

USER AGREEMENT

PALM COAST LITTLE LEAGUE, INC. AND CITY OF PALM COAST

THIS USER AGREEMENT is made as of the 10th day of April 2007, by and between THE CITY OF PALM COAST, a Florida municipal corporation, whose address is 2 Commerce Boulevard, Palm Coast, Florida 32164 (hereinafter referred to as "City"); and PALM COAST LITTLE LEAGUE, INC., a Florida not-for-profit corporation, whose address is 8 Carlos Court, Palm Coast, Florida 32137. (hereinafter referred to as "Little League").

RECITALS

WHEREAS, the City and Little League desire to enter into an agreement regarding the use of the baseball/softball fields, batting cages and associated concession stands at Holland Park and the Indian Trails Sports Complex (collectively, the "Complex"), as well as the construction and use by Little League of a building which may be utilized for meeting space, storage, fundraising, training and other uses related to its baseball/softball activities; and

WHEREAS, the City has determined that this Agreement is in the public interest and serves and advances the public purpose,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged the parties hereto covenant and agree as follows:

SECTION 1. AGREEMENT/USE: During the term this Agreement, Little League shall have the primary proportional right to use the Complex between January 15th and July 31st and also between September 1st through November 30th of each year. The proportional usage shall be based upon a lottery system, as may be modified from time-to-time by the City and implemented by the City, in which the Little League would be awarded a number of draws proportionate to the number of participants in the programs of the Little League relative to baseball and softball and the proportionate number of other participants of other organizations in baseball and softball programs; provided, however, that any other participant that has an agreement with Flagler County for the exclusive use any Flagler County ball fields shall not be permitted to participate in the lottery. Failure of Little League to use the Complex on a scheduled day shall result in a fee being charged to Little League in the amount of the user fee for such facilities as established in a fee resolution adopted by the City Council of the City. During the term of this Agreement, Little League shall also have the exclusive use (for meetings, storage, fundraising, training and other uses related to its baseball/softball activities) of a building to be constructed by Little League within the Complex by and at the expense of Little League with structure shall be the property of the City, but the provisions of this Agreement relating to potential compensation to Little League are hereby acknowledged. The City may request (upon reasonable prior notice to Little League) that Little League

allow the temporary use of the building by the City, which consent Little League may not unreasonably withhold or delay and the City may charge a fee for such usage by other users as established in a fee resolution adopted by the City Council of the City. The final conceptual plan including, but not limited to, architectural style, for construction of said building shall be subject to prior review and approval by the City, who shall supply water, sewer, electric and related utility hook-ups to the building site and will waive any permit and/or impact fees (except as to water and sewer service, which are required by any bond covenants). The parties agree to cooperate in auditing the financial matters relating to the construction activities at the Complex. No lien of any type may be placed on City property.

SECTION 2. TERM: The term of this Agreement shall commence on the even date here of (the "Commencement Date") and shall expire fifteen (15) years from the commencement Date (from the date of certificate of occupancy). If, prior to the running of the initial fifteen (15) year period, the City terminates this Agreement, the City shall pay Little League the then current value of the building less the value of the use of the City's real property as determined by the parties through the average of two procured estimates of value from qualified Florida real estate appraisers with an appraiser being retained by Little League and another appraiser being retained by the City. After the initial period of fifteen (15) years, Little League shall not be entitled to any compensation. After the fifteen (15) year term, upon the request of Little League; the City may authorize Little League to use the Complex, subject to the conditions set forth herein, for additional periods of five (5) years not to exceed three (3) such periods.

SECTION 3. PERMIT FEE: Little League shall pay the City an annual permit fee for the use of the building area of real property owned by the City said fee being in the amount of One Dollar (\$1.00) annually during the term of this Agreement.

SECTION 4. COACHES CLINICS: Little League shall either: (a) conduct its own mandatory coach's clinics; or (b) require its coaches to attend a similar mandatory coach's clinic approved by the City. All such clinics shall be of a form and substance as well as at such times and duration as determined by the City. All Little League coaches, officials or any other person who engage in contact with children shall be subject to criminal background checks to the satisfaction of the City and Little League shall provide the City with copies of all background checks; but, it shall be the obligation of Little League to review and analyze same although the City reserves the right to perform additional review and analysis and take action thereon.

SECTION 5. BEVERAGE CONTRACT(S) Little League shall honor the terms and conditions of the City's current beverage contract with Pepsi to the extent it involves the Complex and shall also honor any extensions, renewals and/or modifications thereof, including new beverage contracts.

SECTION 6. FRDAP GRANTS: Little League shall comply with and shall do nothing to impair, impede or contradict the terms and conditions of any Florida Recreation Development Assistance Program (FRDAP) grants currently in place or

entered into by the City during the term of this Agreement. Little League shall cooperate with the City if it applies for FRDAP grants in the future and shall assist the City as to any and all auditing or financial matters relating to this Agreement.

SECTION 7. DEFAULT: If, under this Agreement, either party shall fail to perform any of the obligations set forth herein, the non-breaching party shall (after providing the breaching party not less than fifteen (15) days prior written notice and opportunity to cure) have the option, to be exercised in its sole discretion, to either: (i) seek specific performance of the other party's obligations hereunder; or (ii) terminate this Agreement. If Little League terminates this Agreement prior to the expiration of the initial fifteen (15) year period, it shall not be entitled to compensation from the City in any respect under this Agreement.

SECTION 8. FORCE MAJEURE: If the Complex is rendered unsuitable for use by Little League for its intended purposes by reason of force majeure, the City and Little League are released from their obligations hereunder. *Force Majeure* shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages or other labor disturbances, riots or civil commotions war or other act of any foreign nation, power of government, or governmental agency or authority, terrorist act, or any other cause like or unlike any cause mentioned which is beyond the control of the City.

SECTION 9. INGRESS/EGRESS: All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways and all ways of access to public utilities of the Complex shall be kept unobstructed by Little League and shall not be used for any purpose other than ingress or egress to and from the Complex by Little League.

SECTION 10. COPYRIGHT FEES, ROYALTIES AND OTHER LICENSES: If any material, composition or name to be used or performed at the Complex is copyrighted, Little League is responsible for securing, before using or employing such material, composition or name, the assent in writing, of the owner or licensee of such copyright. Little League agrees to be fully responsible for any fees, royalties and licenses in connection therewith. Little League shall advise the City of each use of such material, composition or name within ten days after such use. Little League shall have the obligation to obtain any and all approvals, licenses or similar actions relating to the use of the intellectual property of others at the Complex.

SECTION 11. ABANDONED PROPERTY: Any property left in the Complex shall be deemed abandoned and shall become property of the City to be disposed of or utilized at the City's sole discretion.

SECTION 12. REPAIRS AND MAINTENANCE: Little League agrees to be responsible for all damage to buildings, grounds, fields and equipment incident to the use of said Complex. Little League shall make no temporary or permanent modifications to the Complex without the prior written consent of the City. Little League shall maintain

the Complex in terms of its usage of the . Complex and shall be responsible for maintaining the structure constructed by Little League in good order.

SECTION 13. COMPLIANCE: Little League and its members agree to use and occupy the Complex in accordance with all City ordinances, codes, laws, rules and regulations including but not limited to fire codes. Little League agrees that Little League shall be subject to all conditions of each and every grant or similar relations to which the Complex is subject, to include, but not be limited to, public use, restrictions on income and/or concessions and any and all related matters. Little League shall use and occupy the Complex in a safe and careful manner and shall comply with all applicable City; State and Federal laws and rules and regulations as prescribed by the fire and police departments and other governmental authorities, as may be in force and effect relating to the Complex.

SECTION 14. INDEMNIFICATION AND RELEASE, ETC.: Little League agrees that on behalf of itself and any and all derivative claimants, of whatsoever type or nature or relationship, it understands that the City and its officers, agents and employees, assume no liability whatsoever for any personal injury or property damage or loss that Little League or any derivative claimant may suffer, of whatsoever type or nature or cause, as a result of the condition or use of the Complex. Little League agrees that it will indemnify, hold and save the City and its officers, agents, contractors and employees whole and harmless and defend same from and against all claims, demands, actions, damages, costs, loss, liabilities, expenses and judgments of any nature recovered from or asserted against the City on account of injury or damage or injury may be incident to, arise out of, or be caused, either proximately or remotely wholly or in part, by an act, omission, negligence or misconduct on the part of Little League or any of its agents, servants, employees, contractors, patrons, guests or invitees or of any other person using the Complex, related to the Complex or when such injury or damage is the result, proximate or remote, of the use by Little League or any of its agents, servants, employees, contractors, patrons, guests, or invitees of City property, or when any such injury or damage may in any other way arise from or out of the use by Little League, its agents, servants, employees, contractors, patrons, guests or invitees of the Complex or associated facilities. Little League covenants and agrees that in case the City shall be made party to any litigation against Little League or in any litigation commenced by any party other than Little League relating to this Agreement or the complex or associated facilities, then Little League shall and will pay all costs and expenses, including, but not limited to, reasonable attorney's fees and court costs, incurred or imposed upon the City by virtue of any such litigation. In consideration of, and as an inducement for, the City allowing Little League to use the Complex, Little League, and on behalf of and for all derivative claimants including, but not limited to, any and all heirs, assigns, executors, beneficiaries, administrators and any and all other claimants or legal representatives of whatsoever nature or relationship, do hereby forever fully release, remiss, indemnify, acquit, forever discharge and hold harmless and blameless, the City and its officers, employees and agents for any personal injury or property damage, of whatsoever type or nature, the Little League or any derivative claimant as set forth above, or Little League's successor, or those listed above may suffer as a result of, directly or indirectly; Little

League's use of the Complex or City property. Little League assumes any and all risks, known or unknown, relative to the use of the Complex or City property and covenants on behalf of Little League and all derivative claimants, as aforementioned, not to sue the City or its officers, employees and agents or any one of them or combination of them.

SECTION 15. INSURANCE: Little League further agrees to purchase at its own expense a comprehensive liability insurance policy, including public liability and property damage, written by a company licensed to do business in the State of Florida and acceptable to the City, covering the Complex, operations hereunder, and productions therein in the amount of ONE MILLION AND NO/100ths DOLLARS (\$1,000,000.00) for bodily injury and ONE MILLION AND NO/100ths DOLLARS (\$1,000,000.00) property damage or combined single limit of ONE MILLION AND NO/100ths DOLLARS (\$1,000,000.00). The City shall be named as an insured in any insurance policy required hereunder. Little League shall also maintain worker's compensation insurance and such other coverage as the City may reasonably require if they engage employees other than volunteers. Little League agrees that the insurance purchased hereunder shall be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity. A certificate of evidencing the insurance as required under this Agreement shall be delivered to the City no later than ten (10) days prior to the start of the Complex (execution of this Agreement) and annually thereafter. Each such certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving the ten days written notice to the City. Providing and maintaining insurance coverage is a material term of this Agreement. The City may require that Little League procure additional levels of insurance on a periodic basis in order to protect the City at an equivalent level with consideration being given to economic conditions, inflation and other pertinent conditions.

SECTION 16. PERSONAL/NO ASSIGNMENT: This Agreement is personal and Little League shall not assign this Agreement nor sublet the Complex or any part without the prior written consent of the City.

SECTION 17. TAXES: The City shall not be responsible for the payment of any taxes arising out of or connected with the use of the Complex by Little League. Little League shall be responsible and be required to pay upon demand to the City an amount sufficient to discharge all taxes which may arise from or in connection with Little League's use of the complex.

SECTION 18. EQUAL ACCESS: The use of the Complex is subject to its use not being implemented in a discriminatory manner and, to that end, no person shall be denied the equal privileges and enjoyment of having access and use of the Complex on the basis of race, color, national origin, religion, age, veteran's status, sex or disability.

SECTION 19. RELATIONSHIP OF THE PARTIES: It is agreed that Little League, its promoters, its members, its agents and its employees are independent