**MAINTENANCE AND OPERATIONS AGREEMENT**

**(BIG LEAGUE DREAMS CLAY COUNTY SPORTS PARK)**

**THIS MAINTENANCE AND OPERATIONS AGREEMENT** (the "MOA") is entered effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Effective Date") by and between the CLAY COUNTY DEVELOPMENT AUTHORITY, an independent special district of the State of Florida (the "CCDA") and BIG LEAGUE DREAMS CLAY COUNTY, LLC, a Florida limited liability company ("BLD Clay County").

**RECITALS**

A. The CCDA, in partnership or otherwise in cooperation with the County of Clay (the “County”) or any other Governmental Partner (as hereinafter defined) , intends to develop and construct a recreational sports park in Clay County featuring six (6) adult and youth softball/baseball diamonds; two (2) indoor food and beverage concession facilities; an indoor soccer fieldhouse adaptable for group events and functions; administration and maintenance facilities; safety netting and fencing; a batting cage; a children's playground; and other amenities (the "Sports Park").

B. The Sports Park is intended to promote economic development in and to benefit citizens of the County. Accordingly, the CCDA and/or its Government Partner wish(es) to finance the construction of the Sports Park.

 C. Prior to the execution of this MOA, the CCDA and Big League Dreams USA, LLC ("BLD USA") entered a license agreement by which BLD USA licensed the use of the name "Big League Dreams" and other intellectual property rights held by BLD USA to the CCDA for use in connection with the Sports Park and agreed not to operate another Big League Dreams facility within a specified radius from the Sports Park (as amended, the "License Agreement").

 D. Concurrently with the execution of this MOA, the CCDA will enter a Consulting Services Agreement (the "Consulting Agreement") with BLD Clay County by which BLD Clay County will provide planning, design and construction consulting services to the CCDA with respect to the Sports Park Improvements (as hereinafter defined) to be constructed at the Sports Park.

 E. The boundaries of the Sports Park shall be established during the design phase of the Consulting Agreement and then set forth in a diagram to be attached as Exhibit A hereto. The Sports Park, by the Completion Date, shall include the features, structures, amenities and improvements listed in the attached Exhibit B and the FF&E listed in the attached Exhibits C-1 and C-2.

 F. The CCDA wishes to contract the maintenance and operation of the Sports Park to an experienced company. Accordingly, the CCDA and BLD Clay County wish to enter this MOA by which BLD Clay County shall (1) maintain the Sports Park and the Sports Park Improvements; (2) program sports and recreational play on the fields and courts to be constructed at the Sports Park; and (3) operate the Sports Park, including the F&B Facilities.

**NOW, THEREFORE**, the parties hereby agree as follows:

**AGREEMENT**

1. Definitions. The following defined terms (each with initial capital letters) used in this MOA shall have the meanings given below unless expressly provided to the contrary:

 Affiliate means BLD USA and any entity in which BLD USA or BLD Clay County owns or controls at least a Controlling Percentage.

 Alcoholic Beverages Fee is defined in Section 8.2 of this Agreement.

 Alcoholic Beverages Gross Revenues means and includes all revenues received by BLD Clay County or any Affiliate relating to or derived from the sale of alcoholic beverages at the Sports Park unless such item of revenue is specifically excepted or excluded under Section 7.2 or 7.3. Alcoholic Beverages Gross Revenues calculations are reported on the Quarterly and Annual Gross Revenues Statements.

 Annual Gross Revenues Statement means a statement in the form of Exhibit D that sets forth Gross Revenues and Alcoholic Beverages Gross Revenues for the Operating Year just concluded.

Base Maintenance and Operations Fee is defined in Section 8.1 of this Agreement.

BLD Clay County means Big League Dreams Clay County, LLC, a Florida limited liability company which shall maintain and operate the Sports Park.

BLD Sponsorships is defined in Section 7.3(c).

 BLD Sports means Big League Dreams Sports, LLC, a California limited liability company, which is an Affiliate. BLD Sports owns and organizes (on a non-exclusive basis) tournaments and camps/clinics held at various Big League Dreams Sports Parks, contracts for BLD Sponsorships and with other sponsors and advertisers and contracts with hotels to serve as host hotels for out-of-town players and guests.

BLD USA means Big League Dreams USA, LLC, a California limited liability company. BLD USA has licensed Big League Dreams intellectual property rights to the CCDA through the License Agreement.

Capital Expenditures means expenditures for the replacement, major repair or reconstruction of Sports Park Improvements which (a) are building roofs, slabs, foundations or walls; heating, ventilation, air conditioning, plumbing, sewer, utility, irrigation and drainage systems; field, parking lot and perimeter lighting; paved areas, including parking lots and circulation walkways; field maintenance equipment, batting cage equipment, office equipment, kitchen equipment and F&B Facility carpeting and furniture; safety netting and fencing; and outfield wall and stadium design features, including crowd scene vinyl and graphics and (b) cost more than $2,500 in any one instance and have a projected useful life of at least three (3) years.

Capital Expenditure Reserve Account is defined in Section 6.2.

Capital Improvements means, subsequent to the Completion Date, any new construction, improvement or addition (as opposed to Maintenance and Repairs to, or the Capital Expenditure relating to, existing Sports Park Improvements) costing more than $15,000 in any one instance and having a projected useful life of at least three (3) years.

 Completion Date means the first day of the first month following the earliest date upon which the Sports Park Improvements are substantially completed, are accepted by BLD Clay County in writing and the right of entry to maintain and operate the Sports Park shall have been delivered to BLD Clay County.

 Consulting Agreement means the Consulting Services Agreement to be entered concurrently herewith between the CCDA and BLD Clay County by which BLD Clay County will provide planning, design and construction consulting services to the CCDA for the construction of the Sports Park Improvements.

Controlling Percentage means the ownership of, or the right to vote, fifty-one percent (51%) or more of the total combined voting shares, units or membership interests, as applicable, of another entity.

CCDA means the Clay County Development Authority, an independent special district of the State of Florida. For purposes of this MOA, "CCDA" shall also mean and include any Government Partner with which the CCDA partners or otherwise associates contractually to perform the obligations of the CCDA hereinafter described.

CCDA Activities is defined in Section 24.

CCDA Manager means the CCDA-designated manager who shall administer this MOA on behalf of the CCDA.

County means Clay County, Florida.

Diamonds means any baseball/softball diamond constructed at the Sports Park, whether a Stadium Design Field or a non-Stadium Design Field.

 Effective Date is the effective date of this MOA set forth in the introductory paragraph above.

[Exterior-Facing Message Board means an unobstructed structure (a) located on or near the minimum setback line of a freeway or arterial right-of-way, (b) capable of displaying a two-faced sign, (c) with rotating sign panels permitting up to ten (10) advertising messages to be displayed one-at-a-time, (d) with a minimum sign panel dimension of 15 feet by 25 feet and (e) capable of displaying time and temperature data.]

 [Exterior-Facing Signage means unobstructed signage (a) within 500 feet of a freeway or arterial right-of-way and (b) enabling a display of at least four signs of a minimum dimension of 14 feet by 48 feet with no minimum distance requirement between such signs.]

 F&B Facility means a covered and enclosed food and beverage concession facility with a seating capacity of at least [TBD], whether one or more, to be constructed at the Sports Park and maintained and operated by BLD Clay County.

 Fees means the Base Maintenance and Operations Fee, the Alcoholic Beverages Fee and the Minimum Maintenance and Operations Fee.

 Fieldhouse means a covered, four walled structure with heating and air conditioning to be constructed at the Sports Park and maintained and operated by BLD Clay County at which indoor soccer with dasher boards can be played.

 Force Majeure Event means declared or undeclared war, sabotage, revolutions, riot or acts of terrorism or civil disobedience; acts or omissions of governmental agencies; accidents, fires or explosions; floods, earthquakes or other acts of God; strikes or labor disputes; shortages of materials; or any other event not within the control of BLD Clay County or the CCDA and not caused by the negligence or intentional wrongful conduct of BLD Clay County or the CCDA which makes the performance of any duty or responsibility of either party hereto under this MOA impossible or impractical.

 FF&E means all furniture, furnishings, trade fixtures, apparatus and equipment, including without limitation maintenance vehicles and equipment, cash registers, sports equipment, benches, uniforms, kitchen equipment, appliances, glassware, silverware, office equipment, computers and computer hardware, software, servers, networks and systems, copy machines, facsimile machines, telephone systems (not including pay telephones), automated teller machines (ATMs), signage and other personal property used in or held in storage for use in the operation of the Sports Park, other than Operating Inventory. All FF&E shall be of first quality. Initially, FF&E shall include, without limitation, those items listed on Exhibit C, attached hereto and incorporated herein by this reference. FF&E includes both (a) fixtures and related items of furniture, furnishings and equipment to be purchased and installed by the Sports Park General Contractor selected to construct the Sports Park Improvements as part of the construction contract (Exhibit C-1) and (b) furniture, furnishings and equipment to be purchased by the CCDA separately from the construction contract or which is purchased by BLD Clay County and reimbursed by the CCDA (Exhibit C-2).

 Full Operating Year means any twelve (12) month calendar year period during the Term commencing on January 1 and continuing through December 31.

 Government Partner shall mean the County of Clay and/or any city or political subdivision within Clay County with which the CCDA partners or otherwise associates contractually to perform the obligations of the CCDA described in this MOA.

 Gross Revenues means and includes all revenues received by BLD Clay County or any Affiliate relating to or derived from the Sports Park except Alcoholic Beverages Gross Revenues unless such item of revenue is specifically excepted or excluded under Section 7.2 or 7.3. Gross Revenues calculations are reported on the Quarterly and Annual Gross Revenues Statements.

 Hazardous Materials means any material, substance or matter which is flammable, explosive, corrosive, radioactive or toxic, or which contains asbestos, or is a pesticide, or is a chemical known to cause cancer or reproductive toxicity or which is defined as a hazardous substance, material or waste, or as a toxic substance, material or waste, in any federal, State of Florida or applicable local law, regulation or order.

Impositions means all taxes, assessments, levies or other charges, other than Real Property Taxes, which at any time may be imposed, assessed, levied or charged to or on BLD Clay County, the Sports Park or the operation of the Sports Park, provided such taxes, assessments, levies or other charges are imposed, assessed, levied or charged generally by the CCDA, a Government Partner or other governmental agency and not just to BLD Clay County or the Sports Park.

Indemnitees is defined in Section 15.1.

Insurance Requirements means all requirements of each insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Sports Park.

Late Night Events means (1) baseball or softball games or other group activities which are scheduled to begin (a) at or after 10:45 PM on the Diamonds on Sunday, Monday, Tuesday, Wednesday or Thursday nights not preceding a legal holiday, or (b) at or after midnight on Friday or Saturday nights or nights preceding a legal holiday (for example, at school-sponsored high school graduation night parties or police and fire department late night softball tournaments) on the Diamonds or (2) indoor soccer or other indoor games or activities which are scheduled to begin (a) at or after 11:45 PM in the Fieldhouse or the F&B Facilities on Sunday, Monday, Tuesday, Wednesday or Thursday nights not preceding a legal holiday or (b) at or after 1:00 AM on Friday or Saturday nights or nights preceding a legal holiday in the Fieldhouse or the F&B Facilities.

League Play means a series of games scheduled by BLD Clay County or a Government Partner over a period of time longer than 18 days at one or more locations as to which (i) participating teams pay a per team and/or per player registration fee directly to BLD Clay County or the Government Partner and (ii) no field rental fee is assessed to or paid by any third party tournament organizer.

Legal Challenge means any action or other legal proceeding (including, without limitation, any environmental challenge) brought by any third party seeking to block construction of the Sports Park Improvements or to contest the validity of this MOA, the License Agreement, the Consulting Agreement or any environmental impact report associated with the Property.

Legal Requirements means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, including without limitation any Government Partner, which now or hereafter may be applicable to BLD Clay County, the Sports Park or the operation of the Sports Park.

License Agreement means the License Agreement by and between the CCDA and BLD USA.

License Date means the earliest date on which all permits and licenses required to sell beer, wine and mixed drinks at the Sports Park shall have been obtained by BLD Clay County.

 Maintenance and Repairs means all routine and ordinary maintenance and repairs to the Sports Park Improvements required to preserve them in good working order and repair during their projected useful life which do not constitute Capital Expenditures.

 Minimum Maintenance and Operations Fee is defined in Section 8.2.

MOA means this Maintenance and Operations Agreement.

Operating Account is defined in Section 6.1.

Operating Inventory means consumable items used or held in storage for use in the operation of the Sports Park, including lineup cards, retail pro shop merchandise, food and beverage inventory, kitchen supplies, paper and plastic ware, bathroom supplies, paper towels, fuel, cleaning materials, fertilizers, pesticides, seed, maintenance parts and supplies, office supplies and other similar items.

Operating Quarter means any calendar quarter during the Term subsequent to the Completion Date in which the License Date does not fall.

 Operating Year means either a Full Operating Year or a Partial Operating Year.

 Partial Operating Quarter means any calendar quarter in which the License Date falls on any day other than the first day of such calendar quarter.

 Partial Operating Year means any calendar year in which the License Date falls on any day other than January 1 or any calendar year in which the Term ends on any day other than December 31.

 Plans, Specifications and Designs is defined in Section 4.1.

 Property means the [approximately (40) acres of real property] located in Clay County, Florida and described in Exhibit A on which the Sports Park will be constructed and developed.

 Quarterly Gross Revenues Statement means a statement in the form of Exhibit D that sets forth Gross Revenues and Alcoholic Beverages Gross Revenues for the calendar quarter just concluded.

Real Property Taxes shall include all real property and possessory interest taxes, charges or assessments which are levied, assessed or imposed by any governmental authority or political subdivision thereof with respect to the Property, the Sports Park or the Sports Park Improvements, or the use, occupancy or operation of the Sports Park or the Sports Park Improvements by the CCDA, the County, any other Government Partner, BLD Clay County or any Affiliate or any other person or entity, and any taxes, charges or assessments levied, assessed or imposed in addition to or in lieu of such real property or possessory interest taxes, charges or assessments.

Senior Staff means the general manager, sports director, food and beverage director and maintenance director.

Sports Park means the high quality, multi-purpose recreational sports park to be known (unless the parties otherwise agree) as the "Big League Dreams Clay County Sports Park" to be constructed on the Property containing the elements set forth in Exhibit B. The boundaries of the Sports Park are set forth in Exhibit A. The Sports Park shall not include any area of the Property located outside of the exterior fencing and gates restricting access to the Sports Park Improvements except for the parking lot, driveways and the paved sidewalks immediately adjacent to the exterior fencing.

Sports Park Architect means the architectural firm to be retained by the CCDA to develop Plans, Specifications and Designs for the Sports Park Improvements.

Sports Park Expenses means (unless provided otherwise in this MOA) all costs and expenses incurred by or imposed on BLD Clay County in the operation and maintenance of the Sports Park, including (a) all expenditures incurred by or imposed on BLD Clay County in the performance of its obligations under this MOA; (b) the Fees; (c) all expenses specifically identified as "Sports Park Expenses" in this MOA; (d) all costs (e.g., cost of goods or cost of revenues) incurred by or imposed on BLD Clay County in generating Gross Revenues; (e) all funds paid for Capital Expenditures; and (f) all other expenses incurred by or imposed on BLD Clay County in connection with the Sports Park or this MOA, which expenses if assumed by BLD Clay County would be consistent with the role of a sports park maintenance and operations service provider.

Sports Park Improvements means the buildings, fields, structures, advertising displays, landscaping, infrastructure, utilities, FF&E (as herein defined) and other improvements or facilities listed in Exhibit B or constructed or installed or to be constructed or installed on the Property by the CCDA, except Capital Improvements.

Sports Park General Contractor means the general contractor to be retained by the CCDA to construct the Sports Park Improvements pursuant to the Plans, Specifications and Designs developed by the Sports Park Architect.

Stadium Design Field is a baseball/softball diamond constructed so as to incorporate architectural design features developed by BLD USA and inspired by professional baseball stadiums in which games are now or have been played by professional baseball teams, including, without limitation, the foul pole to foul pole look of the field from the batter’s perspective, including depictions of crowd scenes, facades, outfield walls, bullpens, grandstands, skylines, historically relevant scoreboards and landscaping, as well as the exterior look of the outside of the grandstand structures.

 Term is defined in Section 3.1.

 Total Gross Revenues means Gross Revenues plus Alcoholic Beverages Gross Revenues.

 Tournament Play means a series of games scheduled by a third party organizer over a period of time less than 18 days at one or more locations as to which (i) participating teams pay a per team and/or per player registration fee directly to such third party organizer, not BLD Clay County or any Government Partner, and (ii) such third party tournament organizer pays a field rental fee to BLD Clay County or any Government Partner for use of fields owned or operated by BLD Clay County or the Government Partner.

 Waiver Period means the first Partial Operating Quarter and the next twelve (12) calendar quarters thereafter.

 Youth Games means any baseball, softball or indoor soccer game at the Sports Park whose participants are limited by the sponsoring organization (or by BLD Clay County or BLD Sports) to youth (age 17 or under).

 2. Sports Park Elements and Operating Covenant.

 2.1 Sports Park Elements. The boundaries of the Sports Park are to be established during the design phase of the Consulting Agreement and then set forth in a diagram to be attached as Exhibit A hereto. The Sports Park, by the Completion Date, shall include the features, structures, amenities and improvements listed in the attached Exhibit B and the FF&E listed in the attached Exhibits C-1 and C-2.

2.2 Operating Covenant. The CCDA hereby contracts with BLD Clay County to maintain and operate the Sports Park only as a recreational sports park with food and beverage and group business facilities pursuant to the terms of this MOA, and BLD Clay County covenants and agrees to maintain and operate the Sports Park only as a recreational sports park with food and beverage and group business facilities pursuant to the terms of this MOA, throughout the Term.

 3. Term.

 3.1 Term. The term of this MOA ("Term") shall commence on the Completion Date and expire on the last day of the calendar month during which the fortieth (40th) anniversary of the Completion Date occurs.

 3.2 Condition of Sports Park at Termination. At the expiration or earlier termination of the Term, BLD Clay County shall terminate its services and vacate the Sports Park, leaving all FF&E and the facilities in good and broom clean condition.

 4. Performance Obligations of the Parties.

 4.1 Construction of Sports Park Improvements. On or before the Completion Date, the CCDA, through the Sports Park General Contractor, shall construct the Sports Park and Sports Park Improvements in accordance with the plans, specifications and designs to be developed by the Sports Park Architect and mutually approved by the CCDA and BLD Clay County (the “Plans, Specifications and Designs”). A link to the Plans, Specifications and Designs so approved by both parties shall be attached to this Agreement as Exhibit D upon the conclusion of the design phase of the Consulting Agreement. The cost to construct the Sports Park Improvements and to purchase the FF&E shall be borne by the CCDA. If the Sports Park and Sports Park Improvements, absent a Force Majeure Event, have not been completed on or before the third anniversary of the Effective Date, BLD Clay County shall, subject to the notice and cure provisions of Section 12.2(a), have the option to terminate this MOA, without further obligation or liability.

 4.2 FF&E. On or before the Completion Date, the CCDA, through the Sports Park General Contractor, shall ensure that the Sports Park Improvements and the FF&E to be procured and delivered to or installed at the Sports Park, including, without limitation, those items identified on Exhibit C, have been delivered or installed and are of the quality standard to be identified in the Plans, Specifications and Designs for the Sports Park, a link to which shall be attached as Exhibit D hereto. All FF&E will be owned by the CCDA. BLD Clay County shall, however, be exclusively entitled to use the FF&E but shall also, as required by Section 5.1(i), be obligated to maintain, repair and replace it as required at BLD Clay County's expense. In developing its FF&E budget, the CCDA shall take note that FF&E includes both (a) fixtures and related items of furniture, furnishings and equipment to be purchased and installed by the Sports Park General Contractor selected to construct the Sports Park Improvements as part of the construction contract and (b) furniture, furnishings and equipment to be purchased by the CCDA (or by BLD Clay County at the CCDA's direction and reimbursement) separately from the construction contract.

 4.3 Utilities and Services. On or before the Completion Date, the CCDA, through the Sports Park General Contractor, shall ensure that all utilities and services necessary for the operation of the Sports Park, including without limitation gas, electrical, water, telephone, communications, satellite or cable television lines or sources and sewer and storm drainage (including all connections necessary to enable BLD Clay County to activate the relevant service with only an activation charge, not a charge to connect the source to existing service points) have been installed.

 [4.4 Exterior-Facing Signage and Message Board. BLD Clay County shall take all necessary steps to secure all necessary approvals and permits to enable BLD Clay County to construct, at its expense but at its option, (a) Exterior-Facing Signage on the exterior walls of the Sports Park and (b) an Exterior-Facing Message Board to be constructed and maintained on the Property or on an easement connected to the Property in the event the Property is located adjacent to or visible from an interstate highway or state arterial. The parties understand that the right to maintain the Exterior-Facing Signage and the Message Board is subject to the requirements of the federal Highway Beautification Act and County signage ordinances. Both the Exterior-Facing Signage and Message Board are intended to be used in community sports facility sponsorship programs to benefit the Sports Park and shall comply with the following requirements:

(a) No advertising of alcoholic beverages shall be permitted;

(b) No advertising of adult entertainment facilities or sexually

oriented businesses shall be permitted; and

(c) No advertising of tobacco products shall be permitted.]

 4.5 Prohibited Interior Signs. BLD Clay County shall not erect or maintain, or allow to be erected and maintained, signs within the Sports Park which contain copy relating to alcoholic beverages (other than beer, advertising related to which is permitted), tobacco products or adult entertainment facilities.

* 1. ­Environmental Approvals. On or before the Completion Date, the CCDA at its cost, through the Sports Park General Contractor, shall ensure that all necessary environmental approvals for the development of the Sports Park and the construction of the Sports Park Improvements have been obtained.

 4.7 Construction Standards. The CCDA, through the Sports Park Architect shall prepare the Sports Park Plans, Specifications and Designs with a view to making the long term Maintenance and Repair of the Sports Park as efficient and cost effective as possible. Long term maintenance costs shall be taken into account during the design of the Sports Park and design plans shall endeavor to reduce them insofar as reasonably possible recognizing the extraordinarily heavy use the Sports Park is anticipated to receive. Design aesthetics difficult to maintain over time and heavy use shall be minimized. All Plans, Designs and Specifications for the Sports Park and the Sports Park Improvements in general, and the grading, drainage and soil plans in particular, shall be subject to the reasonable approval of BLD Clay County as to their operational effectiveness and long term Maintenance and Repair cost. Neither the CCDA nor the Government Partner shall change the Plans, Specifications and Designs for the Sports Park once they have been finalized without the written consent of BLD Clay County. Specifically, without limitation, the following construction standards must be met in the original Plans, Specifications and Designs for the Sports Park Improvements:

 (a) Turf (Natural). All natural grass in outfield playing fields shall be a brand of hybrid Bermuda and shall have a subterranean drainage system and root zone growing medium as reasonably approved by BLD Clay County.

 (b) Turf (Artificial). Artificial turf infields shall be constructed on all Diamonds. The FF&E list shall include specific maintenance equipment designed to maximize the life of the artificial turf and minimize man/woman hours required to maintain and care for the artificial turf including, specifically without limitation, grooming machines.

 (c) Landscaping. The interior and exterior landscaping plan shall be designed to maximize operational effectiveness and minimize long term Maintenance and Repair cost while minimally meeting the landscape ordinance of any applicable Government Partner applicable to all new construction.

 (d) Batting Cages. The manufacturer and installer of the batting cage equipment shall be subject to the reasonable approval of BLD Clay County as to their experience and the operational effectiveness of the machinery and installation and long term Maintenance and Repair cost.

 (e) Restaurant View. Walkways to and from the Diamonds to the F&B Facilities shall be designed so as not to obstruct the view of the Diamonds by patrons of the F&B Facilities as reasonably determined by BLD Clay County.

 4.8 As Built Drawings To enable BLD Clay County to maintain and operate the Sports Park, the CCDA shall cause the Sports Park Architect and the Sports Park General Contractor to furnish (not later than sixty (60) days after the Completion Date) as built versions of the Plans, Specifications and Designs for the construction of the Sports Park and the Sports Park Improvements to BLD Clay County, both in digital and printed form, at no cost or expense to BLD Clay County.

 5. Maintenance and Operations Obligations of BLD Clay County. Subject to the terms of this MOA, BLD Clay County shall have the responsibility to: (a) determine, establish and implement the policies, standards, fees and schedules for the maintenance and operation of the Property and Sports Park and all matters affecting customer relations; (b) hire, train and supervise all employees; (c) supervise and direct marketing, sales and business promotion; and (d) establish accounting and payroll procedures and functions. The CCDA shall cooperate with BLD Clay County to permit and assist BLD Clay County to carry out its duties and to generate revenues needed to Maintain and Repair the Sports Park and to pay Fees to the CCDA and the County. Without in any way limiting BLD Clay County's right and responsibility to operate the Sports Park in accordance with the terms of this MOA, BLD Clay County shall perform the following maintenance and operations services, or cause the same to be performed for the Sports Park. All expenditures of BLD Clay County and costs and expenses incurred by BLD Clay County in performing these services shall be borne by BLD Clay County and be Sports Park Expenses:

 5.1 General Responsibilities. Subject to the other requirements contained herein, BLD Clay County shall have the following general rights and responsibilities to:

* + - 1. program recreational sports to be offered at the Sports Park, which may include, without limitation, adult and youth softball, baseball, indoor soccer, volleyball, basketball, rugby, lacrosse and flag football, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all seasons. The foregoing shall not restrict BLD Clay County from offering recreational programs in sports not here enumerated;

 (b) consummate arrangements with concessionaires, licensees, sports governing bodies or associations, tournament promoters, contractors or other intended users of the Sports Park;

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* + - 1. maintain and operate the Sports Park in good repair and condition for use as a recreational sports complex, and in connection therewith enter contracts for the furnishing of utilities and maintenance and janitorial and other services to the Sports Park;
			2. incur such expenses as shall reasonably be determined to be necessary for the proper operation of the Sports Park, including without limitation rental expenses for leased FF&E as necessary;
			3. maintain a level of Operating Inventory deemed appropriate by BLD Clay County for supplying the needs of the Sports Park and its customers;
			4. apply for, and obtain and maintain, all licenses and permits required of BLD Clay County in connection with the operation of the Sports Park, including beer, wine and mixed drinks licenses. The CCDA and any Government Partner shall expeditiously process any and all applications for such licenses and permits as to which it is the issuing party and otherwise cooperate, in all reasonable respects, with BLD Clay County in the application(s) for, and the obtaining and maintenance of, such licenses and permits issued by other authorities.
			5. notwithstanding Section 14, use commercially reasonable efforts to do, or cause to be done, all such acts in and about the Sports Park as shall be reasonably necessary to comply with Insurance Requirements;
			6. implement a marketing and promotional plan for the Sports Park;
			7. purchase additional or replacement FF&E as necessary to maintain and operate the Sports Park in good repair and condition;
			8. pay initial activation charges for utilities and services for the Sports Park;
			9. in accordance, as applicable, with defense and indemnification rights contained in insurance policies procured and maintained by BLD Clay County, defend and settle claims, lawsuits and demands relating to the Sports Park (other than any Legal Challenge) and retain and pay legal counsel who under the direction of BLD Clay County or the insurance carrier will represent the CCDA, the County or any other Government Partner, BLD Clay County and the Sports Park on all questions relating to Legal Requirements, will defend any claims or actions brought against the CCDA, the County or any other Government Partner or BLD Clay County relating to the Sports Park and may institute and defend any and all legal actions or proceedings as shall be reasonably necessary to collect charges, fees or other income for the Sports Park, or to cancel or terminate any license, vendor or concession agreement or other contract on the grounds of default. The CCDA shall have the right to approve any legal counsel retained by BLD Clay County to represent or defend the CCDA;

(l) BLD Clay County shall not permit any liens to remain against the Property for work or materials furnished in connection with any services or Structural Improvements to the Sports Park; and

 (m) During the Term of this MOA, BLD Clay County shall conduct business in the Sports Park under the name “Big League Dreams Clay County Sports Park” except such may be preceded by or used in association with the name of a corporate sponsor, and further provided that BLD Clay County may use the geographic location of the Sports Park to identify the Sports Park to patrons and other visitors.

5.2 Maintenance and Repair Services. Subject to the terms and conditions of this MOA, BLD Clay County at its cost and expense shall furnish Maintenance and Repair services to the Sports Park Improvements to keep them in good condition and repair for use as a recreational sports complex (damage by Force Majeure Events or condemnation excepted) throughout their useful life and in accordance with all applicable Legal Requirements and Insurance Requirements. All expenditures of BLD Clay County and costs and expenses incurred by BLD Clay County in performing the foregoing services shall be Sports Park Expenses. BLD Clay County shall not have the obligation to provide Maintenance and Repair Services to portions of the Property which are not part of the Sports Park.

 5.3 Personnel. Except for employees of vendors or contractors, all employees working at the Sports Park subsequent to the Completion Date shall be full or part time employees of BLD Clay County, BLD Sports or an Affiliate. The number of employees working at the Sports Park, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by BLD Clay County. BLD Clay County shall recruit, hire, train, discharge, promote and supervise the Senior Staff of the Sports Park, and supervise through the Senior Staff the recruiting, hiring, training, discharge, promotion and work of all other full or part-time employees. The compensation (including benefits) of the Senior Staff and all other Sports Park employees shall be borne by BLD Clay County and shall be a Sports Park Expense. BLD Clay County shall endeavor to recruit and hire residents of the County provided they are comparably qualified and experienced for the positions to be filled.

5.4 Specific Operating Procedures. In addition to the more general responsibilities of BLD Clay County as provided herein, BLD Clay County shall operate the Sports Park in accordance with the following operating procedures:

 (a) Sports Park Operating Hours. BLD Clay County shall operate the Sports Park subject to demand and subject to closure due to inclement weather, casualty, condemnation, Force Majeure Events or other causes beyond the reasonable control of BLD Clay County. BLD Clay County shall have the right to schedule up to four (4) Late Night Events at the Sports Park annually. Late Night Events beyond the four (4) such Events hereby expressly permitted shall be subject to the review and approval of the CCDA Manager. Field maintenance (using low intensity lighting rather than the main field lighting) may be performed after the conclusion of evening games when morning games are scheduled the following day, e.g. after Friday night games conclude to prepare for Saturday morning games.

(b) Fees and Charges. All fees, charges and prices for services at the Sports Park shall be established by BLD Clay County.

1. Preference to Local Leagues and Teams. BLD Clay County shall, to the greatest extent reasonably possible, give a preference during league and tournament sign-ups (provided registration deadlines are met) to teams whose players (80% or more) reside in Clay County.

(d) Unscheduled Sports Park Use. From 10:00 AM to 4:00 PM on those weekdays that there is no scheduled use or maintenance of the Sports Park, BLD Clay County shall make the Sports Park available to the public and local groups free of charge for non-scheduled, non-team practice or “pick-up” games.

 5.5 Contracts and Agreements. Post-Completion Date and after the CCDA or the Sports Park General Contractor has purchased all FF&E it is obligated to purchase under the terms of this MOA, all leases and financing agreements for additional or replacement FF&E purchased pursuant to Section 5.1(i) of this MOA and all contracts and agreements relating to the maintenance and operation of the Sports Park (including without limitation contracts for Maintenance and Repair services, pest control, supplies and landscaping services and agreements for tournaments, banquets and other group functions) entered during the Term shall be entered by BLD Clay County as the contracting party. BLD Clay County shall not enter any contract or agreement which extends beyond the Term of this MOA or which is not terminable on thirty (30) days notice in the event BLD Clay County defaults under the terms of this MOA. Upon the earlier termination (for whatever reason) of this MOA, the CCDA agrees to assume all contracts and agreements entered in accordance with this paragraph.

 5.6 Contract Administration. The CCDA Manager shall administer this MOA on behalf of the CCDA. Except as otherwise expressly provided herein, or with respect to matters where the approval of the CCDA or Government Partner executive body is required by law, the CCDA Manager has the authority to approve or consent to those matters requiring the CCDA's approval or consent and to make all other decisions on behalf of the CCDA.

 5.7 Compliance with Environmental Laws. Effective with the commencement of its Sports Park maintenance and operations responsibilities on the Completion Date, BLD Clay County shall have the responsibility to comply with all applicable federal, state and local laws and regulations pertaining to the storage, use and disposal of Hazardous Materials on the Property. All expenditures of BLD Clay County and costs and expenses incurred by BLD Clay County in performing the foregoing services or in remediating damage to the Property resulting from post-Completion Date storage, use or disposal of such Hazardous Materials shall be considered Sports Park Expenses and shall be paid or borne solely by BLD Clay County. All costs and expenses associated with the remediation of damage to the Property from, and all liability arising from or related to, pre-Completion Date storage, use or disposal of Hazardous Materials shall be the responsibility of the CCDA.

 5.8 Permitted Operations. BLD Clay County shall have the right to use and occupy the Sports Park to perform Maintenance and Repairs, to make Capital Expenditures repairs and replacements and to operate the Sports Park as provided herein without further consent or approval of the CCDA except as otherwise expressly stated in this MOA. Use of a part of the Sports Park for a game room, including video games and similar entertainment equipment, shall be permitted. The Property shall not be used for an adult business as such term is commonly understood in the context of sexual activities. Without limiting the foregoing, BLD Clay County shall have the right to do the following without the CCDA's consent or prior authorization (such consent and prior authorization being deemed to have been given by this Section 5.8):

(a) Establish a token redemption policy and charge token, parking and/or admission fees to users of the Sports Park;

(b) Engage in the sale of beer, wine and mixed drinks from the Sports Park (subject to obtaining and maintaining required or appropriate licenses or permits from the Florida Division of Alcoholic Beverages and Tobacco and compliance with Legal Requirements). No alcoholic beverages may be sold anywhere within the Sports Park during any Youth Game unless BLD Clay County secures written authorization to sell alcoholic beverages from the respective youth organization;

(c) Not allow customers of the Sports Park to bring outside food or beverage (except water) into the Sports Park;

(d) Establish operating hours and hours during which the fields and courts may be lighted for evening play, subject only to the review and approval of the CCDA Manager as provided in Section 5.4(a) with respect to Late Night Events; and

(e) Establish all fees, charges and prices for services at the Sports Park.

 5.9 Capital Expenditures. BLD Clay County shall forecast and pay for the cost of, contract for and make all Capital Expenditures necessary to keep the Sports Park Improvements in good condition and repair for use as a recreational sports complex, taking into account the extensive utilization of the Sports Park. BLD Clay County may make payments directly to vendors or contractors making Capital Expenditures repairs or replacements to the Sports Park from funds held in the Operating Account. Once a Capital Expenditures project is completed, it shall be considered a Sports Park Improvement as to which BLD Clay County shall have Maintenance and Repair obligations. In the event funds in the Capital Expenditures Reserve Account are insufficient to pay the cost of any Capital Expenditures needed, BLD Clay County shall be responsible for paying such additional costs.

 5.10 No Living Wage Requirement. No County or Government Partner ordinance, law or regulation requires, or shall require, BLD Clay County to make any wage payments to its employees, in the form of a “living wage” or "prevailing wage" or otherwise, beyond the requirements of state and federal minimum wage legislation applicable to all businesses in Florida.

 5.11 Opening Date and Pre-Completion Date Occupancy. BLD Clay County shall have the right to determine the date on which, following the Completion Date, it first opens the Sports Park to the public for League or Tournament Play. BLD Clay County shall have the right to occupy the Sports Park administrative offices (equipped, minimally, with telephones, computers, a printer, a photocopier, tables and chairs) for a period of at least thirty (30) days prior to the Completion Date to recruit and train its initial staff.

 6. Operating and Capital Expenditure Reserve Accounts. Prior to the Completion Date, BLD Clay County shall establish the following accounts:

 6.1 Operating Account. BLD Clay County shall establish an interest bearing account with a financial institution of its choice, subject to the reasonable approval of the CCDA (the "Operating Account"), to be used in the operation of the Sports Park. All Gross Revenues from the operations of the Sports Park shall be paid into the Operating Account and all Sports Park Expenses (including the Fees) shall be paid from the Operating Account. BLD Clay County shall have the right, for administrative ease, to establish a second Operating Account from which certain Sports Park Expenses may be paid by the Sports Park General Manager directly at the Sports Park rather than through the BLD Clay County administrative headquarters. BLD Clay County shall own the Operating Accounts, shall have check writing authority with respect to them and shall be entitled to all interest accruing on them. Funds in the Operating Accounts in excess of those necessary to pay for Sports Park Expenses, to pay Fees and to provide adequate cash reserves (as reasonably determined by BLD Clay County) may be withdrawn by BLD Clay County.

 6.2 Capital Expenditure Reserve Account. BLD Clay County shall establish an interest bearing account with a financial institution reasonably acceptable to the CCDA (the “Capital Expenditure Reserve Account”). Deposits into the Capital Expenditure Reserve Account shall be made by BLD Clay County as provided in Section 8. BLD Clay County shall be the owner of the Account and shall have check writing authority with respect to it subject to the restrictions below. Interest earned on the Capital Expenditure Reserve Account shall remain in the Account. BLD Clay County may draw funds from the Capital Expenditure Reserve Account only to make payments directly to vendors or contractors responsible for making Capital Expenditures repairs or replacements. BLD Clay County shall provide an accounting of the Capital Expenditure Reserve Account annually in connection with its delivery of the Annual Gross Revenues Statement to the CCDA. In the event of a default by BLD Clay County under this MOA, funds in the account shall belong to the CCDA.

 7. Gross Revenues and Sports Park Expenses. Gross Revenues and Sports Park Expenses shall be calculated as provided in this section.

 7.1 Gross Revenues "Gross Revenues" means and includes all receipts and revenues received by BLD Clay County or any Affiliate relating to or derived from the Sports Park, in whatever form [, including, without limitation, revenues from Exterior-Facing Signage and any Exterior-Facing Message Board,] unless such item of revenue is derived from the sale of Alcoholic Beverages at the Sports Park or is otherwise specifically excepted or excluded under Sections 7.2 or 7.3 below. Subject to the obligation of BLD Clay County to pay Fees to the CCDA and Sports Park Expenses, BLD Clay County may receive and retain for its own benefit all Gross Revenues and Alcoholic Beverage Gross Revenues. Without limiting the foregoing, Gross Revenues shall include the gross receipts, less sales taxes and other adjustments set forth below, received by BLD Clay County (or any Affiliate) from each line item set forth on Exhibit D. “Alcoholic Beverages Gross Revenues” shall include the gross receipts, less sales taxes and other applicable adjustments in Section 7.2 below, derived from the sale of alcoholic beverages at, in, on or from the Sports Park. Sports Park Expenses shall not be deducted from “Gross Revenues” in calculating Fees due to the CCDA. The line item "Other Revenue" shall, to the extent such revenues are received, include, but not be limited to, the following additional items of Gross Revenues:

(a) commissions, fees or profit shares received by BLD Clay County (or any Affiliate) from revenues generated from sales by unaffiliated vendors or concessionaires at the Sports Park where the gross revenues from such sales are not received by or payable to BLD Clay County or any Affiliate, including, for example, vending machine and videogame commissions, etc.;

(b) all late or finance charges to customers, in case of sales on credit, whether or not payment is actually made, at, in, on or from the Sports Park;

(c) revenues from the sale of gift certificates, when such revenues are received;

(d) all service fees or other consideration, if any, paid to BLD Clay County as compensation for BLD Clay County's sale or distribution of lottery tickets, hunting and fishing licenses or in connection with any other local, state or federal lottery or licensing program similar to the foregoing; and

(e) all charges for services, alterations or repairs made at, in, on or from the Sports Park; and

(f) the proceeds of business interruption insurance, if applicable in the event BLD Clay County elects to secure such insurance, with respect to the Sports Park.

 7.2 Items Not Included in Gross Revenues or Alcoholic Beverages Gross Revenues. The following shall not be included in Gross Revenues or Alcoholic Beverages Gross Revenues (or shall be deducted from Gross Revenues or Alcoholic Beverages Gross Revenues, as the case may be):

(a) the amount of all sales tax receipts required to be accounted for by BLD Clay County and paid to any government or governmental agency, but not the amount of any excise tax (except a consumer excise tax) or other governmental obligation in the nature of a tax on the privilege of doing business;

(b) the amount of any sales initially included in Gross Revenues or Alcoholic Beverages Gross Revenues that are subsequently subject to refund or credit;

(c) the amount of any revenues received by any licensee, contractor or concessionaire (unless such licensee, contractor or concessionaire is an Affiliate) operating in or from the Sports Park which are not paid or required to be paid to BLD Clay County;

(d) the amount of any revenues received by non-Affiliate special, corporate or group business events or tournament promoters, impresarios, outside catering companies or similar third party independent contractors (including revenues derived from the sale of food or beverages by them) involved in the promotion or conduct of special, corporate or group business events or tournaments, which revenues are not paid or required to be paid to BLD Clay County;

(e) the amount of sponsorship or advertising revenues generated from the Sports Park which are received by BLD Clay County from sponsors or advertisers but are paid to unaffiliated advertising agencies or brokers as commissions;

(f) gratuities paid or given by customers to employees of BLD Clay County or food and beverage gratuity service charges billed to group business clients and paid by BLD Clay County to its employees;

(g) proceeds of insurance other than business interruption insurance applicable to the Sports Park. Any business interruption insurance proceeds applicable to the Sports Park received by BLD Clay County shall only be used by BLD Clay County to pay Sports Park Expenses;

(h) loan proceeds, if any. (No loans secured by the Property or any portion thereof may be obtained by BLD Clay County without the approval of the CCDA Manager);

(i) credits or refunds received from vendors or other third parties as a result of damage claims made by BLD Clay County with respect to defective goods or services previously purchased;

(j) Gross Revenues do not include Alcoholic Beverages Gross Revenues and Alcoholic Beverages Gross Revenues do not include Gross Revenues; and

(k) checks or other instruments returned for insufficient funds.

 7.3 BLD Sports Allocations. BLD Sports owns and organizes Tournament Play and camps/clinics held at various Big League Dreams Sports Parks and contracts with hotels to receive commissions on room nights reserved by participants in tournaments held at the various Big League Dreams Sports Parks. BLD Sports also sells sponsorships to entities interested in having a commercial identification with the various Big League Dreams Sports Parks. BLD Sports shall have the right to do all of the foregoing with respect to the Sports Park. Except as otherwise provided in the remainder of this Section 7.3, revenues derived by BLD Sports from such activities shall not be considered Gross Revenues or Alcoholic Beverages Gross Revenues. The following amounts paid to BLD Clay County by BLD Sports in connection with the foregoing activities shall be included in Gross Revenues:

(a) Except during the Waiver Period, during which field rental charges may be waived to promote and encourage the development of new tournaments and camps/clinics, in connection with each BLD Sports tournament held at the Sports Park, BLD Sports shall pay to BLD Clay County a field rental charge of (1) not less than the greater of (A) $1,200 per day for each day a BLD Sports tournament is held at the Sports Park or (B) $35 per tournament game played and (2) not less than $200 per day for each full day or $100 for each half day a BLD camp/clinic is held at the Sports Park. In the event the average charge paid by all third party Tournament Play organizers during any given Full Operating Year for any of the four types of field rental minimum charges set forth in the preceding sentence at the Sports Park exceeds the minimum charges set forth in the preceding sentence, BLD Sports shall pay such higher average charges to BLD Clay County instead of the stated minimum charges. The minimum charges shown in this Section 7.3(a) shall increase every five years by an index factor of 1.05 commencing with the fifth (5th) Full Operating Year.

(b) BLD Sports shall pay to BLD Clay County fifty percent (50%) of all hotel commissions received by BLD Sports for room nights reserved by participants in tournaments held at the Sports Park.

 (c) "BLD Sponsorships" means any agreement entered by BLD Sports with any entity by which such entity is given the right to identify commercially with Big League Dreams Sports Parks (or any sports park maintained and operated by an Affiliate) as a sponsor, preferred company or other designation of similar import and where such commercial identification rights extend to more than one Big League Dreams Sports Park or sports park maintained and operated by an Affiliate. BLD Sports shall pay to BLD Clay County fifty percent (50%) of the revenues received by BLD Sports from BLD Sponsorships divided by the number of Big League Dreams Sports Parks or sport parks maintained and operated by an Affiliate to which the BLD Sponsorship applies and, after paying other Affiliates their allocated share of such revenues, may retain the balance. As to any advertising or sponsorship sales applicable to the Sports Park made by BLD Sports or BLD Clay County which do not constitute BLD Sponsorships, BLD Sports shall pay to BLD Clay County eighty percent (80%) of the revenues received from such non-BLD Sponsorship and may retain the balance net of any third party commissions paid to unaffiliated advertising agencies or brokers or pursuant to Section 7.2(e) above.

 7.4 Sports Park Expenses. BLD Clay County shall be responsible for the payment of all Sports Park Expenses.

 7.5 BLD Allocations Most Favored Nations Clause. In the event, after the Effective Date, (a) any Affiliate enters an agreement with a municipality or other governmental entity for the maintenance and operation of a new Big League Dreams Sports Park which provides for a payment of Gross Revenues from the operation of such a facility by the Affiliate to such municipality or other entity, and (b) such agreement shall contain Gross Revenues allocation provisions which, taken as a whole, are more favorable to such municipality or other governmental entity than the BLD Sports Gross Revenue allocation provisions set forth in Section 7.3, taken as a whole, are to the CCDA, then this MOA shall *ipso facto* be deemed amended to make such more favorable provisions of Section 7.3, taken as a whole, applicable to the CCDA under this MOA from that time forward.

 8. Fees. BLD Clay County shall pay Fees to the County, consisting of a quarterly Base Maintenance and Operations Fee (see Section 8.1) and, if applicable, an annual Minimum Maintenance and Operations Fee (see Section 8.3) to be computed and paid as provided in this section. In addition, BLD Clay County shall pay a quarterly Alcoholic Beverages Fee to the CCDA (see Section 8.2) to be computed and paid as provided in this section. In addition, BLD Clay County shall make payments to the Capital Expenditure Reserve Account as provided in Sections 8.1 and 8.2. In the event the Sports Park Improvements as constructed are less or more extensive than as described in Exhibit B, an adjustment to the Fees shall be made as provided in Section 8.4. [Finally, if applicable, the amount of Fees may also be adjusted as provided in the bond financing provisions set forth in Section 8.5].

 8.1 Base Maintenance and Operations Fees. Commencing as to the first calendar quarter after the expiration of the Waiver Period (defined to be the first Partial Operating Quarter and the next 12 calendar quarters thereafter), and continuing thereafter throughout the Term, BLD Clay County shall pay to the County, quarterly in arrears, a Base Maintenance and Operations Fee equal to ­­­­\_\_\_\_ percent (­\_\_%) of Gross Revenues generated during the applicable calendar quarter. Such payments shall be due forty-five (45) days after the last day of the first, second and third calendar quarters (i.e., on May 15, August 14 and November 14, respectively) and sixty (60) days after the last day of the fourth calendar quarter (i.e., on March 1, whether or not the year is a leap year) of each Operating Year following the expiration of the Waiver Period. From each quarterly payment of Base Maintenance and Operations Fees to the County, BLD Clay County shall pay (a) \_\_\_ percent (\_\_%) of the total \_\_\_ percent (\_\_%) of Gross Revenues due by a deposit to the Capital Expenditure Reserve Account and (b) the balance (\_\_\_\_\_\_ percent (\_\_%) of Gross Revenues) by check payable to the County.

As an example of the above calculations, if Gross Revenues for the third Operating Quarter of the fourth Full Operating Year are $\_\_\_\_\_\_\_, BLD Clay County shall pay to the County a total of $\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_ x \_\_% = $\_\_\_\_\_\_\_\_) as the Base Maintenance and Operations Fee for that Operating Quarter on or before November 14. Of that amount, $\_\_\_\_\_\_\_ shall be deposited by BLD Clay County directly to the Capital Expenditure Reserve Account and the balance ($\_\_\_\_\_\_\_) paid directly to the County.

 8.2 Alcoholic Beverages Fees. Commencing as to the first calendar quarter after the expiration of the Waiver Period and continuing thereafter throughout the Term, BLD Clay County shall pay to the CCDA, quarterly in arrears, an Alcoholic Beverages Fee equal to \_\_\_\_ percent (\_\_%) of Alcoholic Beverages Gross Revenues generated during the applicable calendar quarter. Such payments shall be due on the same dates on which payments of Base Maintenance and Operations Fees are payable to the County as provided in Section 8.1. From each quarterly payment of Alcoholic Beverages Fees to the CCDA, BLD Clay County shall pay (a) \_\_\_\_ percent (\_\_%) of the total \_\_\_\_ percent (\_\_%) of Alcoholic Beverages Gross Revenues due by a deposit to the Capital Expenditure Reserve Account and (b) the balance (\_\_\_\_\_ percent (\_\_%) of Alcoholic Beverages Gross Revenues) by check payable to the CCDA.

As an example of the above calculations, if Alcoholic Beverages Gross Revenues for the third Operating Quarter of the fourth Full Operating Year are $\_\_\_\_\_\_\_\_, BLD Clay County shall pay to the County a total of $\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_ x \_\_% = $\_\_\_\_\_\_) as the Alcoholic Beverages Fee for that Operating Quarter on or before November 14. Of that amount, $\_\_\_\_\_\_ shall be deposited by BLD Clay County directly to the Capital Expenditure Reserve Account and the balance ($\_\_\_\_\_\_\_) paid directly to the CCDA.

 8.3 Minimum Maintenance and Operations Fee. Commencing with respect to the fifth Full Operating Year of the Term and continuing for the balance of the Term of the MOA, BLD Clay County shall guarantee a yearly minimum Base Maintenance and Operations Fee of $\_\_\_\_\_\_\_ per Full Operating Year (the “Minimum Maintenance and Operations Fee”) to the County. In the event the total of all Base Maintenance and Operations Fee payments by BLD Clay County to the County with respect to any such Full Operating Year subsequent to the fourth Full Operating Year do not equal or exceed the Minimum Maintenance and Operations Fee, BLD Clay County shall pay to the County the difference between the Minimum Maintenance and Operations Fee owed and the Base Maintenance and Operations Fees actually paid on or before March 1 of the subsequent Operating Year. BLD Clay County shall not be required to pay the difference between the Minimum Maintenance and Operations Fee owed for any Full Operating Year and the Base Maintenance and Operations Fees actually paid in the event a Force Majeure Event has occurred during any such Full Operating Year.

 8.4 Reduction in Scope Fee Modifications. In the event the Sports Park is constructed with (a) fewer than six baseball/softball Diamonds, (b) fewer than three Stadium Design Fields, (c) fewer than one Fieldhouse, (d) fewer than two F&B Facilities or (e) fewer than eight batting cage stations, or in the event the permitted operations of BLD Clay County set forth in this MOA, including without limitation Sections 5.4 or 5.8, are restricted for any reason other than Force Majeure or actions within the control of BLD Clay County, the parties shall in good faith negotiate reductions in the Fees to be paid to the County and to the CCDA commensurate with the decrease in revenue opportunities such reductions in the scope of the Sports Park or such restrictions on permitted operations may cause. In the event the parties are unable to agree on commensurate reductions in the Fees under such circumstances, the parties shall submit the dispute to mediation (with each party bearing one-half of the cost) and, if that is unsuccessful, to non-binding arbitration in the County of Clay under the rules of the American Arbitration Association (with each party again bearing one-half of the cost).

[8.5 Bond Related Adjustments to Fees. In the event the present value (calculated using as the discount factor the yield on the Tax-Exempt Debt [define]) of (a) the Fees and (b) any other revenues directly attributable to the operation of the Sports Park as a public sports and recreational facility paid to or received by the County under this MOA which must, in the opinion of bond counsel for the County, be included in such calculations in order for the interest on the Tax-Exempt Debt [define] to remain excluded from the gross income of the holders thereof for federal income tax purposes, less (c) any costs incurred by the County which, in the opinion of its bond counsel, may be excluded from such computation, exceeds the sum of (1) the present value (calculated using as the discount factor the yield on Tax-Exempt Debt) of the debt service on any applicable taxable debt issued in connection with the Property; plus (2) the present value (at the tax-exempt bond yield) of ten percent (10%) of the debt service on any Tax-Exempt Debt, such excess amount shall not be due and owing or paid or payable by BLD Clay County to the County.]

 9. Records, Reports and Audits.

 9.1 Sales Recording and Records. BLD Clay County shall record at the time of sale, in the presence of the customer, receipts from sales or other transactions, whether cash or credit, in a cash register or registers, or a point of sale terminal or terminals, having a tape or internal memory that accumulates and consecutively numbers all transactions. A receipt from any transaction showing the correct amount of purchase shall be offered to the customer at the time of any transaction, including any cash sale. Transactions not ordinarily recorded in a cash register or point of sale terminal shall be noted on and kept in a ledger format. The Annual Gross Revenues Statement to be furnished to the CCDA and to the County as provided in Section 9.2(b) shall be prepared in accordance with generally accepted accounting principles. BLD Clay County shall keep:

(a) full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits of Total Gross Revenues;

(b) all cash register or point of sale terminal receipts with regard to the Total Gross Revenues, credits, refunds and other pertinent transactions made from or on the Sports Park; and

(c) detailed original records of any exclusions or deductions from Total Gross Revenues.

 9.2 Quarterly and Annual Gross Revenues Statements.

(a) Quarterly Gross Revenues Statement. Within forty-five (45) days following the end of each calendar quarter during the Term, commencing with the statement applicable to the first calendar quarter of the second Full Operating Year, BLD Clay County shall furnish the CCDA and the County with a Quarterly Gross Revenues Statement certified as correct by an authorized manager or officer of BLD Clay County. No Quarterly Gross Revenues Statement shall be required for the fourth calendar quarter of any Operating Year. Such Quarterly Gross Revenues Statements to the County shall be, commencing as to the statement applicable to the first calendar quarter after the expiration of the Waiver Period, accompanied by quarterly payments of Base Maintenance and Operations Fees then due and payable to the County. . Such Quarterly Gross Revenues Statements to the CCDA shall be, commencing as to the statement applicable to the first calendar quarter after the expiration of the Waiver Period, accompanied by quarterly payments of Alcoholic Beverages Fees then due and payable to the CCDA. To both the County and the CCDA, BLD Clay County shall also furnish evidence of deposits made to the Capital Expenditure Reserve Account applicable to the preceding Operating Quarter once such payments are required to be made pursuant to Sections 8.1 and 8.2.

(b) Annual Gross Revenues Statement. Within sixty (60) days (i.e., on or before March 1, including March 1 of leap years) following the end of each Operating Year during the Term, commencing with the statement applicable to the second Full Operating Year, BLD Clay County shall furnish the CCDA and the County with an Annual Gross Revenues Statement certified as correct by an authorized manager or officer of BLD Clay County. Such Annual Gross Revenues Statements to the County shall be, commencing as to the statement applicable to the third Full Operating Year, accompanied by an accounting for and the payment of Base Maintenance and Operations Fees then due and payable to the County. Commencing with respect to the Fifth Full Operating Year, to the extent applicable, Minimum Maintenance and Operations Fees then due and payable shall also be paid to the County together with the furnishing of the Annual Gross Revenues Statement. Such Annual Gross Revenues Statements to the CCDA shall be, commencing as to the statement applicable to the third Full Operating Year, accompanied by an accounting for and the payment of Alcoholic Beverages Fees then due and payable to the CCDA. An accounting of deposit and payment activity in the Capital Expenditures Reserve Account during the preceding year shall also accompany the Annual Gross Revenues Statement.

(c) Form and Content. Each Quarterly Gross Revenues Statement and Annual Gross Revenues Statement shall be in the form of the statement attached as Exhibit D. The parties may change the form of the Gross Revenues Statements from time to time by mutual agreement.

 9.3 Audit and Examination Rights.

(a) Audit Procedures. The CCDA or the County shall be entitled to question the sufficiency or accuracy of any Annual Gross Revenues Statement for a period of two years after delivery by BLD Clay County of such Statement to the CCDA and the County. During such two year period, the CCDA or the County may cause an audit of BLD Clay County's books and records by an independent accountant of the CCDA's or the County’s own selection or by the CCDA’s or the County’s internal auditors and may, in connection with such audit, request that BLD Clay County cause the books and records of BLD Sports pertaining to the Sports Park to be made available for audit purposes as well. If any Annual Gross Revenues Statement for any such Operating Year delivered by BLD Clay County to the CCDA or the County reports Total Gross Revenues that are found to be less than the amount of BLD Clay County's actual Total Gross Revenues, BLD Clay County shall immediately pay to the CCDA and/or the County, as applicable, earned but unpaid payments of Fees due to the CCDA and/or the County. If the audit reveals an understatement of Total Gross Revenues for such Operating Year by more than five percent (5%), BLD Clay County shall immediately pay to the CCDA or the County, as applicable, the cost of the audit. Otherwise, the cost of the audit shall be paid by the CCDA or the County, as applicable. If, ten days after written request therefor specifying BLD Clay County's failure to comply with the reporting obligations hereunder, BLD Clay County fails to provide to the CCDA and to the County any Quarterly Gross Revenues Statement or Annual Gross Revenues Statement in the manner specified in this MOA, the CCDA and the County shall have the right, in addition to any other rights or remedies it may have under this MOA, to conduct an audit to enable the CCDA and/or the County independently to determine the Total Gross Revenues for the Sports Park. BLD Clay County shall reimburse the CCDA or the County, as applicable, for the cost of such audit on written demand by the CCDA or the County.

(b) Examination of Books. Recognizing that the CCDA or the County may require access to the books and records of BLD Clay County for reasons other than to question the sufficiency or accuracy of any Annual Gross Revenues Statement (which the CCDA or the County may do for a period of two years from delivery of the Annual Gross Revenues Statement as provided above), BLD Clay County shall, for a period of seven years following the delivery of each Annual Gross Revenues Statement, including the seven year period following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required under this Section 9, and shall from time to time, upon request, make these records available to the CCDA or the County, the CCDA's or the County’s auditor, representative or agent for examination at any reasonable time on fifteen (15) business days advance written notice. The CCDA or the County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, leases, licenses and concession agreements. In addition, on request of the CCDA or the County or their representatives, BLD Clay County shall furnish copies of BLD Clay County's state and local sales and use tax returns.

(c) CCDA Staff Inspections. CCDA staff shall have the right, from time to time, to visit and inspect the operations of the Sports Park to confirm compliance with this MOA.

(d) Examination of BLD Sports Records. BLD Sports shall make its books and records, as they relate to the Fees to be paid to the CCDA and the County hereunder, or operations at the Sports Park, available for inspection by the CCDA or the County or their representatives in accordance with the provisions of this Section 9. These books and records shall be made available to the CCDA or the County at the Sports Park.

 10. Capital Improvements; Warranties.

 10.1 Capital Improvements. BLD Clay County may, on an annual basis (or more frequently if circumstances require), recommend that specified Capital Improvement projects be undertaken and estimate the cost of doing so. All Capital Improvement projects shall require the CCDA's prior authorization and any funding of Capital Improvements by the CCDA shall be at the sole discretion of the CCDA. The costs and expenses of Capital Improvement projects, if authorized by the CCDA, shall be paid by the CCDA and shall not be considered Sports Park Expenses. Once a Capital Improvement project is completed, it shall be considered a Sports Park Improvement as to which BLD Clay County shall have Maintenance and Repair and Capital Expenditure obligations.

 10.2 CCDA Obligations. The CCDA, if permitted, shall assign to BLD Clay County (or enforce for the benefit of BLD Clay County ) any and all guarantees and/or warranties of workmanship and materials which it may receive with respect to those portions of the Sports Park which BLD Clay County is required to maintain or repair. Select items (such as roofing and air conditioning equipment) may have a longer warranty period as they apply to the CCDA, which the CCDA shall enforce for the benefit of BLD Clay County. For periods of (a) one (1) year after the Completion Date, the CCDA shall, at its sole cost and expense, make all repairs and replacements to the Sports Park required because of defective workmanship or materials and (b) five (5) years after the Completion Date, the CCDA, shall, at its sole cost and expense, make all repairs and replacements to the Sports Park required because of latent defects or latent faulty installation or construction of the Sports Park or as a result of the act, default, omission or negligence of the CCDA, its employees, agents, licensees, contractors or subcontractors. However, these obligations of the CCDA shall not apply to those repairs or replacements incurred, caused or created (other than as a result of latent defects or latent faulty installation or construction) by BLD Clay County’s officers, employees, agents, licensees, contractors, subcontractors, customers, invitees, patrons or other persons or parties using the Sports Park and the Sports Park Improvements. To determine whether a defect or faulty installation or construction constitutes either a "latent defect" or "latent faulty installation or construction", the parties shall first jointly investigate the matter, then jointly discuss and negotiate a solution, and, if they are unable to agree on a solution, then submit the dispute to mediation.

 11. Real Property Taxes and Impositions

 11.1 Real Property Taxes. This MOA is a contract for the maintenance and operation of a publicly owned recreational sports facility developed for the public benefit of the residents of Clay County. BLD Clay County is not hereby granted, or entitled to, any ownership interest or possessory rights running with the land on which the Sports Park or the Sports Park Improvements are situated, whether fee, leasehold, possessory interest or otherwise. To the extent, notwithstanding the foregoing, any Real Property Taxes are assessed, regardless of whether the tax bill is presented to BLD Clay County or whether the tax is assessed against the Property, the Sports Park, the Sports Park Improvements, BLD Clay County (or any claimed possessory interest of BLD Clay County), the CCDA shall pay when due directly to the appropriate taxing authorities all Real Property Taxes from CCDA funds, the payment of such Real Property Taxes shall not be a Sports Park Expense and such payments shall not be reimbursable to the CCDA by BLD Clay County.

 11.2 Impositions. BLD Clay County shall account for and pay, as a Sports Park Expense, all Impositions.

 12. Default.

 12.1 BLD Clay County's Default. The occurrence of any of the following shall constitute a default by BLD Clay County:

(a) Default Under this MOA. BLD Clay County's failure to perform any covenant or provision of this MOA, if the failure to perform is not cured within thirty (30) days after delivery by the CCDA to BLD Clay County of written notice of default specifying with particularity the nature of the default; provided however that if the failure to perform relates to BLD Clay County’s failure to pay a Fee due and payable hereunder, BLD Clay County shall have ten (10) days to cure the default. If the failure to perform does not involve the payment of a Fee and cannot reasonably be cured within thirty (30) days, BLD Clay County shall not be in default of this MOA if BLD Clay County commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion.

(b) Insolvency Proceeding. An assignment by BLD Clay County for the benefit of creditors or the filing of a voluntary or involuntary petition by or against BLD Clay County under any law for the purpose of adjudicating BLD Clay County as bankrupt; or for extending time for payment, adjustment or satisfaction of BLD Clay County's liabilities; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies and supervision are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event.

(c) Receiver The appointment of a receiver, unless such receivership is terminated within sixty (60) days after the appointment of the receiver, to take possession of BLD Clay County's operations in the Sports Park for any reason, including but not limited to, assignment for the benefit of creditors or voluntary or involuntary bankruptcy.

 12.2 CCDA's Default. The occurrence of the following shall constitute a default by the CCDA:

(a) Default Under this MOA. The CCDA's failure to perform any covenant or provision of this MOA, if the failure to perform is not cured within thirty (30) days after delivery by BLD Clay County to the CCDA of written notice of default specifying with particularity the nature of the default. If the failure to perform cannot reasonably be cured within thirty (30) days, the CCDA shall not be in default of this MOA if the CCDA commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion.

 13. Remedies and Early Termination.

 13.1 CCDA's Remedies. If any default by BLD Clay County under Section 12.1(a) shall continue uncured, following notice of default as required by this MOA, for the period applicable to the default under Section 12.1(a), the CCDA may at its election terminate this MOA by giving BLD Clay County written notice of termination and this MOA shall terminate effective thirty (30) days after the date such written notice is received by BLD Clay County. Upon the occurrence of any of the events specified under Section 12.1(b), the CCDA may at its election terminate this MOA by giving BLD Clay County written notice of termination and this MOA shall terminate immediately upon receipt of such written notice by BLD Clay County. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which the CCDA may resort cumulatively or in the alternative.

 13.2 BLD Clay County's Remedies. If any default by the CCDA under Section 12.2(a) shall continue uncured, following notice of default as required by this MOA, for the period applicable to the default under Section 12.2(a), BLD Clay County may at its election terminate this MOA by giving the CCDA written notice of termination and this MOA shall terminate thirty (30) days after the date such written notice is received by the CCDA. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which BLD Clay County may resort cumulatively or in the alternative.

 14. Insurance. Commencing as of the Completion Date, BLD Clay County shall fulfill the following insurance obligations.

 14.1 Liability Insurance. BLD Clay County shall procure and thereafter keep in effect at all times until the end of the Term, as a Sports Park Expense, commercial general liability insurance. Such coverage shall have a minimum combined single limit of liability of at least $2,000,000 per occurrence and $5,000,000 in the aggregate and shall be written on a per occurrence basis. The required limit may be achieved through a combination of liability and umbrella coverages. BLD Clay County's public liability insurance shall include liquor liability insurance. All of BLD Clay County's public liability insurance policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term.

 14.2 Workers' Compensation Insurance. BLD Clay County shall maintain, as a Sports Park Expense, workers' compensation insurance in accordance with Florida law.

 14.3 Property Insurance. BLD Clay County shall obtain and keep in force during the Term, as a Sports Park Expense, a policy of insurance covering loss or damage to the Sports Park, the Sports Park Improvements and all FF&E in the amount of the replacement value thereof, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils ("all risk," as that term is known in the insurance industry), but excluding damage due to earthquake or terrorist activities unless the CCDA and BLD Clay County otherwise agree. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $10,000 per occurrence. BLD Clay County shall obtain such endorsements as are recommended by the CCDA's risk manager, including, without limitation, an endorsement for changes in building codes, provided such endorsements may be obtained on commercially reasonable terms. The CCDA shall be the loss payee on such policy. The CCDA shall receive and retain all insurance proceeds to the extent they are not used to rebuild the Sports Park following an insured casualty.

 14.4 Insurance Policies.

 (a) Coverage Re-Evaluation. Not more frequently than once every five (5) years, if in the reasonable opinion of the CCDA the amount or type of any insurance at that time is not adequate to provide coverage to the CCDA as of such future date which is comparable to the coverage afforded the CCDA under this MOA as of the Completion Date, BLD Clay County shall either acquire or increase the insurance coverage as required by the CCDA provided BLD Clay County may obtain such increased coverage on commercially reasonable terms.

 (b) Policy and Company Requirements. BLD Clay County shall deliver to the CCDA certificates of insurance evidencing the existence and amounts of such insurance with loss payable clauses as required by this Section 14. BLD Clay County shall also furnish the CCDA with renewals thereof. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII and licensed to do business in the State of Florida.

 (c) Policy Compliance. BLD Clay County shall not keep on the Sports Park or permit to be kept, used or sold thereon, anything prohibited by any fire or other insurance policy covering the Sports Park.

 14.5 Waiver of Subrogation. BLD Clay County and the CCDA each hereby release and relieve each other, and waive their right of recovery against the other, for loss or damage arising out of or incident to the perils insured against under this section, which perils occur in, on or about the Sports Park, whether due to the negligence of the CCDA or BLD Clay County or their agents, employees, contractors and/or invitees, but only to the extent of insurance coverage. As respects liability insurance, the policy shall be endorsed with a waiver of subrogation clause for the CCDA.

 14.6 Insurance Related Expenses. The cost of any insurance premium, amounts paid on any deductible and any loss, damage, liability or expense that may not be covered by any of the insurance specified in this Section 14 shall be a Sports Park Expense and paid by BLD Clay County.

 15. Indemnity.

 15.1 BLD Clay County Indemnity. BLD Clay County shall defend, indemnify and hold harmless the CCDA, the County, their board or Commission members, officers, employees and volunteers (collectively the "Indemnitees") from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by (i) any act, omission or negligence of BLD Clay County or any concessionaire of BLD Clay County, or their respective contractors, licensees, invitees, agents or employees; (ii) any use of the Sports Park, or any accident, injury, death or damage to any person or property occurring in, on or about the Sports Park, or any part thereof, or from the conduct of BLD Clay County's business or from any activity, work or thing done, permitted or suffered by BLD Clay County or its contractors, employees or invitees in, on or about the Sports Park (other than when arising as a result of defective construction or workmanship by the CCDA or its contractors or agents; or as a result of the storage, use, disposal or non-disposal of Hazardous Materials prior to the Completion Date; or as a result of the negligence or intentional misconduct of an Indemnitee); and (iii) any breach or default in the performance of any obligations on BLD Clay County's part to be performed under the terms of this MOA, or any such claim or any action or proceeding brought thereon.

 15.2 Notice and Defense. In case any action or proceeding is brought against an Indemnitee by reason of any such claim, BLD Clay County, upon notice from CCDA, shall defend the same at BLD Clay County's expense by counsel reasonably satisfactory to the CCDA. The CCDA shall give BLD Clay County prompt notice of any event triggering the foregoing indemnity and shall cooperate with BLD Clay County in the defense of any cause of action to which the foregoing indemnity relates. These provisions are in addition to, and not in lieu of, the insurance required under Section 14.

 15.3 No Indemnification for Legal Challenge. BLD Clay County shall have no duty to defend or indemnify the CCDA or any other Indemnitee from any Legal Challenge.

 15.4 Indemnity Related Expenses. Any amounts paid by BLD Clay County pursuant to the indemnity provisions of this Section 15 shall be a Sports Park Expense.

 15.5 No Third Party Beneficiaries. Nothing in this section may be construed as waiving any immunity available to the CCDA or the County under state law. This provision is solely for the benefit of BLD Clay County and the CCDA and is not intended to create or grant any rights, contractual or otherwise, in or to any other person or entity.

 16. Damage or Destruction. Should the Sports Park be substantially damaged by a Force Majeure Event, either the CCDA or BLD Clay County, by written notice to the other given within sixty (60) days following the occurrence of such Event, shall have the right to terminate this MOA. If either does so, neither party shall have any further obligation to the other party under this MOA, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. The Sports Park shall be deemed to have been "substantially damaged" if (1) the estimated cost of restoring the Sports Park to its condition immediately before such damage is eighty percent (80%) or more of the repair and replacement cost of the Sports Park Improvements or (2) the Term has less than ten (10) years remaining.

17. Condemnation.

17.1 Unfeasible Continued Use. Neither the CCDA nor any Government Partner shall exercise the power of eminent domain with respect to the Property during the Term. If all of the Sports Park (or such a substantial portion of the Sports Park so as to make it unfeasible, in the reasonable opinion of the CCDA or of BLD Clay County, to restore and continue to operate the remaining portion of the Sports Park for the purposes contemplated in this MOA) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain by an entity other than the CCDA, then upon the date that the CCDA shall be required to surrender possession of the Sports Park or of that substantial portion of the Sports Park, this MOA shall terminate and neither party shall have any further obligation to the other party under this MOA except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. In the event of any taking of all or any portion of the Property as a result of the exercise of the powers of eminent domain, the rights of BLD Clay County with respect to any award for such taking shall be as determined by the laws of the State of Florida.

17.2 Feasible Continued Use. If such taking of a portion of the Sports Park shall not make it unfeasible, in the reasonable opinion of the CCDA and BLD Clay County to restore and continue to operate the remaining portion of the Sports Park for the purposes contemplated in this MOA, then this MOA shall not terminate. In the event such a partial taking results in the loss of use of any Stadium or non-Stadium Design Field, Fieldhouse or F&B Facility, the provisions of Section 8.4 shall govern the modification of the Fees to be paid to the CCDA as a result.

 18. Assignment. Provided BLD Clay County is not in default of this MOA, BLD Clay County shall have the right to assign this MOA to an entity as to which a Controlling Percentage is owned by BLD USA or by BLD Clay County or which shall have purchased all or substantially all of the assets of BLD USA or BLD Clay County. BLD Clay County shall not otherwise assign or transfer all or any portion of its interest in this MOA without the CCDA's prior written consent. The CCDA shall not assign this MOA to any entity other than a political subdivision of the CCDA or to a Government Partner without BLD Clay County's prior written consent.

 19. Big League Dreams Proprietary Rights. BLD Clay County represents that it (or its Affiliates) has proprietary intellectual property rights in the Big League Dreams name and marks and in the look, design, style, shape, color scheme and architecture of Big League Dreams Sports Parks, including, without limitation, the outfield fences, crowd scenes and other stadium design features; the F&B Facility design; and the overall sports park layout which will be utilized in the construction of the Sports Park. This MOA does not grant to the CCDA any rights to use such name or marks or such other proprietary rights. The License Agreement does. In the event of termination of this MOA due to any default of BLD Clay County, the CCDA shall have the right to continue operations at the Sports Park without retrofitting the Stadium Design Fields, the Sports Park Improvements or the Capital Improvements in the Sports Park.

20. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be effective on receipt if delivered by personal delivery; by depositing same in the United States mail, postage prepaid, certified mail, return receipt requested; or by overnight delivery service, addressed to the parties at the respective addresses set forth below or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the CCDA: Executive Director

 Clay County Development Authority

 1734 Kingsley Ave.

 Orange Park, FL 32073

If to BLD Clay County: Big League Dreams Clay County, LLC 16339 Fairfield Ranch Road

 Chino Hills, California 91709

 Attention: Scott Parks LeTellier

 Chief Executive Officer

Either party may change its address for notice purposes by notifying the other party of such change in accordance with the provisions of this section.

 21. Independent Contractor. BLD Clay County shall at all times be considered an independent contractor under this MOA. Nothing contained in this MOA shall be construed to be or create a partnership or joint venture between the CCDA and its successors and assigns, on the one part, and BLD Clay County and its successors and assigns, on the other part.

 22. Compliance with Laws and Non-Discrimination. BLD Clay County shall comply with all applicable federal, state and local laws, and not discriminate against any person on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in its performance under the terms of this MOA.

 23. Force Majeure Events. Both parties shall be excused from performance hereunder to the extent such party is unable to perform its obligations due to a Force Majeure Event. If, as a result of the occurrence of a Force Majeure Event, the responsibilities of BLD Clay County under this MOA are substantially changed or the revenue potential of the Sports Park is potentially impaired, then the parties shall meet and discuss in good faith appropriate modifications to this MOA. If such good faith discussions do not result in an agreement as to appropriate modifications of this MOA, then BLD Clay County and the CCDA shall each have the right, effective on ninety (90) days' written notice to the parties, to terminate this MOA and to be free of all obligations or liabilities except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination.

24. CCDA Activities The CCDA shall have the right to use the Sports Park for CCDA-sponsored activities for the benefit of citizens of the community or non-profit community organizations ("CCDA Activities"). No more than one CCDA Activity may be held during any calendar month and no more than four CCDA Activities may be held during any Operating Year. CCDA Activities shall be scheduled at mutually agreeable times that do not restrict BLD Clay County from scheduling revenue producing League or Tournament Play or group business events. The CCDA shall propose dates for CCDA Activities to BLD Clay County at least three months in advance, unless otherwise mutually agreed between the parties. The Sports Park shall be made available to the CCDA free of any facility rental or admission charge for CCDA Activities.

The CCDA shall reimburse BLD Clay County (at the then current hourly salary or wage) for the cost of all personnel (other than Senior Staff and food and beverage personnel) employed to service CCDA Activities and other third party out of pocket expenses BLD Clay County incurs which are attributable to the CCDA Activities. The CCDA may, however, elect to use its own employees or volunteers to staff CCDA Activities rather than employees of BLD Clay County, provided that only employees of BLD Clay County may engage in food handling activities requiring a license or permit, at no cost to the CCDA.

Participants wishing to purchase or consume food or beverages during or in connection with CCDA Activities shall do so only at the concession facilities operated by BLD Clay County, which shall not charge more than its regular food and beverage prices then in effect. On a not to exceed once in six months basis, however, the CCDA may sponsor a CCDA Activity which includes the sale or giveaway of food (but not beverages) as part of the CCDA Activity or which permits participants to bring in their own food. (If such once in six months CCDA Activity is an event primarily for CCDA or County employees, such as a staff picnic, attendees may bring their own beverages.) Examples of CCDA Activities include school benefit softball games, school all star games, police versus fire softball games, an Easter egg hunt, etc. No for profit company or organization shall be entitled to use the Sports Park as part of a CCDA Activity for the benefit of its own employees or customers. The CCDA shall not organize softball or baseball Tournament Play as a CCDA Activity.

The CCDA or CCDA-designated promoter of each CCDA Activity shall, at the CCDA's or such promoter's expense, accept liability for, and furnish BLD Clay County with a certificate of insurance naming BLD Clay County as an additional insured with respect to claims or damages arising from the CCDA Activity in an amount and on terms comparable to the insurance promoters must furnish BLD Clay County to organize Tournament Play at the Sports Park. The CCDA or any CCDA-designated promoter shall also be required to assume responsibility pursuant to a Sports Park rental agreement to repair or restore the Sports Park to its previous condition in the event of damage.

25. Miscellaneous Provisions.

25.1 Modification and Changes. This MOA may be amended or modified only by a writing signed by both parties.

 25.2 Understandings and Agreements. This MOA constitutes all of the understandings and agreements of whatever nature or kind existing between the parties with respect to BLD Clay County's maintenance and operation of the Sports Park. This MOA supersedes all prior understandings and agreements, whether written or oral, between the CCDA and BLD Clay County pertaining to the maintenance and operation of the Sports Park.

25.3 Survival of Covenants. Any covenant, term or provision of this MOA which in order to be effective must survive the termination of this MOA shall survive any such termination.

 25.4 Third Parties. None of the obligations under this MOA of either party shall run to or be enforceable by any third party other than a permitted assignee of this MOA.

 25.5 Waivers. No failure by BLD Clay County or the CCDA to insist upon the strict performance of any covenant, agreement, term or condition of this MOA or to exercise any right or remedy consequent upon the breach of this MOA shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this MOA and no breach of this MOA shall be waived, altered or modified except by a written instrument signed by both parties. A waiver of any breach of this MOA shall only affect this MOA to the extent of the specific waiver.

 25.6 Applicable Law. This MOA shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of Florida. BLD Clay County expressly consents to the jurisdiction of the courts of the State of Florida and agrees that venue for any legal action in connection with this MOA shall be exclusively in the [name of court] Court of Florida for the County of Clay.

 25.7 No Presumption Regarding Drafter. The terms and provisions of this MOA have been extensively negotiated and discussed between the CCDA and BLD Clay County. This MOA reflects their mutual agreement regarding the subject matter of this MOA. Because of the nature of such negotiations and discussions, neither the CCDA nor BLD Clay County shall be deemed or construed to be the drafter of this MOA. Therefore, no presumption for or against the drafter shall be applicable in interpreting or enforcing this MOA.

 25.8 Enforceability of Any Provision. If any term, condition, covenant or obligation of this MOA shall be determined to be unenforceable, invalid or void, such determination shall not affect, impair, invalidate or render unenforceable any other term, condition, covenant or obligation of this MOA.

 25.9 Attorneys' Fees. In the event of a court proceeding involving the non‑performance by a party of its obligations under this MOA, the prevailing party shall be entitled to reasonable attorneys' fees and all other expenses (including fees and costs related to discovery) reasonably incurred in connection with such dispute, in addition to all other relief to which the party is entitled.

 25.10 Time of the Essence. Time is of the essence of this MOA. The time for performance of each obligation has been the subject of negotiation by the parties.

 25.11. Non-Competition. For the first five years from the License Date, neither the County nor any Government Partner shall compete with BLD Clay County by itself organizing, or by contracting with third parties to organize, adult softball League Play or adult softball Tournament Play elsewhere in the County.

 25.12 Non-Recourse. In the event of any dispute arising out of this MOA, the CCDA shall look only to BLD Clay County for recourse**,** and covenants not to sue or otherwise look to the assets of BLD USA, BLD Sports, any other Affiliate or of any officer, director, member, manager, employee or agent of BLD Clay County, BLD USA, BLD Sports or any Affiliate, and BLD Clay County shall look only to the CCDA for recourse, and covenants not to sue or otherwise look to the assets of any past or present elected official, officer, employee or agent of the CCDA.

 **IN WITNESS WHEREOF** the parties have caused this MOA to be executed effective as of the day and year first above written.

 **CLAY COUNTY DEVELOPMENT AUTHORITY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

**ATTEST:**

**BY:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

**APPROVED AS TO FORM:**

**By:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

 **BIG LEAGUE DREAMS CLAY COUNTY, LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: Scott Parks LeTellier

 Title: Chief Executive Officer

**EXHIBIT A**

**PROPERTY DESCRIPTION AND SPORTS PARK BOUNDARY DIAGRAM**

**EXHIBIT B**

**FEATURES, STRUCTURES, AMENITIES AND IMPROVEMENTS**

**TO BE CONSTRUCTED ON THE SPORTS PARK**

**EXHIBIT C**

**FF&E SCHEDULE**

**EXHIBIT D**

**LINK TO MUTUALLY APPROVED PLANS, SPECIFICATIONS**

**AND DESIGNS FOR THE SPORTS PARK AND SPORTS PARK IMPROVEMENTS**

|  |
| --- |
| **EXHIBIT D** |
| **ANNUAL AND QUARTERLY GROSS REVENUE STATEMENT FORMAT** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  **REVENUE**  |  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Diamond Sports  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Leagues  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Tournaments  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Court Sports  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Field & Sand Sports  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Batting Cages  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Food & Beverage (Non-Alcoholic) |  |  |  |  |  |  |  |  |  |  |  |
|   |  Restaurant/Concessions  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Group Business/Special EventsAlcoholic Beverages  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Group Business/Special Events  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Gate Admissions  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Sponsorship/Advertising  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Merchandising  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Arcade/Vending  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Camps & Clinics  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Hotel Commissions  |  |  |  |  |  |  |  |  |  |  |  |
|   |  Other Revenue  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  ATM Commission  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Candy Machine Commission  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Cox/Sprint  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  NSF Service Charges  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Pay Phone Commissions  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Other/Misc Refunds  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Credit Card Fees  |  |  |  |  |  |  |  |  |  |  |  |
|   |  |  Video Games  |  |  |  |  |  |  |  |  |  |  |  |
|  **Total Gross Revenue**  |   |   |   |   |   |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |