports Facility. The City covenants and agrees that, at all times during the Term, the Sports Facility will be owned by the City, with complete and sufficient right to make use of the Sports Facility available to The **Phillies** on the terms and with the rights herein provided, subject only to restrictions of record as of the date hereof as reflected in the title report delivered by the City pursuant to the SFDA. This Agreement does not create or grant any real property interest or similar right, title or interest in the Sport Facility to The **Phillies** or any of its Affiliates.

6. Use Fee and after the Commencement Date. The **Phillies** shall pay, in arrears, a use fee to the City at the rate of \$70,000 per calendar year during the Term, subject to adjustment pursuant to Section 6.2. The Use Fee for each calendar year during the Term shall be payable by March 31st of the following year.

7. Revenues. Except as otherwise specifically provided in this Section 7, The **Phillies** alone shall be entitled to retain all revenues generated on and from the Sports Facility during the Term from all sources whatsoever, including by way of illustration but not limitation, all ticket, premium seating, luxury suite, food and beverage, **signage**, merchandise, broadcasting, sponsorship and parking revenues and all revenues from the operation of the Commercial Space and fantasy camps.

8.4 City Services. City will provide all appropriate City services at appropriate levels of coverage for all Events, including without limitation, police surrounding the Sports Facility for security and traffic control purposes and to prevent scalping and unauthorized sale of merchandise at the Sports Facility and paramedical services. (For this purpose, “scalping” shall mean the selling of tickets for more than \$1 above face amount, and the “unauthorized sale of merchandise” shall mean the sale of goods by a Person who has not been authorized by The **Phillies** to make such sales and the sale of

unlicensed goods, whenever a license is required for such sale to be given by The Phillies, MLB or other holders of the marks embodied on such goods.) The **Phillies** will provide necessary security and paramedical services within the Sports Facility.

9.2 City Maintenance, Repair etc. Obligations. Except for The **Phillies** Maintenance Obligations, the City shall have the obligation to provide all maintenance, repairs, restorations, refurbishments and replacements, whether interior or exterior, structural or non-structural, routine or extraordinary, ordinary or capital in nature, as shall be necessary to keep the Sports Facility clean, safe and in good order, condition and repair, and in compliance with all applicable Legal Requirements and in first class condition and up to first class **MLB** spring training stadium standards at the time of reference, provided however, that (subject to Sections 14 and 15 hereof) this obligation shall not operate to require the City to construct a new Sports Facility, or to substantially reconstruct the Sports Facility during the Term hereof. The Consulting Engineer shall annually determine which capital repairs, restorations, refurbishments and Replacements shall be scheduled to be done in the future, and when. The costs of the Consulting Engineer shall be borne equally by The **Phillies** and the City. The determinations of the Consulting Engineer shall be conclusive on both the City and The **Phillies**.

9.4 Sports Facility Manager. The Sports Facility Manager shall be responsible for the day-to-day oversight of the maintenance, repair and condition of the Sports Facility, and shall be the representative of the City with whom The **Phillies** may communicate. The Sports Facility Manager shall have authority to bind the City to the fullest extent permitted by law, provided, however, that the Sports Facility Manager shall not have the legal authority to bind the City to financial obligations without the prior approval of City's governing body.

9.5 Personnel. The City shall provide such level of qualified and properly trained personnel to perform its obligations under Section 9.2.

9.7 Action by The Phillies. Without limiting The Phillies' rights Under Section 17, if The **Phillies** in good faith determines that any portion of the Sports Facility (excluding only the playing fields) is not being maintained and/or repaired by the City in accordance with the standards and requirements set forth in Section 9.2, 9.3 and 9.6, The **Phillies** shall have the right, but not the obligations, to advance funds for or otherwise provide appropriate maintenance and/or repair, subject to the following provisions:

9.7.1 Notice Practicable. If practicable, The **Phillies** shall give written notice to the City specifying the nature of the required work, and the date by which The **Phillies** reasonably considers it necessary to commence such work following its receipt of such a notice:

(i) The City may commence such work prior to the date and time so specified by The **Phillies** and prosecute the same diligently to completion, if the City does so, The **Phillies** shall not undertake such work itself.

(ii) If the City disputes whether the requested work required to fulfill the City's obligations under this Agreement, the City shall so inform The **Phillies** in writing prior to the date and time specified by The **Phillies** in its notice. If the City gives timely notice, the dispute shall be submitted to Expedited ADR prior to the date **and time** specified by The **Phillies** in its notice.

(iii) If (a) the City does not commence such work prior to the date and time specified by The **Phillies** and prosecute the same diligently to completion, or (b) The City fails to give timely notice of a dispute, or (c) it is not practicable to submit the matter to Expedited ADR prior to the date and time specified by The **Phillies** in its notice, then in any such event, The **Phillies** may commence the work necessary to remedy the matter on an emergency basis and prosecute the same diligently to completion.

9.7.2 Emergency. If The **Phillies** in good faith determines that

work must be performed on an emergency basis (that is, it must be performed in order to prevent an imminent danger to health or safety or it is otherwise not practicable to give notice provided in this Section 9.7), then The **Phillies** may commence work to remedy the matter on an emergency basis, and prosecute the same diligently to completion.

9.7.3 Payment to The Phillies. The City shall promptly reimburse The **Phillies** on demand for any amounts expended pursuant to this Section 9.7 (including interest at the Default Rate from the date that is 30 days after the date of demand until paid if such amount is not paid by the 45th day following the date of demand). If the City disputes that the work was required to fulfill the City's obligations hereunder, Expedited ADR shall be convened to resolve the dispute.

- (i) If and to the extent it is determined by Expedited ADR that work was not required to fulfill the City's obligations hereunder, then The **Phillies** shall not be entitled to any reimbursement for any sums expended by The **Phillies**.
- (ii) If and to the extent it is determined by Expedited ADR that the work was required to fulfill the City's obligations hereunder, then the City shall immediately reimburse The **Phillies** for all sums expended by The **Phillies** on the w plus interest at the Default Rate.

11.1 Possessory Taxes. It is the intent of the parties that the Sport Facility (land and improvements) shall be exempt from any and all real property ad **valorem** taxes and from payments in lieu of such taxes throughout the Term. However, should all or any part of parts of the Sports Facility become subject to any such taxes, then the parties shall each cooperate and use their respective best efforts (i) to cause Pinellas County to return its share of any such taxes and (ii) to secure legislation exempting the Sports Facility from such taxes. In the interim, The **Phillies** and the City shall each pay one-half of any such taxes, net of any City ad **valorem** real property taxes, which

shall be paid by the City. Any such payments by The **Phillies** are herein referred to as the “Phillies Possessory Tax Share”.

11.2 Tax Protection. The City shall throughout the Term hold The **Phillies** harmless **from** all other local (as opposed to Federal, State or County) taxes (except for income, sales and like taxes of general application), including without limitation amusement/ticket taxes, any increase in the sales tax rate applicable to tickets, use and occupancy taxes and surcharges on the Stadium or Sports **Facility**-derived revenues.

12.1.2 City’s Non-Property Coverage. The City shall maintain at its expense during the Term of this Agreement the following **non**-property insurance:

- (i) Auto Liability and General Liability: Self-Insured Level: \$100,000 per **Person/\$200,000** per Occurrence self-insured retention with the statutory limits per Section 768.28 Florida Statutes. Excess Insurance: **\$5,000,000** per occurrence excess insurance (no aggregate applicable) with self-insured retention of \$500,000.
- (ii) Workers’ Compensation: Statutory workers compensation Coverage per occurrence with self-insured retention of **\$500,000**.

12.1 Property Coverage. The City shall maintain at its expense during the Term of this Agreement the following property related insurance:

12.2.1 Property insurance for 100% of full replacement value of the Sports Facility (including all improvements and personal property), with deductibles not exceeding \$50,000 per occurrence against loss by so-called “all risk” perils, including but not limited to fire, extended coverage, storm (including without limitation wind, floor and hurricane coverage), boiler and machinery, vandalism, malicious mischief, flood and earthquake. Such insurance is to contain a replacement cost endorsement, and endorsements eliminating any and all

coinsurance provisions.

12.2.2 For any work of construction conducted on the Site by or at the direction of the City, builder's risk insurance with the same limits and coverages as set forth in Subsection 12.2.1, provided that at the City's election, such insurance may be maintained by the contractor(s) performing the construction work at the Sports Facility.

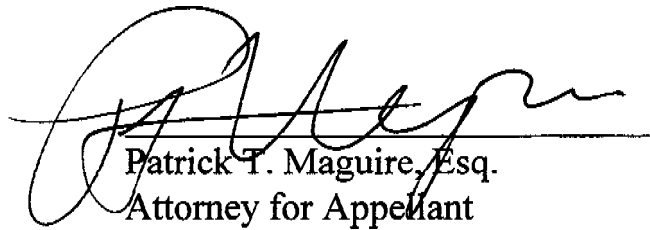
12.2.3 City Property Self-Insurance or Self-Funding. Any provision of this Agreement to the contrary notwithstanding, while the City shall maintain insurance coverage and limits as provided for in this Agreement, parties hereto specifically agree that the City may do so by self-insurance and/or by purchase at the sole option of the City. To the extent required by the terms of this Agreement, insurance coverage and limits shall be evidenced by delivery to The **Phillies** of letters of self-Insurance or self-funding executed by the City's Risk Manager, or by certificates of insurance executed by either the agent for the insurers or the insurers or by copies of policy declaration pages. Such letters, certificates, and policy declaration pages shall list coverage (including the amount of insurance per claim and per occurrence, any gap in coverage, and the amount of excess insurance) and policy limits with expiration dates and major policy terms and endorsements.

Other than meeting the definition of a "tourism facility" under Section 159.27(11), Florida Statutes, the proposed project fails to meet or violates the other substantive criteria of Chanter 159, Part II, Florida Statutes.

CONCLUSION

Inasmuch as the proposed project does not qualify for Industrial Development Bonds, under Section 159, Part II, Florida Statutes, the project and bonds are not exempt from the referendum requirement of Article IX of the City of Clearwater's Charter. Therefore, in the absence of an authorizing referendum by the citizens of Clearwater, the Trial Court erred in entering a Final Judgment validating Appellee's bonds.

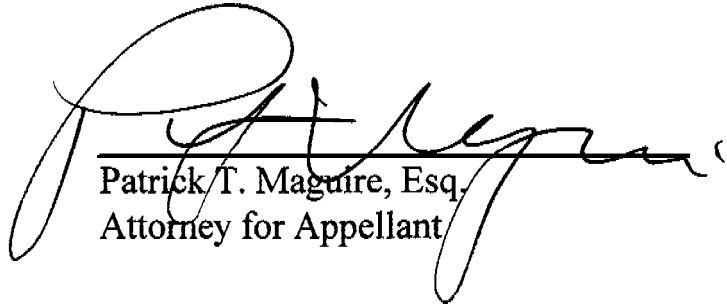
Respectfully submitted,



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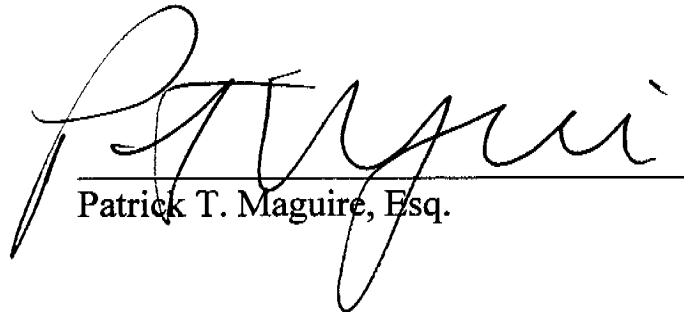
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to PAMELA K. AKIN, Esq., P. O. Box 4748, Clearwater, FL 33758-4748; ROBERT J. REID, Esq., 201 South Monroe Street, Tallahassee, FL 32301; and C. MARIE KING, Esq., Asst. State Attorney, P. O. Box 5028, Clearwater, FL 33758, by U.S. Mail, this 23rd day of APRIL, 2001.


Patrick T. Maguire, Esq.
Attorney for Appellant

CERTIFICATION

The undersigned does hereby certify that this Initial Brief of Appellant used 14 point Times New Roman type and does hereby comply with Rule 9.21(a)(2), Florida Rules of Appellate Procedure and the Administrative Order of this Court dated July 13, 1998.



Patrick T. Maguire, Esq.

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA

CIVIL ACTION NO: 01-460-CZ-G 15

THE CITY OF CLEARWATER, a municipal
corporation and public body corporate and
politic of the State of Florida,

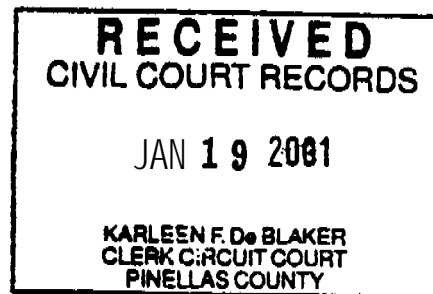
Plaintiff,

vs.

THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and Citizens of
the City of **Clearwater**, Florida, including non-
residents owning property or subject to
taxation therein.

Defendants.

VALIDATION OF THE NOT
EXCEEDING \$14,000,000 CITY OF
CLEARWATER, FLORIDA, REVENUE
BONDS (SPRING TRAINING
FACILITY) SERIES 2001

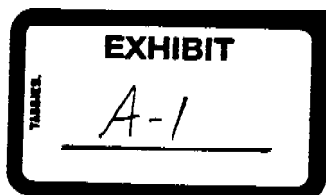


COMPLAINT FOR VALIDATION

TO THE HONORABLE JUDGES OF THE ABOVE STYLED COURT:

Plaintiff, the City of **Clearwater**, Florida (herein referred to as the "City" or the "Plaintiff"), brings this Complaint against the State of Florida, and the taxpayers, property owners and citizens of the City of **Clearwater**, Florida, including non-residents owning property or subject to taxation therein and all others having or claiming any rights, title or interest in property to be affected by the issuance by Plaintiff of its revenue bonds, hereinafter described, or to be affected in any way thereby, and **respectfully** shows and represents unto the Court as follows:

1. This Court has jurisdiction of this matter under Section 75.01, Florida Statutes



2. **Plaintiff** is a municipal corporation organized and existing under and by virtue of the laws of the State of Florida.

3. Authority is conferred upon Plaintiff, under and by virtue of the laws of said State, particularly Chapter 166, Part **II**, Florida Statutes, and other applicable provisions of law, the Charter of the City of **Clearwater**, and Ordinance No. **6675-01**, enacted by the City Commission of the Plaintiff on January **18, 2001** (the "Bond Ordinance"), to issue its Revenue Bonds (Spring Training Facility), Series 2001, in a principal amount not to exceed **\$14,000,000** (the "Bonds") to finance the cost of constructing a spring training facility consisting of a 7000 seat new baseball stadium, baseball practice facilities, and related facilities (collectively, the "Project") to be owned by the Plaintiff but operated and maintained by The Philadelphia **Phillies** ("The Phillies"), and located **within** the municipal corporate limits of the Plaintiff.

4. On or about January 1, 2001, the City of Clearwater was certified by the State of Florida Office of Tourism, Trade and Economic Development ("**OTTED**") as the host for a retained spring training franchise **facility** in accordance with Section 288.1162, Florida Statutes, and as such, is entitled to receive monthly payments **from** the State of Florida in accordance with Section 212.20, Florida Statutes, the proceeds of **which** may be used to finance the cost of the Project and are pledged by the Bond Ordinance to the repayment of the Bonds and to reimburse the Plaintiff for costs of the Project. A copy of the **OTTED** Certification is attached hereto as **Exhibit "C"**.

5. The **Plaintiff** and **Pinellas** County, Florida (the 'County'), entered into an Interlocal Agreement dated as of December **1, 2000**, pursuant to which the County **will** make monthly payments to the City for the purpose of financing a portion of the costs of the Project, which payments are

pledged by the Bond Ordinance to the repayment of the Bonds and to reimburse the Plaintiff for costs of the Project. A copy of the form of Interlocal Agreement is attached hereto as Exhibit "D".

6. The City Commission of the City has found and determined that the Project constitutes a "tourism facility" as defined in Section 159.27(11), Florida Statutes, and as such constitutes a "project for industrial development" within the meaning of Article IX of the City's Charter.

7. Pursuant to the Charter of the Issuer and other applicable provisions of law and by virtue of the authority thereof, the City Commission of the Issuer did on the 18th day of January, 2001, at a regular meeting enact the Bond Ordinance entitled:

AN ORDINANCE PROVIDING FOR CITY OF CLEARWATER, FLORIDA REVENUE BONDS (SPRING TRAINING FACILITY) SERIES 2001, TO BE ISSUED IN ONE OR MORE SERIES; PROVIDING FOR THE PAYMENT OF THE BONDS SOLELY FROM THE INTERLOCAL AGREEMENT PAYMENTS TO BE MADE BY PINELLAS COUNTY, FLORIDA AND REVENUES TO BE RECEIVED BY THE CITY FROM THE STATE OF FLORIDA PURSUANT TO SECTION 288.1162, FLORIDA STATUTES; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

A true and complete copy of the Bond Ordinance is hereto attached, marked Exhibit "A" and made a part hereof as **if fully** set forth at length. All capitalized undefined terms used herein shall have the meanings set forth in the Bond Ordinance.

8. In furtherance of the approved Project, the City Commission of the Issuer did on the 18th day of January, 2001, at a regular meeting, adopt Resolution No. 01-01 (the "Reimbursement Resolution") entitled:

A RESOLUTION OF **THE** CITY OF CLEARWATER FLORIDA
ESTABLISHING ITS INTENT TO REIMBURSE CERTAIN
PROJECT COSTS INCURRED WITH PROCEEDS OF FUTURE
TAX-EXEMPT FINANCING; PROVIDING CERTAIN OTHER
MATTERS IN CONNECTION THEREWITH; AND PROVIDING
AN EFFECTIVE DATE.

A true and correct copy **of which** is hereto attached, marked Exhibit "B", expressing the intent of the Issuer to commence the Project and to reimburse the Issuer from proceeds of a tax-exempt revenue bond issue to be issued to provide permanent financing for such costs for the Project.

9. The Plaintiff and The **Phillies** have entered into a Sports Facility Use Agreement dated as of December 31, 2000 (the "Use Agreement"), pursuant to which The **Phillies** will have operation and maintenance responsibilities for the Project and will exercise operating control over the Project for a period of not less than 20 years, with rights to renew the Use Agreement for additional 5 year periods. A true and correct copy of the Use Agreement is attached hereto and marked Exhibit "E".

10. The Bond Ordinance fixes the form and other details of the Bonds, provides for the manner of issuance thereof, and further provides that no **ad valorem** taxes shall be levied for the payment of such Bonds or the interest thereon, but that such principal and interest shall be payable solely from the Pledged Revenues (as **defined** in the Bond Ordinance) consisting of the payments from the County pursuant to the Interlocal Agreement (the "County Payments") and the payments from the State of Florida under Section 212.20, Florida Statutes (the "State Payments"), and that said Bonds shall not constitute a lien upon any property whatsoever of the City except the revenues pledged for the payment thereof. No assets, property, funds or revenue of the City, **other** than the County Payments and the State Payments, will be available to pay the principal **of**, premium, if any

or interest on the Bonds. In no event will the interest rate borne by the Bonds exceed the maximum lawful interest rate.

11. The revenues pledged for the payment of the Bonds are estimated to be **sufficient** to pay the principal of, redemption premiums, if any, and the interest on the Bonds as the same become due.

12. The City has the requisite authority to own the Project and to contract for the operation and maintenance of the Project.

WHEREFORE, your Plaintiff prays as follows, that:

1. This Honorable Court issue an order against the State of Florida and against the several taxpayers, property owners and citizens of the City of **Clearwater**, Florida, including nonresidents owning property subject to taxation therein and others having or claiming any right, title or interest in property to be affected by the issuance of such Bonds or to be affected in any way thereby, requiring in general terms and without naming them, all persons and each of them and the State of Florida through the State Attorney for the Sixth Judicial Circuit of Florida to appear at a time and place within the Sixth Judicial Circuit of Florida designated in such order and show cause why the prayers of this Complaint should not be granted, and said Bonds in the aggregate amount of not exceeding **\$14,000,000**, the proceedings authorizing the issuance thereof and the revenues pledged to the payment thereof should not be validated and **confirmed** as herein prayed.

2. The Clerk of this Court cause to be published as provided in Section 75.06, Florida Statutes, in a newspaper published in **Pinellas** County, as required by law, a copy of the Order to Show Cause once each week for two consecutive weeks, the first publication to be not less than twenty (20) days before the date set for said hearing.

3. Plaintiff further prays that upon the **final** hearing of this cause a final judgment of the Court be entered validating and confirming the issuance of the Bonds to be issued in various series as hereinabove set forth, the Issuer's authority to incur this Bond debt, and the legality of all proceedings in connection therewith and the revenues pledged for the payment thereof



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ORDINANCE NO. 6675-0 1

AN ORDINANCE PROVIDING FOR CITY OF CLEARWATER, FLORIDA, REVENUE BONDS (SPRING TRAINING FACILITY), SERIES 2001, TO BE ISSUED IN ONE OR MORE SERIES; PROVIDING FOR THE PAYMENT OF THE BONDS SOLELY FROM THE INTERLOCAL AGREEMENT PAYMENTS TO BE MADE BY PINELLAS COUNTY, FLORIDA AND REVENUES TO BE RECEIVED BY THE CITY FROM THE STATE OF FLORIDA PURSUANT TO SECTION 288.1162, FLORIDA STATUTES; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CLEARWATER, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Ordinance is enacted pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following terms shall have the following meanings herein, unless the text otherwise expressly requires. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

“Accreted Value” shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital Appreciation Bond **from** the date of delivery to the original purchasers thereof to the Interest Payment Date next preceding the date of computation or the date of computation if an Interest Payment Date, such interest to accrue at a rate not exceeding the legal rate, compounded semi-annually, plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bonds, if such date of computation shall not be an Interest Payment Date, a portion of the difference between the Accreted Value as of the immediately preceding Interest Payment Date and the Accreted Value as of the immediately succeeding Interest Payment Date, calculated



based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a 360 day year consisting of 12 months of 30 days each.

“Act” shall mean Chapter 166, Part II, Florida Statutes, and other applicable provisions of law.

“Amortization Installments” shall mean an amount designated as such by subsequent resolution of the Issuer and established with respect to any Term Bonds.

“Authorized Investments” shall mean any of the following if and to the extent the same are at the **time** legal for investment of municipal funds: (a) direct obligations of or obligations, the principal of and interest on which are unconditionally guaranteed by the United States of America; (b) bonds, debentures, notes or other evidence of indebtedness payable in cash issued by any of the following agencies whose obligations represent full faith and credit of the United States of America: the Export-Import Bank of the United States, the Federal Financing Banks, Farmers Home Administration, Maritime Administration, Public Housing Authority and the Government National Mortgage Association; (c) certificates of deposit properly secured at all times, by collateral security described in (a) and (b) above, such agreements are only acceptable with commercial banks, savings and loan associations, and mutual savings banks; (d) the following investments fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation: (1) certificates of deposit, (2) savings accounts, (3) deposit accounts, or (4) depository receipts of a bank, savings and loan associations, and mutual savings banks, and (e) such additional investments as are approved by subsequent resolution of the Issuer adopted prior to the issuance of the Bonds.

“Bondholder” shall mean a registered owner of a Bond as shown on the registration books of the Registrar.

“Bonds” shall mean the Revenue Bonds (Spring Training Facility), Series 2001, permitted to be issued hereunder in accordance with the provisions hereof.

“Bond Insurer” shall mean the entity which insures the timely payment of the interest on or principal of the Bonds through a municipal bond insurance policy or similar financial instrument, as determined by subsequent resolution of the Issuer adopted prior to the issuance of **t h e B o n d s** .

“Capital Appreciation Bonds” shall mean Bonds **the** interest on which is payable only at maturity or redemption, as determined by subsequent resolution.

“Capital Appreciation Term Bonds” shall mean Capital Appreciation Bonds of a series all of which shall be stated to mature on one date, which shall be subject to retirement by operation of the Bond Amortization Account, and the interest on which is payable only at maturity or redemption.

“City” shall mean the City of Clearwater, Florida, a municipal corporation.

“County” shall mean Pinellas County, Florida, a political subdivision of the State.

“County Payments” shall mean the periodic payments to be made by the County to the City in accordance with the Interlocal Agreement dated as of December 1, 2000, between the City and the County, as amended and supplemented from time to time.

“Federal Securities” shall mean only direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America.

“Fiscal Year” shall mean the period commencing on October 1 of each year and ending on the succeeding September 30, or such other period as is at the time prescribed by law.

“Issuer” shall mean the City of Clearwater, Florida.

“Maturity Amount” means the amount payable upon the stated maturity of a Capital Appreciation Bond equal to the principal amount thereof plus all accrued interest thereon from the date of issue to the date of maturity.

“Payment Date” shall mean, with respect to payment to the Bondholders of principal or interest on the Bonds, or with respect to the mandatory amortization of Term Bonds, the date upon which payment of such principal, interest or Amortization Installment is required to be made to the Paying Agent, which date shall be determined by subsequent resolution of the Issuer adopted prior to the issuance of the Bonds.

“Pledged Revenues” shall mean the County Payments, the State Payments, and any investment income realized on any funds held under this Ordinance, except the Rebate Fund.

“Project” shall mean the baseball spring training facility comprised of Carpenter Field, at which is located four major league training fields, a practice infield, covered batting tunnels, an outdoor bullpen, clubhouse building and a workout/exercise building, and a 7000 seat new baseball stadium to replace the existing Jack Russell Stadium.

“Registrar” shall mean the paying agent for the Bonds, as Bond Registrar, or such other person, firm or corporation as may thereafter be from time to time designated by the Issuer as the Registrar for the Bonds.

“Reserve Account Requirement” shall mean an amount equal to the lesser of (i) ten percent (10%) of the original sole proceeds of the Bonds, (ii) maximum annual debt service on the Bonds and (iii) one hundred twenty-five percent (125%) of the average annual debt service on the Bonds; provided however, that by subsequent resolution adopted prior to the issuance of the Bonds, the Issuer may reduce the amount of the Reserve Account Requirement.

“Serial Bonds” shall mean any Bonds for the payment of the principal of which, at the maturity thereof, no Amortization Installments are required to be made prior to the stated date of maturity of such Serial Bonds.

“Series” or “Series of Bonds” or “Bonds of a Series” shall mean all Bonds designated as being of the same Series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution ~~therefor~~ pursuant to this Ordinance.

“State” shall mean the State of Florida.

“State Payments” shall mean the monthly payments to be received by the City from the State as a result of obtaining certification of the Project as a “retained spring training franchise facility” in accordance with Section 288.1162, Florida Statutes.

“Term Bonds” shall mean the Bonds of a series all of which shall be stated to mature on one date and which shall be subject to retirement by operation of the Bond Amortization Account.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

A. The Philadelphia **Phillies** is a major league baseball franchise which has been conducting its spring training program in the City for the prior 54 years.

B. The Philadelphia **Phillies** generates a significant economic impact in ~~the~~ City and the County as a direct result of the spring training activities which occur within the City each year, and that such impact has been reported to the City Commission to be approximately \$24.5 million each year, and that in order to **preserve** this economic benefit for the City, the City must undertake the Project, and the City has **further** determined that the Project is in furtherance of its municipal purposes to provide for the health and general welfare of the citizens and residents of the City, and that undertaking the Project is a valid municipal purpose.

C. The Project constitutes a “Tourism Facility” as defined in Section 159.27(11), Florida Statutes, and is included within ~~the~~ definition of an industrial development project set forth in Section 159.27(5), Florida Statutes, and that the Project constitutes a “project for industrial development” within the meaning of Article IX of the City’s Charter.

D. No funds (including but not limited to ad **valorem** tax revenues of the City) or property of ~~the~~ City will be pledged to the repayment of the Bonds, and no property of the City will be pledged to secure the Bonds, and the Bonds will be secured solely by, and repayable solely from the County Payments and the State Payments, neither of which would otherwise be payable to the City in the event the City did not undertake the Project.

E.. The Pledged Revenues will be sufficient to pay all of the principal of and interest on the Bonds as the same become due, and to make all required sinking fund, reserve and other payments required under this Ordinance.

F. The principal of and interest on the Bonds and all required sinking fund, reserve and other payments shall be made solely from the Pledged Revenues **as** herein provided. The Issuer shall never be required to levy ad **valorem** taxes on any property therein to pay the principal of and interest on the Bonds or to make any of the required sinking fund, reserve or other payments. and any failure to pay the Bonds shall not give rise to a lien upon any property of the Issuer, except the Pledged Revenues.

G. The total indebtedness of the Issuer, within the meaning of the Issuer's charter, does not exceed twenty per centum (20%) of the current assessed valuation of all real property located in the Issuer, and will not exceed such amount after issuance of the Bonds.

SECTION 4. ORDINANCE TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Bonds by the Bondholders from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Bondholders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided therein and herein.

SECTION 5. AUTHORIZATION OF BONDS. Subject and pursuant to the provisions hereof and as shall be described in subsequent resolutions of the Issuer to be adopted prior to the issuance of the Bonds, obligations of the Issuer to be known as "Revenue Bonds (Spring Training Facility), Series 2001" are authorized to be issued in one or more series. The aggregate principal amount of the Bonds which may be executed and delivered under this Ordinance is limited to a maximum principal amount of **\$ 14,000,000.**

SECTION 6. DESCRIPTION OF BONDS. The Bonds shall be issued in fully registered form; may be Capital Appreciation Bonds, Capital Appreciation Income Bonds, Serial Bonds or Term Bonds; shall be dated; shall be numbered consecutively from one upward in order of maturity preceded by the letter "**R**"; shall be in the denomination of \$5,000 each, or integral multiples thereof for the Serial Bonds and in \$5,000 maturity amounts for the Capital Appreciation Bonds or in **\$5,000** multiples thereof, or such other denominations as shall be approved by the Issuer in a supplemental resolution prior to the delivery of the Bonds; shall have such Paying Agent and Registrar; shall bear interest at such rate or rates not exceeding the maximum' rate allowed by State law, the actual rate or rates to be approved by the governing body of the Issuer prior to or upon the **sale** of the Bonds; such interest to be payable semiannually at such times as are fixed by supplemental resolution of the Issuer if Serial Bonds and shall mature semi-annually or annually on such date in such years (not exceeding 30 years

from the date of issuance) and such amounts as will be fixed by supplemental resolution of the Issuer prior to or upon the sale of the Bonds; and may be issued with fixed interest rates with or without original issue discounts and as Capital Appreciation Bonds; all as the Issuer shall provide herein or hereafter by supplemental resolution.

Each Serial Bond shall bear interest from the interest payment date next preceding the date on which it is authenticated, unless authenticated on an interest payment date, in which case it shall bear interest from such interest payment date, or, unless authenticated prior to the first interest payment date, in which case it shall bear interest from its date; provided, however, that if at the time of authentication payment of any interest which is due and payable has not been made, such Serial Bond shall bear interest from the date to which interest shall have been paid.

The Capital Appreciation Bonds shall bear interest only at maturity or upon redemption prior to maturity in the amount determined by reference to the Compounded Amount.

The principal of and the interest redemption premium, if any, on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The interest on the Serial Bonds shall be payable by the Paying Agent on each interest payment date to the person appearing on the registration books of the Issuer hereinafter provided for as the registered Holder thereof, by check or draft mailed to such registered Holder at his address as it appears on such registration books or by wire transfer to Holders of \$1,000,000 or more in principal amount of the Bonds. Payment of the principal of all Serial Bonds and the Compounded Amount with respect to the Capital Appreciation Bonds shall be made upon the presentation and surrender of such Bonds as the same shall become due and payable.

Notwithstanding any other provisions of this section, the Issuer may, at its option, prior to the date of issuance of any Series of Bonds, elect to use an immobilization system or pure book-entry system with respect to issuance of such Series of Bonds, provided adequate records will be kept with respect to the ownership of such Series of Bonds issued in book-entry form or the beneficial ownership of bonds issued in the name of a nominee, As long as any Bonds are outstanding in book-entry form the provisions of this Ordinance inconsistent with such system of book-entry registration shall not be applicable to such Bonds. The details of any alternative system of issuance, as described in this paragraph, shall be set forth in a resolution of the Issuer duly adopted at or prior to the sale of such Series of Bonds.

SECTION 7. EXECUTION OF BONDS. The Bonds shall be executed in the name of the Issuer by the Mayor-Commissioner and City Manager and attested by the City Clerk, and approved as to form, sufficiency and correctness by the City Attorney, either manually or by facsimile signature, and the official seal of the Issuer or a facsimile thereof shall be affixed thereto or reproduced thereon. The facsimile signature of such officers may be imprinted or reproduced on the Bonds. The Certificate of Authentication of the Bond Registrar shall appear on the Bonds, and no bond shall be valid or obligatory for any purpose or be entitled to any

security or benefit under this Ordinance unless such certificate shall have been duly executed on such Bond. The authorized signature for the Bond Registrar shall be either manual or facsimile; provided, however, that at least one of the signatures appearing on the Bonds shall at all times be a manual signature. In case any officer whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bonds shall hold the proper office with the Issuer, although at the date of enactment of this Ordinance such person may not have held such office or may not have been so authorized.

SECTION 8. AUTHENTICATION OF BONDS. Only such of the Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinbelow set forth, duly executed by the Registrar, as authenticating agent, shall be entitled to any benefit or security under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication of all of the Bonds that may be issued hereunder at any one time.

SECTION 9. NEGOTIABILITY. Subject to the provisions hereof respecting registration and transfer, the Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the laws of the State of Florida, and each successive holder, in accepting any of the Bonds, shall be conclusively deemed to have agreed that the Bonds shall be and have all of such qualities and incidents of negotiable instruments under the Uniform Commercial Code - Investment Securities of the State of Florida.

SECTION 10. REGISTRATION, EXCHANGE AND TRANSFER. There shall be a Bond Registrar for the Bonds which may be the Issuer or a designated bank or trust company located within or without the State of Florida. The Bond Registrar shall maintain the registration books of the Issuer and be responsible for the **transfer** and exchange of the Bonds. The Issuer shall, prior to the proposed date of delivery of the Bonds, by resolution designate the Bond Registrar and Paying Agent. The Bond Registrar **shall** maintain the books for the registration of the transfer and exchange of the Bonds in compliance with the Florida Registered Public Obligations Act and the system of registration as established by the Issuer pursuant thereto.

Bonds may be transferred upon the registration books, upon delivery to the Registrar, together with written instructions as to the details of the transfer of such Bonds, along with the social security number or federal employer identification number of such transferee and, if such transferee is a trust, the name and social security or federal employer identification numbers of the **settlor** and beneficiaries of the trust, the date of the trust and the name of the trustee. No

transfer of any Bond shall be effective until entered on the registration books maintained by the Bond Registrar.

Upon surrender for transfer or exchange of any Bond, the Issuer shall execute and the Bond Registrar shall authenticate and deliver in the name of the registered owner or the transferee or transferees, as the case may be, a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Ordinance. The Issuer or the Bond Registrar may charge the owner of such Bond for every such transfer or exchange an amount sufficient to reimburse them for their reasonable fees and for any tax, fee, or other governmental charge required to be paid with respect to such transfer, and may require that such charge be paid before any such new Bond shall be delivered.

All Bonds presented for transfer, exchange, redemption or payment (if so required by the Bond Registrar), shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the registered holder or by his duly authorized attorney in fact or legal representative.

All Bonds delivered upon transfer or exchange shall bear interest from the preceding interest payment date so that neither gain nor loss in interest shall result **from** the transfer or exchange. New Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bond surrendered, shall be secured by this Ordinance and shall be entitled to all of the security and the benefits hereof to the same extent as the Bonds surrendered.

The Issuer and the Bond Registrar may treat the registered owner of any Bond **as** the absolute owner thereof for all purposes, whether or not such Bonds shall be overdue, and shall not be bound by any notice to the contrary.

Notwithstanding the foregoing provisions of this section, the Issuer reserves the right, on or prior to the delivery of the Bonds to amend or modify the foregoing provisions relating to the registration of the Bonds by resolution or ordinance in order to comply with all applicable laws, rules, and regulations of the United States and/or the State of Florida relating thereto. In addition, pursuant to a resolution adopted prior to the issuance of the Series Bonds, the Issuer may establish a book-entry-only system of registration for the Series Bonds, the provisions of which shall be deemed to modify any inconsistent provisions of this Ordinance.

SECTION 11. BONDS MUTILATED, DESTROYED, STOLEN OR LOST. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such

mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder furnishing the Issuer proof of his ownership- thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. All Bonds so surrendered shall be canceled by the Registrar for the Bonds. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on the source and security for payment from the funds, as hereinafter pledged, to the same extent as all other Bonds issued hereunder.

SECTION 13. PROVISIONS FOR REDEMPTION. The Bonds shall be redeemable as provided by subsequent resolution of the Issuer.

Bonds in denominations greater than an authorized denomination (or authorized Maturity Amount in the case of Capital Appreciation Bonds) shall be deemed to be an equivalent number of Bonds in the denomination of an authorized denomination or Maturity Amount. If a Bond is of a denomination or Maturity Amount larger than an authorized denomination or Maturity Amount, a portion of such Bond may be redeemed, in the amount of an authorized denomination or Maturity Amount or integral multiples thereof.

Notice of such redemption, identifying the Bonds or portions thereof called for redemption (i) shall be filed with the paying agents and any Registrar; and (ii) shall be mailed by the Registrar, first-class mail, postage prepaid, to all registered owners of the Bonds to be redeemed not more than sixty (60) days and not less than thirty (30) days prior to the date fixed for redemption at their addresses as they appear on the registration books to be maintained in accordance with the provisions hereof. Failure to give such notice by mailing to any owner of Bonds, or any defect therein, shall not affect the validity of any proceeding for the redemption of other Bonds.

Notice having been mailed and filed in the manner and under the conditions hereinabove provided, the Bonds or portions of Bonds so called for redemption shall, on the redemption date designated in such notice, become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date. On the date so designated for redemption, notice having been mailed and filed and moneys for payment of the redemption price being held in separate accounts in trust for the holders of the Bonds or portions thereof to be redeemed, all as provided in this Ordinance, interest on the Bonds or portions of Bonds so called for redemption shall cease to accrue, such Bonds and portions of Bonds shall cease to be entitled to any lien, benefit or security under this Ordinance, and the holders or Registered Owners of such Bonds or portions of Bonds, shall have no rights in respect thereof, except the right to receive payment of the redemption price thereof.

Upon surrender of any Bond for redemption, in part only, the Issuer shall issue and deliver to the registered owner thereof, the costs of which shall be paid by the registered owner, a new Bond or Bonds of authorized denominations or Maturity Amounts in aggregate principal amount equal to the unredeemed portion surrendered.

SECTION 13. FORM OF BONDS. The text of the Bonds shall be in substantially the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable and authorized and permitted by this Ordinance or by any subsequent ordinance or resolution adopted prior to the issuance thereof.

SECTION 14. BONDS NOT DEBT OF ISSUER. The Bonds shall not be or constitute general indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from and secured by a prior lien upon and pledge of the Pledged Revenues herein provided. No Bondholder shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real property therein to pay the Bonds or the interest thereon or be entitled to payment of such principal and interest from any other funds of the Issuer except from the Pledged Revenues in the manner provided herein,

SECTION 15. PLEDGED REVENUES. Until payment has been provided for as herein permitted, the payment of the principal of and interest on the Bonds shall be secured forthwith equally and ratably by an irrevocable lien on the Pledged Revenues prior and superior to all other liens or encumbrances on such Pledged Revenues and the Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of and interest on the Bonds, the reserves therefor, and for all other required payments. The Pledged Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer. All funds and accounts created pursuant hereto shall be held by the Financial Services Administrator (or such other officer of the Issuer as shall be approved by the City Commission) as trust funds for payment of the Bonds.

SECTION 16. CREATION OF FUNDS AND ACCOUNTS. There is hereby created the following funds and accounts:

- a. Revenue Fund, and within the Revenue Fund, the County Payments Account, the State Payments Account and the Investment Account;
- b. Construction Fund, and within the Construction Fund, a Project Account and a Cost of Issuance Account;
- c. Debt Service Fund, and within the Debt Service Fund, an Interest Account, a Principal Account, Bond Amortization Account and a Reserve Account; and

d. Rebate Fund.

The designation and establishment of the various funds and accounts in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets for certain purposes and to establish certain **priorities** for application of such revenues and assets as herein provided.

SECTION 17. COVENANTS OF THE ISSUER. Until all principal of and interest on the Bonds shall have been paid or provided for as herein permitted, the Issuer covenants with the Bondholders as follows;

A. REVENUE FUND. The County Payments and the State Payments shall upon receipt thereof be deposited in the County Payment Account and the State Payment Account, respectively, in the Revenue Fund. Such Revenue Fund shall constitute a trust fund for the purposes herein provided and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner herein provided,

B. DISPOSITION OF REVENUES. All funds at any time remaining on deposit in the Revenue Fund shall be disposed of on the day immediately preceding each Payment Date, commencing with the first Payment Date immediately following the delivery of the Bonds, for so long as any Bonds remain Outstanding, only in the following manner and in the following order of priority:

(1) From the moneys in the Revenue Fund, the Issuer shall deposit into the respective accounts in the Debt Service Fund, such sums as will be sufficient to pay (a) interest becoming due on the Bonds on the next Payment Date; (b) principal due and payable on the next Amortization Installment required to be made on the next Payment Date, and (c) the amount of any Amortization Installment required to be made on the next Payment Date. Such payments shall be credited to the Interest Account, Principal Account or Bond Amortization Account.

Upon the sale of any series of Term Bonds, the Issuer shall by resolution, establish the amounts and maturities of such Amortization Installments for each series, and if there shall be more than one maturity of Term Bonds within a series, the Amortization Installments for the Term Bonds of each maturity. In the event the moneys deposited for retirement of a maturity of **Term** Bonds are required to be invested, in the manner provided below, the Amortization Installments may be stated in terms of either the principal amount of the **investments** to be purchased on, or the cumulative amounts of the principal amount of investments required to have been purchased by, the payment date of such Amortization Installment.

Moneys on deposit in each of the separate special accounts in the Bond Amortization Account shall be used for the open market purchase or the redemption of Term Bonds of the series or maturity of Term Bonds within a series for which such separate special account is established or may remain in said separate special account and be invested until the stated date of maturity of the Term Bonds. The resolution establishing the Amortization Installments for any series or maturity of Term Bonds may limit the use of moneys to any one or more of the uses set forth in the preceding sentence and may specify the type or types of investments permitted hereunder to be purchased.

(2) Moneys remaining in the Revenue Fund shall next be applied by the Issuer to maintain the Reserve Account, with a balance equal to the Reserve Account Requirement, all or a portion of which sum may be initially provided from the proceeds of the sale of the Bonds and/or other moneys of the Issuer. The Issuer shall thereafter deposit into said Reserve Account an amount equal to the difference between the amount, if any, on deposit in the Reserve Account and the Reserve Account Requirement, No further payments shall be required to be made into such Reserve Account when there has been deposited therein and as long as there shall remain on deposit therein a sum equal to the Reserve Account Requirement.

Any withdrawals from the Reserve Account shall be subsequently restored from the first moneys available in the Revenue Fund after all required current payments into the Debt Service Fund and including all deficiencies for prior payments, have been made in full.

Moneys in the Reserve Account shall be used only for the purpose of the payment of maturing principal (including Amortization Installments) of or interest on the Bonds when the moneys in the Interest Account, Principal Account or Bond Amortization Account in the Debt Service Fund are insufficient therefor, and for no other purpose.

Whenever the amount on deposit in the Reserve Account exceeds the Reserve Account Requirement, the excess may be withdrawn and deposited into the Investment Account in the Revenue Fund.

The Issuer shall not be required to make any further payments into the Debt Service Fund or into the Reserve Account when the aggregate amount of moneys in the Debt Service Fund and the Reserve Account are at least equal to the aggregate principal amount of Bonds then outstanding, plus the amount of interest then due or thereafter to become due on the Bonds then outstanding.

Notwithstanding the foregoing provisions, in lieu of the required deposits of Revenues into the Reserve Account, the Issuer may cause to be deposited into the Reserve Account a surety bond or an insurance policy issued by a reputable and recognized insurer for the benefit of the Bondholders in an amount equal to the Reserve

Account Requirement, which surety bond or insurance policy shall be payable (upon the giving of notice as required thereunder) on any Payment Date on which a deficiency exists which cannot be cured by funds in any other account held pursuant to this Ordinance and available for such purpose. The insurer providing such surety bond or insurance policy shall be an insurer whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in the highest rating category by Standard & Poor's Corporation or Moody's Investors Service, Inc., or their successors. If a disbursement is made from a surety bond or **an** insurance policy provided pursuant to this paragraph, the Issuer shall be obligated to either reinstate the maximum limits of such surety bond or insurance policy immediately following such disbursement or to deposit into the Reserve Account, as herein provided in this paragraph for restoration of withdrawals from the Reserve Account, funds in the amount of the disbursement made under such policy, or a combination of such alternatives.

(3) The balance of any moneys remaining in the Revenue Fund after the above required payments have been made may either be deposited into either the Investment Account, the Revenue Fund, or may be used for the purchase or redemption of Bonds, or may be used by the Issuer to reimburse the Issuer for any costs of the Project paid for with City funds other than **the** proceeds of the Bonds.

C. INVESTMENT OF FUNDS. The Debt Service Fund, the Rebate Fund, the Revenue Fund, the Construction Fund, and any other special funds herein established and created shall constitute trust funds for the purposes provided herein for such funds. All such funds shall be continuously secured in the same manner as state and municipal deposits are required to be secured by the laws of the State of Florida. Moneys on deposit in any of such funds and accounts may be invested and reinvested in Authorized Investments.

Investments made with moneys in the Construction Fund, the Revenue Fund and the Debt Service Fund (except the Bond Amortization Account therein), must mature not later than the date that such moneys will be needed. Investments made with moneys in the accounts in the Bond Amortization Account and in the Reserve Account must mature, in the case of the accounts in the Bond Amortization Account not later than the stated date of maturity of each respective Amortization Installment of the Term Bonds to be retired **from** the Bond Amortization Account from which the investment is made, and in the case of the Reserve Account not later than the **final** maturity of any Bonds then outstanding. Any and **all** income received by the Issuer from all such investments shall be deposited into the Investment Account in the Revenue Fund, except however, that investment income **earned** in the Bond Amortization Account shall be retained therein and used to pay maturing principal of the Bonds, investment income earned on the Construction Fund shall be deposited into the Project Account in the Construction Fund, and investment income **earned** on the Rebate Fund **shall** be deposited into the Rebate Fund.

Except as otherwise permitted by subsequent resolution adopted prior to the issuance of the Bonds, moneys in any fund or account created hereunder may be invested and reinvested in Permitted Investments which mature not later than the dates on which the moneys on deposit therein will be needed for the purpose of such fund.

The cash required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

D. NO MORTGAGE OR SALE OF THE PROJECT. The Issuer irrevocably covenants, binds and obligates itself not to sell, lease, encumber or in any manner dispose of the Project (except that the leasing to or the use of the Project by one or more major league baseball teams shall be expressly permitted) as a whole until all of the Bonds shall have been paid in full as to both principal and interest, or payment shall have been duly provided for under this Ordinance.

E. ISSUANCE OF OTHER OBLIGATIONS. The Issuer shall issue no bonds or obligations of any kind or nature payable from or enjoying a lien on the Pledged Revenues if such obligations have priority over the Bonds with respect to payment or lien, nor shall the Issuer create or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or other charge on a parity with the lien of the Bonds upon said Pledged Revenues. Any obligations of the Issuer, other than the Bonds, which are payable from the Pledged Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the Bonds as to lien on and source and security for payment from such Pledged Revenues.

SECTION 18. TAX COMPLIANCE.

A. In General. The Issuer at all times while the Bonds and the interest thereon are outstanding will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") and any valid and applicable rules and regulations promulgated thereunder (the "Regulations") in order to ensure that the interest on the Bonds will be excluded from gross income for federal income tax purposes.

B. Rebate. (1) The Issuer shall either make or cause an independent firm of certified public accountants or tax compliance firm to make and promptly provide to the Issuer the rebate calculations required by the Code and Regulations, on which the Issuer may conclusively rely in taking action under this Section. The Issuer shall make deposits to and disbursements from the Rebate Fund to the extent required by the Code and Regulations and shall otherwise maintain full and complete accounting records of receipts and disbursements of, and investment purchases and sales allocated to, the "gross

proceeds” subject to the rebate requirements of the Code and Regulations. The requirements of this Subsection **18B** may be superseded or amended by new calculations accompanied by an opinion of bond counsel addressed to the Issuer to the effect that the use of the new calculations are in compliance with the Code and Regulations and will not cause the interest on the Bonds to become included in gross income for Federal income tax purposes.

(2) The Issuer shall either make or cause an independent **firm** of certified **public** accountants or tax compliance firm to annually make and promptly forward to the Issuer after the end of the Bond Year and within the time required by the Code and the Regulations the computation of the rebate deposit required by the Code, on which the Issuer may conclusively rely in taking action under this Subsection **B**. Records of the determinations required by this Subsection **B** and the Code and Regulations shall be retained by the Issuer until six (6) years after the Bonds are no longer outstanding.

(3) Within the time required by the Code and Regulations following the end of the fifth Bond Year, as defined in the Code, and every five (5) years thereafter, the Issuer **shall** pay to the United States of America ninety percent (90%) of the rebate amounts calculated as of such payment date, as shown by the computations of the Issuer or the certified public accountants or tax compliance **firm**, and one hundred percent (100%) of the earnings on such rebate amounts as of such payment date. Not later than sixty (60) days after **the final** retirement of each applicable series of Bonds, the Issuer shall pay to the United States of America one hundred percent (100%) of the balance remaining of the rebate amount and the earnings thereon. Each payment required to be paid to the United States of America pursuant to this Subsection **B** shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Form 803 **8-T**.

SECTION 19. DEFAULTS; EVENTS OF DEFAULT AND REMEDIES. Except as provided below, if any of the following events occur it is **hereby** defined as and declared to be and to constitute an “Event of Default”:

- (A) Default in the due and punctual payment of any interest on the Bonds;
- (B) Default in the due and punctual payment of **the** principal of and premium, if any, on any Bond, at the stated maturity thereof, or upon proceedings for redemption thereof;
- (C) Default in the performance or **observance** of any other of the covenants, agreements or conditions on the part of the Issuer contained in **this** Ordinance or in the Bonds and the continuance thereof for a period of **thirty** (30) days after written notice to the Issuer given by the Holders of not less than twenty-five percent (25%) of aggregate principal amount of Bonds then Outstanding (provided, however, that with respect to any obligation, covenant, agreement or condition which requires performance by a date certain, if the Issuer performs such

obligation, covenant, agreement or condition within thirty (30) days of written notice as provided above, the default shall be deemed to be cured);

(D) Failure by the Issuer promptly to remove any execution, garnishment or attachment of such consequence **as** will materially impair its ability to carry out its obligations hereunder;

(E) Any act of bankruptcy or the rearrangement, adjustment or readjustment of the obligations of the Issuer under the provisions of any bankruptcy or moratorium laws or similar laws relating to or affecting creditors' rights; or

The term "default" shall mean default by the Issuer in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Ordinance, any supplemental resolution or in the Bonds, exclusive of any period of grace required to constitute a default or an "Event of Default" as hereinabove provided.

For purposes of Section 19(A) and (B) hereof, no effect shall be given to any payments made under any municipal bond insurance policy.

Any Holder of Bonds issued under the provisions hereof or any trustee acting for the Holders of such Bonds, may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under State or federal law, or granted and contained herein, and may enforce and compel the performance of **all** duties required herein or by any applicable law to be performed by the Issuer **or by** any **officer** thereof.

Nothing herein, however, **shall** be construed to grant to any Holder of the Bonds any lien on any property of the Issuer, except the Pledged Revenues.

The foregoing notwithstanding:

(i) No remedy conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, **but** each remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder.

(ii) No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient.

(iii) No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or **shall** affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon-

(iv) Acceleration of the payment of principal of and interest on the Bonds shall not be a remedy hereunder in the case of an Event of Default.

Upon the occurrence of an Event of Default, and upon the **filing of** a suit or other commencement of judicial proceedings to enforce the rights of the Bondholders under this Ordinance, the Bondholders shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Project and the funds pending such proceedings, with such powers as the court making such appointment **shall** confer.

Notwithstanding any provision of this Ordinance to the contrary, for all purposes of this Section 19, except the giving of notice of any Event of Default to the Holder of the Bonds, the Bond Insurer which provides a municipal bond insurance policy shall be deemed to be the Holder of the Bonds it has insured.

On the occurrence of an Event of Default, to the extent such rights may then lawfully be waived, neither the Issuer nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Ordinance, and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent it may **lawfully** do so, the benefit of all such laws and all right of redemption to which it may be entitled.

Within 30 days of knowledge thereof, both the Issuer and the Paying Agent shall provide notice to the Bond Insurer of the occurrence of any Event of Default.

The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Issuer or any Paying Agent of the occurrence of an Event of Default and (ii) request the Issuer or any Paying Agent to intervene in judicial proceedings that **affect** the Bonds or the security therefor. The Issuer and any Paying Agent are required to accept notice of default **from** the Bond Insurer.

Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer **shall** be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders under this Ordinance and the Bond Insurer shall also be entitled to approve all waivers of events of default,

SECTION 20. AMENDING AND SUPPLEMENTING OF ORDINANCE WITHOUT CONSENT OF HOLDERS OF BONDS. The Issuer, **from** time to time and at any time and without the consent or concurrence of any Holder of any Bonds, may enact an ordinance amendatory hereof or supplemental hereto, if the provisions of such supplemental ordinance shall not adversely affect the rights of the Holders of the Bonds then Outstanding, for any one or more of the following purposes:

(A) To make any changes or corrections in this Ordinance as to which the Issuer shall have been advised by counsel that are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or omission or mistake or manifest error contained in this Ordinance, or to insert in this Ordinance such provisions clarifying matters or questions arising under this Ordinance as are necessary or desirable;

(B) To add additional covenants and agreements of the Issuer for the purpose of further seeming the payments of the Bonds;

(C) To surrender any right, power or privilege reserved to or conferred upon the Issuer by the terms of this Ordinance;

(D) To **confirm** as further assurance any lien, pledge or charge or the subjection to any lien, pledge or charge, created or to be created by the provisions of this Ordinance;

(E) To grant to or confer upon the Holders any additional right, remedies, powers, authority or security that lawfully may be granted to or conferred upon them;

(F) To assure compliance with federal "arbitrage" provisions in effect from time to time; and

(G) To modify any of the provisions of this Ordinance in any other aspects provided that such modifications shall not be effective until after the Bonds Outstanding at the time such supplemental ordinance is adopted shall cease to be Outstanding, or until the holders thereof consent thereto pursuant to Section 21 hereof, and any Bonds issued subsequent to any such modification shall contain a specific reference to the modifications contained in such supplemental ordinance.

Except for supplemental ordinances providing for the issuance of Bonds pursuant hereto, the Issuer shall not enact any supplemental ordinance authorized by the foregoing provisions of this Section unless in the opinion of Bond Counsel the enactment of such supplemental ordinance is permitted by the foregoing provisions of this section.

SECTION 21. AMENDMENT OF ORDINANCE WITH CONSENT OF HOLDERS OF BONDS. Except as provided in Section 20 hereof, no material modification or amendment of this Ordinance or of any resolution supplemental hereto shall be made without the consent in writing of the Holders of fifty-one percent or more in the principal amount of the Bonds of each Series so affected and then Outstanding. For purposes of this Section, to the extent any Bonds are insured by a policy of municipal bond insurance or are secured by a letter of credit and such Bonds are then rated in as high a rating category as the rating category in which such Bonds were rated at **the** time of initial issuance and delivery thereof by either Standard & Poor's Corporation or Moody's Investors Service, or successors and assigns, then the consent of the issuer of such municipal bond insurance policy or the issuer of such letter of credit

shall be deemed to constitute the consent of the Holder of such Bonds. No modification or amendment shall permit a change in the maturity of such Bonds or a reduction in the rate of interest thereon or in the amount of the principal obligation thereof or affecting the promise of the Issuer to pay the principal of and interest on the Bonds as the same shall become due from the Pledged Revenues or reduce the percentage of the Holders of the Bonds required to consent to any material modification or amendment hereof without the consent of the Holder or Holders of all such obligations. For purposes of the immediately preceding sentence, the issuer of a municipal bond insurance policy or a letter of credit shall not consent on behalf of the Holders of the Bonds. No amendment or supplement pursuant to this Section 21 (but not including Section 20 hereof) shall be made without the consent of the Bond Insurer.

SECTION 22. DEFEASANCE. The covenants and obligations of the Issuer shall be defeased and discharged under terms of this Ordinance as follows:

(A) If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal, redemption premium, if any, and interest due or to become due thereon, at the times and in the manner stipulated herein, then the pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied, If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of any Outstanding Bonds the principal or redemption **premium**, if any, and interest due or to become due thereon, at the times and in the manner stipulated herein, such Bonds **shall** cease to be entitled to any lien, benefit or security under this Ordinance, and all covenants, agreements and obligations of the Issuer to the Holders of such Bonds shall thereupon cease, terminate and **become** void and be discharged and satisfied.

(B) The Bonds, redemption premium if any, and interest due or to become due for the payment or redemption of which moneys shall have been set aside and shall be held in trust (through deposit by the Issuer of funds for such payment or redemption or **otherwise**) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in paragraph (A) of this Section 22. Subject to the provisions of paragraph (C) and (D) of this Section 22, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in paragraph (A) of this Section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Issuer shall have given to the escrow agent instructions accepted in writing by the escrow agent to notify Holders of Outstanding Bonds in the manner required herein of the redemption of such Bonds on said date and (ii) there shall have been deposited with the escrow agent either moneys in an amount which shall be sufficient, or Federal Securities (including any Federal Securities issued or held in book-entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the escrow agent at the same time, shall be sufficient, to pay when due the principal of or premium, if any,

and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be.

Section 23. SALE OF THE BONDS. The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent- with the provisions of the requirements of this Ordinance and other applicable provisions of law as set forth in a supplemental resolution of the Issuer adopted before the issuance of any Series of Bonds.

SECTION 24. CAPITAL APPRECIATION BONDS. For the purposes of (i) receiving payment of the redemption price if a Capital Appreciation Bond is redeemed prior to maturity, or (ii) receiving payment of a Capital Appreciation Bond if the principal of all Bonds is declared immediately due and payable under the provisions of the Ordinance, or (iii) computing the amount of the Maximum Bond Service Requirement and of Bonds held by the registered owner of a Capital Appreciation Bond in giving to the Issuer or the Trustee any notice, consent, request or demand pursuant to the Ordinance for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value.

SECTION 25. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable **from** the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other **provisions** hereof or of the Bonds issued hereunder.

SECTION 26. REPEALING CLAUSE. All ordinances or resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 27. VALIDATION. The City Attorney and the City's bond counsel are hereby authorized to **commence** validation proceedings under Chapter 75, Florida Statutes.

SECTION 28. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage.

SECTION 29. PUBLIC NOTICE. Notice of the proposed enactment of this Ordinance has been properly advertised in a newspaper of general circulation in accordance with Chapter 166.04 1, Florida Statutes.

PASSED ON FIRST READING

December 12, 2000

PASSED ON SECOND READING
AND **FINAL READING AND ADOPTED**


January 18, 2001



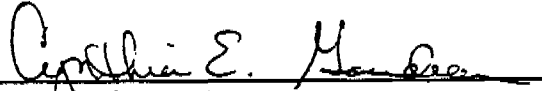
Brian J. Aungst
Mayor-Commissioner

Approved as to form:

Attest:



Pamela K. Akin
City Attorney



Cynthia E. Goudeau
City Clerk

RECEIVED
CIVIL COURT RECORDS

JAN 22 2001

KARLEEN F. De BLAKER
CLERK CIRCUIT COURT
PINELLAS COUNTY

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA

CIVIL ACTION NO: 0 1-460-CI-0 15

THE CITY OF CLEARWATER, a municipal
corporation and public body corporate and
politic of the State of Florida,

Plaintiff

vs.

VALIDATION OF THE NOT
EXCEEDING \$14,000,000 CITY OF
CLEARWATER, FLORIDA, REVENUE
BONDS (SPRING TRAINING
FACILITY) SERIES 2001

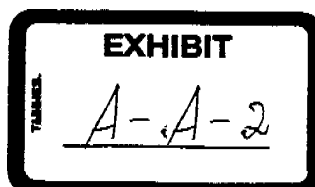
THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and Citizens of
the City of Clearwater, Florida, including
non-residents owning property or subject to
taxation therein.

Defendants.

ORDER TO SHOW CAUSE

TO: THE STATE OF FLORIDA, THROUGH THE STATE ATTORNEY FOR THE SIXTH
JUDICIAL CIRCUIT OF FLORIDA, AND TO THE SEVERAL TAXPAYERS,
PROPERTY OWNERS, CITIZENS OF THE CITY OF CLEARWATER, FLORIDA,
INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION
THEREIN AND ALL OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE OR
INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE OF THE
REVENUE BONDS (SPRING TRAINING FACILITY), SERIES 2001, HEREINAFTER
MORE PARTICULARLY DESCRIBED OR TO BE AFFECTED IN ANY WAY
THEREBY;

The above cause coming on to be heard upon the Complaint this day filed herein by the City
of Clearwater, Florida, seeking to determine the authority of the City of Clearwater to issue its
Revenue Bonds (Spring Training Facility) Series 2001 in the amount of not exceeding \$14,000,000
(the "Bonds"), a more particular description of said Bonds being contained in the Complaint filed
in these proceedings, to determine the legality of the proceedings had and taken in connection



therewith, and the legality of the provisions, covenants and agreements contained therein and the revenues pledged to the payment thereof, and seeking a judgment of this Court to validate the proceedings for said Bonds, the revenues pledged for the payment thereof, and said Bonds when issued pursuant thereto, and said Complaint now having been presented to this Court, for entry of an Order to Show Cause pursuant to Chapter 75, Florida Statutes, and the Court being fully advised in the premises:

IT IS ORDERED AND ADJUDGED that the State of Florida, through the State Attorney of the Sixth Judicial Circuit of Florida, and the several taxpayers, property owners and citizens of the City of Clearwater, including non-residents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected in any way thereby, or to be affected thereby, be and they are each hereby required to appear and show cause, if any there be, before this Court on the 22nd day of February, 2001, at 3:30 o'clock P.M. in the Chambers of the undersigned Judge at the Pinellas County Courthouse in the City of **Clearwater**, Florida, why the prayer of said Complaint should not be granted and why the proceedings for said Bonds and said Bonds when issued pursuant thereto and the revenues pledged to the payment thereof should not be validated and confirmed as therein prayed.

AND IT IS FURTHER ORDERED AND ADJUDGED that this Order to Show Cause be published in the manner required by Section 75.06, Florida Statutes.

AND IT IS FURTHER ORDERED AND ADJUDGED that by such publication of this Order all taxpayers, property owners and citizens of the City of **Clearwater**, including non-residents owning property or subject to taxation therein and all others having or claiming any right, title or interest in the City of Clearwater or the taxable property therein or in any property to be affected by

the issuance of said Bonds or to be affected in any way thereby, or the validity of such Bonds or of any revenues pledged for payment thereof, or of the proceedings authorizing the issuance of said Bonds, including any remedies provided for their collection, be and they are made parties defendant to this proceeding, and that this Court shall have jurisdiction of them to the same extent as if named as defendants in said Complaint and personally served with process in this cause.

DONE AND ORDERED in chambers at Clearwater, **Pinellas** County, Florida, this _____ day of January, 200 1.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

THE CITY OF CLEARWATER, a municipal
corporation and public body corporate and
politic of the State of Florida,
Plaintiff,

vs.

CIVIL ACTION NO. 0 1-460-CI-0 1 5

THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and Citizens of
the City of Clearwater, Florida, including
non-residents owning property or subject to
taxation therein,
Defendants.

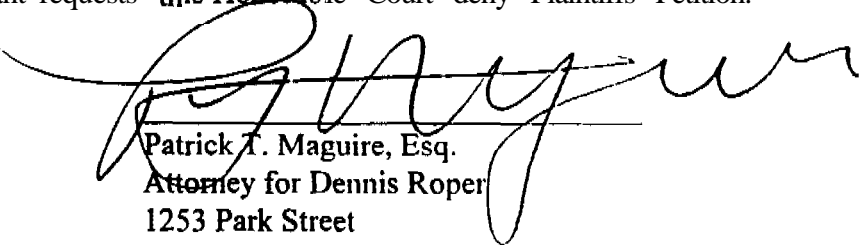
VALIDATION OF NOT TO EXCEED
\$14,000,000 CITY OF CLEARWATER,
REVENUE BONDS (SPRING TRAINING
FACILITY) SERIES 200 1

ANSWER

COMES NOW DENNIS ROPER, a Defendant, Taxpayer, Property Owner, citizen and
voter of the City of Clearwater, Florida, and answers the Complaint for Validation filed in the
above styled cause as follows:

1. This Defendant admits the allegations of Paragraphs 1 and 2 of the Complaint.
2. This Defendant denies the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of
the Complaint.

WHEREFORE, this Defendant requests **this Honorable** Court deny Plaintiffs Petition.


Patrick T. Maguire, Esq.
Attorney for Dennis Roper
1253 Park Street
Clearwater, FL 33756
(727) 442-3838
SPN 72239 FBN 266371

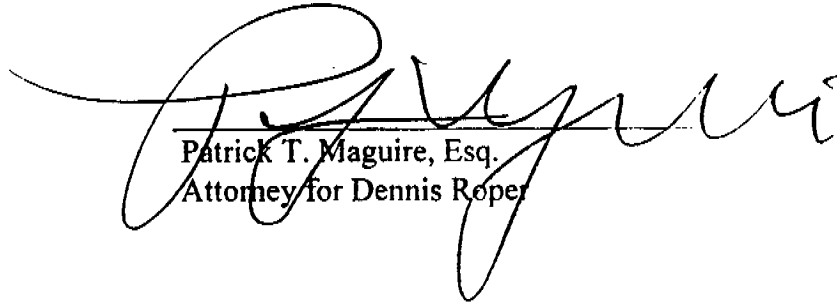


COPY TO
CLIENT

2/14/01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to PAMELA K. AKIN, Esq., P. O. Box 4748, **Clearwater**, FL 33758-4748; ROBERT C. REID, ESQ., 20 1 South Monroe Street, Tallahassee, FL 32301, and C. MARIE KING, Asst. State Attorney, P. O. Box 5028, Clearwater, FL 33758, by U.S.Mail, this 13th day of February, 200 1.


Patrick T. Maguire, Esq.
Attorney for Dennis Roper

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO. 0 1-460-CI- 15

THE CITY OF CLEARWATER, a municipal
corporation and public body corporate and
politic of the State of Florida,
Plaintiff,

vs.

VALIDATION OF THE
CITY OF CLEARWATER,
FLORIDA REVENUE BONDS
(SPRING TRAINING FACILITY)
SERIES 200 1, NOT EXCEEDING
\$14,000,000.00.

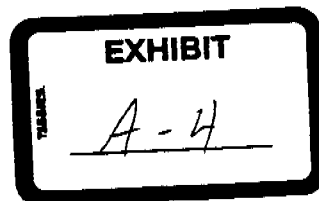
THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and Citizens of
the City of Clearwater, Florida, including
non-residents owning property or subject to
taxation therein,
Defendants.

FINAL JUDGMENT

This cause came before the Court for final hearing on the Complaint for Bond Validation, the Order to Show Cause, the State of Florida's Response to the Order to Show Cause, and the Answer of Dennis Roper, a Defendant taxpayer, property owner, and citizen of Clearwater, Florida. The Court having reviewed the file and the evidence presented, heard argument of counsel, and being otherwise advised in the premises, **finds** as follows:

1. The Court's inquiry in bond validation proceedings is limited. Courts should: (1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) ensure that the authorization of the obligation complies with the requirements of law. Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997); Boschen v. City of Clearwater, 26 Fla. L. Weekly S32 (Fla. Jan. 18, 2001).

2. The Defendant, Dennis Roper, argues that because the Plaintiffs proposed project does not qualify for Industrial Development Bonds under Section 159, Part II, Florida Statutes,



**COPY TO
CLIENT**

3/5/01

the project and bonds are not exempt from the referendum requirement of Article IX of the Charter of the City of Clearwater.

3. The Plaintiff has authority to issue the Bonds. Plaintiff is a public body corporate and politic organized and existing under the laws of the State of Florida. Authority is conferred upon the Plaintiff by the laws of Florida, including but not limited to Chapter 166, Part II, Florida Statutes, (the Municipal Home Rule Powers Act), the Charter of the City of **Clearwater** (City), and Ordinance No. **6675-0 1**.

After publication and notice, the City Commission enacted Ordinance No. **6675-01** on January **18, 2001** (the Bond Ordinance), providing for the City's Revenue Bonds (Spring Training Facility), Series 2001 (Bonds), to be issued in a principal amount not to exceed **\$14,000,000.00** to finance the cost of constructing a new spring training facility. The facility consisting of a 7000 seat stadium, baseball practice facilities, and related facilities (the Project) will be owned by the Plaintiff but operated and maintained by The Philadelphia **Phillies** (Phillies) and located within the municipal corporate limits of the Plaintiff.

The Bond Ordinance fixes the form and other details of the Bonds, provides for the manner of issuance thereof, and **further provides** that no ad **valorem** taxes shall be levied for the payment of the bonds or the interest on them. The pledged revenues are the County Payments, the State Payments, and any investment income realized on any funds held under the Ordinance, except the Rebate Fund.

4. On or about **January 1, 2001**, the State of Florida **Office** of Tourism, Trade and Economic Development certified the City for a retained spring training franchise facility in accordance with Section 288.1162, Florida Statutes. This certification entitles the City to receive monthly payments from the State of Florida **in** accordance with Section 212.20, Florida Statutes, which may be used to finance the cost of the Project. The Bond Ordinance pledges the monthly payments from the State for the repayment of the Bonds and to **reimburse** the Plaintiff for the costs of the Project.

5. The Plaintiff has entered into an Interlocal Agreement with Pinellas County, Florida (County) &ted December 1, 2000, pursuant to which the County will make monthly payments to the City for the purpose of financing a portion of the costs of the Project. The Bond Ordinance pledges the monthly payments from the County for the repayment of the Bonds and to reimburse the Plaintiff for the costs of the Project,

6. Article IX of the City's Charter requires that the City's bonds must be approved by public referendum, unless they meet certain exceptions set forth in the Charter. The Charter permits the City to issue revenue bonds in excess of one million dollars without a referendum, if the bonds are to finance a project "for industrial development."

The Plaintiff sought guidance from Section 159.27, Florida Statutes, because the Plaintiffs Charter does not define what is a project for industrial development. Section 159.27, Florida Statutes, is the "Definitions" section of Chapter 159, Part II, the Florida Industrial Development Financing Act. Section 159.27(5) defines a "project" for industrial development to include a tourism facility. Section 159.27(11) defines "tourism facility" to include "spectator or participatory sports facilities generally available to the public."

The City Commission determined that the Project constitutes a "tourism facility" as defined in Section 159.27(1 1), Florida Statutes, and as such constitutes a project for industrial development within the meaning of Article IX of the City's Charter, and enacted the Bond Ordinance.

7. In furtherance of the approved Project, the City Commission at a regular. meeting on January 18,200 1, adopted Resolution 01-0 1 expressing its intent to commence the Project and to reimburse the City from proceeds of a tax-exempt revenue bond issue to be issued to provide permanent financing for the Project. The Resolution was properly and lawfully adopted.

8. The Bonds are of the character and the proceedings **preliminary** to the issuance thereof are of the nature that entitle the Plaintiff to proceed under the provisions of Chapter 75, Florida Statutes, for the purpose of having the right of the Plaintiff to issue the Bonds determined.

9. A copy of the Order to Show Cause was duly published by the Clerk of **Court** in Pinellas County, Florida, where the Complaint was filed, in a newspaper of general circulation in Pinellas **County**, Florida, once each week for two consecutive weeks, the first such publication being not less than twenty days prior to the **date** of the hearing, as required by law.

10. With the exception of the Dennis Roper, no other taxpayer, citizen or other person has made application to become a party to these proceedings for the purpose of interposing objections to the granting of the relief set forth in the Complaint, Defendant, Dennis Roper, argues that the Plaintiff has not complied with the requirements of Chapter 159, Florida Statutes, for industrial development projects. The Plaintiff argues that it is using the definitions section of Chapter 159 to assist it in determining what its Charter means, not as authority to issue its Bonds,

11. Kevin **Dunbar**, Director of Parks and Recreation, testified to the following facts: The Philadelphia Phillies, a major league baseball franchise, has been conducting its spring training program in the City for fifty-five years. The Philadelphia **Phillies** has an economic impact on the City estimated to be between twenty-four and twenty-five million dollars per year. In order to preserve this economic benefit for the City, the City must undertake 'the project. The site that is presently being used by the Philadelphia **Phillies** is in a state of decline, and does not meet the needs of baseball in the Twenty-first Century. In addition, the facility will not only be used by the Philadelphia Phillies, but **also** by the St. Petersburg Junior College, Clearwater High School, local youth groups, and for other programs that will be scheduled around the Philadelphia Phillies' schedule. Over time these benefits will far exceed the costs of the new facility. It is, therefore,

ORDERED AND ADJUDGED as follows:

1. The City of Clearwater has the authority to issue the Revenue Bonds (Spring Training Facility), Sties 2001 in a **principal** amount not to exceed **\$14,000,000.00**.

2. The purpose of the Bond obligation is legal. The purpose of the Bond obligation is industrial development by constructing a spring training facility to be owned by the Plaintiff, but

used by the Philadelphia Phillies, the St. Petersburg Junior College, Clearwater High School, local youth groups, and for other programs and events.

3. The authorization of the obligation complies with the requirements of law. The Charter permits the City to issue revenue bonds in excess of one million dollars without a referendum, if the bonds are to finance a project "for industrial development." In addition, no funds, **including** but not limited to ad **valorem** tax revenues of the City, or property of the City is pledged to the repayment of the Bonds, and no property of the City will be pledged to secure the Bonds. The Bonds will be secured solely by, and repayable solely from the County Payments and State Payments, neither of which would otherwise be payable to the City in the event the City did not undertake the Project. Therefore, the Plaintiff is not required to submit the issue to a Referendum,

4. The Revenue Bonds-(Spring Training Facility), Series 2001 in a principal amount not to exceed **\$14,000,000.00** are validated and confirmed.

5. There shall be stamped or written on the back of each of the Revenue Bonds a statement in substantially the following form:

This Bond is one of a series of Bonds, which were validated by judgment of the Circuit Court for Pinellas County, Florida, rendered on the ___day of **February** 2001.

Mayor-Commissioner

DONE AND ORDERED in **chambers** at **Clearwater**, Pinellas County, Florida, this ____ day of February 2001.

CROCKETT FARNELL
Circuit Court Judge

Copies Furnished To:

C. Marie King, Esquire
Assistant State Attorney

Original Signed
MAR - 1 2001
CROCKETT FARNELL
Circuit Judge

P. O. Box 5028
Clearwater, FL 34618

Robert C. Reid, Esquire
Suite 500
201 South Monroe Street
Tallahassee, FL 32301
Co-Counsel, City of Clearwater

Pamela **K.** Akin, Esquire
City Attorney
City of Clearwater
P.O. Box 4748
Clearwater, FL 33758-4748

Patrick T. Maguire, Esquire
1253 Park Street
Clearwater, FL 33756
Attorney for Dennis Roper

EXHIBIT "B" '

RESOLUTION NO. 01-01

[REIMBURSEMENT RESOLUTION]



RESOLUTION NO. 01-01

A RESOLUTION OF THE CITY OF CLEARWATER, FLORIDA ESTABLISHING ITS INTENT TO REIMBURSE CERTAIN PROJECT COSTS INCURRED WITH PROCEEDS OF FUTURE **TAX-EXEMPT** FINANCING; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE **DATE**.

WHEREAS, the City Commission of the City of Clearwater, Florida (the "Issuer") has determined that the need exists to construct a baseball spring training facility comprised of Carpenter Field, at which is located four major league training fields, a practice infield, covered batting tunnels, an outdoor bullpen, clubhouse building and a workout/exercise building, and a 7000 seat new baseball stadium to replace the existing Jack Russell Stadium (collectively, the "Project");

NOW, THEREFORE, BE IT RESOLVED BY THE **CITY COMMISSION OF THE CITY OF CLEARWATER, FLORIDA THAT:**

SECTION 1. AUTHORITY. This Resolution (hereinafter called the "Resolution") is adopted pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. DECLARATION OF INTENT. The Issuer hereby expresses its intention to be reimbursed from proceeds of a future tax-exempt **financing** for capital expenditures to be paid by the Issuer in connection with the construction of the Project. Pending **reimbursement**, the Issuer expects to use funds on deposit in its general funds and other funds legally available to pay a portion of the cost of the Project. It is not reasonably expected that the total amount of debt to be **incurred** by the Issuer to reimburse itself for expenditures paid with respect to the Project will exceed **\$14,000,000**. This Resolution is intended to constitute a "declaration of official intent" within the meaning of Section 1.1 SO-2 of the Income Tax Regulations.

SECTION 3. SEVERABILITY. If any one or more of the provisions of this Resolution shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, but this Resolution shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

SECTION 4. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith to the extent of such conflicts, are hereby superseded and repealed.

SECTION 5. EFFECTIVE DATE. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 18th day of January, 2001.



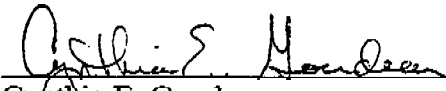
Brian J. Aungst
Mayor-Commissioner

Approved as to form:

Attest:



Pamela K. Akin
City Attorney



Cynthia E. Goudeau
City Clerk

EXHIBIT "C"

OTTED CERTIFICATION





JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

Major
CC: Keith
9 Conn
F4I
Bill

RECEIVED 1/8

January 1, 2001

JAN - 4 2001

CITY MANAGER'S OFFICE

Mr. William B. Home, II
Interim City Manager
City of Clearwater
112 South Osceola Avenue
Clearwater, FL 33756

Dear Mr. Home:

It is my pleasure to inform you that the City of Clearwater has been approved by the Office of Tourism, Trade, and Economic Development (OTTED) for certification as a Facility for a Retained Spring Training Franchise in accordance with Section 288.1162, Florida Statutes,

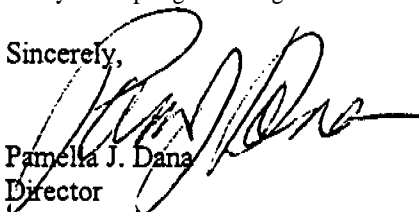
We received a total of seven applications, each thoroughly evaluated by an OTT'ED-led review panel. From this evaluation, five applications, to include that submitted by your community, were approved for certification. On whole, I am told the panel was quite impressed with the quality and comprehensiveness of all of the applications submitted for consideration.

Please find enclosed an official certification. This letter, along with the signed certification, serves as notice that the City of Clearwater is hereby certified as a Facility for a Retained Spring Training Franchise and, thus, eligible to receive specified funds pursuant to Section 212.20, Florida Statutes.

If you have any questions regarding this certification, please feel free to contact Ms. Jean Hartman, Senior Attorney for OTTED at (850) 487-2568, or Mr. Marshall Stranburg, Chief Assistant General Counsel, General Tax Administration within the Florida Department of Revenue at (850) 488-0712.

I offer you my sincere congratulations on this certification, and wish you much continued success on your spring training endeavors.

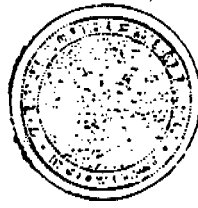
Sincerely,


Pamella J. Dana
Director
Office of Tourism, Trade, and Economic Development

cc: Jean Hartman, Senior Attorney
Larry Pendleton, President, Florida Sports Foundation
Marshall Stranburg, Chief Assistant General Counsel, Department of Revenue


Governor's Mentoring Initiative
BE A MENTOR. BE A BIG HELP.
1-800-825-3786

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EXHIBIT
e



CERTIFICATION

WHEREAS, the Office of Tourism, Trade, and Economic Development is authorized pursuant to Section 288.1162, Florida Statutes, to certify applicants as a Facility for a Retained Spring Training Franchise; and

WHEREAS, the Office of **Tourism**, Trade, and Economic Development has received and reviewed the application from the City of **Clearwater**; and

WHEREAS, the **Office** of Tourism, Trade, and Economic Development has evaluated the application, and has found that the application complies with the requirements of Section 288.1162, Florida Statutes, and that the applicant should be certified.

NOW, THEREFORE, I, **Pamella** Dana, as Director of the Office of Tourism, Trade, and Economic Development, by virtue of the authority vested in me by the State of Florida, do hereby certify the City of **Clearwater** as a Facility for a Retained Spring Training Franchise, effective immediately, pursuant to Section 288.1162, Florida Statutes.

IN TESTIMONY WHEREOF, I have hereunder set my hand to be **affixed** at Tallahassee, 2001 The Capitol, on the 1st day of January, 2001.

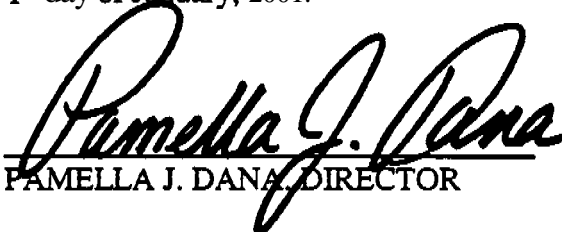

PAMELLA J. DANA, DIRECTOR

EXHIBIT "D"
FORM OF INTERLOCAL AGREEMENT

EXHIBIT
TABLE
D

[Years 2001-2021]

INTERLOCAL AGREEMENT
BETWEEN
CITY OF CLEARWATER, FLORIDA
AND
PINELLAS COUNTY FLORIDA

Dated as of December **1, 2000**

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(This table of contents is not part of the Interlocal Agreement and is only for the convenience of reference.)

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INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** (the "Interlocal Agreement") is made as of this 1st day of **December, 2000**, by and between **PINELLAS COUNTY, FLORIDA** a political subdivision of the State of Florida (the "County") and the **CITY OF CLEARWATER FLORIDA**, a **municipal** corporation of the State of Florida (**the "City"**).

WITNESSETH:

WHEREAS, it is the purpose and intent of this Interlocal Agreement, the parties hereto and the Florida Interlocal Cooperation Act of 1969 ("Cooperation Act"), to permit the City and the County to make the most efficient use of their respective powers, resources and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby to provide the facilities provided for herein in the manner that will best accord with the existing resources available to each of them and with geographic, economic, population and other factors influencing the needs and developments within their respective jurisdictions; and

WHEREAS, the purpose of the Cooperation Act is to provide for a means by which the City and the County may exercise the respective powers, privileges and authorities which they share in common and which each might exercise separately in a joint manner; and

WHEREAS, the parties further intend to enter into this Interlocal Agreement in order to show evidence of indebtedness of the County to the City; and

WHEREAS, the City has now entered into an Agreement (the "Baseball Agreement") for the use, management and operation of a retained spring training franchise facility consisting of spring training practice fields and a baseball stadium (the "Baseball Facility") with [The **Phillies**] (the "Team") pursuant to which the Team has agreed to retain its spring training program in the City and utilize the Baseball Facility and such Baseball Agreement and the location of the Team in the City will create beneficial economic development in the County; and

WHEREAS, the City intends on **financing** the cost of the Baseball Facility through the issuance of one or more series of revenue bonds to be issued by the City (the "City Bonds"), together with other funds of the City and the Team, and has requested that the County provide additional funds to support the repayment of the City Bonds; and

WHEREAS, the County is desirous of assisting the City by providing monthly payments to the City (the "County Payments") for the purpose of assisting the City in the repayment of the City Bonds and otherwise assisting in the payment of the costs of the Baseball Facility; and

WHEREAS, the retention of the Team and the construction of the Baseball Facility in the City is designed to increase tourist-related business activities in the County and the Baseball Facility constitutes a facility which may be financed with the County's tourist development tax revenues in accordance with Section 125.0104, Florida Statutes; and

WHEREAS, this beneficial economic impact arising from the Team is a material and necessary inducement to the County in its decision to make the County Payments for the purposes herein provided; and

WHEREAS, the County and the City desire to equitably determine and to contract and provide herein the manner in which the County Payments shall be paid to the City as additional funds for the payment of a portion of the debt service on the City Bonds for which the County shall be obligated to pay in the manner herein provided, and for which this Interlocal Agreement shall constitute the evidence of indebtedness of the County; and

WHEREAS, the County and the City desire to determine and to contract and provide herein the manner in which the County Payments shall be deposited in the County Payments Account and expended to pay the County Payments and further to be deposited for payment of the County indebtedness evidenced hereby to be utilized for payment of the debt service on the City Bonds; and

WHEREAS, the County has determined and agreed to budget and appropriate and to pay over to the City the County Payments;

NOW, THEREFORE, in consideration of the mutual covenants of this Interlocal Agreement, the City and County agree as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

SECTION 1.01. Authority.

This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes; Article VIII, Sections 1 and 2 of the Constitution of the State of Florida; Chapter 166, Florida Statutes; Pinellas County Home Rule Charter; Section 125.0104(1), Florida Statutes; and other applicable provisions of law (collectively, the "Act").

SECTION 1.02. Definitions.

"Bond Ordinance" means that certain Ordinance No. 6675-01 of the City, as amended and supplemented, providing for the issuance of the City Bonds.

“Bond Year” means with respect to the City Bonds, the Bond Year as defined in the Bond Ordinance.

“City Bonds” means the City of Clearwater, Florida Revenue Bonds (Spring Training Facility), Series 200 1, issued in one or more series pursuant to the Bond Ordinance.

“County Payments” means the payments to be made by the County as provided by Section 2.01 hereof, in the annual amount of **\$587,650.00**, payable in equal monthly payments of **\$48,970.83** (which amount is one-twelfth of the annual amount), commencing on the first County Payment Date, and continuing for a total of two hundred forty (240) months for a total of two hundred forty (240) monthly payments.

“County Payment Date” means the fifteenth calendar day of each month, commencing with the second month immediately following the month in which the City receives certification from the State of Florida that the Project constitutes a “facility for a retained spring training franchise” in accordance with Section **288.1162(5)**, Florida Statutes, on which dates an installment of County Payments is to be made to the City.

“County’s Payment Account” means the account created within the Revenue Fund in the Bond Ordinance **funded** from payments made by the County constituting County Payments pursuant to this Interlocal Agreement.

“Debt Service Fund” means the **fund** designated in the Bond Ordinance from which the principal of, premium, if any, amortization payments and interest on the City Bonds are paid.

“Debt Service Payments” means the payments required to be made by the City for debt service on the City Bonds, in the manner provided in the Bond Ordinance.

“Non-Ad **Valorem** Revenues” shall mean all legally available non-ad **valorem** revenues or taxes of the County (including ad **valorem** taxes to the extent the use thereof for securing bonds or other debt obligations of the County has been approved by referendum), which are legally available to make the payments required by this Interlocal Agreement, but only after provision has been made by the County for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

ARTICLE II

FLOW OF FUNDS AND PAYMENTS

SECTION 2.01. Payments by the County to the City.

The County hereby covenants and agrees to pay on or before each County Payment Date,

commencing with the first **County** Payment Date, an amount equal to the amount of the respective **County Payment due** on such date, to the City to assist the City in paying a portion of the costs of the construction and equipping of the Baseball Facility, and following the issuance of the City Bonds, for deposit into the County's **payment** Account held by the City.

SECTION 2.02. Payments by the City to the Debt Service Fund.

The City hereby covenants and agrees as follows:

(a) The City shall accept the monies delivered by the County pursuant to Section 2.01 hereof to assist the City in paying a portion of the costs of the construction and equipping of the Baseball Facility, and following the issuance of the City Bonds, the City shall deposit all subsequent County Payments into the County's Payment Account held by the City under the Bond Ordinance.

(b) After the date on which the City Bonds are issued, the City shall, on or before the first business day prior to the date upon which the monies on deposit in the County's Payment Account are to be transferred to the Debt Service Fund, transfer and deposit all amounts received from the County representing **County** Payments into the Debt **Service** Fund.

(c) The City shall on each payment date for the City Bonds pay **from** and exhaust all monies in the Debt Service Fund so deposited **from** the proceeds of the County Payments paid by and received from the County for the Debt Service Payments prior to using any other revenues of the City which are pledged for the repayment of the City Bonds.

SECTION 2.03 Payments by the County.

The obligation of the County to pay over to the City the County Payments is indebtedness of the County and this Interlocal Agreement is hereby issued by the County as evidence of such indebtedness. The County shall keep accurate books and records, and shall record the amount the County has transferred pursuant to Section 2.01 hereof to the City.

ARTICLE III

TERM AND MISCELLANEOUS

SECTION 3.01 Term.

This Agreement shall commence on December 1, 2000 (but only in the event that the City receives certification that the Baseball Facility constitutes a "facility for a retained spring training franchise" in accordance with Section 288.1162(5), Florida Statutes), and shall terminate at midnight on the earliest date on which (i) the final County Payment is **made** in accordance with this Agreement, (ii) the Bonds are retired in full or legally defeased, or (iii) the City issues bonds to

refund, in full, the City Bonds, and the County elects, at its option, to terminate any further County Payments hereunder. On the date that the City Bonds are retired in full or otherwise legally defeased in accordance with the Bond Ordinance, any County Payments not then paid or due shall thereafter be canceled, and no further County Payments by the County shall be required hereunder.

SECTION 3.02 Filing and Effective Date.

This Agreement shall become effective upon (i) the execution of this Agreement by the proper officers of the City and the County as of the date set forth above and (ii) upon the filing with the Clerk of the Circuit Court of Pinellas County, Florida as required by Section 163.01(11), Florida Statutes.

SECTION 3.03 Severability.

If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to any policy of expressed law and held invalid, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement which shall remain fully enforceable.

SECTION 3.04 Controlling Law; Members of City and County Not Liable.

All covenants, stipulations, obligations and agreements of the City and the County contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City and the County, respectively, to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the City or the County in its, his or their individual capacity, and neither the members of the governing body of the City or the County nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the City or the County of this Agreement or any act pertaining hereto.

SECTION 3.05 Miscellaneous.

A. **Budget and Appropriation by the County.** The County shall include in its annual budget and appropriate, sufficient legally available Non-Ad Valorem Revenues of the County, for the timely payment of all County Payments due to be made in each fiscal year at such times as shall be required. In no event shall the County be required to make any payments required hereunder except from funds duly budgeted and appropriated in accordance with this Section 3.05. Such covenant and agreement on the part of the County shall be cumulative and shall continue until all County Payments shall have been budgeted, appropriated and actually paid. The County agrees that this covenant and agreement shall be deemed to be entered into for the benefit of the holders

of the City Bonds and that this obligation may be enforced in a **court** of competent jurisdiction. Notwithstanding the foregoing or any provision of this Interlocal Agreement to the contrary, the County does not covenant to maintain any services or programs now maintained or provided by the County, including those programs and services which generate Non-Ad **Valorem** Revenues. This covenant and agreement shall not be construed as a limitation on the ability of the County to pledge all or a portion of such Non-Ad **Valorem** Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad **valorem** taxation revenues or to permit or constitute a mortgage upon any assets owned by the County and no person may compel the levy of ad **valorem** taxes on real or personal property within the boundaries of the County for the payment of the County's obligations hereunder. The City Bonds and the obligations of the County hereunder shall not be or constitute general obligations or indebtedness of the County as "bonds" within the meaning of the Constitution of the State of Florida, and no holder or holders of any City Bonds shall ever have the right to compel the exercise of the ad **valorem** taxing power of the County or taxation in any form of any real or personal property therein,

However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein, has the effect of making available for the payment of the obligations of the County the Non-Ad **Valorem** Revenues of the County in the manner provided herein and placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Chapter 125, Florida Statutes, which makes it unlawful for any county to expend moneys not appropriated and in excess of such county's current budgeted revenues. The obligation of the County to make such 'payments from its Non-Ad **Valorem** Revenues is subject to the availability of money in the treasury of the County and **funding** requirements for essential services of the County; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year. The County further covenants that this Interlocal Agreement shall be entered into for the benefit of the holders of the City Bonds and that the obligations of the County to pay the County Payments to the City may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Notwithstanding the foregoing, the City recognizes that the County intends, but is not required, to utilize the County's tourist development tax revenues levied pursuant to Section 125.0104, Florida Statutes, to fund each year's appropriation for County Payments.

B. **Annual Budgets.** The County shall prepare, approve and adopt each year, in the manner provided by law, a detailed annual budget pursuant to which it shall allocate, appropriate and provide for the deposits and payments of sufficient **legally** available Non-Ad **Valorem** Revenues of the County for the ensuing Fiscal Year required by this Agreement. The covenant and agreement by the County to budget and appropriate such amount shall be cumulative and shall continue each Fiscal Year until all required County Payments have been budgeted, appropriated and actually paid by the County to the City for deposit as provided herein.

C. Reports and Annual Audits. The County shall, as soon as practicable after the end

of each Fiscal Year, cause the books, records, accounts and the data relating to the County Payments for **such** Fiscal Year to be properly audited by an independent certified public accountant of recognized standing.

D. **Enforcement of Collections.** The County is currently authorized to receive sufficient legally available non ad-valorem revenues to enable it to budget and appropriate the County Payments. The County will diligently enforce its right to receive such revenues and will not take any action which will impair or adversely **affect** its right to receive such funds or impair or adversely affect in any manner its obligations hereunder. The County shall be unconditionally and irrevocably obligated to take all lawful action necessary or required to enable the County to receive sufficient revenues to so budget and appropriate the County Payments as now permitted or provided by law or as may later be authorized, and to make the transfers required by this Agreement.

E. **Reduction of Non-Ad Valorem Revenues.** During such time as the obligations of the County to make County Payments hereunder are outstanding, the County covenants that it will not reduce the rate or rates at which any Discretionary Non-Ad **Valorem** Revenues are charged or collected if such reduction, in **and** of itself, would cause, Non-Ad **Valorem** Revenues in such Fiscal Year to be less than 120% of the debt service in such year on debt payable from Non-Ad **Valorem** Revenues, including for this purpose, the County Payments. "Discretionary Non-Ad **Valorem** Revenues" means any component of the Non-Ad **Valorem** Revenues as to which the County has the authority to determine the rate or rates charged or collected. Notwithstanding the foregoing or any provision of this Interlocal Agreement to the contrary, the County shall not be prohibited from reducing Non-Ad **Valorem** Revenues if such reduction is required by the laws of the State of Florida or the United States of America.

F. **City Covenant as to Use of Baseball Facility.** The City and the County recognize that the Baseball Facility constitutes a facility for a retained spring training **franchise** and as such is a facility which may be financed, in whole or in part, with the proceeds of the County's tourist development tax. In the event the Baseball Facility ceases to be used by the Team, or another major league baseball club, as its spring training facility, the City will notify the County in writing of any proposed alternate use of the Baseball Facility, which use will be restricted to a use which may be financed with the proceeds of the tourist development tax as set forth in Section 125.0104, Florida Statutes; provided however, that prior to any change in the use of the Baseball Facility, the County will have provided written notice to the City either that (i) the County agrees that such alternate use is for a use that may be financed with tourist development taxes, (ii) the County agrees that the proposed alternate use is in the best interest of the City and the County and will utilize a funding source other than appropriations of tourist development tax revenues to fund its annual appropriation of County Payments, or (iii) the County will require the City to retire or refund the City Bonds prior to implementing any such proposed change in use of the Baseball Facility. In the event the Baseball Facility ceases to be used for baseball spring training activities or an alternate use permitted by Section 125.0104, Florida Statutes, and it is determined that the City's use of the Baseball Facility is not in accordance with the covenants of the City set forth in

this Section 3.05(F), the **County** shall **give** the City written notice of such **impermissible** use, and the City shall have a period of sixty **(60)** days **after** receipt of such notice to change the use of the Baseball Facility to a permitted use, and **if the** City fails to conform the use of the Baseball Facility within such period to a use permitted by **this** Section 3.05(F), the County shall be entitled to enforce the City's covenant set forth in **this** section 3.05(F).

SECTION 3.06 Modification or Amendment.

This Agreement may be amended with the written consent of the County and the **City**.

SECTION 3.07 Fees, Costs and Expenses.

The City hereby agrees to pay or reimburse the County for all reasonable fees, costs and expenses incurred by the County with respect to the negotiation, execution and delivery of this Agreement, including, without limitation, fees and expenses of bond counsel or other outside counsel, its financial advisor, and all similar fees, costs and expenses, including the costs of validation.

SECTION 3.08 -Marketing of Baseball Facility.

The County hereby agrees to assist, where feasible, the City in any and all efforts to market the Baseball Facility by the City to potential users thereof. The City hereby agrees to require, as part of any **licence**, use or similar agreement with the Team or any other major league baseball team for the use of the Baseball Facility, a provision that the Team or such other major league baseball team will be required to provide equivalent dollar value in the form of marketing trade out opportunities for each County Payment made hereunder. Marketing trade out opportunities may include, but are not limited to, destination advertising (both traditional and internet), tourism public relations campaigns, tourism direct sales activities and/or other programs mutually agreed upon between the **Pinellas** County Convention and Visitors Bureau and the Team or such other major league baseball team then using the Baseball Facility. The County acknowledges that the marketing program shall be the sole responsibility of the Team or such other major league baseball team then using the Baseball Facility.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

CITY OF CLEARWATER, FLORIDA

By: _____
Mayor-Commissioner

(SEAL)

By: _____
City Manager

ATTEST:

Approved as to form and correctness:

By: _____
City Clerk

By: _____
City Attorney

PINELLAS COUNTY, FLORIDA

By: _____
Chairman, Board of County
Commissioners, Pinellas County, Florida

ATTEST: **KARLEEN F. De BLAKER**, CLERK

By: _____
Deputy Clerk, Board of County
Commissioners, Pinellas County, Florida

EXHIBIT "E"
USE AGREEMENT

EXHIBIT
 'E'

SPORTS FACILITY
USE AGREEMENT

by and among

THE CITY OF CLEARWATER, FLORIDA

and

THE PHILLIES

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EXHIBITS

EXHIBIT A Expedited ADR

SPORTS FACILITY USE AGREEMENT

THIS SPORTS **FACILITY** USE AGREEMENT (the "Agreement") is made and entered into as of December 31, 2000, by and among THE CITY OF CLEARWATER, FLORIDA, a municipal corporation ("**City**") and THE **PHILLIES**, a Pennsylvania limited partnership ("The Phillies").

1. Recitals.

Unless otherwise defined herein, **capitalized** terms used in this Section 1 shall have the meaning ascribed to them in Section 2 of this Agreement.

1.1 ~~The~~ **Phillies** owns the Philadelphia franchise for a **MLB** club in the National League of Professional Baseball Clubs.

1.2 Economic and Industrial Development. The City may in accordance with applicable Florida law engage in economic and industrial development activities (such as those contemplated by this Agreement) which improve the condition of the residents and businesses of the City, which contribute to the overall economic condition of the City as a whole, and which may provide jobs for residents of the City as well as providing **recreational** and entertainment activities for the use and enjoyment of the residents of the City.

1.3 Intergovernmental Agreement. The City and The **Phillies** believe that conducting The Phillies' **MLB** Spring Training Season games in **Clearwater** will create significant **economic**, recreational, cultural and other benefits to **Clearwater** and to **Pinellas** County. For the foregoing reasons, the City is concurrently herewith entering into an intergovernmental agreement with **Pinellas**

County for **funding** of a portion of the costs of the development of the Sports Facility as contemplated by the **SFDA**. In addition, the City **has** represented to The **Phillies** and **The Phillies** **acknowledge** that the City has represented to it that the City is unable to **finance** the public sector costs of the Sports Facility but for **the** assistance and cooperation of and **providing** of funds by other Public bodies.

1.4 **Spring Training Season**. The **Phillies** is willing to conduct its home Spring Training Season activities at the Sports Facility, on the terms set forth in this Agreement.

1.5 **Public Interest**. The City finds that this Agreement is in the public interest and that the public funds are to be expended for a public purpose.

2. **Definitions**.

The following terms shall have the meanings ascribed to **them** as follows:

2.1 **"Affiliate"** or **"Affiliated"** of any Person (the "Subject Person") means any other Person who (i) controls, is directly or indirectly controlled by, or is under common control with, the Subject Person; or (ii) is a general partner, officer or director of the Subject Person or of any Person described in clause (i) above.

2.2 **"Civic Event"** means **an** event (which may, but need not, be a Revenue Event) held at the Sports Facility which is for charitable, community or civic purposes, the net ticket revenues from which, if any, may be distributed only to a charitable, community or civic organization.

2.3 **"Claim"** shall have the meaning set forth in Section 13.3.

2.4 **"Club"** means the **MLB** franchise owned by The Phillies, or successors thereto.

2.5 **"Commercial Space"** means the space and facilities in the Sports Facility that are described as such in the Scope of Work.

2.6 "Consulting Engineer" means a qualified consulting engineer mutually selected and equally paid by the parties, as provided in Section 9.2 hereof.

2.7 "CPI Index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers **specified** for "**All Items**" for Tampa, St. Petersburg and **Clearwater**, Florida published by the Bureau of Labor Statistics of the United States Department of Labor (1982 = 84 =100). If the method by which such index is calculated is hereafter substantially changed, appropriate adjustments will be made by the parties to produce results approximating as nearly as possible the results which would have been obtained absent such change. A change in the base year shall be deemed such a substantial change. If the index is no longer published or **otherwise** becomes unavailable to the public, a reasonable substitute index shall be mutually agreed upon by the City and The Phillies.

2.8 "CPI Adjustment" shall have the meaning set forth in Section 6.1.

2.9 "Concession Facilities" means these portions of the Sports Facility (other than the Commercial Space), used for the preparation, storage, display and sale of food, beverages, merchandise and other products at events.

2.10 "Default" shall have the meaning set forth in Section 17.1.

2.11 "Defaulting Party" shall have the meaning set forth in Section 17.1.

2.12 "Default Rate" means an annual rate of interest **equal** to the prime rate of interest charged **from** time to time by Citibank (or some other bank agreed upon by the parties) **plus** one and one-half percent but in no event greater than the amount permitted by Chapter 2 18, Part VII, Florida Statutes. As used in the preceding sentence, the 'prime rate of interest charged **from** time to time by Citibank shall mean the rate of interest announced **from** time to time by Citibank for loans to its commercial customers with the highest credit rating.

2.13 “Disaster Staging Uses” shall have the meaning set forth in Section 5.5.

2.14 “Environmental Laws” means any and **all** currently existing or subsequently enacted or effective **federal**, state, and local laws, statutes, codes, rules, regulations, ordinances, orders, standards, permits, licenses and requirements (including, but not limited to, consent decrees, judicial decisions and administrative orders) and any amendments, implementing regulations and reauthorizations thereto in effect **during** the **Term** regulating, dealing with, pertaining to or imposing liability or standards of conduct concerning the use, exposure, generation, manufacture, transportation, treatment, **storage**, disposal, emission, release, discharge, remediation or abatement of hazardous substances, or the preservation, conservation or regulation of the environment.

2.15 “Event” means a **Phillies** Event, a Partnership Event or a Civic Event.

2.16 “Expedited ADR” means the Expedited Alternative Dispute Resolution procedures attached to this Agreement as Exhibit A.

2.17 “Fields” means collectively the three baseball playing fields within the Sports Facility.

2.18 “Force Majeure” shall have the meaning set forth in Section 19.4.

2.19 “Grapefruit League” means the collection of **MLB** clubs that conduct their spring training operations in the State of Florida and who play exhibition games among each other during the spring training season, which collection is commonly known and referred to **as** the **Grapefruit** League.

2.20 “Home Game” means every **regularly** scheduled **Grapefruit** League exhibition game to be played between the Club and a **MLB** team during the Spring Training Season of each year during the Term (exclusive of **so-called “B games”**), including split-squad games, as to which the Club is designated **as** the home team, (For this purpose, the **term “B game”** shall mean the one game

of two, that are played by **The Phillies** on the same day for which **no** admission is charged and which may be played **either** at the Stadium or at another location, such as the Carpenter Complex.

2.21 "Improvements" means the Stadium, and all other improvements to real property now or hereafter located on the Site, including, without limitation, all improvements described in the Scope of Work and the Site Plan.

2.22 "Legal Requirements" means all federal, state, county, municipal and other governmental laws (including applicable constitutions), ordinances, codes, rules, regulations, statutes and orders (including court and administrative agency orders), all covenants and restrictions of record and the requirements of all fire insurance underwriters or rating bureaus, applicable to the Sports Facility.

2.23 "Luxury Suites" means the private suites identified as such on the Scope of Work.

2.24 "Minor League Affiliate" means any minor league team which has a player development agreement with or is an Affiliate of **The Phillies**.

2.25 "MLB" means Major League Baseball or any successor or substitute association or other entity which engages in professional baseball competition comparable to Major League Baseball, of which **The Phillies** is or becomes a member.

2.26 "MLB Agreements" means the following governing documents **and agreements**, as they may be amended **from** time **to** time: the Major **League** Constitution, the Major League Rules, the Major League Agreement, **the** Major League Central Fund Agreement, the collective bargaining agreement between the **MLB** and the **MLB Players** Association, the directives, rules and bulletins **from** the National League of Professional Baseball Clubs **and/or** the Office of the Commissioner of MLB and the Professional Baseball Leagues Agreement **and** any future MLB instruments or

requirements which may govern **The Phillies** and/or with respect to which **The Phillies** is required to comply.

2.27 "Non-Defaulting Party" shall have **the** meaning set forth in Section 17.1.

2.28 "Office Space" means the space in the Sports Facility provided to **The Phillies** for office purposes, as shown **in** the Scope of Work.

2.29 "Offset Amount" means for each calendar year during the Term the sum of (i) all reimbursements by **The Phillies** relating to field maintenance supplies, as contemplated by Section 9.1; (ii) **The Phillies** Utilities Share; and (iii) all Sports Facility operating and maintenance labor costs paid by **The Phillies**.

2.30 "Partnership Event" shall have the meaning set forth in Section 5.4.

2.31 "Person" means any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, governmental authority or entity or any other legal entity or business or investment enterprise.

2.32 "Phillies Event" means an Event conducted by or for **The Phillies** at the Sports Facility, including without limitation MLB and Minor League baseball games, but excluding Partnership Events and Civic Events.

2.33 "Phillies Exclusive Use Areas" means the Office Space and any other spaces (such as the weight training rooms) identified as such in the Scope of Work.

2.34 "Phillies Maintenance Obligations" shall have the meaning set forth in Section 9.1.

2.35 "Phillies Possessory Tax Share" shall have the meaning set forth in Section 11.1.

2.36 "Phillies Users" shall have the meaning set forth in Section 5.

2.37 "Phillies Utilities Share" shall have the meaning set forth in Section 8.2.

2.38 "**Public Uses**" shall have the meaning set forth in Section 5.2.

2.39 "**Revenue Event**" means any use of the Sports Facility for concerts, plays, pageants or other revenue producing events unrelated to MLB or minor league baseball, for which a paid admission is required to attend.

2.40 "**Satisfaction Date**" shall have the meaning set forth in Section 20.3.

2.41 "**Scope of Work**" means the schematic drawings and program narrative set forth in an Exhibit to the **SFDA**.

2.42 "**SFDA**" means the Sports Facility Development **Agreement** to be entered into between the City and The Phillies, pursuant to which The **Phillies** will construct the Sports Facility on the Site on behalf of the City.

2.43 "**Site**" means the land area described in the Site Plan.

2.44 "**Site Plan**" shall mean the Exhibit to the SFDA designated as the Site **Plan**.

2.45 "**Sports Facility**" means the Site and all Improvements now or hereafter located on it as described in the Scope of Work and the Site Plan and all personal property used in connection therewith other than personal property owned by The Phillies.

2.46 "**Sports Facility Manager**" shall mean **City's** Park & Recreation Director or his or her designee.

2.47 "**Spring Training Season**" shall mean the period in each calendar year in which spring training activities are customarily conducted for **MLB** teams, which period **currently** commences on or about February 15 of each year and **ends** on or about March 31 of each year.

2.48 "**Stadium**" means the baseball stadium building located in the Sports Facility where Home Games are to be played by The Phillies, including (in addition to the stadium building itself)

the public **Parking** Lots adjacent to the stadium building, and all landscaped areas and other improvements to real property related to the stadium building, **all** as more fully described in the Scope of Work and the Site Plan.

2.49 **"Term"** shall have the meaning set forth in Section 3.1.

3. Term.

3.1 Initial Term. The initial **term** of this Agreement shall commence ("Commencement Date") on the later of (i) January 1, 2003 or (ii) the date on which the entire Sports Facility is "Complete" (as defined in the SFDA) and shall end on December 31 of the year in which occurs The Phillies' twentieth full Spring Training Season at the Sports Facility. The "Term" shall mean the initial **term** as such term may be extended, renewed or terminated as provided for in this Agreement.

3.2 Rights of The Phillies Prior to Commencement Date. This **Agreement becomes** effective as of the date hereof. Prior to the Commencement Date, The **Phillies** shall have all rights hereunder necessary or convenient to enable The **Phillies** to **prepare for** its operations at the Sports Facility during the Term and to the exercise of the approvals and consents granted to it hereunder and under the **SFDA**, including, without limitation, the right to enter onto the Sports Facility. The Phillies' rights, obligations, and duties pursuant to Section 13 shall be applicable to any such activities of The **Phillies** at the Sports Facility prior to the Commencement Date.

3.3 Options to Renew. The **Phillies** shall have, and the City hereby grants to The Phillies, the option of renewing this Agreement and of extending **the** initial term for **an** additional five-year period, on the same terms as are set forth in this Agreement. That option shall be exercisable by The **Phillies** by written notice to the City not less than one year prior to the then scheduled expiration of the Term; provided that the option may not be exercised at a time when The **Phillies** are in Default

hereunder. If The **Phillies** duly exercise that option and if the parties hereto shall thereafter so agree, this Agreement **may** be extended for three additional five-year periods, on such terms as may be contained in such future agreements to extend.

3.4 Jack Russell Stadium Lease. The lease between the City and The **Phillies** relating to Jack Russell Stadium, as heretofore **and** hereafter amended, shall, without further act or deed, end on the Commencement Date, as if the Commencement Date had been expressly fixed in that lease **as** the last day of the term thereof.

4. Certain Covenants of the Parties.

3.1 Ownership of Sports Facility. The City covenants and agrees that, at all times during the **Term**, the Sports **Facility** will be owned by the City, with complete and **sufficient** right to make use of the Sports Facility available to **The Phillies** on the terms and with the rights herein provided, subject only to restrictions of record as of the date hereof as reflected in the title report delivered by the City pursuant to the SFDA. This Agreement does not create or grant any real property interest or similar right, title or interest in the Sports Facility to The **Phillies** or any of its Affiliates.

4.2 Delivery of the Sports Facility. Subject to the timely completion of all actions required of The **Phillies** under the **SFDA**, the City covenants and agrees to make the Sports Facility available for The Phillies' use on the Commencement Date, in a new, clean and completed condition, and that the Sports **Facility**, in its condition **as** existing on the Commencement Date, shall be in full compliance with **all** applicable Legal Requirements then **in** effect, all in accordance with the SFDA.

4.3 Home Field Commitment. Subject to Force **Majeure** and the requirements of any MLB Agreements and so long as City is not in Default, The **Phillies** covenants and agrees that it shall, during the Term, utilize the Stadium as its "home field" for all Home Games; provided,

however, **nothing** contained herein shall limit The **Phillies' right** to be occasionally designated and act as home team for games at venues other than the "home field" of either participating team (recent examples of **which** have been games played in Las Vegas and Seattle).

4.4 Florida State League Commitment. Subject to Force **Majeure** and the requirements of any MLB Agreements and so long as the City is not in Default, The **Phillies** covenants and agrees that it will during the Term cause a Minor League **Affiliate** in the Florida State League to play its regularly scheduled home games at the Sports Facility during the first three full Florida State League seasons following the commencement of the Term.

4.5 Environmental Laws Indemnity. The City covenants and agrees to indemnify, defend and hold harmless The **Phillies from** any liabilities arising under the Environmental Laws from the use of the Sports Facility by **Phillies Users** as contemplated by this Agreement, except to the extent such liabilities may be caused by the **wrongful** or negligent act of a **Phillies User**.

5. Use of Snorts Facility. The exclusive right to use the Sports Facility shall throughout the **Term** be vested solely in The **Phillies** and its **Affiliates** and its and their partners, officers, employees, licensees, **franchisees**, independent contractors and **permittees ("Phillies Users")**, subject only to the limitations and exceptions **hereinafter** in this Section specifically set forth.

5.1 Phillies Use. The **Phillies Users** may use the Sports Facility only for the following purposes:

5.1.1 For all **MLB** Spring Training Season operations, including without limitation playing Home Games, so-called "**B** games" and **intra-squad** games and training and player development activities.

5.1.2 For all Minor League spring training season operations, including without **limitation playing** home games and intra-squad games and training and player development activities.

5.1.3 For all Minor League regular season operations, including without limitation playing Florida **State** League **and** Gulf Coast League home games and **intra-squad** games and training and player development activities, and any Minor League playoff and championship games and Minor League **all-star** games.

5.1.4 For **all** Florida Instructional **League** operations, **including** without limitation home games and intra-squad games and training and player development activities,

5.1.5 For **all** MLB and Minor League “mini-camp” operations, including without limitation intra-squad games and training and player development activities.

5.1.6 For all baseball fantasy camp, **youth** camp, youth instructional and like activities.

5.1.7 To use the Office Space for any office uses, in the pursuit of any aspect of the business and operations of the **Phillies** Users whatsoever.

5.1.8 To use **the** Commercial Space as a restaurant/sports bar, souvenir/sporting goods store and/or other synergistic uses open to the general public.

5.1.9 For **Phillies** Events.

5.1.10 For Civic Events sponsored by **The** Pbillies, alone or with **the** City.

5.1.11 For any **other** lawful purpose **directly** or indirectly related to any of the foregoing uses.

5.2 Public Uses. Subject to Section 5.3, City shall have the right to authorize use of the Sports Facility for these, **and** only these purposes (the “Public Uses”):

5.2.1 For baseball and **softball** games played without an admission charge by St. Petersburg Junior College, **Clearwater’s two** public high schools and youth baseball and like organizations; provided, however, that the user shall reimburse The **Phillies** for the cost of The **Phillies** Maintenance Obligations allocated to such games played other than by St. Petersburg Junior College and **Clearwater** High School.

5.2.2 For any other Civic Events proposed by the City and approved by The **Phillies**, such approval not to be unreasonably withheld.

5.2.3 For Partnership Events, at the rate of up to twelve per calendar year during the Term.

5.2.4 For Disaster Staging Uses.

5.3 Limitations on Public Uses. The Public Uses shall be subject to the following limitations:

5.3.1 Public Uses shall be limited to those areas of the Sports Facility that are necessary and appropriate **therefor** in each instance and in no event shall use be made of the **Phillies** Exclusive Use **Areas** (of which The **Phillies** are hereby **granted** the exclusive right to use). Whether the Commercial Space and/or the Concession Facilities shall be operated during Events which constitute Public Uses (any such operations to be effected solely by The **Phillies** and/or any concessionaire of The **Phillies**) shall be determined by The **Phillies** at its discretion; provided, however, that when requested by the City in respect of any Events which constitute the Public Uses where attendance is reasonably projected to exceed 200, Concession Facilities shall be opened by

The **Phillies**, to the extent **that** The **Phillies** deem appropriate, based on a reasonable estimate of attendance.

5.3.2 The City shall make mutually satisfactory **arrangements** in advance with The **Phillies**, for The **Phillies** to provide (but at the expense of the City) appropriate staffing and operations during each Event which constitutes a Public Use, such as ticket takers, ushers, parking attendants, food and beverage preparers and servers, security and paramedical personnel,

5.3.3 Each Public Use may be scheduled only at a time that is **reasonably** acceptable to The **Phillies**, it being understood that each of the uses specified in Sections 5.1.1 through 5.1.6 inclusive shall have absolute scheduling priority over every Public Use, except Disaster Staging Uses.

5.3.4 Each Public Use (other than those provided for in Section 5.2.1 and 5.2.4) shall be subject to The **Phillies**' prior approval, which may be withheld by The **Phillies** only if in its reasonable judgment conducting the **Public** Use at the Sports Facility would risk damage to the playing fields or cause unreasonable wear and tear to structures or, in the reasonable judgment of The **Phillies**, be inconsistent with the image of **MLB** and The **Phillies**.

5.4 **Partnership Events.** The City shall be responsible at its expense to book, manage **and** conduct significant Revenue **Events** at the Sports Facility, at a rate of at least six but not more than **twelve** per calendar year throughout the **Term** (each, a "Partnership Event"). For purposes hereof, a "significant **Revenue** Event" shall mean an Event, the reasonably anticipated net revenues from which are expected to be not less than **\$ 15,000** (in 2003 dollars, **subsequently** adjusted by the **CPD**). The **Phillies** shall be responsible for ticket taking, food and beverage, merchandise and broadcasting

operations **only, at prices** set by The **Phillies** subject to the **City's** approval, not to be unreasonably withheld.

5.5 Disaster Staging Uses. The City may, in each instance of actual or imminently threatened natural disaster, use the Sports Facility as a staging area for disaster preparations, response or other related uses (“Disaster Staging Uses”), provided that (i) there will not be any cost to The **Phillies** and (ii) the City will immediately restore any resulting damage to the playing field or any other element of the Sports Facility caused as a result of the Disaster Staging Use. (Any loss caused by the natural disaster, as opposed to the City’s Disaster Staging Use, is governed by Section 14 hereof.) The City shall not be responsible to The **Phillies** for any loss of revenue or consequential damages resulting **from** Disaster Staging Uses, except any attributable to its failure to duly effect any such restoration and restore full use of the Sports Facility to The **Phillies** immediately following the end of the disaster.

6. Use Fee. From and after the Commencement Date, The **Phillies** shall pay, in arrears, a use fee to the City at the rate of \$70,000 per calendar year during the Term, subject to adjustment pursuant to Section 6.1 (as so adjusted, the “Use Fee”) and to offset pursuant to Section 6.2. The Use Fee for each calendar year during the **Term** shall be payable by March 31st of the following year.

6.1 Adjustment. The Use Fee for the second and each subsequent **full** calendar year during the **Term shall** be subject to an adjustment (a “CPI Adjustment”), for any change in the CPI Index between that for December of the year prior to the **first** such **full calendar** year and that for December of the year prior to the calendar year with respect to which the calculation is being made.

6.2 Offset. **The Phillies** may offset against **and** deduct **from** the Use Fee payable in respect **of any whole** or partial calendar year during the Term, the Offset Amount **attributable** to that period.

7. Revenues. Except as otherwise specifically provided in this Section 7, **The Phillies** alone shall be entitled to retain all revenues generated on and **from** the Sports Facility during the Term **from** all sources whatsoever, including by way of illustration but not limitation, all ticket, premium seating, luxury suite, food and beverage, **signage**, merchandise, broadcasting, sponsorship and **parking** revenues and all revenues **from** the operation of the Commercial Space and **fantasy** camps.

7.1 Revenues from Partnership Events and Civic Events. All ticket, food and beverage, merchandise, parking and broadcasting revenues generated on and from the Sports Facility (excluding only revenues derived **from** the Luxury Suites and the Commercial Space) attributable to each Partnership Event and each **Civic** Event, net of the direct incremental cost to **The Phillies** of operating and maintaining the Sports Facility (excluding the Luxury Suites and the Commercial Space) attributable solely to such use (which shall not include administrative or overhead costs or the like or any utility charges or other costs that would have been incurred irrespective of such use) will be: (i) in the case **of** Partnership Events, shared equally by **The Phillies** and the **City**, and (ii) in the case of Civic Events, will be retained by **The Phillies** (except for any net ticket revenues, which shall be distributed by **The Phillies** to the appropriate charitable, community or civic organization), **in** each case **within** thirty days following the Event. **The Phillies** shall institute a method of accounting for the collection and calculation of the net revenues collected in respect of Partnership Events and Civic Events **and** shall **furnish** to the City appropriate accounting statements in respect of such Events, which shall be prepared in accordance with generally accepted accounting

principles. The City may, upon reasonable notice and during normal business **hours**, examine, inspect and **copy** the books and records of The **Phillies** pertaining to such net revenues and, at its own expense, cause an audit to be performed of such pertinent books and records.

7.2 **Naming Rights.** The City hereby grants to The **Phillies** the power **and** authority **from** time to time during the **Term** to assign-or license to a third party the right to **name** (i) all (e.g. "ABC Sports Facility" or "DEF Stadium") or (ii) portions (e.g. "**GHI** Bullpen" or "**JKL** Pavilion") of the Sports Facility and to retain all net proceeds therefrom. The term "net proceeds" for this purpose means the **gross** proceeds from the assigning or licensing of such naming rights less any direct costs associated with conducting the naming process and, in cases where any additional benefits (e.g. suite usage, tickets, stadium **signage**, advertising etc) may be included as part **of the** naming rights package and not separately priced, then the fair market value of such additional benefits shall also be deducted. The City shall have the **right** to disapprove any such name only, if in the City's reasonable judgment, such name is inconsistent with a wholesome public image for the Sports Facility. The net proceeds **from** any naming of the whole Stadium or the Sports Facility referred to in clause (i) (but not from any naming of portions thereof, as referred to in clause (ii)) shall be shared as follows: two-thirds to The **Phillies** and one-third to the City.

7.3 **Signage During Partnership and Civic Events.** Temporary signs identifying and promoting participants in **or** sponsors **of Partnership** Events or Civic Events may be displayed during the Event, provided, however, that: (i) no such **signage** shall relate to a product, service or **Person** which competes with the Person (or that one Person **from** time to time designated by The Phillies, at any time or times when there may be more than one such Person) for which **all** or any part of the Sports Facility is named or with that Person's products or services or with any products or services

designated by The **Phillies as falling** within either of up to two exclusive product categories (e.g. **soft drinks, beer, banking etc**) for the Sports Facility; (ii) no such display may obscure fixed **signage** then located in the **Sports Facility**; and (iii) the City shall be responsible at its expense for the removal thereof **immediately** upon conclusion of the Event.

8. **Operation of the Sports Facility.** Subject to Section 5.5, The **Phillies** shall have the sole right and obligation to operate the Sports Facility during the **Term** (which it shall do in a first-class manner and in compliance with all applicable Legal Requirements), including without limitation, the right and obligation to perform any ticket taking, food and beverage, **merchandising**, parking and broadcasting operations,

8.1 **Operating Staff.** The **Phillies** shall employ or retain all Persons necessary to discharge its operating responsibilities and shall bear the expense of their compensation.

8.2 **Utilities.** Electric, gas, water, sanitary sewer, storm sewer and trash disposal service provided to and used at the Sports Facility during the Term will be contracted for and **either** paid by the City or shall be provided by the City. The **Phillies** will reimburse the City for twenty-five percent **of the** total cost thereof as incurred by the City and at the rate charged to similar users, in the case of utilities supplied by the City, payable within **thirty** days of each monthly bill **therefor** from the City, accompanied by evidence of payment **and/or** of such rates so charged (such twenty-five percent reimbursements are herein **referred** to as the "**Phillies Utilities Share**")

8.3 **Parking.** In addition to operating all parking areas at the Sports Facility, The **Phillies** shall have the right to make arrangements for **offsite** parking for Events at the Sports Facility, including without limitation at the Carpenter Sports Facility, St. Petersburg Junior College and under the Florida Power Corporation right of way. For each Home Game, The **Phillies** will engage such

civic **organization** that the City shall propose (subject to The Phillies' approval, not to be unreasonably **withheld**) to staff the public parking areas at the Sports Facility and at any utilized **offsite parking** areas. The **Phillies** will pay to that organization for such services an honorarium of \$1,250 per **Game, which** figure shall be subject to a CPI Adjustment.

8.4 **City Services.** City will provide **all** appropriate City services at appropriate levels of coverage for all Events, including without limitation, police surrounding the Sports Facility for security and traffic control purposes and to prevent scalping and unauthorized sale of merchandise at the Sports Facility and paramedical services. (For this purpose, "scalping" shall mean the selling of tickets for more than \$1 above face amount, and the "unauthorized sale of merchandise" shall mean the sale of goods by a Person who has not been authorized by The **Phillies** to make such sales and the sale of unlicensed goods, whenever a license is required for such sale to be given by The Phillies, MLB or other holders of the 'marks embodied on such goods.) The **Phillies** will provide necessary security and paramedical services within the Sports Facility.

9. **Maintenance and Repair of Sports Facility.** The following provisions govern the maintenance and repair of the Sports Facility.

9.1 **Phillies Cleaning and Maintenance Obligations.** The **Phillies** shall have the obligation to keep the Sports Facility clean and to provide light housekeeping (e.g. changing bulbs, towels, etc) for the interior areas of the Sports Facility The **Phillies** shall be responsible for the ordinary and customary day-to-day maintenance of the following (and only the following) portions of the Sports Facility: (i) the playing fields, (ii) the **Phillies** Exclusive Use Areas, (iii) the Luxury Suites, and (iv) the Commercial Space (together, the "Phillies Maintenance Obligations"). The City shall acquire for and supply to The **Phillies** all field care (e.g. clay, sod, sand, fertilizer and chemicals) and other

supplies necessary for The **Phillies** to discharge the **Phillies** Maintenance Obligations relating to the playing fields, and The **Phillies** shall reimburse the City for its actual out-of-pocket costs therefor. **Notwithstanding** anything herein to the contrary, any City employee providing City Services to the Sports Facility shall be operating under the direction and **control** of the City, and shall be subject to any applicable City rule, regulation or-policy, provided however, that The **Phillies** may directly engage City employees during the off-duty time, **in** which case such City employees shall be deemed to operate under The **Phillies** control.

9.1 City Maintenance, Repair etc. Obligations. Except for The **Phillies** Maintenance Obligations, the City shall have the obligation to provide all maintenance, repairs, restorations, refurbishments and replacements, whether interior or exterior, structural or non-structural, routine or extraordinary, ordinary or capital in nature, as shall be necessary to keep the Sports Facility clean, safe and in good order, condition and repair, and in compliance with all applicable Legal Requirements and in first class condition and up to first class **MLB** spring training stadium standards at the time of reference, provided however, that (subject to Sections **14** and **15** hereof) this obligation shall not operate to require the City to construct a new Sports Facility, or to substantially reconstruct the Sports Facility during the **Term** hereof. The Consulting Engineer shall annually determine which capital repairs, restorations, refurbishments and replacements are needed to be done currently and which capital repairs, restorations, **refurbishments** and replacements shall be scheduled to be done in the future, and when. The costs of the Consulting Engineer shall be borne equally by The **Phillies** and the City. The determinations of the Consulting Engineer shall be conclusive on both the City and The **Phillies**.

9.3 Upgrading of the Sports Facility. The City shall from time to time, as needed, upgrade, **modernize** and otherwise improve the **Sports Facility** so that during the Term of this Agreement, the **Sports Facility** shall not only meet all applicable **MLB** standards but shall, in addition, include that level **of amenities** and technological facilities as is **comparable at** the time of reference to those of first class **MLB spring training** facilities of comparable age (such as Roger Dean Stadium in Jupiter, FL, City of Palms Park in Ft. Myers, FL and Hohokam Stadium in Mesa, AZ). Without limiting the generality of the foregoing, at such time as any technological improvements (e.g., video rooms) have been incorporated in at least two of those three comparable **MLB** spring training facilities, then the City shall install such technological improvements in the Sports Facility. However, this provision shall not require the City to expend monies within the last five years of the Term, unless The **Phillies** agree to (i) exercise the option to renew provided for in Section 3.3 hereof (in which event, if necessary, the one-year notice period for exercising such option shall be waived), or (ii) if the option to renew has already been exercised, The **Phillies** and the City agree to extend the Term by at least five years.

9.4 Sports Facility Manager. The Sports Facility Manager shall be responsible for the day-to-day oversight of the maintenance, repair and condition of the Sports Facility, and shall be the representative of the City **with** whom The **Phillies** may communicate. The Sports Facility Manager shall have authority to bind the City to the fullest extent permitted by law, provided, however, that the Sports Facility Manager shall not have the legal authority to bind the City to financial obligations without the prior approval of **City's governing** body.

9.5 Personnel. The City shall provide such level of qualified and properly trained personnel to perform its obligations under Section 9.2.

9.6 Capital Expenditures. The Consulting Engineer shall, by November 1 of each calendar year during the Term, submit to the parties his recommendation as to what capital repairs, refurbishments, restorations, replacements and upgrades **are** to be done currently and **schedule** those to be done in the future, which are necessary, in the judgment of the Consulting Engineer, in order for the City to fulfill its obligations under this Section 9. On December 1 of each calendar year during the Term the City shall furnish to The **Phillies** a capital expenditure schedule prepared by the City, with due regard to such **recommendations**, setting forth in detail the projected capital repairs and improvements expenditures scheduled for the following calendar year and shall **appropriately** budget any amounts necessary to do so. The **Phillies** shall be afforded the right to have input in the preparation of such schedule and it shall be subject to The **Phillies**' approval, which shall not be unreasonably withheld,

9.7 Action by The Phillies. Without limiting **The Phillies**' rights under Section 17, **if The Phillies** in good faith determines that any portion of the Sports Facility (excluding only the playing fields) is not being maintained **and/or** repaired by the City in accordance with the standards and requirements set forth in Sections 9.2, 9.3 and 9.6, The **Phillies** shall have the **right**, but not the obligation, to advance funds for or **otherwise** provide appropriate maintenance **and/or repair**, subject to the following provisions:

9.7.1 Notice Practicable. **If practicable**, The **Phillies** shall give written notice to **the** City specifying the nature of the required work, and the date by which The **Phillies** reasonably considers it necessary to commence such work following its receipt of such a notice:

(i) The City may commence such work prior to the date and time so specified by The **Phillies** and prosecute the same diligently to completion; if the City does so, The **Phillies** shall not undertake such work itself.

(ii) If the City disputes whether the requested work required to **fulfill** the City's obligations under this Agreement, the City shall so **inform** The **Phillies** in writing prior to the date and time specified by The **Phillies** in its notice. **If the** City gives timely notice, the dispute shall be submitted to Expedited ADR prior to the date and time specified by The **Phillies** in its notice.

(iii) If(s) the City does not commence such work prior to the date **and** time specified by The **Phillies** and prosecute the same diligently to completion, or (b) the City fails to give timely notice of a dispute, or (c) it is not practicable to submit the matter to Expedited **ADR** prior to the date and time specified by The **Phillies** in its notice, then in any such event, The **Phillies** may commence the work necessary to remedy the matter on an emergency basis and prosecute the same diligently to completion.

9.7.2 **Emergency.** If The **Phillies** in good faith determines that the work must be performed on an emergency basis (that is, it must be **performed** in order to prevent an imminent danger to health or safety or it is otherwise not practicable to give notice provided in this Section 9.7), then The **Phillies** may commence work to remedy the matter on an emergency basis and prosecute the same diligently to completion.

9.7.3 **Payment to The Phillies.** The City shall promptly reimburse The **Phillies** on demand for any amounts expended pursuant to this Section 9.7 (including interest at the Default Rate from the date that is 30 days **after** the date of demand until paid if such amount is not paid by the 45th

day **following the date of** demand). If the City disputes that the work was **required** to fulfill the City's obligations **hereunder**, Expedited ADR shall be convened to resolve the **dispute**.

(i) **If and** to the extent it is determined by Expedited ADR that work was not required to fulfill the City's obligations hereunder, then The **Phillies** shall not be entitled to any reimbursement for any sums expended-by The **Phillies**.

(ii) If and to the extent it is determined by Expedited ADR that the work was required to fulfill the City's obligations hereunder, then the City shall immediately reimburse The **Phillies** for all sums expended by The **Phillies** on the work, plus interest at the **Default Rate**.

9.8 Surrender. At the termination of this Agreement, by lapse of time or otherwise, The **Phillies** shall surrender possession of the Sports Facility to the City and deliver all keys or such other access equipment or devices. In addition, The **Phillies** shall remove The **Phillies**' furniture, trade fixtures and other items of movable personal property of every kind and description from the Sports Facility and restore any damage caused thereby, such removal and restoration to be performed prior to the end of the Term or within sixty days following any earlier termination of this Agreement. If The **Phillies** fail to remove any such items, the City may do so, and The **Phillies** shall pay to the City upon demand the cost **of removal** and of restoring the Sports Facility. All obligations of The **Phillies** under this Section shall survive the expiration of the **Term** or sooner termination of this Agreement,

10. Alterations and Additions by The Phillies.

10.1 Minor Improvements. The **Phillies** shall have the right (following reasonable notice thereof to the City for its information only), but not the obligation, to make minor improvements to the **Phillies** Exclusive Use Areas without City's approval, consisting of any work, installation,

construction or the like which does not require a permit **from** any federal, state or local governmental agency (e.g., installation of additional shelving in the **office**).

10.2 All Other Improvements. Except for the “minor improvements” described in Section 10.1, The **Phillies** shall not construct any improvements on or otherwise alter, change or improve any part of the Sports Facility, without the-prior written consent of the Sports **Facility** Manager, upon such **terms** and conditions as he may reasonably deem necessary Requests by The Pbillies to construct any such improvements on or otherwise to alter, change or improve any part of the Sports Facility shall be presented to the Sports Facility Manager in written form and he shall act thereon within a reasonably prompt time. If the Sports Facility Manager gives his consent to The **Phillies'** undertaking such work (which consent shall not be unreasonably withheld), the consent shall be deemed conditioned upon The **Phillies'** acquiring any necessary **permit** to do so **from** applicable governmental agencies, furnishing a copy thereof to the Sports Facility Manager prior to the commencement of the work and complying with all conditions of said permit in a prompt and expeditious manner.

10.3 Ownership of Such Improvements. All improvements, alterations or other changes made by The **Phillies** to any part of the Sports Facility pursuant to this Agreement, other than that which is so **affixed** to the Sports Facility that it cannot be removed without material damage to it, **shall** remain the personal property or equipment of The **Phillies** and may be removed by The **Phillies** upon expiration or termination of this Agreement provided that The **Phillies** restore and repair any damage caused by the removal.

10.4 No Limitation. Nothing in this Section 10 shall in any way limit or reduce the obligation of the City to maintain the Sports Facility as provided in Section 9 and elsewhere in this Agreement.

11. Taxes.

11.1 Possessory Taxes. It is the intent of the parties that the Sports Facility (land and Improvements) shall be exempt from any and all real property ad **valorem** taxes and **from payments** in lieu of such taxes throughout the Term. However, should all or any part or parts of the Sports Facility become subject to my such taxes, then the parties shall each cooperate and use their respective best efforts (i) to cause **Pinellas** County to return its share of any such taxes and (ii) to secure legislation exempting the Sports Facility from such taxes. In the interim, The **Phillies** and the City shall each pay one-half of any such taxes, net of any City ad **valorem** real property taxes, which shall be paid by City. Any such payments by The **Phillies** are herein referred to as the “Phillies Possessoty Tax Share.”

11.2 Tax Protection. The City shall throughout the **Term** hold The **Phillies** harmless from all other local (as opposed to Federal, State **or** County) taxes (except **for** income, sales and like taxes of general application), including without limitation **amusement/ticket** taxes, any increase in the sales tax rate applicable to tickets, use and occupancy taxes and surcharges on the Stadium or Sports Facility-derived revenues.

12. Insurance.

12.1 Liability Insurance.

12.1.1 Phillies Non-Property Coverage. The **Phillies** shall maintain at its expense during the **Term** of this Agreement the following insurance:

(i) Commercial general liability (including athletic participants coverage) against claims for bodily injury, personal injury and **property** damage based upon, involving or arising out of the use of the Sports Facility and all areas appurtenant to it. Such insurance shall be on an occurrence basis, providing coverage in an amount not less than **\$5,000,000** per occurrence, and not less than **\$5,000,000** general aggregate (**per** location), and not less than **\$5,000,000** coverage for products and completed **operations** liability, and not less than **\$5,000,000** coverage for personal and advertising injury, with deductibles of up to **\$ 100,000** per person and **\$200,000 per occurrence..**

(ii) **Statutory** workers' compensation and employers' liability coverage in an amount no less than **\$500,000** bodily injury each accident, **\$500,000** bodily injury by disease each employee and **\$500,000** bodily injury by disease policy limit.

(iii) Automobile liability for bodily injury and property damage arising from the use of The Phillies' owned, non-owned and hired vehicles, in an amount not less than **\$5,000,000** per accident.

(iv) **Garagekeepers** legal liability coverage in the amount of **\$ 1 ,000,000**.

12.1.2 City's Non-Property Coverage. The City shall maintain at its expense during the Term of this Agreement the following non-property insurance:

(i) Auto Liability and General Liability: Self-Insured Level: **\$100,000** per **Person/\$200,000** per Occurrence self-insured retention with the statutory limits per Section 768.28

Florida Statutes. Excess **Insurance:** \$5,000,000 per occurrence excess **insurance** (no aggregate applicable) with self-insured retention of **\$500,000.**

(ii) Workers' Compensation: Statutory workers compensation coverage per occurrence **with** self-insured retention of **\$500,000.**

12.2 Property Coverage. The City shall maintain at its expense during **the** Term of this Agreement the following property related insurance:

12.2.1 Property insurance for 100% of full replacement value of the Sports Facility (including all improvements and personal property), with deductibles not exceeding 550,000 per occurrence against loss by so-called "all risk" perils, including but not limited to fire, extended coverage, storm (including **without** limitation wind, flood and hurricane coverage), boiler and machinery, vandalism, malicious mischief, flood and earthquake. Such insurance is to contain a replacement cost endorsement, and endorsements eliminating any and all coinsurance provisions.

12.2.2 For any work of construction conducted on the Site by or at the direction of the City, builder's risk insurance with the same limits and coverages **as** set forth in Subsection 12.2.1, provided that at the City's election, such insurance may be maintained by the contractor(s) performing the construction work at the Sports Facility.

12.2.3 **City Property Self-Insurance or Self-Fundine;** Any provision of this Agreement to the contrary notwithstanding, while the City **shall maintain** insurance coverage and **limits** as provided for in this Agreement, parties hereto specifically agree that the City may do so by self-insurance and/or by purchase at the **sole** option of the City. To the extent **required** by the terms of this Agreement, insurance coverage and limits shall be evidenced by delivery to The **Phillies** of letters of self-insurance or self-funding executed by the City's Risk Manager, or by certificates of

insurance executed by either the agent for the insurers or the insurers or by copies of policy declaration pages. Such letters, certificates, and policy declaration pages shall list coverage (**including** the amount of **insurance** per claim and per occurrence, any gap in coverage, and the amount of the excess insurance) and policy limits with expiration dates and major policy terms and endorsements.

12.3 General. All insurance policies obtained pursuant to this Section 12 **shall**: (i) be with companies legally authorized to do business in the State of Florida and which possess a minimum rating of **A-** or better and a minimum class VIII financial size category (as listed at the time of issuance by A.M. Best Insurance Reports), which are reasonably acceptable to the other parties; and (ii) shall name as an additional insured each other party and such Affiliates of that party as it shall reasonably request. Upon commencement of the Term, each party shall furnish or cause to be furnished to the other party a certificate of insurance evidencing all such insurance policies. Renewal certificates shall be delivered by each party to the others at least ten days prior to the expiration of any policy of insurance. No such policy **shall** be cancelable or subject to reduction of coverage except after thirty days' prior written notice to all parties hereto.

12.4 Remedies. **If any** party fails to obtain, keep in force or provide evidence of any of the insurance policies or self-insurance coverage required by this Section 12, **the** other party may give written notice to the defaulting party, and the defaulting party shall have until the earlier of (i) five days after its receipt of such notice, or (ii) regardless of whether notice shall have been given, one day before the date the required insurance will lapse, to cure the default. If the default is not cured within such period, then the other parties shall have the remedies set forth in Section 17.

12.5 Waiver of Subrogation. Each party hereby releases and relieves the other party, and

waives its **entire** right of recovery against the other party, for direct or consequential loss or **damage arising out** of an incident to the perils covered by any insurance **carried** by the other party or **which would** have been carried had such other parties fulfilled their obligations hereunder to carry insurance, whether **or** not due to the negligence of the released party or its agents, employees, contractors or **invitees**. If necessary, **all property** insurance policies required by this Agreement shall be endorsed to so provide.

13. Indemnification. The indemnifications provided for in this Section 13 shall relate only to the **extent** that the liability in question has not produced insurance proceeds to the indemnitee.

13.1 Bv The Phillies. Subject to Section 12.5, The **Phillies** agrees to and will at **all** times defend, indemnify, save and hold the City and their Affiliates, and their respective elected officials, officers, agents, employees, successors and assigns harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs of every kind and nature, **including** reasonable attorneys fees, costs of investigation and discovery, and all court costs, arising out of:

13.1.1 Injury to or death **of** persons (including personnel or employees **of** the City or The Phillies), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of any willful and wanton or grossly **negligent** act or omission of The **Phillies** or any **Affiliate** of The **Phillies** or any of their respective agents, officers or employees, in connection with the operation or use of the Sports Facility.

13.1.2 Any breach or default in the **performance** of any obligation on The **Phillies'** part to be performed under the **terms** of this Agreement.

The foregoing indemnification obligations of The **Phillies** shall not extend to liabilities caused, in whole or in part, by any willful, wanton, or grossly negligent act or omission of the City or any of its agents, Officers or employees to the extent such act or omission caused the liability and shall survive the termination of this Agreement for all acts committed or omissions made prior to the effective date of the termination of this Agreement.

13.2 By the City. Subject to Section 12.5, the City, to the extent permitted by applicable law, including, but not limited to Section 768.28, Florida Statutes, agrees to and will at all times defend, indemnify save and hold The **Phillies** and its Affiliates and their respective employees, agents, officers, directors, shareholders, partners, successors and assigns, harmless, on a current basis, for, **from** and against any and all damages, liabilities, claims, demands, expenses and costs of every kind and nature, including reasonable attorneys' fees, costs of investigation and discovery, and all court costs, arising out of

13.2.1 Injury to or death of persons (including personnel or employees of the City or The **Phillies**), and damage to any and **all** property, including loss of use thereof, resulting from or in any manner arising out of or in connection with any willful, wanton or grossly negligent act or omission of the City or any **Affiliate** of City or any of their respective agents, officers or employees, in connection with the operation or use of the Sports Facility to the extent such act or omission caused the **injury**.

13.2.2 Any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the City shall not extend to liabilities caused by any willful, wanton, or negligent act or omission of The **Phillies** or any **Affiliate** of The **Phillies**

or **any of their respective** agents, officers or employees to the extent such act or omission caused the liability and shall **survive** the **termination** of this Agreement for all acts **committed or** omissions made prior to the effective date of the termination of this Agreement.

13.3 ~~Procedu~~ ~~emnification -- Third Party Claims~~

13.3.1 Promptly after **receipt** by an indemnified **party under** Sections 12.1 or 12.2 of notice of a **claim** against it ("Claim"), such indemnified party shall, if a claim is to be made against **an** indemnifying party thereunder, give notice to the indemnifying party of such Claim, but the **failure to notify** the indemnifying **party** will not relieve the indemnifying **party** of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnified **party's** failure to give such notice.

13.3.2 If any Claim is made against an indemnified party and it gives notice to the indemnifying **party** of such Claim, the indemnifying **party** will be entitled to participate in the defense of such Claim and, to the extent that it wishes (unless (i) the indemnifying party is also a party to such Claim and the indemnified party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such Claim and provide indemnification with respect to such Claim), to assume the defense of such Claim with counsel **satisfactory** to the indemnified party and its **insurers** and, **after** notice **from** the indemnifying party to the indemnified **party** of its election to assume the defense **of** such Claim, the indemnifying party will not, **as** long as it diligently conducts such **defense**, be liable to the indemnified party under such Section for any fees of other counsel or any other expenses with respect to the **defense** of such Claim in each case subsequently incurred by the indemnified **party** in connection with the defense of such Claim, other

than reasonable costs of **investigation**. If the **indemnifying** party assumes the defense of a Claim (i) no compromise **or** settlement of such claims may be effected by the indemnifying party without the indemnified Party's consent unless (a) there is no finding or admission of any violation of Legal Requirements or **any** violation of the rights of any Person and no effect on any other Claims that may be made against the indemnified **party, and (b)** the sole relief provided is **monetary** damages that are paid in full **by** the indemnifying **party** and **(b)** the indemnifying party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying **party** of **a Claim** and the indemnifying party does not, within **thirty** days after the indemnified party's notice is given (or such lesser period of time **as** may be necessary to avoid a Default on such Claim), give notice to the indemnified **party** of its election to assume the defense of such Claim, the indemnifying party will be bound by any determination with respect to said Claim or any compromise or settlement effected by the indemnified party.

13.3.3 Notwithstanding the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Claim, but the indemnifying party will not be bound by any determination of a Claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

13.4 Procedure for Indemnification -- Other Claims. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the **party** from whom indemnification is sought.

14. Damage or Destruction.

14.1 Decision to Rebuild. In the event that the **Sports Facility** or any **part** thereof is damaged or destroyed by fire, flood or other similar or dissimilar cause whatsoever, the City shall promptly commence and thereafter diligently proceed to repair and rebuild the Sports Facility to its condition immediately prior to such **damage** or destruction, provided, however, if such damage or destruction involves the entire Sports Facility or any substantial part thereof and occurs less than five years prior to the end of the Term, the City may elect to terminate this Agreement unless The **Phillies** agree to (i) exercise the option to renew provided for in Section 3.3 hereof (in which event, if necessary, the one-year notice period for exercising such option shall be waived), or (ii) if the option to renew has already been exercised, The **Phillies** and the City agree to extend the **Term** by at least five years. In the event that such damage or destruction is of such an extent as would substantially and adversely affect The **Phillies**' activities at the Sports Facility, the City shall use its best efforts to provide to The **Phillies** the use of alternate first class MLB spring training facilities, in reasonable proximity to the Sports Facility, on a basis that preserves to The **Phillies** the net benefit of the economic terms of this Agreement and that affords business interruption protection to The **Phillies** against lost revenues. **If the** City meets the requirements of the next preceding sentence and has been and remains in substantial compliance with its obligations under the **first** sentence of this Section 14.1, then The **Phillies** shall use those alternate facilities during the period of **interruption** and, for each full Spring Training Season during the initial **20-year** portion of the Term hereof that such use continues, that initial **term** shall be extended by one year.

14.2 Failure To Repair. If the City is obligated to repair or rebuild the Sports Facility under **the** provisions of this Section 14 and does not commence such repair or rebuilding within

ninety days after the Occurrence of the damage or destruction, or if the City commences such repair or rebuilding but do not prosecute the same diligently to completion, then the City shall be deemed to be in Default under this Agreement and The **Phillies** shall have the rights and remedies set forth in Section 17.

14.3 Phillies Option to Rebuild or Repair. In the event the City fails to commence such repairs or rebuilding within 90 days of the occurrence of the casualty, The **Phillies** shall have the right, but not the obligation, to undertake such repairs or rebuilding. In the event The **Phillies** so undertake such repairs or rebuilding, The **Phillies** shall be entitled to reimbursement of the actual costs thereof by the City as incurred, within 45 days of all invoices therefor, with interest thereafter at the Default Rate.

15. Condemnation.

15.1 Total Taking. In the event the entire Sports Facility is appropriated or taken under the power of eminent domain, or sold under threat thereof (all of which will be referred to as a “condemnation”), by any public or quasi-public authority, The **Phillies** shall have the option to terminate this Agreement as of the date the condemning authority takes title or possession, whichever first occurs. The **Phillies** shall have no claim to the award in condemnation for the City’s interest in the Site and Sports Facility; provided, however, that The **Phillies** shall have a claim to the portion of the award in condemnation that represents compensation for the taking of the interest of The **Phillies** under this Agreement, including without limitation its right to retain net revenues from the operation thereof,

15.2 Partial Taking. In the event that only a portion of the Sports Facility is condemned, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes

title or possession, whichever **first** occurs; **provided**, however, that if so much of the Sports Facility **is** taken **by** such condemnation as would substantially and **adversely** affect The Phillies' operations at the Sports **Facility**, The **Phillies** shall have the option, to be exercised in writing within one hundred **eighty** days after the City shall have given The **Phillies** written notice of the condemnation (or in the absence of such notice, within one hundred eighty days after the condemning authority shall have taken possession), to terminate this Agreement as of the date the condemning authority takes such possession. If The **Phillies** does not give timely notice to terminate, this Agreement shall remain in full force **and** effect **as** to the **remainder** of the Sports Facility that is suitable for the use then being made of the **Sports Facility** by The Phillies; if and so long as The **Phillies** deem it advisable, The **Phillies** may utilize alternative facilities; and the City shall, to the extent of condemnation proceeds received by it, acquire or add adjacent property and construct additional Improvements with reasonable diligence, in order to restore the Sports Facility as nearly as possible to the condition immediately before the condemnation. Whether this Agreement terminates or continues in full force or effect, The **Phillies** shall have no claim to the award in condemnation for the City's interest in the Sports Facility; provided, however, **that** The **Phillies** shall have a claim to the portion of the award in condemnation that represents compensation for the taking of the interest of The **Phillies** under this Agreement, including without limitation its right to retain net revenues from **the** operation thereof.

15.3 **Failure To Repair.** **If the** City is obligated to make the Sports Facility suitable for use by The **Phillies** following a condemnation under the provisions of this Section 15 and does not commence to acquire or add adjacent property or construct additional Improvements necessary to do so within ninety days **after** the date of the condemnation, or if the City commences such

acquisition or construction but does not prosecute the same diligently to completion, **the City shall** be deemed **in** Default under this Agreement and The **Phillies** shall have the **rights and** remedies set forth in Section 17.

15.4 Phillies Option to Rebuild or Repair. **In** the event the City **fails** to commence such repairs or rebuilding within 90 days of the occurrence of the condemnation, The **Phillies** shall have the right, but not the obligation, to undertake such repairs or rebuilding. **In** the event The **Phillies** so undertake such repairs or rebuilding, The **Phillies** shall be entitled to reimbursement of the actual costs thereof by the City **as** incurred. within **45** days of all invoices therefor, with interest thereafter at the Default Rate.

16. Assignment.

16.1 Assignment by The Phillies. The **Phillies** shall not sell, assign, encumber, pledge, or otherwise transfer all or any portion **of its** interest in this Agreement without the prior written consent of the City, except as follows:

16.1.1 The **Phillies** shall have the right to transfer all of its rights and obligations under this Agreement to any Person that shall **thereafter** own the **MLB franchise** now held by The Phillies; provided, however, that such transferee shall assume the obligations of The **Phillies** under this Agreement; and provided, further, that MLB approves the transfer of such **MLB franchise** to such **transferee** and the City has been provided with satisfactory evidence of such assumption and approval.

16.1.2 The **Phillies** shall also have the right to transfer its interest in this Agreement **freely** to another **MLB** club; provided, however, that such transferee shall **assume** the obligations of The **Phillies** under this Agreement.

16.1.3 No transfer under this Section 16 shall release **The Phillies** from any pre-existing liabilities under this Agreement, including, but not limited to any indemnification obligations of **The Phillies** which arise prior to the date of such transfer.

16.2 Assignment by City. The City shall have the right to **assign certain rights** under this Agreement to a non-profit organization controlled by the City, provided that such **assignment** will not affect **The Phillies** rights and remedies against the City under this Agreement and the City shall at all times remain primarily liable for their obligations hereunder. Except as aforesaid, the City may not assign its rights and duties under this Agreement without the consent of **The Phillies**.

17. Default.

17.1 Default party hereto (the "Defaulting Party") shall fail to **perform** any of its obligations under this Agreement, then the Party not in default (the "Non-Defaulting Party") shall provide notice of such failure to the Defaulting Party and afford the Defaulting Party a grace period to cure said failure, as follows:

17.1 .1 Where a grace period is specifically provided for in any section of this Agreement, that specific grace period shall apply.

17.1.2 Where a grace period is not specifically provided for in any other section of this Agreement, the Defaulting Party **shall afford** the Non-Defaulting Party a grace period of: (i) five business days to **cure** monetary failure; and (ii) thirty days to cure any non-monetary default; provided, however, that if any non-monetary **failure** cannot be cured within such thirty day period, the Defaulting Party shall be afforded such additional time as shall be reasonably required to cure such failure, if the Defaulting Party has commenced the appropriate cure within said initial thirty day period and thereafter proceeds with reasonable diligence to cure said failure.

17.1.3 If any failure to perform shall not have been cured by the expiration of the applicable grace **period**, then a “Default” shall be deemed to have occurred and the Non-Defaulting Party shall have the rights and remedies set forth below,

17.1.4 Termination of this Agreement.

17.2 **Non-Defaulting Party's Rights and Remedies.** If a Default shall occur, the Non-Defaulting Party shall have the right (but not the obligation):

17.2.1 To cure such default on behalf of the Defaulting Party, in which event the Defaulting Party shall immediately reimburse Non-Defaulting Party for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

17.2.2 To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the Defaulting Party under this Agreement.

17.3 **Cumulative Rights.** The remedies heretofore described in this Section 17 shall be in addition to any other remedy the Non-Defaulting Party may have at law and in equity in the event of a Default, including without limitation:

17.3.1 **An** action to recover monies then due and owing **from** the Defaulting Party, together with interest thereon at the Default Rate from the date on which such monies were due;

17.3.2 An action for specific performance of non-monetary covenants and agreements on the part of the Defaulting **Party**; and/or

17.3.3 **An** action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the Defaulting Party in connection with the default.

17.4 **Injunctive Relief.** Without limiting any other remedies of the City on account of a **Default** by **The Phillies** hereunder, **The Phillies** further **acknowledges** that the City will be irreparably harmed if **The Phillies** violate this Agreement by the transfer, move or other relocation of **The Phillies' spring** training activities to, and/or the playing of Home Games at, any locations other than the **Sports Facility** during the Term otherwise than as provided or **permitted** by this Agreement. Accordingly, **The Phillies** hereby agree that in the event of such a violation or threatened violation of this Agreement, the City shall be entitled to seek and obtain, and **The Phillies** hereby consent to the entry of, a **temporary restraining** order, together with preliminary and permanent injunctive relief, from any court of competent relief to enjoin any such violation or threatened violation. **The Phillies** waive any requirement that the City post a bond or other security in connection with such injunctive relief. **In** the event of such attempted or actual transfer, move or other relocation of **The Phillies'** spring training activities to, or the playing of Home Games at, any location other than the **Sports Facility**, and City is not able to obtain **the** injunctive relief provided for in this Section 17.4, the City shall be entitled, at its option, to seek monetary damages.

17.5 **Emergency.** Nothing in this Section 17 shall be deemed to limit **The Phillies'** right to take action in emergencies **pursuant** to Section 9.7.

18. **Legal Opinions.**

18.1 **By the City. Concurrently with the** execution and delivery **of this** Agreement, the City has provided to **The Phillies** an opinion of its City Attorney advising **The Phillies** that (i) the City is a duly organized and existing municipal corporation of **the** State of Florida and is authorized to enter into and perform under this Agreement, (ii) execution of this Agreement by the City is duly authorized, (iii) all notices required by Florida law and **all** necessary action required for the execution

and **delivery** of this Agreement or otherwise required under **applicable law** have been obtained, and (iv) this **Agreement** is valid, binding and enforceable against the City in accordance with its terms, subject **only** to such exceptions as are set forth expressly in such opinion and are reasonably acceptable to The **Phillies, as** evidenced by its execution of this Agreement.

18.2 **By The Phillies. Concurrently with** the execution and delivery **of this** Agreement, The **Phillies** has provided to the City an opinion of its general counsel advising the City that (i) The **Phillies** is a duly organized and existing limited partnership of the Commonwealth of Pennsylvania and is authorized to enter into and perform under this **Agreement**, (ii) execution of this Agreement by The **Phillies** is duly authorized, and (iii) this Agreement is valid, binding and enforceable against The **Phillies** in accordance with its terms, subject only to such exceptions as are set forth expressly in such opinion and are reasonably acceptable to the City, as evidenced by its execution of this Agreement.

19. Miscellaneous.

19.1 **Estoppel Certificates.** Each party (as “responding party”) shall at **any** time within **fifteen** days **after** written request **from** the other party (“requesting party”) execute, **acknowledge** and deliver to the requesting party a statement **in** writing as of the date of such certification (i) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification **and** certifying that this Agreement, as so modified, is in **full** force and effect), (ii) acknowledging that there are not, to the responding **party's knowledge** without inspection, audit or investigation, any uncured defaults on the part of the requesting party (or specifying such defaults, if any are claimed), and (iii) providing such other information regarding this Agreement **as** may reasonably be requested by the requesting party. Any such statements may be conclusively relied

upon by **any** Prospective purchaser or **encumbrancer** of **The Phillies** or of its interests **herein and** by **any** bond **holders, underwriters** and **financiers** of the City.

19.2 Consents. Whenever a **party's** approval, permission, concurrence, consent or satisfaction **is required** under this Agreement, such approval, permission, concurrence, consent or satisfaction shall not be unreasonably withheld or delayed, except **as** and to **the extent** expressly provided to the contrary in this Agreement; provided, however that neither party shall be required to waive a Default hereunder.

19.3 Additional Instruments. The parties agree to execute and deliver any instruments in writing, necessary to **carry** out any agreement, **term**, condition or assurance in this Agreement, whenever the occasion shall arise and reasonable request for such instrument shall be made. In addition, as soon as practicable following the Commencement Date hereunder, the parties shall execute a written supplement to this Agreement setting forth such Commencement Date. With respect to the City, any obligations pursuant to this Section 19.3 **shall** be subject to obtaining any required governmental approvals.

19.4 Force Majeure. A party shall not be in Default under this Agreement if and to the extent it is unable to **fulfill** any of its obligations under this Agreement because it is prevented, **hindered** or delayed in doing so by reason of a strike, lockouts, labor dispute, boycott, material or **energy** shortage, **casualty** loss, weather conditions, acts **of** God, **order** of any government officer or court (but excluding, as to the City, orders promulgated by the City themselves), national emergency or war (collectively, "Force **Majeure**").

19.5 Notices. **Any** notice required to be given hereunder shall be in writing and sent by either overnight courier service or United States certified or registered mail, postage prepaid, addressed to the parties as follows:

If to City:

City of **Clearwater**
112 South Osceola Avenue, 3rd Floor
Clearwater, Florida 33756
Attention: City Manager

With a copy to Counsel for City:

Pam Akin, Esquire
112 South Osceola Avenue, 3rd Floor

Clearwater, Florida 33756

If to The Phillies:

Veterans **S**tadium
P.O. Box 7575
Philadelphia, PA 19 10 1
Attention: David P. Montgomery,
President

and

Attention: William Y. Webb,
Vice President, General
Counsel and Secretary

Notices shall be **deemed** given when actually received or when delivery is refused. The address for notices to a party may be changed, from time to time, by notice from such party given as herein required.

19.6 No Joint Venture. The City and The **Phillies** do not intend by entering into **this Agreement** to **create** a partnership, joint venture or any relationship other than that of independent contractors **and licensor** and licensee. Nothing in this Agreement shall be construed to create such a partnership, joint venture or other relationship, nor shall it be construed to create any pledging of the credit of the City or the faith and **credit** of the City.

19.7 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, and the proper venue shall be in **Pinellas** County, Florida.

19.8 Construction of this Agreement. This Agreement shall not be construed for or against any party on the basis that such Party drafted any portion of this Agreement. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

19.9 Binding Effect. Subject to Section 16, the covenants, **terms**, conditions, provisions and undertakings in this Agreement, or in any renewals hereof, shall extend to and be binding upon the successors and assigns of the respective parties hereto **as** if they were in every case named and expressed, and wherever **reference** is made to made to either of the **parties** hereto, it shall be held to include and apply also to the successors and **assigns** of such party as if in each and every case so expressed.

19.10 Entire Agreement. This Agreement and the SFDA, together with the attached exhibits and simultaneous writings, contain the entire agreement and understanding between the parties relating to its subject matter. There are no oral understandings, terms or conditions, and

neither party has relied on any representation, express or implied, not contained in this Agreement or in simultaneous writings. All prior understandings, terms or conditions are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Without limiting the generality of the foregoing, this Agreement and the SFDA replace and supersede that certain Clearwater Stadium Project Term Sheet dated September 8, 2000 by and between the City and The Phillies in its entirety and such Term Sheet is hereby terminated.

19.11 Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

19.12 Cautions. The headings of this Agreement are for convenience only and shall not be deemed a part of this Agreement, nor shall they be deemed to affect the meaning or construction of any portion of this Agreement.

19.13 Time of Essence. Time is of the essence of this Agreement.

19.14 Interest on Delinquent Amounts. Any amounts owing from one party to the other party under this Agreement and not paid when due shall bear interest from and after the due date at the Default Rate until paid, provided however, that no such interest shall accrue on any City obligation to pay until the expiration of 45 days after the date such payment is due.

19.15 Waivers. A waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent right by any party under the same or any other provision.

19.16 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19.17 Right of Offset. Each party hereto, without waiving its rights under Section 17, shall be entitled to set off against sums due from it hereunder to any other party any amounts owing to it (including Default Interest if any) by such other party.

19.18 Attorneys' Fees. If an action or proceeding is brought to enforce the terms hereof or declare rights hereunder, including without limitation Expedited ADR, the prevailing party in any such action or appeal **therefrom** shall be entitled to its reasonable attorneys' fees and costs, which shall include the costs of consultants and experts, to be paid by the losing party as fixed by the court or arbitrator(s) in the same or a separate action or proceeding.

19.19 Amendment. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or The **Phillies**. This Agreement may not be changed, modified or rescinded except in writing by the City and The Phillies, and any attempt at oral modification of this Agreement shall be void and of no effect.

19.20 Authority. Each party hereto hereby represents **and** warrants to the other that it has the authority to enter into this Agreement and to undertake and perform its respective obligations hereunder.

19.21 Exhibits. Exhibit A is attached hereto and incorporated by this reference thereto.

19.22 Liability Limitation. Except as otherwise provided herein, no individual who is a **general partner** of **The Phillies**, or a member of the City Commission or **an** officer, employee or agent of any party hereto shall be liable to any other party, or any successor in interest thereto, for any default by a party hereunder.

19.23 Certain Disputes. Any dispute between the parties arising under Sections 9 and 10 of this Agreement shall be resolved by Expedited **ADR**.

20. Conditions.

20.1 Conditions Precedent to Parties' Rights and Obligations. **All of the** parties' respective rights and obligations under this Agreement are expressly conditioned upon the occurrence of the following, each by the date respectively indicated:

20.1.1 Issuance of Certification from the Florida Office of Tourism regarding a "retained spring training **franchise** facility" shall have issued by January **2, 2001**.

20.1.2 The specific site for the Sports Complex shall by February **15, 2001** have been agreed to by the parties and reflected upon a detailed site plan initialed by the parties, which shall become Exhibit **B** to this Agreement.

20.1.3 The parties shall, within 15 days following satisfaction of the conditions in Section 20.1.2, have: (i) executed and delivered a definitive SFDA; (ii) have agreed upon a detailed Scope of Work, an initialed copy of which shall become Exhibit C to this Agreement; and (iii) have executed and delivered a **definitive** lease for the Carpenter Complex, which will terminate the existing lease dated September **26, 1966**, as amended, and which: (x) shall be for a term coextensive with the Term; (y) shall conform to the relevant allocation provisions of this Agreement; and (z) call for fixed rent in arrears at the **annual** rate of \$204,000 for 20 years **from** the start of the **Term**.

20.2 Waiver. Each of the conditions precedent specified in Sections 20.1 and 20.4 may only be waived in a **writing** duly executed and delivered by both **parties**; provided, however, that The **Phillies** may, by written notice to City, extend **from** time to time each of the dates specified in Section 20.1.

20.3 ~~The satisfaction date~~ which the **last** of **all** of the conditions precedent specified in Section 20.1 has been duly satisfied or duly waived is herein referred to as the "**Satisfaction Date**."

20.4 Further Condition Relating to **Litigation**. If on the Satisfaction **Date** any **litigation** other than bond **validation** proceedings is pending to **restrain** or enjoin the performance of this Agreement **and/or** of the SFDA and/or of any material aspect of either and/or to seek material damages in respect thereto and is neither withdrawn nor dismissed with prejudice by October 1, 2001, either **party** may (but need not) elect to terminate this Agreement by written notice given within 30 days thereafter.

21. **Marketing Proms.** The **Phillies** and the City hereby agree that The **Phillies** will provide trade out value in marketing programs to match the **financial** contributions made by **Pinellas** County toward the funding of the Sports Facility. These marketing trade out programs may include, but are not limited to destination advertising, tourism public relations campaigns, tourism direct sales activities and/or other marketing programs mutually agreed upon between the **Pinellas** County Convention and Visitors Bureau and The **Phillies**. Representatives of The **Phillies** and the Convention and Visitor's Bureau shall meet as **often** as they mutually **determine** to be needed (but at least annually) to agree to a specific program of destination marketing and/or ticket opportunities of the trade out program for **the** upcoming calendar year. This marketing trade out program shall be **the** sole responsibility of The **Phillies**.


IN WITNESS WHEREOF, the parties hereto have. executed this Agreement as of the date first above written.

THE CITY OF CLEARWATER, FLORIDA

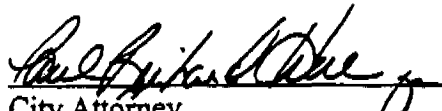
By: 
Brian Aungst, Mayor

By: 
City Manager

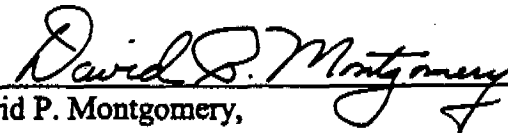
ATTEST: . . .

 12/20/00
ASST. City Clerk

Approved as to form and
legal sufficiency


City Attorney

THE PHILLIES

By: 
David P. Montgomery,
General Partner

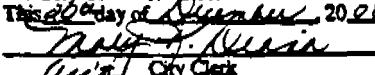
I hereby certify that this is a true and correct copy of the original as it appears in the files of the City of Clearwater. Witness my hand and official seal of the City of Clearwater.
This 20th day of December, 2000

City Clerk

EXHIBIT A

All **claims**, demands, disputes, controversies and differences that may arise under this Agreement **between** the **parties**, concerning any controversies under the Sections of this Agreement making reference to the use of Expedited **ADR** shall be resolved by Alternative Dispute Resolution **as** set forth below:

1. Disputes submitted to Expedited **ADR** hereunder will be conducted before a "Panel" designated in the manner provided in Section 2 below. The decision of the Panel will be final and binding upon the parties as to all matters in dispute and will be enforceable by a court of competent jurisdiction. The rules of the American Arbitration Association will be used for guidance in establishing procedures for the arbitration, but their use will not be mandatory unless the parties are unable to agree on an alternative body of **rules**.

2. In the case of disputes involving construction matters at the Sports Facility, the Panel **will** consist of three persons selected by the parties **from** a list of twenty-one persons with at least ten years experience in the construction business furnished by the Florida Chapter of the American Arbitration Association. In the case of disputes involving operations at the Sports Facility, the Panel will consist of three persons selected by the parties from a list of eleven persons, each of whom must have at least ten years of experience in the stadium/arena management business furnished by the Florida Chapter of the American Arbitration Association. The Panel of three will be selected **from** such list by the mutual agreement of the parties, **If**, within three days following **the** day on which the list is **furnished** to the parties, the parties are unable to agree on the composition of the Panel, then representatives of the parties will meet promptly and the following procedures will be used: The **Phillies** will strike the name of a person on the list. Within fifteen minutes thereafter, the Public Bodies will strike a name from the list. At fifteen minute intervals thereafter, each party will strike a name from the list. If a party fails to strike a name within the allotted time period, it will forego its **turn** to strike a name. The last three names on the list will constitute the Panel.

3. Within thirty days following the appointment the Panel as provided for above, **the** Panel **shall** hold a **hearing** which hearing **shall** be held at Tampa, Florida, or at **any** other place agreed to by the parties involved.

4. **The Public** Bodies or The **Phillies** may join any other party to the arbitration which is needed for just adjudication. The standard for joinder of any other party **shall** be that provided under Rule 19 of the Florida Rules of Civil Procedure.

5. If **the** Panel determines that either party's position in the dispute was without merit, such party will pay the other party's reasonable attorneys' fees and costs related to **the** arbitration, including the costs and fees of the Panel, fees to the American Arbitration Association and other costs of such arbitration **otherwise** payable by such party in the arbitration proceedings. In all other

cases, the **parties will** share equally the costs of such arbitration and **will** pay their own attorneys' fees.

6. At least ten days prior to the hearing, the parties shall meet and exchange exhibits and pre-hearing statements and stipulate and **agree** on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the **hearing**, each party shall submit a memorandum not to exceed five pages outlining the relevant issues for the Panel. At **the hearing**, the **laws** of evidence of the State of Florida shall apply, and the **Panel shall** allow each party to present that party's case, evidence and witnesses and render its award, including a provision for **payment** of attorneys' fees and costs of arbitration to be paid by one or both of the parties to this Agreement, as the Panel deems just.