

MEMORANDUM

Agenda Item No. 11(A) (1)


TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: January 22, 2008

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution relating to
the Florida Marlins

The accompanying resolution was prepared and placed on the agenda at the request of Chairman Bruno A. Barreiro.



R. A. Cuevas, Jr.
County Attorney

RAC/bw

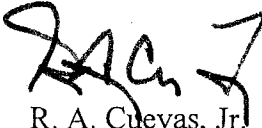


MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: January 22, 2008

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(1)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☒ No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 11(A) (1)

01-22-08

RESOLUTION NO. _____

RESOLUTION REQUESTING MAYOR OR HIS DESIGNEE TO NEGOTIATE AND FINALIZE BASEBALL STADIUM AGREEMENT BY AND AMONG COUNTY, CITY OF MIAMI AND FLORIDA MARLINS, LP, RELATED TO DEVELOPMENT OF NEW BALLPARK FOR FLORIDA MARLINS, SUBJECT TO SUBSEQUENT BOARD APPROVAL; AND REAFFIRMING COMMITMENT TO PLEDGE PORTION OF PROJECTED AVAILABLE CONVENTION DEVELOPMENT TAX AND PROFESSIONAL SPORTS FRANCHISE FACILITIES TAX RECEIPTS FOR DEVELOPMENT AND CONSTRUCTION OF SUCH BALLPARK

WHEREAS, the County has led efforts to secure a new ballpark for the Florida Marlins;

and

WHEREAS, the County, the City of Miami (the "City") and the Florida Marlins L.P. (the "Marlins") continue to negotiate the terms of a baseball stadium agreement for the development, management and operation of a new ballpark for the Florida Marlins at the Orange Bowl site; and

WHEREAS, this Board desires to request the Mayor or his designee to finalize negotiations with the City and the Marlins in accordance with the terms and provisions proposed in the Baseball Stadium Agreement attached hereto as Exhibit A (the "Baseball Stadium Agreement") and to present the final version to this Board for consideration and approval; and

WHEREAS, this Board desires to reaffirm its commitment to pledge County funding support for the Florida Marlins ballpark from projected available Convention Development Tax and the Professional Sports Franchise Facilities Tax receipts to fund project costs in an amount equal to \$199,000,000,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

Section 1. The matters contained in the foregoing recitals are incorporated in this resolution by reference.

Section 2. The Board hereby requests the Mayor or his designee to negotiate and finalize the terms of a Baseball Stadium Agreement by and among the County, the City, and the Marlins in accordance with the terms and provisions proposed in the draft attached to this resolution as Exhibit A and to present the final Baseball Stadium Agreement to this Board for its consideration and approval.

Section 3. This Board hereby reaffirms its commitment to pledge County funding support for the proposed Florida Marlins ballpark from projected available Convention Development Tax and the Professional Sports Franchise Facilities Tax receipts in amounts sufficient to fund project costs in an amount equal to \$199,000,000.

The foregoing resolution was sponsored by Chairman Bruno A. Barreiro and offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

GBL

Geri Bonzon-Keenan

BASEBALL STADIUM AGREEMENT

(Orange Bowl)

DRAFT

MIAMI-DADE COUNTY, FLORIDA

CITY OF MIAMI, FLORIDA

FLORIDA MARLINS, L.P.

December 18, 2007

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BASEBALL STADIUM AGREEMENT

This is an agreement, dated _____, 2007 ("Agreement"), among **MIAMI-DADE COUNTY, FLORIDA, CITY OF MIAMI, FLORIDA** and **FLORIDA MARLINS, L.P.**

Recitals:

The parties have agreed upon and wish to record their respective undertakings for the long-term commitment of the Florida Marlins Major League Baseball franchise to the City of Miami and Miami-Dade County.

ARTICLE I

DEFINITIONS

"Affordable Seats" shall mean, for the 2011 season, seats priced at no more than \$15, and subject to escalation each subsequent season thereafter, in an amount not greater than CPI applicable for such season.

"Assurance Agreement" shall mean an agreement to be entered into by and between the County and the Team with respect to the Team's obligation to guarantee the Stadium Developer's and the Stadium Manager's obligations under the Stadium Agreements.

"Baseball Events" means the Team's home games, training, practices, exhibition games, and other Major League Baseball or Team sponsored baseball clinics, fan or sponsor theme events, press conferences or other Major League Baseball or Team sponsored, baseball or Team fan related events, activities, promotions or sales of baseball or Team fan related products, services, information or media content relating to such events, activities, or promotions held at or emanating from the Baseball Stadium.

"Baseball Rules and Regulations" means, collectively, the Major League Constitution, the Major League Rules, and any other agreements, rules, guidelines, regulations, or requirements of the Office of the Commissioner of Baseball, the Commissioner, the Ownership Committee of Baseball, or any other person appointed by the foregoing that are generally applicable to all Major League Baseball clubs, as applicable, including, without limitation, the Interactive Media Rights Agreement, and each agency agreement and operating guidelines among Major League Baseball clubs and a Major League Baseball entity, all as the same now exist or may be amended or adopted in the future.

"Baseball Stadium" means a first class, baseball stadium to be owned by the County and constructed on the Baseball Stadium Site, having a retractable roof, a natural grass playing field, a capacity of approximately 37,000 seats, including approximately 3,000 club seats, approximately 60 private suites, 7,200 Affordable Seats, and concession, entertainment and retail areas, fixtures, furnishings, equipment, features and amenities comparable with other recently constructed Major League Baseball ballparks, including but not limited to San Diego, St. Louis, Philadelphia, Pittsburgh, and Milwaukee.

“Baseball Stadium Project” means the Baseball Stadium, the City Parking, and the Public Infrastructure.

“Baseball Stadium Site” means the area of land within the Entire Site upon which the Baseball Stadium will be constructed which area of land is shown on Exhibit “A”.

“CDT Interlocal Agreement” means the First Amendment to the Interlocal Agreement dated December 4, 2004 to be entered into by and between the City and the County in the form attached to this Agreement as Exhibit D, and which the valid execution and delivery of such CDT Interlocal Agreement is a condition precedent to the execution of this Agreement.

“CRA Interlocal Agreement” means the First Amendment to the OMNI CRA Interlocal Agreement to be entered into by and among the City, the OMNI Community Redevelopment Agency and the County in the form attached to this Agreement as Exhibit D, and which the valid execution and delivery of such CRA Interlocal Agreement is a condition precedent to the execution of this Agreement.

“Capital Improvements” means capital improvements to the Baseball Stadium provided the costs of such improvements must be of a type which is to be capitalized under generally accepted accounting principles, other than Maintenance and Repairs.

“Capital Reserve Fund” means a segregated fund on which the County has a first lien and held by a Qualified Trustee solely for the uses and purposes described in Section 7.07.

“City” means the City of Miami, Florida.

“City Bonds” means the bonds described in Section 6.03.

“City Parking Agreement” means an agreement to be entered into by and among the City or its designee, the County and the Stadium Manager with respect to the City Parking.

“City Parking” means approximately 6,000 spaces located within the Development Site, which will be constructed for the purpose of providing necessary parking for the Baseball Stadium.

“Claim” has the meaning given in Section 4.09.

“Community Events” has the meaning given in Section 7.03.

“Completion Date” means the date that is the earlier of (a) the date on which the Stadium Manager has commenced operations in the Baseball Stadium pursuant to the Management Agreement, or (b) the date on which all of the following have occurred: (i) the Design and Construction Professionals have issued to the Stadium Developer and the County a certificate of substantial completion certifying that the Baseball Stadium has been “substantially completed,” subject to the completion of minor punch list items which do not materially affect the use or occupancy of the Baseball Stadium; and (ii) a temporary Certificate of Occupancy has been issued.

“Construction Administration Agreement” means an agreement to be entered into by and among the County, the City and the Stadium Developer with respect to the design, development and construction of the Baseball Stadium.

“Construction Manager” means the construction management firm hired by the Stadium Developer to construct the Baseball Stadium.

“County” means Miami-Dade County, Florida.

“County Bonds” means the bonds described in Section 6.02.

“Design and Construction Professionals” means the various design, engineering and construction consulting firms hired by the Stadium Developer to design and provide construction guidance for the design, development, construction and furnishing of the Baseball Stadium. “Design and Construction Professionals” do not include the Construction Manager.

“Design Team” shall have the meaning set forth in Section 4.06.

“Development Site” means the area of land within the Entire Site described in Exhibit A, which excludes the Baseball Stadium Site.

“Draw Down Schedule” means the month by month schedule of timely payments estimated to be necessary for the timely completion of the Baseball Stadium.

“Effective Date” means the date on which this Agreement becomes legally effective in accordance with Section 10.09.

“Event Parking” means parking during the period beginning two hours before and ending two hours after each Baseball Event and each Other Event if the Other Event is expected to have or has an attendance of at least 5,000 people.

“Entire Site” means the area of land described in Exhibit A.

“General Obligation Bonds” means the bonds described in Section 6.05.

“MLB Entities” means (i) the Office of the Commissioner of Baseball, the American and National Leagues of Professional Baseball Clubs (to the extent of any continuing applicability), Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Major League Baseball Properties Canada Inc., MLB Media Holdings, Inc., MLB Media Holdings, L.P., MLB Advanced Media, Inc. and MLB Advanced Media, L.P., (ii) any of their respective present or future affiliates, and (iii) any of their respective present or future assigns or successors that are owned in substantial part and/or controlled directly or indirectly, by the Major League Baseball clubs

“Maintenance and Repairs” means work, labor and materials reasonably required in the ordinary course of business to be performed and used to: (i) maintain the Baseball Stadium in good, clean working order; (ii) repair components of the Baseball Stadium as a result of ordinary wear and tear; and (iii) replace, at the end of their economic life cycle, those components of the Baseball Stadium whose reasonably expected economic life at the time of original installation was three years or less.

“Major League Baseball” means, collectively, the Office of the Commissioner of Baseball, the Commissioner of Baseball, the Major League clubs, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Major League Baseball Properties Canada, Inc., Major League Baseball Productions, MLB Advanced Media, Inc., MLB Advanced Media, L.P., MLB Media Holdings, L.P., MLB Media Holdings, Inc., MLB Online Services, Inc., each of their respective present and future affiliates, assigns and successors, and any other entity owned equally by the Major League Baseball clubs.

“Management Agreement” means an agreement to be entered into between the County and the Stadium Manager with respect to the operation and maintenance of the Baseball Stadium Site.

“Non-Relocation Agreement” means an agreement to be entered into among the Team, the County and the City with respect to the Team’s obligation to play its home games at the Baseball Stadium.

“Other Events” means, other than Baseball Events and Community Events, any professional or amateur sporting events or exhibitions; concerts; and general audience, family or other targeted audience shows, performances or exhibitions.

“Plans and Specifications” means the architectural drawings, plans and specifications for the Baseball Stadium.

“Project Coordination Team” has the meaning given in Section 4.08.

“Project Program Statement” means the document, as amended from time to time that is in a form comparable to and with such detail as the “Preliminary Project Plan” attached as Exhibit D to the Baseball Stadium Agreement entered into by and among the Government of the District of Columbia, the District of Columbia Sports and Entertainment Commission, and Baseball Expos, L.P., dated September 29, 2004, and which specifies, among other things: (i) the functions to be conducted at the Baseball Stadium; (ii) the location and minimum space requirements for those functions; and (iii) the formulation of how those spaces will be used and the aesthetics of those spaces. The initial Project Program Statement will be attached to the Construction Administration Agreement as an Exhibit.

“Promotional Rights” means and includes any and all of the following rights as applied to, arising out of or connected in any way with Major League Baseball, the Team, the Proprietary Indicia, the Team’s Major League Baseball franchise, the Baseball Stadium, the Baseball Events and other permitted uses of the Baseball Stadium:

- (a) rights of exploitation, in any format now known or later developed, through advertising, promotions, marketing, merchandising, licensing, food services, franchising, sponsorship, publications, hospitality events or through any other type of commercial or promotional means, including but not limited to advertising by interior, exterior or perimeter signage, through printed matter such as programs, posters, letterhead, press releases, newsletters, tickets, photographs, franchising, concessions, restaurants, party rooms, uniforms, schedules, displays, sampling, premiums and selling rights of any nature, the right to organize and conduct promotional competitions, to give prizes, awards, giveaways, and to conscript official music, video or other related data or information;

(b) media rights, in any format now known or later developed, including but not limited to the right to broadcast, transmit, display and record images and recordings, in any and all media now known or hereafter devised, including but not limited to radio, television, cable, satellite and internet;

(c) rights to name the Baseball Stadium and any portions of it;

(d) rights to create, use, promote and commercialize any representation of the Baseball Stadium, in whole or in part, or the name or contents thereof, for licensing, promotional, publicity, general advertising and other suitable purposes, including but not limited to the creation, use, promotion and commercialization of text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, in any media or embodiment, now known or later developed; and

(e) all other rights of marketing and advertising, exploitation, in any format, now known or later developed, and associated promotional opportunities.

“Proprietary Indicia” means all trademarks, service marks, trade names, trade dress, domain names, symbols, logos or brand names, together with any other copyrighted or copyrightable properties, in any format now known or later developed, that are or become owned or controlled by a Team Affiliate or an MLB Entity, which are or become commercially identified or associated with the Team Affiliate or an MLB Entity, or are now or hereafter licensed by or to a Team Affiliate or an MLB Entity.

“Public Infrastructure” means utilities, roadwork, walkways and transportation linkages that will provide ingress and egress to and support the Baseball Stadium and the City Parking as more fully described in Exhibit E.

“Public Infrastructure Budget” means the budget for Public Infrastructure set forth in Exhibit F.

“Public Infrastructure Costs” means all hard costs and soft costs and incurred by the County and/or the City pursuant to the Construction Administration Agreement for the development and completion of the Public Infrastructure.

“Qualified Trustee” means a financial institution qualified to act as a depository and jointly appointed by the County, the City and the Team.

“Stadium Agreements” shall mean the Construction Administration Agreement, the Management Agreement, the Non-Relocation Agreement, the City Parking Agreement and any other necessary agreements entered into by and among the County, the City, the Team, the Stadium Developer, the Stadium Manager and/or any other necessary parties with respect to the development, operation and management of the Baseball Stadium Project.

“Stadium Developer” means the Team Affiliate or successor entity designated by the Team to manage the construction and development of the Baseball Stadium in accordance with the terms of the Construction Administration Agreement.

“Stadium Manager” means the Team Affiliate or successor entity designated by the Team to manage the Baseball Stadium in accordance with the terms of the Management Agreement.

“Stadium Project Budget” means the budget for the Baseball Stadium set forth in Exhibit B.

“Stadium Project Construction Fund” means an escrow fund held by a Qualified Trustee for the purposes described in Section 6.06. The Stadium Project Construction Fund shall be composed of three segregated accounts to be known respectively as the County Account, the City Account and the Team Account, and any necessary subaccounts within each account.

“Stadium Project Costs” means all hard costs and soft costs incurred by the Stadium Developer in accordance with the Construction Administration Agreement for the development and completion of the Baseball Stadium. The Construction Administration Agreement shall define “hard costs” and “soft costs” and provide which hard costs and soft costs, if any, are not eligible for payment or reimbursement from the Stadium Project Construction Fund.

“Team” means Florida Marlins, L.P., its successors and its assigns as permitted under Section 10.07.

“Team Affiliate” means the Team and any entity controlled by or under common control with the Team.

“Team Foundation” shall have the meaning set forth in Section 7.13(a).

“Team Reserved Parking Spaces” shall have the meaning set forth in Section 5.02.

“Team Revenues” means, all revenues generated from or by reason of Baseball Events at the Baseball Stadium, including without limitation: the proceeds from the sale of tickets or other rights to admission; the proceeds from the sale or licensing of suites; the proceeds from the sale of seat licenses or other rights to purchase tickets or admission; all revenues derived from the sale or licensing of rights of any sort to televise, broadcast, transmit, record, advertise or promote in any manner the Baseball Events at the Baseball Stadium or any description or account of the Baseball Events at the Baseball Stadium; all proceeds from the sale at or from the Baseball Stadium of concessions, memorabilia, souvenirs, or other products and services; all marketing, advertising, promotional, naming and other revenues derived from or arising out of the Baseball Stadium or the Baseball Events held there or products, services, information or media content sold from there; all proceeds from assignments, leases or licenses of Baseball Stadium and all revenues from the rights to parking; provided, however, that Team Revenues do not include taxes or governmental charges or revenues from Community Events.

ARTICLE II

REPRESENTATIONS

Section 2.01 Representations of the County

As an inducement to the City and the Team to enter into this Agreement, the County represents as follows:

- (a) The County is, under the laws of the State, a duly created and validly existing government constituted as a political subdivision of the State.
- (b) The County has the power to contract and to be contracted with, to sue and to be sued, to plead and to be impleaded, to have a seal and to exercise all other powers of a political subdivision not inconsistent with the Constitution and laws of the State.
- (c) The County has full right, power and authority to execute, deliver and perform its obligations under this Agreement.
- (d) This Agreement has been duly executed and delivered by the County and, when duly executed and delivered by the Team and City, shall constitute a legal, valid and binding obligation of the County enforceable against the County in accordance with its terms, except that (i) enforceability may be limited by the application of bankruptcy, insolvency, or similar laws of general applicability relating to the enforcement of creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.
- (e) The execution, delivery and performance of this Agreement will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which the County is a party or by which it is bound.
- (f) There is no litigation, administrative proceeding or investigation pending (nor, to the knowledge of the County, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin the County's enabling legislation or any of the proceedings or actions taken by the County leading up to the execution, delivery or performance of this Agreement.

Section 2.02 Representations of the City

As an inducement to the County and the Team to enter into this Agreement, the City represents as follows:

- (a) The City is, under the laws of the State, a duly created and validly existing government constituted as a municipal corporation of the State.
- (b) The City has the power to contract and to be contracted with, to sue and to be sued, to plead and to be impleaded, to have a seal and to exercise all other powers of a political subdivision not inconsistent with the Constitution and laws of the State.

- (c) The City has full right, power and authority to execute, deliver and perform its obligations under this Agreement.
- (d) This Agreement has been duly executed and delivered by the City and, when duly executed and delivered by the Team and County, shall constitute a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms, except that (i) enforceability may be limited by the application of bankruptcy, insolvency, or similar laws of general applicability relating to the enforcement of creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.
- (e) The execution, delivery and performance of this Agreement will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which the City is a party or by which it is bound.
- (f) There is no litigation, administrative proceeding or investigation pending (nor, to the knowledge of the City, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin the City's enabling legislation; or any of the proceedings or actions taken by the City leading up to the execution, delivery or performance of this Agreement.

Section 2.03 Representations of the Team

As an inducement to the County and the City to enter into this Agreement, the Team represents as follows:

- (a) The Team is a limited partnership duly created and validly existing pursuant to the laws of Delaware and is qualified to do business in every jurisdiction where its ownership of property or its conduct of business operations gives rise to the need for such qualification, except to the extent that the failure so to qualify in any particular jurisdiction could not reasonably be expected to result in a material adverse effect on the business or financial condition of the Team or the ability of the Team to perform its obligations hereunder.
- (b) The Team and the applicable Team Affiliate have full right, power and authority to execute, deliver and perform their respective obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by the Team and, when duly executed and delivered by the City and the County, shall constitute a legal, valid and binding obligation of the Team enforceable against the Team in accordance with its terms, except that (i) enforceability may be limited by the application of bankruptcy, insolvency, or similar laws of general applicability relating to the enforcement of creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.
- (d) The execution, delivery and performance of this Agreement and the Non-relocation Agreement, as of the date of this Agreement, will not conflict with or constitute a breach of

or default under any commitment, agreement or instrument to which the Team or any Team Affiliate is a party or by which it is bound.

- (e) The Team holds a valid Major League Baseball franchise and is in compliance in all material respects with all Baseball Rules and Regulations.
- (f) There is no litigation, administrative proceeding or investigation pending (nor, to the knowledge of the Team, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin any of the following: (i) the Team's participation in the Baseball Stadium Project; (ii) any of the limited partnership proceedings or actions taken leading up to the execution, delivery or performance of this Agreement; or (iii) the Team's ownership of its Major League Baseball franchise.
- (g) Major League Baseball has approved the terms of this Agreement and the Team's execution, delivery and performance of this Agreement.

Section 2.04 Continued Effectiveness

Each party agrees that each of its representations in Sections 2.01, 2.02 and 2.03, respectively, was true and accurate on the Effective Date of this Agreement and, except for the representations made in Sections 2.01(f), 2.02(f) and 2.03(f) as to which no continuing representations can be made, will continue to be true and accurate at all times thereafter while this Agreement is in effect. Should the County, the City, or the Team or any Team Affiliate receive knowledge about any matter which may constitute a breach of its representations set forth in Sections 2.01, 2.02 or 2.03, respectively, which arises after the date of this Agreement, it shall promptly notify the other parties of the same in writing. Specifically, the County, the City, and the Team and any Team Affiliate shall inform the others of any matters referred to in Sections 2.01(f), 2.02(f) or 2.03(f), respectively.

ARTICLE III

BASEBALL FRANCHISE

Section 3.01 Discontinuation of Relocation Discussions

Upon the execution and delivery of this Agreement, the Team and its agents shall for the term of this Agreement discontinue all discussions, negotiations and efforts to relocate the Team's Major League Baseball franchise either temporarily or permanently to any location other than the Baseball Stadium Site.

Section 3.02 Non-Relocation Agreement

The Team shall enter into the Non-Relocation Agreement concurrently with the execution and delivery of the Management Agreement. The Non-Relocation Agreement shall unconditionally require the Team to maintain its Major League Baseball franchise in the City of Miami for the term of the Management Agreement or the retirement of the County Bonds, the General Obligation Bonds and the City Bonds, whichever is later. The Non-Relocation Agreement shall require the Team to operate and maintain a Major League Baseball franchise with the Baseball

Stadium as its home stadium and to play all of its regular season and post-season home games at the Baseball Stadium; provided, however, that the Non-Relocation Agreement shall permit the Team: (i) to play its home games elsewhere if necessary for reasons of public safety or because of rescheduling due to weather or force majeure; (ii) to schedule and play up to three regular season home games in any consecutive five-year period in an international or other venue as permitted or requested by Major League Baseball; and (iii) play post-season games in any venue required by Major League Baseball.

ARTICLE IV

DEVELOPMENT

Section 4.01 Baseball Stadium Site

- (a) The Baseball Stadium Site shall be the site described in Exhibit A, unless the parties mutually determine in writing as approved by the County and City Commissions that some other site should be selected instead. As part of the City's contribution to the Baseball Stadium, the City agrees that on or prior to May 31, 2008, it shall, convey title to the County, at no cost, the parcel(s) of land legally described in Exhibit "A" by Warranty Deed free and clear of all liens and encumbrances. The City shall perform an environmental assessment and shall bear the cost of any environmental remediation necessary on the Baseball Stadium Site prior to its conveyance to the County. Prior to March 31, 2008, the City shall provide to the County and the Team (a) a certified survey of the Baseball Stadium Site prepared by a licensed Florida land surveyor, in form and substance satisfactory to the County and the Team, which survey must confirm that (i) there are no encroachments by any neighboring improvements (whether above or below ground) onto or across the boundaries of the Baseball Stadium Site, and (ii) the boundaries of the Baseball Stadium Site are consistent with Exhibit A, and (b) a binding letter of vested rights and binding letter of modification of vested rights, if appropriate, which authorizes the construction, operation and use of the Baseball Stadium contemplated under this Agreement without the need to undergo development of regional impact review (or, failing that, a preliminary development agreement and DRI approval). The City agrees, at its sole cost and expense, to take whatever action necessary, including the filing of any appropriate legal proceeding, to remove any encroachment into the Baseball Stadium Site identified by said survey and to take such action within thirty (30) days of the identification of such encroachment. In addition, the City shall covenant, warrant and represent to the County that any improvements constructed on the Development Site shall not create any encumbrance, easement, license, right of way, covenant, condition or restriction which would materially diminish, impair or disturb the use of the Baseball Stadium and the Baseball Stadium Site or the rights of the County under this Agreement and the Stadium Agreements.
- (b) Within 30 days after the Effective Date, the City shall, at its sole cost and expense, perform and provide a Phase I environmental audit and asbestos survey of the Baseball Stadium Site to the County and the Team. Within 30 days following completion of the Phase I environmental audit, the City shall, at its sole cost and expense, perform and

provide to the County and the Team a Phase II environmental audit and such other testing and analysis as is recommended therein. The City shall provide the results to the County and the Team, which must include complete copies of the Phase I and II environmental audits, the asbestos survey and any other tests performed in connection therewith. Prior to February 15, 2008, the City shall perform, at no cost to the County, the Team or any Team Affiliate, the demolition of the Orange Bowl. Prior to March 31, 2008, the City shall perform, at no cost to the County or Team Affiliate, the removal of debris and any environmental remediation necessary to permit the timely completion, occupancy and usage of the Baseball Stadium by the Completion Date specified in Section 4.10 and to otherwise cause the Baseball Stadium Site to comply with all applicable laws and regulations, including, without limitation, any remediation associated with the presence of asbestos containing materials or lead containing materials. Notwithstanding and prevailing over any other provision to the contrary in this Agreement, the County shall in no way be obligated to accept the conveyance of such parcel if the demolition of the Orange Bowl and all environmental remediation (as required by the Phase I and Phase II environmental audits) has not been performed and completed by the City prior to March 31, 2008. The City shall indemnify and hold harmless the County and its officers, employees, agents or instrumentalities, and the Team Affiliates from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities, and the Team Affiliates may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from a breach by the City, or its employees, agents, servants, partners, principals or subcontractors, of its obligations and covenants under this paragraph (b). The City shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The City expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the City shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided (the "Indemnity").

- (c) As of the Effective Date and continuing throughout the term of this Agreement, the City represents and warrants to the County and the Team that (i) the City holds fee simple title to the Entire Site free and clear of all liens, encumbrances, restrictions and any leasehold or other possessory interests, (ii) there are no environmental liabilities (including, without limitation, any relating to asbestos or lead) associated with the construction, ownership, lease or use of the Baseball Stadium, the Baseball Stadium Site and/or the Entire Site that would cause an increase in the Stadium Project Budget or could delay the completion of the Baseball Stadium, the City Parking or Public Infrastructure beyond the Completion Date specified in Section 4.10, (iii) the City or County, as appropriate under applicable law and regulations, shall serve as the applicant for all Development Requirements and construction permit applications (including any required binding letter requests (or, failing that, a preliminary development agreement and DRI approval), Comprehensive Plan amendments, rezoning, special permit, zoning variance, street or alley closure applications or approvals and any and all other applications for development orders and permits under applicable land use regulations) required for the Baseball Stadium,

including the construction, operation and uses of the Baseball Stadium Site and/or the Entire Site contemplated under this Agreement, (iv) the soil and subsoil condition of the Baseball Stadium Site will support the Baseball Stadium without having to expend funds not included in the Stadium Project Budget, and (v) the Baseball Stadium Site is sufficient for the timely completion, occupancy and usage of the Baseball Stadium by the deadline specified in Section 4.10. Upon the County's or the Team's written request from time to time, the City shall provide reasonable evidence that the above covenants have been satisfied and that the City's representation and warranties remain true and correct.

- (d) The County shall have the right, without the consent of the City, the Team, the Stadium Developer and/or the Stadium Manager, to grant utility, access and other similar easements affecting the Baseball Stadium Site and/or the Baseball Stadium, and to construct and install on the Baseball Stadium Site utility lines and other improvements so long as the easements do not unreasonably interfere with the construction and operation of the Baseball Stadium. At the County's request, the City shall grant utility, access, temporary construction staging and other similar easements affecting the Development Site, and the right to construct and install on the Development Site, utility lines and other improvements in connection with the Baseball Stadium Project.

Section 4.02 Stadium Project Budget

The Stadium Project Budget is set forth in Exhibit B. The Team has determined that the Baseball Stadium can be completed within the Stadium Project Budget. The sources of funds for the Stadium Project Budget are shown in Exhibit C.

Section 4.03 Project Program Statement

The Construction Administration Agreement shall include a Project Program Statement as an Exhibit to the Construction Administration Agreement. The County, the City and the Team agree that the Project Program Statement will incorporate the features that, given budget realities, they want the Baseball Stadium Project to have. The Construction Administration Agreement shall provide that the Team may amend the Project Program Statement from time to time; provided, however, that the amendment shall not be effective without the prior written consent of the City and the County if the effect of the amendment is to: (i) cause the deadline in Section 4.10 to be missed; (ii) cause the projected total Stadium Project Costs to exceed or further exceed the Stadium Project Budget (assuming that the budgeted contingency identified in Exhibit B would not be available or use thereof not approved by the County and City) unless the Stadium Developer has made arrangements reasonably satisfactory to the County and City to fund the excess cost; (iii) cause the projected total Public Infrastructure Costs to exceed or further exceed the Public Infrastructure Budget; (iv) cause the deadline in Section 4.10 to be missed because the amendment causes delay in completion of the Public Infrastructure; (v) pose a risk to public safety or convenience; or (vi) eliminate or materially alter an important programmatic element from the Project Program Statement. Each time the Project Program Statement is amended, no later than ten (10) days from the date of the amendment, the Team shall provide the City and the County an updated Project Program Statement.

Section 4.04 Construction Administration Agreement

The County, the City and the Stadium Developer shall enter into the Construction Administration Agreement and the Construction Administration Agreement shall contain the contractual provisions regarding each party's obligations and responsibilities relating to the Baseball Stadium Project including those obligations that are expressly set forth in Article IV, Article V, Article VI and Article VIII. The Team and the County shall enter into an Assurance Agreement and the Assurance Agreement shall provide that the Team shall guarantee the payment and performance of all obligations of the Stadium Developer under the Construction Administration Agreement.

Section 4.05 Design and Construction Professionals

The Construction Administration Agreement shall require the Stadium Developer to engage the Design and Construction Professionals and the Construction Manager for the design of the Baseball Stadium. The Team has advised the County and the City that it will retain HOK Sport, Inc., doing business as HOK Sport+Venue+Event ("HOK"), Walter P. Moore, Bliss & Nitray, Inc., Uni-Systems and M/E Engineers as one of its Design and Construction Professionals.

The fees of the Design and Construction Professionals and Construction Manager shall be included in the Stadium Project Budget. The Construction Administration Agreement shall provide that the Stadium Developer shall not be paid or compensated a developer fee for its services as Stadium Developer. All fees and sums paid to the Design and Construction Professionals shall be paid directly by the Stadium Developer and not from the Stadium Project Construction Fund. The County and/or the City shall not be obligated in any way to pay or reimburse the Team and/or the Stadium Developer for any Design and Construction Professionals' fees.

Although the Team is paying all architectural and design fees of the Baseball Stadium, the Team agrees to provide in its contracts with the Design and Construction Professionals provisions requiring the Design and Construction Professionals to comply with the County's CBE-A/E program in the same manner as if the design was County rather than privately funded and to enforce such provisions. In addition, the Team shall comply and agree to provide in its contracts with the Design and Construction Professionals provisions requiring the Design and Construction Professionals to comply with any applicable State and local laws. The Team shall provide a copy of any and all contracts between the Team and the Design and Construction Professionals to the County for its review within 30 days after the Effective Date of this Agreement.

The Stadium Developer shall competitively select a Florida licensed contractor to serve as the Construction Manager in accordance with State and local law, specifically the competitive selection procedures provided in Section 255.20, Florida Statutes, including bid waivers approved by the Board in accordance with the provisions of such Section. The Stadium Developer shall include in its contract with the Construction Manager provisions requiring compliance with State and local laws, including but not limited to, the County's CSBE small business programs, responsible wages and benefits, Community Workforce, Sustainable Building Program, IPSIG, bonding from the Stadium Developer and Construction Manager for the total cost of construction of the Baseball Stadium in compliance with the terms of Section 255.05, Florida Statutes, naming the County the beneficiary thereof, and the insurance requirements as specified by the County's Risk Management Division of the General Services Administration Department, all as more fully described in the Construction Administration

Agreement. The Construction Administration Agreement shall provide that prior to award to the Construction Manager, the Stadium Developer shall submit the proposed final form of contract to the County for its review and approval of the terms contained in the construction contract, including the terms of any subcontracts.

Section 4.06 Plans and Specifications

The Construction Administration Agreement shall require the Stadium Developer to direct the Design and Construction Professionals to prepare Plans and Specifications for the Baseball Stadium that are consistent in all material respects with the Project Program Statement and all applicable federal, state and municipal building codes. The Construction Administration Agreement shall provide that the County and the City shall have rights of review and approval for general conformance with the Project Program Statement of all design and design related matters to the extent agreed upon by the parties in the Construction Administration Agreement, provided that such approval shall not be unreasonably withheld, conditioned or delayed. The Construction Administration Agreement shall require the Stadium Developer to submit the proposed Plans and Specifications to the County and the City to allow the County and the City ten (10) business days to confirm that the Plans and Specifications are generally consistent in all material respects with the Project Program Statement and shall set forth a process to address the nonconformance of the final Plans and Specifications with the Project Program Statement. The Construction Administration Agreement shall require the Stadium Developer, the County and the City to work in good faith to comply with the County's Sustainable Building Program and achieve a LEED or comparable certification for the Baseball Stadium to the extent that can be accomplished without increasing the total cost of the Baseball Stadium or delaying its completion. The Construction Administration Agreement shall require the Stadium Developer to form a design review committee (the "Design Team"), which shall consist of four members: one selected by the Team, one selected by the County, one selected by the City, and one selected by Major League Baseball. The Design Team shall meet with the Design and Construction Professionals and the Construction Manager to develop no more than three conceptual recommendations of contemporary design related to the exterior aesthetics of the Baseball Stadium that do not require an increase in the Stadium Project Budget or a delay in the construction schedule. Within ten (10) business days following receipt of the conceptual recommendations, the Design Team shall select a design with assistance from the Design and Construction Professionals and the Construction Manager. The City shall use reasonable and diligent efforts to issue and facilitate all state and local permits necessary for the timely construction and occupancy of the Baseball Stadium pursuant to the initial project schedule to be included in the Construction Administration Agreement.

Section 4.07 Permits and Zoning

The Construction Administration Agreement shall require the City or the County, as appropriate and in consultation with the Stadium Developer, to apply for and obtain all consents, approvals and permits necessary to allow for the construction of the Baseball Stadium which include, without limitation: (i) appropriate binding letters of vested rights and interpretation regarding the development of regional impact status of the Orange Bowl site (or, failing that, a preliminary development agreement and DRI approval), (ii) major use special permit or other special exception, variance or special permit applications, (iii) road/alley closure and relocation petitions, (iv) re-platting petitions, (v) zoning variance applications, and (vi) petitions to relocate all public and

private utilities, including, without limitation, electric, gas, cable, telecommunication, water, sewer, and storm drainage facilities, located within the Baseball Stadium Site to areas located outside the boundary of the Baseball Stadium Site (collectively (i) – (vi), the “Development Requirements”). Any costs and expenses associated with obtaining all consents, approvals and permits as provided in the preceding sentence shall be borne exclusively by the Team. The City shall reasonably expedite any actions or approvals requested or required of it in connection with the permitting and construction of the Baseball Stadium so as to ensure the undelayed commencement and completion of the Baseball Stadium by the Completion Date, and agrees to dedicate at least one member of its building permit staff to the Baseball Stadium Project to expedite the permitting process at no cost to the Stadium Developer. Further, the City agrees not to act, or fail to act, in a manner that would substantially delay or place in jeopardy, or would reasonably be expected to jeopardize, the completion of the Baseball Stadium by the Completion Date. The City agrees to review building permits relating to the Baseball Stadium in accordance with the following schedule:

<u>Permit Review Packages</u>	<u>Package Review Time</u>
Bid Package 1 – Foundations	30 Days
Bid Package 2 – Superstructure, Roof	30 Days
Bid Package 3 – Enclosures, Interiors, Finishes	60 Days

Any City and County fees, including construction permits and regulatory approval fees applicable to the Baseball Stadium shall be waived or, to the extent they may not be waived pursuant to applicable law, shall be customary and consistent with amounts charged for comparable uses and projects, provided, however, the parties agree that impact fees may not be waived as a matter of law. The Construction Administration Agreement shall provide that IPSIG fees shall be waived if an ordinance granting such waiver is approved by the Board of County Commissioners.

Section 4.08 Construction

The Construction Administration Agreement shall require the Stadium Developer to construct and complete the Baseball Stadium in accordance with the Plans and Specifications. The Construction Administration Agreement shall require the Stadium Developer to form an administrative committee that includes representation from the County and the City (the “Project Coordination Team”) to perform the following functions: (i) receive reports from the Design and Construction Professionals pertaining to the construction schedule (including any updates) for completion of Baseball Stadium, the Stadium Project Budget and any other aspects of the Baseball Stadium Project; (ii) maintain clear lines of communication to facilitate a successful Baseball Stadium Project; (iii) receive reports; and (iv) approve change orders that are generally consistent in all material respects with the approved Project Program Statement, provided that: (i) either (x) the cost of the change order does not cause the projected total Public Infrastructure Costs to exceed or further exceed the Public Infrastructure Budget; and (y) the change order does not cause the deadline in Section 4.10 to be missed because the change order causes delay in completion of the Public Infrastructure; and (ii) (xx) either the cost of the change order does not cause the projected total Stadium Project Costs to exceed or further exceed the Stadium Project Budget or the Stadium Developer shall have made arrangements reasonably satisfactory to the County for the funding by the Stadium Developer of any increase in the Stadium Project Costs resulting from such change orders;

and (yy) the change order does not delay or further delay the Completion Date beyond the targeted Completion Date specified in Section 4.10. The Construction Administration Agreement shall provide that all other change orders shall be subject to the written approval of the County and the City pursuant to the approval process detailed in the Construction Administration Agreement. The Construction Administration Agreement shall provide for periodic (at least monthly) regular meetings of the Project Coordination Team and for special meetings upon reasonable prior notice. The County and the City shall be given an opportunity to inspect the construction work and materials and to review construction documents as reasonably necessary to verify that the work and materials are in conformity with the approved Project Program Statement, all as more fully set forth in the Construction Administration Agreement. The Construction Administration Agreement shall require the Stadium Developer to carry, or require others to carry, construction period insurance, naming the County and the City as additional named insureds, with such coverages and in such amounts as are customary for projects of similar size and scope and as approved by the Risk Management Division of the County's General Services Department. The Stadium Developer shall provide the County and the City at the time of the execution of the Construction Administration Agreement with a construction schedule, a schedule of values and a Draw Down Schedule each in the form approved in the Construction Administration Agreement. The Construction Administration Agreement shall require the Stadium Developer to provide to the County and the City monthly updates to the Baseball Stadium construction schedule, the schedule of values and the Draw Down Schedule. The Draw Down Schedule should reconcile with the most updated construction schedule and the Construction Manager's schedule of values for the Baseball Stadium. The Construction Administration Agreement shall include a detailed plan by which the County shall procure construction materials and equipment for the Baseball Stadium on a sales tax exempt basis pursuant to State law and in a manner that protects the reasonable financial interests of each party. The County's obligation to implement a sales tax exempt procurement program in accordance with the terms of the Construction Administration Agreement shall be subject to the Team's receipt of a favorable opinion provided by the State of Florida Department of Revenue that purchases in accordance with such procurement program will be exempt from sales tax. The Construction Administration Agreement shall require the City or the County within six months following the effective date thereof to provide the Team with at least 3,000 square feet of downtown office space within two miles of the Baseball Stadium Site that is suitable for marketing purposes.

Section 4.09 Cost Overruns

The Construction Administration Agreement shall require that the Team shall be the guarantor of the Stadium Developer's obligation to pay any and all costs of planning, designing, acquiring, constructing and equipping the Baseball Stadium that exceed the Stadium Project Budget, including payment of any and all costs for Claims (as defined below), demands or causes of action by the architect, general contractor, subcontractors,, trade contractors, suppliers and other parties, including attorneys' fees (trial and appellate) and defense costs (in the aggregate and as more fully described in the Construction Administration Agreement) but excluding incremental costs to the Baseball Stadium that may result from delays caused by the City because of its failure to meet the deadline set forth in Section 8.1. The County or the City, as the case may be, shall each be responsible for any incremental cost to the Baseball Stadium that may result from delays caused by it or from its failure to meet the deadline set forth in Sections 4.01, 5.01, 8.01, and any other deadlines, as specifically set forth in the Construction Administration Agreement. The Stadium Developer shall provide the County and the City at the time of the execution of the Construction Administration Agreement with a construction schedule as further provided in the Construction Administration Agreement. In addition, the Stadium Developer shall provide any updates to such construction

schedule in the form of and at the times as further provided in the Construction Administration Agreement. The Stadium Developer shall provide the County and the City at the time of execution of the Construction Administration Agreement with evidence that it has secured a dedicated credit facility in a form acceptable to the County and in the amount of at least \$20,000,000 that may be used only to pay for Baseball Stadium cost overruns. The Team and the Stadium Developer shall represent that such credit facility shall remain in place for such purpose until such time that any and all past, present and future liabilities, losses, suits, change orders, Claims, cause of action, judgments, fines or demands or expenses or costs including, without limitation, costs of any settlement and including the fees and costs of the defense of a Claim of any kind whatsoever, known and unknown, asserted or unasserted, accrued or unaccrued, fixed or contingent, suspected or unsuspected, foreseen or unforeseen, which any person or entity now has, ever had or hereafter can, shall or may have, or which may be asserted or recovered against either the County, the Stadium Developer or the Team in connection with the Baseball Stadium or concerning, arising out of or in any way relating to the Baseball Stadium or the design, construction, or implementation thereof by the Stadium Developer or the Construction Manager or any contractors, subcontractors, mechanics, materialmen, sub-consultants, Design and Construction Professionals or any employees and consultants thereof, performing work on or related to the Baseball Stadium including claims arising from or relating to the termination of any agreement with any of the foregoing (each a "Claim and collectively "Claims").

Section 4.10 Stadium Project Completion Date

The Construction Administration Agreement shall require the Stadium Developer to use its reasonable best efforts to achieve the Completion Date by April 1, 2011.

ARTICLE V

INFRASTRUCTURE AND PARKING

Section 5.01 Public Infrastructure

The Public Infrastructure work to be completed by the County or the City in connection with the Baseball Stadium, as the case may be, and the party responsible for payment of all costs associated with each portion of the Public Infrastructure work is set forth in Exhibit E. The Construction Administration Agreement shall set forth the terms covering the completion of such work. The Construction Administration Agreement shall require the City and the County to design, construct, install and pay for the Public Infrastructure in accordance with the applicable deadlines set forth in the Construction Administration Agreement. The Design and Construction Professionals shall work with and cooperate with the County and City and provide input in relation to the design of the Baseball Stadium so that the Public Infrastructure work can be completed expeditiously and cost effectively. The Team shall be given opportunity to review and comment upon program and design features and to inspect plans and specifications and construction work of the Public Infrastructure to verify that they are in conformity with Exhibit E and the terms of this Construction Administration Agreement.

Section 5.02 Parking

The City (or its designee), the County and the Stadium Manager shall enter into a City Parking Agreement. The City Parking Agreement shall require the City on or before the Completion Date to identify at least 12,000 parking spaces within five-eighths of one mile from the Baseball Stadium and to construct, at its sole cost and expense, City Parking on the Development Site to house approximately 6,000 of those parking spaces. The City Parking Agreement shall provide that the Team and the County each have the right to review, comment upon and approve the program and design features of the City Parking to assure that they are in conformity with the terms of this Agreement and the Construction Administration Agreement and the functional requirements of the Baseball Stadium as contemplated in the approved Project Program Statement, this Agreement and the Construction Administration Agreement. The Team and the County shall not unreasonably withhold or delay their approval. The City Parking shall be designed to assure a 40-minute maximum empty time. The City Parking Agreement shall permit the Stadium Manager to purchase from the City the rights to all City Parking, to operate the City Parking as public parking facilities and to establish from time to time a market-based, fixed charge for their use. The City Parking Agreement shall give employees of Team and the Team Affiliates and patrons of the Baseball Stadium exclusive use of the City Parking for Event Parking and priority use of other City-owned parking within five-eighths of one mile from the Baseball Stadium for Event Parking. The City Parking Agreement shall require the City to consult with the Team regarding the establishment of market-based pricing for Event Parking for City owned parking within five-eighths of one mile from the Baseball Stadium but not located on the Development Site. The City shall be entitled to all revenues from and shall be responsible for all expenses related to the City Parking as defined in the City Parking Agreement. The City Parking Agreement shall provide that the Team will be provided 250 parking spaces (the "Team Reserved Parking Spaces") at all times for Team player, employee and visitor parking in a location to be determined by the Stadium Manager within the City Parking. The portion of the Team Reserved Parking Spaces allocated to players, coaches and senior Team executives shall be separately located and secured and shall be made available to the Team without charge. The Team will be responsible for paying the incremental costs of separately securing the portions of the Team Reserved Parking Spaces allocated to players, coaches and senior Team executives. The City Parking shall house or display no advertising or other promotional features involving the Team or Baseball Events or that conflict with sponsors of the Team or the Team's Promotional Rights without the written permission of the Team.

ARTICLE VI

FUNDING

Section 6.01 Sources of Funds

The sources of funds for the Stadium Project are depicted in Exhibit C.

Section 6.02 County Funding

The Construction Administration Agreement shall provide that the County shall issue and sell one or more series of taxable or tax-exempt bonds backed by the convention development tax, the professional sports facility tax or a combination thereof ("County Bonds") in an aggregate

amount sufficient (taking into account issuance costs, required reserves and funded interest cost during construction) to deposit \$199,000,000 of net proceeds into the County Account of the Stadium Project Construction Fund. The Construction Administration Agreement shall provide that the County, in its sole discretion, shall determine the details of the issuance of the County Bonds, including the use of capitalized interest.

Section 6.03 City Funding

The City shall issue and sell one or more series of taxable or tax-exempt bonds backed by the tourist development tax, the convention development tax, or a combination thereof ("City Bonds"), and shall remit to the Qualified Trustee an amount from the Miami Sports and Exhibition Authority Reserve Fund, in an aggregate amount sufficient (taking into account issuance costs, required reserves and funded interest during construction) to deposit \$121,000,000 of net proceeds into the City Account of the Stadium Project Construction Fund.

Section 6.04 Team Funding

The Team shall fund \$155,000,000 of the Stadium Project Budget by (i) directly paying soft costs that are included within the Stadium Project Budget and related to the Baseball Stadium; and (ii) depositing the balance into the Team Account of the Stadium Project Construction Fund.

Section 6.05 General Obligation Bonds

The Construction Administration Agreement shall provide that the County shall issue and sell \$50,000,000 in general obligation bonds at par or with a premium at market rates in order to deposit \$50,000,000 of net proceeds from the Building Better Communities General Obligation Bond Program ("General Obligation Bonds") into the County Account of the Stadium Project Construction Fund. The Construction Administration Agreement shall provide that the County, in its sole discretion, shall determine the details of the issuance of the General Obligation Bonds, including the use of capitalized interest.

Section 6.06 Construction Fund Disbursement Procedure

The Construction Administration Agreement shall provide a disbursement procedure, including payment requisition requirements, by which the Stadium Developer may draw upon the Stadium Project Construction Fund to pay costs of the Baseball Stadium or by which the County and/or the City may draw upon the Stadium Project Construction Fund to reimburse the City and County for advances made in accordance with the terms of the Construction Administration Agreement. Disbursements from the Stadium Project Construction Fund for advances made by the City and/or the County to meet any deadlines set forth in the Construction Administration Agreement, shall be from the Account into which the advance had been deposited. The disbursement procedure set forth in the Construction Administration Agreement shall incorporate sound and customary practices for the disbursement of funds to pay costs of a large commercial project. Notwithstanding the foregoing, neither the Team nor the Stadium Developer shall be reimbursed from the Stadium Project Construction Fund for any costs associated with design, architecture or engineering services described in Section 287.055, Florida Statutes. The disbursements of funds from the Stadium Project Construction Fund to pay costs of the Baseball Stadium shall be made from the County Account, the City Account, and the Team Account ratably to the extent of the balances

therein. Earnings from the investment of the County Account and the City Account shall be distributed when realized to the County and the City, respectively, for their respective uses to pay any additional costs, including soft costs, related to the Baseball Stadium with any remainder to be used to prepay the County Bonds, the General Obligation Bonds, and City Bonds, as the case may be or for any other lawful purpose. Earnings from the investment of the Team Account shall be retained in the Team Account for the authorized uses thereof. Monthly statements of all activity in the Stadium Project Construction Fund shall be furnished to the County, the City and the Stadium Developer.

Section 6.07 Stadium Developer to Keep Funding in Balance

The Construction Administration Agreement shall require the Stadium Developer to maintain a true, accurate, complete and up-to-date record that reconciles each line item of the Stadium Project Budget against (i) the total amount of the Stadium Project Costs for that line item that are covered by contracts in force, including adjustments due to amendments and/or change orders; (ii) the amount of Stadium Project Costs for that line item disbursed to date; (iii) the estimated amount of Stadium Project Costs for that line item necessary to be disbursed in the future to complete (in accordance with the Plans and Specifications) the design services, the construction work, materials and other services covered by that line item; (iv) any reductions due to sales tax savings achieved, if any; and (v) the variance between the sum of items (ii) and (iii) for that line item versus the Stadium Project Budget for that line item. Notwithstanding and prevailing over the preceding sentence, the Construction Administration Agreement shall provide that changes in project scope or budget due to value engineering or the leasing of equipment or system components of the Baseball Stadium must be approved by the County and the City and shall set forth the process for such approval. A copy of the record shall be furnished at least quarterly to the County and the City. The funding of the Baseball Stadium Project shall be deemed to be "in balance" at a particular time of determination if the sum of the following equals or exceeds the amount necessary to pay when due the total of the estimated remaining amounts necessary to complete the Baseball Stadium in accordance with the approved Plans and Specifications and approved Project Program Statement, namely the sum of (i) the then current balance (including any bank letters of credit) in the Stadium Project Construction Fund, plus (ii) prior to the issuance thereof, the projected net proceeds of the County Bonds, the City Bonds and the General Obligation Bonds, respectively, plus (iii) the projected investment earnings on the Team Account, plus (v) the amount of any private funding arranged by the Stadium Developer and contractually committed solely for the purpose of funding the Baseball Stadium, less (vi) any interest earnings from the investment of any funds on deposit in the County Account and the City Account. The Construction Administration Agreement shall provide that if and whenever the Stadium Project Budget is not in balance with the Stadium Project Costs as provided in this section and the Construction Administration Agreement, the Stadium Developer shall report the details to the County and the City and, upon the written demand by the County or the City, shall be obligated to bring funding of the Baseball Stadium in balance within three months following the demand subject, however, to the limitations set forth in Section 4.09 and the Construction Administration Agreement.

Section 6.08 Public Infrastructure Funding

The Construction Administration Agreement shall describe the disbursement procedures by which the County or the City, as the case may be, shall fund the costs of the Public Infrastructure. The disbursement procedures shall incorporate sound and customary practices for disbursement of public funds to pay costs of large public projects. Monthly statements of all sources

and applications of funds for the Public Infrastructure shall be furnished to the County, the City and the Stadium Developer.

ARTICLE VII

MANAGEMENT OF BASEBALL STADIUM

Section 7.01 Management Agreement

The County, the Stadium Manager and, if necessary, the City shall enter into the Management Agreement which shall set forth the terms for the operation, management and use of the Baseball Stadium. The Management Agreement shall grant the Stadium Manager the exclusive right, authority and responsibility to manage the Baseball Stadium on behalf of the County. The Management Agreement shall provide that the Stadium Manager's rights and responsibilities include, (i) arranging for the Team's use of the Baseball Stadium for Baseball Events; (ii) arranging for Other Events and any other lawful uses of the Baseball Stadium; (iii) entering into agreements pursuant to which third parties conduct events or otherwise use the Baseball Stadium for revenue producing purposes; and (iv) managing all operations of the Baseball Stadium and paying the costs thereof, including the cost of all off-duty services including police, fire and emergency personnel to be provided by the County, during all Baseball Events, Community Events and Other Events at the Baseball Stadium. The Management Agreement shall provide that, except for Community Events, the Stadium Manager has the exclusive right (i) to establish all prices and other terms and conditions for the uses of the Baseball Stadium, and (ii) to enter into contracts generating Stadium Revenues. The Assurance Agreement shall provide that the Team shall guarantee the Stadium Manager's obligations under the Management Agreement.

Section 7.02 Term

The term of the Management Agreement shall commence upon its execution and delivery and, unless terminated in accordance with its terms, shall continue until the later of (i) the 30th annual anniversary of the Completion Date of the Baseball Stadium or (ii) the business day following the date the last of the County Bonds, the General Obligation Bonds and the City Bonds are retired or mature, whichever is later.

Section 7.03 Community Events

The Management Agreement shall provide that the County and the City have the right to use the Baseball Stadium for 12 community event days per year for amateur athletic, public service, or other non-profit events not including professional baseball games ("Community Events"), subject to the following: (i) the Team shall have scheduling priority for Baseball Events and the Stadium Manager shall have scheduling priority for Other Events; (ii) written notice to the Stadium Manager of dates to be selected given not less than 10 days prior to contractual commitment and not less than 30 days prior to the Community Event; (iii) no more than six of the Community Events shall be during the baseball season and none of the events shall be within five days preceding a scheduled or previously rescheduled Baseball Event or Other Events; (iv) the County or the City, as applicable, will bear all costs and expenses of the Community Event, including the cost of appropriate liability insurance naming the Stadium Manager as an additional insured; (v) the County

or the City, as applicable, will provide proper security and police protection during the Community Event; (vi) the County or the City, as applicable, will hold the Stadium Manager and the Team harmless from liabilities and damage arising out of such usage; (vii) the proposed usage will not include the infield unless the usage is for a baseball game; and (viii) the County or the City, as applicable, will return the Baseball Stadium and the Baseball Stadium Site to the same or better condition than existed prior to the usage. The Stadium Manager may reject any proposed Community Event if: (i) the Stadium Manager reasonably believes the usage presents an unacceptable risk of damage to the playing field that cannot be repaired before the next scheduled or previously rescheduled home baseball game; (ii) the usage would violate Baseball Rules and Regulations relating to the public image of a Major League Baseball team or the Baseball Stadium; or (iii) the promotional sponsorship connected with the usage, in the opinion of the Stadium Manager, is incompatible with any major sponsorships or other exclusive advertising or promotional arrangements connected with a Team Affiliate or the Baseball Stadium. The Stadium Manager shall be responsible for the cost of providing security on the Baseball Stadium Site (except as provided in clause (v) above), and the Stadium Manager shall not be responsible for the cost of providing traffic control and other security in the areas surrounding the Baseball Stadium Site for the Community Events.

Section 7.04 [NOT USED]

Section 7.05 Maintenance and Repairs; Operating Expenses

The Management Agreement shall require the Stadium Manager to undertake and pay the costs of all Maintenance and Repairs. The Management Agreement shall also require the Stadium Manager to pay all expenses associated with the operation and maintenance of the Baseball Stadium and the Baseball Stadium Site, including, but not limited to, game day operations, security on the Baseball Stadium Site, utilities, custodial services, premiums for the insurance described in Section 7.12, and supplies and other consumable goods. The payments shall be made by the Stadium Manager and the Stadium Manager shall be responsible for the payment of any shortfalls. The County will use reasonable efforts to assist the Stadium Manager to secure utilities for the Baseball Stadium at rates comparable to the County's reduced bulk rates.

Section 7.06 Capital Improvements

The Management Agreement shall permit the Stadium Manager to make such Capital Improvements that are required (i) by applicable governmental law, regulation or order, (ii) to keep the playing field, lighting and safety features of the Baseball Stadium in compliance with Baseball Rules and Regulations, (iii) to safeguard individuals or property in emergency situations, or (iv) to replace components of the Baseball Stadium and/or the Baseball Stadium Site at the end of their economic cycle, as it deems necessary or appropriate, subject to the prior written approval of the County which shall not be unreasonably withheld or delayed. The Management Agreement shall require the Stadium Manager, subject to County approval, to develop a capital expenditure plan that includes estimated capital improvements for each year and the estimated cost of these capital improvements during the term of the Management Agreement. The Management Agreement shall provide that the cost of such Capital Improvements shall be paid or reimbursed to the Stadium Manager from funds in the Capital Reserve Fund and that, to the extent that the funds are insufficient, the County, the City and the Stadium Manager shall each be responsible for one-third of the difference.

Section 7.07 Capital Reserve Fund

The Management Agreement shall provide for the creation of the Capital Reserve Fund and, commencing with the year of the opening of the Baseball Stadium, shall require annual contributions by the County, the City and the Team of \$1,500,000 (apportioned one-third from the County, one-third from the City, and one-third from the Team) into the Capital Reserve Fund. All earnings and profits from the investment of the Capital Reserve Fund shall be for the account of the Capital Reserve Fund. The County, the City and the Team intend that the Capital Reserve Fund is an asset of the County designed to protect its ownership interest in the Baseball Stadium and shall not be an asset of the Team, any Team Affiliate or the City. The Management Agreement shall provide that in the event of a named storm or a terrorist act that damages the Baseball Stadium, the County and the City shall work in good faith with the Stadium Manager to apply for all appropriate disaster and Homeland Security relief from Federal, State and local agencies.

Section 7.08 Ownership of Team Revenues

The Management Agreement shall provide that, as between the County and City on the one hand and the Team and the Team Affiliates on the other hand, all Team Revenues belong to the Team.

Section 7.09 Ownership of Promotional Rights

The Management Agreement shall provide that, as between the County and the City on the one hand and the Team and Team Affiliates on the other hand, the Team or Team Affiliates own all Promotional Rights exclusively and on a worldwide base, including but not limited to the right to exercise and exploit the Promotional Rights in any and all media, now known or hereafter invented, and for any and all purposes, products and services throughout and for all countries and territories of the world. Neither the County nor the City shall use, sell, assign, commercialize or otherwise exploit the Promotional Rights without the written permission of the Team which may be given or withheld in the Team's absolute discretion. As between the County and the City on the one hand and the Team, the Team Affiliates or MLB Entities on the other hand, all Propriety Indicia are solely and exclusively the property of the Team, the Team Affiliates, the MLB Entities or their respective assigns. As between the County and the City on the one hand and the Team, Team Affiliates or MLB Entities on the other hand, the creation, use, compilation, collection, arrangement, assembly, display, promotion, licensing or other promotion or exploitation of Proprietary Indicia are rights exclusively belonging to the Team, Team Affiliates, the MLB Entities or their respective assigns, as the case may be. Use of the Proprietary Indicia by the County or City is strictly prohibited without the prior written permission of the Team which may be given or withheld in the Team's absolute discretion. The Management Agreement shall set forth the process by which the Stadium Manager shall have, subject to compliance with applicable law, the exclusive right to sell, license or otherwise grant the naming rights to the Baseball Stadium for the term of the Management Agreement. Specifically, the Management Agreement shall provide that the Stadium Manager must obtain the written approval of the name(s) from the County which approval shall not be unreasonably withheld or delayed. The Management Agreements shall also provide that the County shall have the right to approve any naming rights agreement(s). The Management Agreement shall provide that the County may disapprove any name that is in conflict with standards of public decency, including, without limitation, association with tobacco or adult entertainment. The name (including the commonly known name and the parent company name) of any Fortune 1000 company or any of its

subsidiaries or products, any bank, any cruise line, any airline, or any nationally recognized beverage company (including alcohol) shall each be deemed to be an approved name.

Section 7.10 [NOT USED]

Section 7.11 Assignments and Liens

The Management Agreement shall grant the Stadium Manager rights on behalf of the County to assign or sublease the portions of the Baseball Stadium for uses permitted under the Management Agreement, and to sell or grant sponsorships, licenses, or similar rights in and to the Baseball Stadium or any portion of it for uses permitted under the Management Agreement. The Management Agreement shall not permit the County to transfer or assign the Baseball Stadium or the Baseball Stadium Site or the Management Agreement or to grant or allow any liens or encumbrances on the Baseball Stadium Site, the Baseball Stadium or the Management Agreement.

Section 7.12 Insurance

The Stadium Manager shall carry and maintain insurance from financially sound carriers, as specified by the County's General Services Administration Department and set forth in the Management Agreement, specifically including the following:

- (a) Commercial general liability insurance against claims for bodily injury, death or property damage arising out of the operations of the Baseball Stadium and the Baseball Stadium Site under the Management Agreement;
- (b) Property insurance on an all risk basis for the Baseball Stadium and all improvements at any time situated upon or forming part of the Baseball Stadium with coverage limits and sub-limits in customary amounts on a replacement cost basis in an amount acceptable to Miami-Dade County and bondholders (if required by any bond documents) as established using an appropriate probable maximum loss analysis.
- (c) Workers' compensation insurance coverage or a qualified self insured program complying with the statutory limits of the State and including employers liability coverage; and
- (d) Umbrella liability coverage as necessary to obtain customary limits for the commercial general liability and employers liability limits as described above.

The general and excess liability policies shall include the City, the County, and the Team and applicable Team Affiliates as additional insureds. The Team or Team Affiliate shall carry and maintain insurance from financially sound carriers customarily maintained including but not limited to business interruption and automotive liability insurance.

Section 7.13 Community Benefit Obligations

The Team acknowledges a civic responsibility to promote and contribute to charitable, educational and community organizations and other public works in South Florida. The Management Agreement shall require the Team to develop and deliver a strong and substantial community benefits package that shall include the following:

- (a) The Team shall maintain, fund, and vigorously promote its not-for-profit Florida Marlins Community Foundation (the "Team Foundation") as well as the Team's own internal community relations efforts, which collectively are focused on promoting educational, athletic, health, social and community service programs with a particular focus on Miami-Dade County and the City of Miami in addition to other activities for South Florida's youth.
- (b) The Team shall endeavor to maximize benefits for (i) youth and other residents of South Florida, with a particular focus on Miami-Dade County and the City of Miami, and (ii) rebuilding youth baseball infrastructure through Major League Baseball's various affiliated charitable organizations and programs, such as: Major League Baseball Charities, Reviving Baseball in Inner Cities, Baseball Tomorrow Fund, Join the Major Leagues @ Your Library, Breaking Barriers, Baseball Assistance Team, Jackie Robinson Foundation, and Commissioner's Initiative for Kids.
- (c) The Team shall request and encourage its advertisers and sponsors to contribute to and support the Team Foundation.
- (d) The Team shall request and encourage its players and other Team personnel to support and participate in community activities through personal appearances and other means, such as financial or other contributions to the Team Foundation or to other organizations that benefit youth and other residents of Miami-Dade County and the City of Miami as well as other organizations and youth in South Florida. The Team will work with its players, coaches and senior management to make at least 25 personal public appearances (counting no more than three appearances per event) per year in South Florida in support of education, youth sports, or other public service activities.
- (e) The Team shall provide attractive and meaningful programs designed to keep Major League Baseball games affordable for youth and the elderly in South Florida. During each year the Team shall (i) make available at least 50,000 regular season tickets priced per ticket at no more than 75% of the full price at which such tickets are offered to the general public, and (ii) distribute at least 5,000 regular season tickets for free each year to appropriate Miami-Dade County charities that will make such tickets available to underprivileged youth accompanied by adult mentors.
- (f) The Team shall provide 7,200 Affordable Seats for each home game.
- (g) The Team shall participate in Major League Baseball's Diverse Business Partners Program.
- (h) The County and the City shall be provided, at no cost to the County and City, (1) the use of two private suites for all Baseball events, Community Events and Other Events at the Baseball Stadium and parking and all related tickets for such private suites; and (2) in the case of regular season baseball games, the County and City shall also be provided, at no cost, 22 additional box seat tickets in the Baseball Stadium in mutually agreed upon locations on the infield. In addition, in the case of any baseball games other than regular season games, the Team shall provide the County and City, at no cost, with the right to purchase such related private suite tickets and parking and such additional 22 box seat tickets and in no event shall the County and City be treated less favorably with respect to

the allocation of such ticket purchase rights than paid ticket holders of private suites or season box tickets in the Baseball Stadium.

- (i) Upon either a sale to a third party of a "control interest" (as defined in the Major League Baseball Constitution in Baseball Rules and Regulations) in the Team or a sale of the Team's Major League Baseball franchise in either case within the first ten years after the execution of this Agreement (other than following the death of the controlling owner), the Team shall or shall cause seller to pay to the County and the City, to be split on a pro-rata basis determined by each respective parties' contribution to the Baseball Stadium, an amount equal to the following percentage of the net proceeds (as such term is defined in the Management Agreement) of sale that are attributable to any increase in value of the franchise from the date of this Agreement (pro-rated in the case of a sale of the control interest):

<u>If the sale occurs in:</u>	<u>Percentage</u>
Year 1	10%
Year 2	9%
Year 3	7%
Year 4	6%
Year 5 to Year 10	5%

Such increase in value shall be based on an assumed value of the franchise of \$250,000,000 as of the date of this Agreement, which assumed value shall be increased to give effect to any additional capital funding to the Team Affiliates (net of distributions) and an imputed increase in value of 8% per annum from the date of this Agreement.

- (j) The Team shall change its name to the Miami Marlins prior to the beginning of the 2011 season.

Section 7.14 Annual Reports

The Management Agreement shall require the Stadium Manager to provide the County and the City with an annual report on Maintenance and Repairs and Capital Improvements.

ARTICLE VIII

DEADLINE DATES

Section 8.01 Control of Buildable Site

- (a) Not later than May 31, 2008, the City shall (i) convey title to the County, at no cost, the parcel(s) of land legally described in Exhibit "A" by Warranty Deed free and clear of all liens and encumbrances for its intended purposes by the targeted Completion Date referenced in Section 4.10; (ii) provide the County and Team with reasonable evidence that the soil and subsoil condition of the Baseball Stadium Site will support the Baseball Stadium without having to expend funds not included in the Stadium Project Budget; (iii) provide the Baseball

Stadium Site is properly zoned for the uses contemplated under this Agreement; (iv) provide there are no material environmental liabilities associated with the ownership, management or use of the Baseball Stadium Site that would or could delay the completion of the Baseball Stadium, the City Parking or the Public Infrastructure beyond the targeted Completion Date referenced in Section 4.10 without having to expend funds not included in the Stadium Project Budget; and (v) provide that necessary permits for the construction, occupancy and use of the Baseball Stadium can be expected to issue in the ordinary course and without jeopardy to the targeted Completion Date referenced in Section 4.10.

- (b) The City shall provide for the existing Orange Bowl to be demolished and for the Baseball Stadium Site to be cleared of debris and completion of any environmental remediation necessary to permit the timely completion, occupancy and usage of the Baseball Stadium by the Completion Date and to otherwise comply with all applicable laws and regulations in accordance with Section 4.01(b).

Section 8.02 Execution and Delivery of Stadium Documents

Not later than April 30, 2008, the County, the City and the Team (with all requisite approvals from Major League Baseball) shall, as applicable, execute and deliver the Construction Administration Agreement, the Non-Relocation Agreement, the Assurance Agreement and the Management Agreement. The Team may cause one or more Team Affiliates to execute and deliver the Construction Administration Agreement and the Management Agreement in place of the Team as the Stadium Developer and the Stadium Manager, respectively. With the exception of terms and provisions expressly agreed to in this Agreement, if the parties are unable to reasonably agree to the terms and conditions to be set forth in the Construction Administration Agreement, the Non-Relocation Agreement, the Assurance Agreement or the Management Agreement and as a result any document is not approved, executed and delivered by the date set forth herein, the parties' failure to approve, execute and deliver such document by such date shall not be deemed an Event of Default under this Agreement and the parties shall not be liable to each other. The approval of this Agreement by the Board does not constitute approval of those matters in the Stadium Agreements, which require a waiver from the Board. Each waiver may only be approved after a vote of two-thirds of the members of the Board and/or two-thirds of the Board members present in favor of the waiver upon a recommendation by the County Mayor or his designee. The parties agree that as a matter of its sovereign power and legislative authority, if the Board does not approve a waiver which causes the related Stadium Agreements not to be approved, executed and delivered by the date set forth herein, the Board's failure to approve, such Stadium Agreements by such date shall not be deemed an Event of Default under this Agreement and the parties shall be liable to each other.

Section 8.03 [NOT USED]

Section 8.04 [NOT USED]

Section 8.05 [NOT USED]

Section 8.06 Execution and Delivery of CDT Interlocal Agreement and CRA Interlocal Agreement

The valid execution and delivery of both the CDT Interlocal Agreement and the CRA Interlocal Agreement is a condition precedent to the valid execution and delivery of this Agreement.

ARTICLE IX

REMEDIES

Section 9.01 Termination Rights in General

The County, the City and the Team entered into this Agreement to set forth their respective undertakings to assure the retention of a Major League Baseball franchise in the City of Miami. Each understands that a successful result is dependent upon their mutual cooperation and adherence to the dates set forth in Article VIII. Accordingly, each is willing to proceed under this Agreement knowing that, as a practical matter, proceeding under this Agreement forecloses or alters the timing of other possible desirable courses of action. Unless otherwise provided in the Construction Administration Agreement, the City Parking Agreement, the Assurance Agreement or the Management Agreement, as the case may be, a termination of this Agreement shall have no effect on the Construction Administration Agreement, the City Parking Agreement, the Assurance Agreement or the Management Agreement.

Section 9.02 Termination Rights of County and City

By written notice to the City and the Team, the County may terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the County prior to termination) if the Team or the City breaches this Agreement in any material respect and has not cured such breach within 30 days after written notice from the County specifying the breach and demanding that it be cured.

By written notice to the County and the Team, the City may terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the City prior to termination) if the Team or the County breaches this Agreement in any material respect and has not cured such breach within 30 days after written notice from the City specifying the breach and demanding that it be cured.

The County has the right to terminate this Agreement, after seven (7) days written notice to the Team and the City, for its own convenience. If the County exercises its right to terminate this Agreement for its convenience, the City and the Team shall each be entitled to recover damages from the County; provided, however, damages shall be limited to actual reasonable out-of-pocket costs incurred by the City or the Team to develop the Baseball Stadium at the Baseball Stadium Site provided the aggregate amount of the County's liability to the Team and the City shall not exceed \$5 million. In addition, out of pocket expenses shall not include lost profits, lost tax collections, lost opportunities for economic development, and the like.

Section 9.03 Termination Rights of the Team

The Team may, by written notice to the County and the City, terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the Team prior to termination) if the County or the City breaches this Agreement in any material respect and has not cured that breach within 30 days after written notice from the Team specifying the breach and demanding that it be cured.

Section 9.04 Remedies

The County, the City and the Team agree that their respective remedies for any breach of or default under this Agreement shall be as set forth below:

- (a) The County, the City or the Team, as the case may be, shall have the right to terminate this Agreement as set forth in Section 9.02 or Section 9.03, as applicable.
- (b) The County, the City or the Team, as applicable, shall have the right to seek an injunction, mandamus, or other equitable relief in the nature of an injunction or mandamus, for violations of this Agreement, including particularly, but without limitation, a violation of Section 3.01 by the Team.
- (c) The County, the City and the Team shall each be entitled to recover damages from a party who breaches its representations or obligations under this Agreement; provided, however, that the damages shall be limited to each non-breaching parties' actual reasonable out-of-pocket costs incurred from the Effective Date forward to develop the Baseball Stadium at the Baseball Stadium Site; and provided further that the cumulative total amount of damages for which any party may be liable under this paragraph (c) to a particular other party shall not exceed \$5 million. In addition, damages shall not include punitive damages or consequential damages such as, for example, lost profits, lost tax collections, lost opportunities, and the like.
- (d) The County, the City or the Team agree that the remedies set forth in paragraphs (a) through (c) shall be the sole and exclusive remedies for any breach of or default under this Agreement and hereby waive any and all other remedies, including, without limitation, any form of equitable relief and any and all claims to any form of compensatory damages, consequential damages, incidental damages and punitive damages other than the remedies allowed in paragraphs (a) through (c). The remedies in paragraphs (a) through (c) are cumulative.
- (e) Nothing contained herein is intended to waive any right or remedy available to the County, the City or the Team under any of the other agreements contemplated under this Agreement, including, without limitation, the Construction Administration Agreement, the City Parking Agreement, the Management Agreement, the Assurance Agreement and the Non-Relocation Agreement.

Section 9.05 Mediation

- (a) If the parties are unable to reach mutual agreement with respect to any matter requiring the parties' mutual agreement under this Agreement, within 10 days following the unmet deadline prescribed herein for such agreement, the parties shall submit such matter to

mediation under the Mediation Procedures of the American Arbitration Association. Real estate development or construction matters shall be subject to the Construction Industry Mediation Procedures and other matters shall be subject to the Commercial Mediation Procedures. Once commenced, no such mediation shall be permitted to proceed for more than 15 days. Each party shall bear its own expenses, and the costs and expenses of the mediator and any administrative expenses of the mediation shall be borne one-third each by the Team, the County and the City.

ARTICLE X

MISCELLANEOUS

Section 10.01 Parties and Interests

This Agreement sets forth the entire agreement of the County, the City or the Team with respect to the subject matters covered by this Agreement. Any prior understandings or agreements, whether oral or written, with respect to subject matters covered by this Agreement are terminated and replaced by this Agreement. This Agreement is solely for the benefit of the County, the City or the Team, and no other person shall have any rights under or by virtue of this Agreement.

Section 10.02 Notices

All notices, demands, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered or when mailed by certified or registered mail postage prepaid, or delivered by commercial overnight courier, with proper address as follows:

If to the County:

With a copy to:

If to the City:

With a copy to:

If to the Team:

With a copy to:

Any party, by written notice to the others, may change its address for purposes of this Agreement.

Section 10.03 Amendments and Waivers

No amendment to this Agreement shall be binding upon the County, the City or the Team until the amendment is reduced to writing, approved by the Board of County Commissioners of Miami-Dade County and the City Commission of the City of Miami, and executed by the County, the City and the Team. No waiver of any terms of this Agreement shall be binding on the party granting the waiver until the waiver is reduced to writing, approved by the Board of County Commissioners of Miami-Dade County and the City Commission of the City of Miami, and executed by the party granting the waiver.

Section 10.04 Governing Law

The internal laws of the State shall govern this Agreement excluding the conflicts of laws principles thereof. All references in this Agreement to “applicable law” and similar terms, and the County’s and the City’s exercise of their governmental and regulatory authorities, shall mean and be in accordance with all laws as generally applied to all businesses in the County or City as applicable.

Section 10.05 Captions

The captions and headings in this Agreement are only for convenience and do not define, limit or describe the scope or intent of any of the provisions of this Agreement.

Section 10.06 Counterparts

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 10.07 Assignment

The Team shall not have any right to assign its rights or delegate its obligations under this Agreement, other than to an affiliate of the Team or a purchaser of the Team's Major League Baseball franchise in a transaction approved in accordance with Baseball Rules and Regulations, without the prior written consent of the County and the City, which consent shall not be unreasonably withheld or delayed. Without limiting the generality of the foregoing, the Team shall have the right to substitute a Team Affiliate in place of the Team as the party to any one or more of the Construction Administration Agreement, the City Parking Agreement and the Management Agreement, provided such substitution does not affect, either directly or indirectly, the Team's obligations to guarantee, give assurance of or otherwise secure the Team Affiliate's obligations as provided in this Agreement. The County and the City shall not have any right to assign their respective rights or delegate their respective obligations under this Agreement, other than to another entity of the County or the City, as applicable, without the prior written consent of the Team, which consent shall not be unreasonably withheld or delayed.

Section 10.08 Sovereign Rights

The County and City retain all of their respective sovereign prerogatives and rights under State law with respect to the planning, design, construction, development and operation of the Baseball Stadium.

It is expressly understood that notwithstanding any provisions of this Agreement and the Stadium Agreements and the County's status thereunder:

1. The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Baseball Stadium, the Baseball Stadium Site, the Public Infrastructure or the City Parking, or the operation thereof, or be liable for the same; and
2. The County shall not by virtue of this Agreement or the Stadium Agreements be obligated to grant the Team or the Stadium Developer any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Baseball Stadium, the Baseball Stadium Site, the Public Infrastructure or the City Parking.

Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the Planning and Zoning Department, DERM or any other County, City, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted,

withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

Section 10.09 Legal Effectiveness

This Agreement is signed on behalf of the parties by appropriate officers and officials to evidence their agreement on behalf of the County, the City and the Team, respectively, but subject in each case to the authorization and approval of the City Commission and the County Commission. Upon (a) satisfaction of all conditions precedents specifically stated in this Agreement and (b) approval by the City Commission and the County Commission, this Agreement shall become binding and legally effective. The City, the County and the Team agree that in the event the conditions precedent are not satisfied and this Agreement is not approved by the City Commission and the County Commission, this Agreement shall be null and void and of no further force and legal effect and the parties shall have no rights or obligations under this Agreement.

Section 10.10 Relationship of County and Team.

No partnership, joint venture or other business relationship is established between the County and the Team under this Agreement other than the relationship of the County as the owner of the Baseball Stadium and the Baseball Stadium Site and the Team as an independent contractor. Except as expressly provided in this Agreement, the Team and its employees, agents, independent contractors and consultants shall not be considered employees or agents of the County or to have been authorized to incur any expense on behalf of the County or to act for or to bind the County. The County and its elected and appointed officials, officers, employees, agents independent contractors and consultants shall not be considered employees or agents of the Team or to have been authorized to incur any expense on behalf of the Team or to act for or to bind the Team. Neither the County nor the Team shall be liable for any acts, omissions or negligence on the part of the other party or its employees, agents, independent contractors, licensees and invitees. The relationship created hereby is solely that of owner-independent contractor.

[End of Agreement. Signatures are on the following page.]

The County, the City, and the Team have executed this Agreement as of _____, 2007.

MIAMI-DADE COUNTY, FLORIDA

By _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

CITY OF MIAMI, FLORIDA

By _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

FLORIDA MARLINS, L.P.

By **DOUBLE PLAY COMPANY**
Its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT A

Entire Site

EXHIBIT B

Stadium Project Budget

(millions)

Direct Costs	\$ 389.4
Furniture, Fixtures and Equipment	4.2
Indirect and Soft Costs ⁽¹⁾	100.4
Contingency	9.0
Site Work ⁽²⁾	12.0
Demolition/Public Infrastructure	10.0

Total Stadium Project Budget⁽³⁾ \$ 525.0*

-
- (1) Includes construction management fee and design fees and demolition/Public Infrastructure. County and City soft costs are to be paid from interest earnings as provided in Section 6.02 and Section 6.03, respectively. Assumes reduction or waiver of permitting costs of City and/or County impact fees. The Stadium Project Budget will increase by up to \$1.7 million, to be paid by the Team, to the extent the reduction or waiver does not occur.
- (2) Includes allowances for site furnishing, grading, paving, fencing, signage, site lighting, site security system, and upgrades of existing on-site utilities directly required to support the Baseball Stadium.
- (3) Assumes April 1, 2011 completion and a sales tax exempt procurement program for construction materials. The Stadium Project Budget will increase by up to \$4.4 million, to be paid by the Team, to the extent the procurement of construction materials is not exempt from sales taxes.

*

EXHIBIT C

Source of Funds

(\$ millions)

<u>Source</u>	<u>County</u>	<u>City</u>	<u>General Obligation</u>	<u>Team</u>	<u>Total</u>
Team Funding				155,000,000	155,000,000
County Funding	199,000,000				199,000,000
City Funding		121,000,000			121,000,000
General Obligation Bonds			50,000,000		50,000,000
Total	199,000,000	121,000,000	50,000,000	155,000,000	525,000,000

* The County and City are also responsible for providing Public Infrastructure at no cost to the team.

EXHIBIT D

Public Infrastructure

1. Relocation of Existing Utilities under, on or near the Baseball Stadium Site that is required to support the Baseball Stadium.
2. Demolition of Orange Bowl, clean the site of debris and environmental hazards.
3. Closure of the streets
4. Street Relocation.
5. Implement recommendations of the transportation and parking study conducted by HNTB on behalf of the City of Miami dated September __, 2007 no later than April 1, 2011.
6. City Parking to be completed by no later than April 1, 2011.
7. Street lighting, sidewalk improvements and other safety and convenience measures required for the area surrounding the Baseball Stadium Site.
8. Improvements or repairs not on the Baseball Stadium Site that are required by a government entity for the timely occupancy and usage of the Baseball Stadium.

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