

FOURTH AMENDMENT TO MULTI-USE FACILITY

NON-EXCLUSIVE USE AGREEMENT

(Located at the Community Maritime Park)

CITY OF PENSACOLA AS SUCCESSOR TO
COMMUNITY MARITIME PARK ASSOCIATES, INC.

and

NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC

Dated as of _____, 2019

FOURTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT

THIS FOURTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT (“First Amendment”) is made and entered into this ____ day of _____, 2019, by and among NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC, a Florida limited liability company (“NFPB”), and the CITY OF PENSACOLA, as successor-in-interest to COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida non-profit corporation (“CMPA”).

RECITALS:

- A. Effective July 20, 2011, NFPB and the CMPA entered into that certain Multi Use Facility Non-Exclusive Use Agreement (the “Agreement”) relating to that certain Multi-Use facility located at the “Vince Whibbs, Sr. Community Maritime Park” (the “Park”) and said Agreement has been previously amended on three occasions. The Park is a 32-acre parcel located on Pensacola Bay in downtown Pensacola, Florida.
- B. NFPB owns a class "AA" minor league baseball team known as the “Pensacola Blue Wahoos,” presently an affiliated franchise of the Minnesota Twins Organization, referred to herein as the “Club.” The Club's existence in Downtown Pensacola, and specifically at the Community Maritime Park, continues to generate significant economic development activity and increase incremental taxable values of properties located in Downtown Pensacola.
- C. Pursuant to the parties Agreement, NFPB utilizes the Park as a forum for different events, including home baseball games, and related training, exhibition and possible post-season play.
- D. The parties have encountered several issues that need to be resolved and clarified such that the Agreement may be administered more appropriately.
- E. Pursuant to that certain Omnibus Bill of Sale, Assignment and Related Agreements between the CMPA and the City dated June 1, 2017 (the “Omnibus Agreement”), the CMPA assigned to the City all of its right, title and interest in, to and under the Use Agreement and transferred and conveyed to City all of its right, title and interest in and to all buildings, structures and improvements at the Vince Whibbs Sr. Community Maritime Park in Pensacola, Florida, which improvements include without limitation the Multi-Use Facility as such term is defined in the Use Agreement;
- F. The Agreement calls for the parties to address the sufficiency of certain surcharges on ticket sales and attendance not less than every three years. CMPA and NFPB believe that these negotiations and this Amendment to the Agreement will satisfy any and all necessity to review those charges in the future and that the Agreement, as amended herein, will continue to create a positive economic impact for the community.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, NFPB and CMPA, each intending to be legally bound, do hereby mutually agree as follows:

1. ATTENDANCE SURCHARGE. The term "Variable Attendance Surcharge" is hereby amended and substituted with the term "Attendance Surcharge" wherever the former appears in the Agreement or any Amendments thereto.

2. SUBSTITUTION OF PARAGRAPH. Paragraph 6(c) titled "Variable Attendance Surcharge" is deleted in its entirety and shall be replaced with the following language:

6. (c) Attendance Surcharge. NFPB shall collect on behalf of, and pay to CMPA during the Term a surcharge based on "actual paid attendance" at certain Club Home Games (the "Attendance Surcharge"). The Attendance Surcharge shall be based on "actual paid attendance" at regular season Club Home Games, EXCLUDING, HOWEVER (a) Club Home Game attendees for exhibition games, (b) all season ticket attendees for regular, exhibition, playoff or post-season games for the first year of play at the Multi-Use Facility; (c) all unredeemed vouchers and/or tickets distributed in the community by NFPG for educational, promotional, or charitable purposes. The Attendance Surcharge shall be one dollar and fifty cents (\$1.50) per attendee for all other actual paid attendance.

The Attendance Surcharge for each Baseball Season shall be paid to CMPA within sixty (60) days after the end of such Baseball Season. The Attendance Surcharge may, in NFPB's discretion, be separately charged and identified on each ticket as a "City/CMPA--surcharge," "attendance surcharge," or other identifying language. In no event shall the total Attendance Surcharge due the CMPA be less than \$125,000.00 in any of the first ten (10) years of the term of this Agreement. NFPB shall provide attendance and ticket sales reports to CMPA monthly or less frequently in order to coincide with the delivery of such information to the League.

No later than every three years, the parties agree to meet and review the sufficiency of the Attendance Surcharge. The parties agree to use their best efforts to amend said Attendance Surcharge as necessary and mutually agreeable.

3. BINDING EFFECT. This Agreement shall insure to the benefit of and remain fully binding upon the parties hereto and their respective successors and permitted assigns.

4. STATUS OF PARTIES. The parties hereto shall be deemed and construed as independent contractors for all purposes and not as the agent, employee, representative or servant of the other.

5. SEVERABILITY. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect unless so construing the Agreement would produce an inequitable result.

6. GOVERNING LAW AND JURISDICTION. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. The parties hereby submit to the jurisdiction of the United States District Court for the Northern District of Florida or of any Florida state court sitting in Escambia County, Florida, for the purposes of all legal proceedings arising out of or relating to this Agreement and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.

7. ENTIRE AGREEMENT. The Agreement, this Amendment and its Exhibits shall constitute the entire agreement between the parties hereto with respect to the subject matter herein contained. There are no agreements or understandings between the parties hereto, whether oral or written, regarding the subject matter hereof, which have not been embodied herein or incorporated herein by reference.

8. ATTORNEYS FEES. In the event either party to this action is required to take legal action to enforce the rights and remedies created herein, the prevailing party shall be entitled to recovery of attorneys' fees and costs, including without limitation fees and costs incurred in finalizing a fee and cost award.

IN WITNESS WHEREOF, this Amendment has been executed by duly authorized officers of NFPB and duly authorized officials of the City of Pensacola, each of whom hereby represents and warrants that he has the full power and authority to execute this Agreement in such capacity, all as of the day and year first above written.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ON FOLLOWING PAGES.]*

CITY:

CITY OF PENSACOLA,
a Florida municipal corporation

BY _____
Grover C. Robinson, IV, Mayor

ATTEST:

Ericka L. Burnett, City Clerk

(AFFIX CITY SEAL)

WITNESS:

WITNESS:

Print Name: _____

Print Name: _____

LEGAL IN FORM AND VALID AS DRAWN:

Susan A. Woolf, City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me on this ____ day of _____, 2019 by Grover C. Robinson, IV, Mayor of the City of Pensacola, a municipal corporation of the State of Florida, on behalf of said municipal corporation. Said person is personally known to me and/or produced a current Florida driver's license ad identification.

NOTARY PUBLIC

(AFFIX NOTARY SEAL)

NFPB:

NORTHWEST FLORIDA
PROFESSIONAL BASEBALL, LLC
A Florida limited liability company

By: _____
Quinton D. Studer, its Managing Member

WITNESS:

Print Name: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me on this _____ day of _____, 2019 by Quinton D. Studer, the Managing Member of Northwest Florida Professional Baseball, LLC, a Florida limited liability company, on behalf of the company. Said person is personally known to me and/or produced a current Florida driver's license ad identification.

NOTARY PUBLIC

(AFFIX NOTARY SEAL)