

Prepared By,
Record and Return to:

Michael Zito, Esq.
Asst. County Administrator
c/o Indian River County
1801 27th Street
Vero Beach, FL 32960

SECOND AMENDMENT TO THE AMENDED AND RESTATED FACILITY LEASE AGREEMENT

This SECOND AMENDMENT TO THE AMENDED AND RESTATED FACILITY LEASE AGREEMENT (“Second Amendment”) is made as of the ___ day of _____, 2022 (the “Amendment Effective Date”), by and between Indian River County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the “County”), and Verotown, LLC, a Delaware corporation, (hereinafter referred to as “Verotown”).

RECITALS

A. **WHEREAS**, County and Verotown entered into that certain Amended and Restated Facility Lease Agreement by and between County and Verotown effectively dated January 2, 2019 as subsequently amended by that certain First Amendment to the Amended and Restated Facility Lease Agreement as fully executed on February 16th, 2021 (collectively referred to as the “Agreement”);

B. **WHEREAS**, pursuant to Section 13.02 of the Agreement, the Agreement may be amended in a writing executed by both parties;

C. **WHEREAS**, in order to modify certain terms of the Agreement, including certain rights and obligations associated with the Capital Improvements and additional contributions to the Capital Reserve Account, Verotown and the County now desire to amend the Agreement as hereinafter set forth, in accordance with the terms and conditions of this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Verotown and the County hereby agree to amend the Agreement as follows:

1. Recitals; Defined Terms. The above Recitals are true and correct and are hereby incorporated herein by reference. All capitalized terms not defined herein shall be given the meanings ascribed thereto in the Agreement.
2. County Improvements. Section 8.04(a)(5) of the Agreement is hereby deleted in its entirety, it being acknowledged and agreed by the parties that, in exchange for the County depositing the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) (the

“Holman Reimbursement Amount”) into the Capital Reserve Account within three (3) business days after the Amendment Effective Date, the County shall be relieved of its obligations set forth in Section 8.04(a)(5). The Holman Reimbursement Amount shall only be used by Verotown to fund maintenance, Capital Improvements, and Repairs or Replacements to Holman Stadium or any portion thereof but shall not be subject to any restriction or limitation set forth in Sections 8.01 or 8.05(b) of the Agreement (but shall be otherwise subject to the approval process for disbursement in Section 8.03 of the Agreement).

3. Definitions. Section 1.02 of the Agreement is hereby amended by adding the following defined term in the proper alphabetical order:

“Executive Building” means the offices, meeting rooms, fitness room, four (4) batting cages and storage area located in Championship Hall, and, to the extent required to comply with applicable permit requirements, all appurtenant parking, hardscape, landscape, walkway, and canopy improvements extending from the main entrance of Championship Hall.

4. Second Amendment Work; Additional Contribution to the Capital Reserve Account.

(a) Section 8.05(a) of the Agreement is hereby amended to add the following additional Verotown Improvements (hereinafter collectively referred to as the “Second Amendment Work”), which Second Amendment Work shall be completed by Verotown to both parties’ reasonable satisfaction no later than December 31, 2024:

* * *

“18. Utilizing a certified asbestos contractor that employs proper removal and disposal practices, prescribed by the United States Environmental Protection Agency (EPA), obtain all the necessary Federal, State, and Local permits, including building permits, and cause to be performed the removal of non-friable asbestos within the walls jointly identified by the parties in the hotel rooms set forth in Exhibit “A,” replacement of any walls removed with like walls in the same locations, and repair of any damage related thereto to a standard as reasonably determined by Verotown; and

19. Demolish, design, permit, and reconstruct the Executive Building reasonably similar to the facility rendering shown in Exhibit “B” to this Second Amendment. The parties acknowledge that the new Executive Building will include all appurtenant parking, hardscape, landscape, walkway, and canopy improvements required to comply with applicable permitting requirements, and at Verotown’s sole option may contain additional improvements to these appurtenant facilities.

(b) As consideration for, and as a condition precedent to, Verotown performing the Second Amendment Work, within three (3) business days after the Amendment Effective Date the County shall deposit the following sums into the Capital Reserve Account (the “Second Amendment Fund Amount”):

1. Five Hundred Seventy Thousand and No/100 Dollars (\$570,000.00) for the project described in Section 8.05(a)(18); and

2. Three Million, Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) for the project described in Section 8.05(a)(19).

(c) Section 8.05(b) of the Agreement is hereby amended by adding the following sentence pertaining to the Second Amendment Work:

“The Second Amendment Work, as identified in Sections 8.05(a)(18) and (19) above, shall be eligible for full reimbursement from the County from the Capital Reserve Account up to the amount of Five Hundred Seventy Thousand and No/100 Dollars (\$570,000.00) for the project described in Section 8.05(a)(18) and up to the amount of Three Million, Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) for the project described in Section 8.05(a)(19).”

(d) Any portion of the Second Amendment Fund Amount not utilized for the project for which it was allocated in accordance with Section 4(b) of this Second Amendment shall be returned to the County. If the cost of the Second Amendment Work exceeds the project amounts allocated in Section 4(b) of this Second Amendment, those excess costs shall be borne by Verotown.

(e) Pursuant to Section 8.01 of the Agreement and notwithstanding anything to the contrary contained in the Agreement, the County hereby approves and grants to Verotown the Second Amendment Fund Amount to be used by Verotown to perform the Second Amendment Work in accordance with the terms of this Second Amendment and such amount shall not be subject to any restriction outlined in Section 8.02 of the Agreement. Notwithstanding Section 8.01 of the Agreement, Verotown is not required to obtain County’s approval in connection with the Second Amendment Work and Verotown’s performance of any work associated therewith (including, without limitation, any plans, drawings, selected materials or design features); provided, however, that Verotown is required to obtain all necessary site plan approvals and building department permits as required by law. The provisions of Section 8.03 shall apply to disbursement of the Second Amendment Fund Amount.

5. Executive Building Repair Obligations. Section 8.04(b) of the Agreement is hereby amended by deleting the reference to “Executive Building” therein, it being acknowledged and agreed to by the parties that County shall be relieved of its obligation to replace the roof on the Executive Building. Section 16 of the First Amendment to the Amended and Restated Facility Lease Agreement is hereby deleted in its entirety. Section 11(iii) of the First Amendment to the Amended and Restated Facility Lease Agreement is hereby ~~amended to provide that the County shall be relieved of its obligations in such Section 11(iii) upon Verotown’s commencement of construction of the Executive Building~~deleted in its entirety.

6. Additional Insurance. Section 17 of the First Amendment to the Amended and Restated Lease Agreement is hereby amended to read as follows:

“Until the commencement of construction of the Executive Building project described in Section 8.05(a)(19) or September 1, 2023, whichever occurs sooner, in addition to the

obligations set forth in Section 8.04(e) of the Agreement, the County agrees to reimburse Verotown up to One Hundred Thousand and No/100 Dollars (\$100,000) in documented business interruption losses that result from a roofing failure of the roof of the Executive Building that prevents Verotown from fully utilizing the building for its intended purpose.”

7. Reimbursement upon County Default. Section 8.03(c)(i) is hereby amended by deleting “Fourteen Million Four Hundred Fifty Thousand Dollars (\$14,450,000)” and replacing it with “Eighteen Million, Seven Hundred Twenty Thousand and No/100 Dollars (\$18,720,000.00)” in lieu thereof; provided, however, that the foregoing amount will be automatically amended to reflect any amounts returned to the County pursuant to and in accordance with Section 4(d) of this Second Amendment.
8. Indemnification; Release by County.

(a) To the extent permitted by Florida law, in addition to County’s indemnification obligations under the Agreement, ~~until the substantial completion of the Executive Building project described in Section 8.05(a)(19)~~, the County agrees, subject to the limitations set forth in Sections 8.04(d) 1. and 2., to indemnify, save and hold Verotown harmless from any and all Losses (as defined in the Agreement) that (i) are caused by or related to (x) a failure of the existing Executive Building roof or (y) the presence, existence or discovery of any mold in the Executive Building, in each instance prior to the substantial completion of the Executive Building project described in Section 8.05(a)(19) and/or (ii) arise out of or are connected with the hotel room asbestos abatement project described in Section 8.05(a)(18) (the matters set forth in the immediately foregoing clauses (i) and (ii) being referred to collectively herein as the “Indemnified Matters”); provided that the County will not be responsible for any Losses ~~related to for the Executive Building Replacement Project or the roof of the Executive Building~~ Indemnified Matters that are directly caused by the gross negligence or willful misconduct of Verotown and any liability of the County shall be reduced proportionately to the extent of any contributory fault chargeable by Verotown. In the event that the Agreement should terminate and/or Verotown should ever cease to be the lessee under the Agreement, the County does hereby release and forever discharge Verotown and its respective affiliates, subsidiaries and direct or indirect parent or affiliate entities and all present, former and future managers, directors, officers, agents, representatives, employees, contractors, successors and assigns of Verotown and/or its respective affiliates, subsidiaries and direct or indirect parent entities (collectively, the “Released Parties”) against any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, or liabilities of any nature whatsoever in law and in equity, both past and present and whether known or unknown, suspected, or claimed against the County or any of the Released Parties, which arise out of or are connected with the hotel room asbestos abatement project described in Section 8.05(a)(18) and/or the Executive Building project described in Section 8.05(a)(19) (collectively, the “General Release”). The Released Parties are intended to be third-party beneficiaries of this Amendment, and the General Release may be enforced by each of them in accordance with the terms hereof in respect of the rights granted to such Released Parties hereunder.

9. Bid Process. The County hereby finds that it is in the best interest of the County and its citizens to waive the requirements for bids and a public procurement process pursuant to the process defined by the Indian River County ordinance and hereby contracts with Verotown, as the lessee pursuant to the Agreement, to oversee and manage the Second Amendment Work.. As such, Verotown is hereby authorized to independently determine the selection of any contractors, subcontractors, materialmen and/or agents to perform the Second Amendment Work.
10. Effect of Second Amendment. Except as specifically amended by this Second Amendment, the Agreement shall remain in full force and effect and as modified hereby, the Agreement is ratified and confirmed in all respects. If any of the provisions of this Second Amendment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Second Amendment or the circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Second Amendment shall be valid and enforceable to the fullest extent permitted by law. In the event of any conflict between the terms of this Second Amendment and the terms of the Agreement, this Second Amendment shall control.
11. Counterparts. This Second Amendment may be executed in two or more counterparts, and, when so executed, will have the same force and effect as though all signatures appeared on a single document. Any signature pages of this Second Amendment may be detached from any counterpart without impairing the legal effect of any signature thereon and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. Electronically transmitted signatures shall be deemed original signatures.
12. Further Assurances. The County and Verotown shall do and perform, or cause to be done and performed, any and all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of the Agreement and this Second Amendment.
13. Construction; Assignment of Construction Warranties. The County and Verotown hereby agree to utilize commercially reasonable efforts to complete all construction described in the Agreement and this Second Amendment. Further, the County and Verotown hereby agree to hold any and all warranties for construction described in the Agreement and this Second Amendment jointly and severally.
14. Captions and Headings. The captions and headings in this Second Amendment are for reference only and shall not be deemed to define or limit the scope or intent of any terms, covenants, conditions or agreements contained herein.

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INDIAN RIVER COUNTY, FLORIDA

By: _____
Peter O'Bryan, Chairman

Approved by BCC:

Attest: Jeffrey R. Smith, Clerk of Court

By: _____
Jeffrey R. Smith

Approved as to form and legal sufficiency:

By: _____
Dylan Reingold, County Attorney

EXHIBIT "A"
Hotel Rooms Identified for Non-Friable Asbestos Wall Removal

[see attached]

**JACKIE ROBINSON TRAINING
COMPLEX**

Villa rooms containing asbestos in the walls:

Room #

103

108

110

112 suite

114

115

116

117

119 suite

120

121

122

123

127

135 suite

136

137

138

140

142

143

144

145

150

154

158

160

161

163

175

176

181

182

184 suite

185 suite

187

189

190

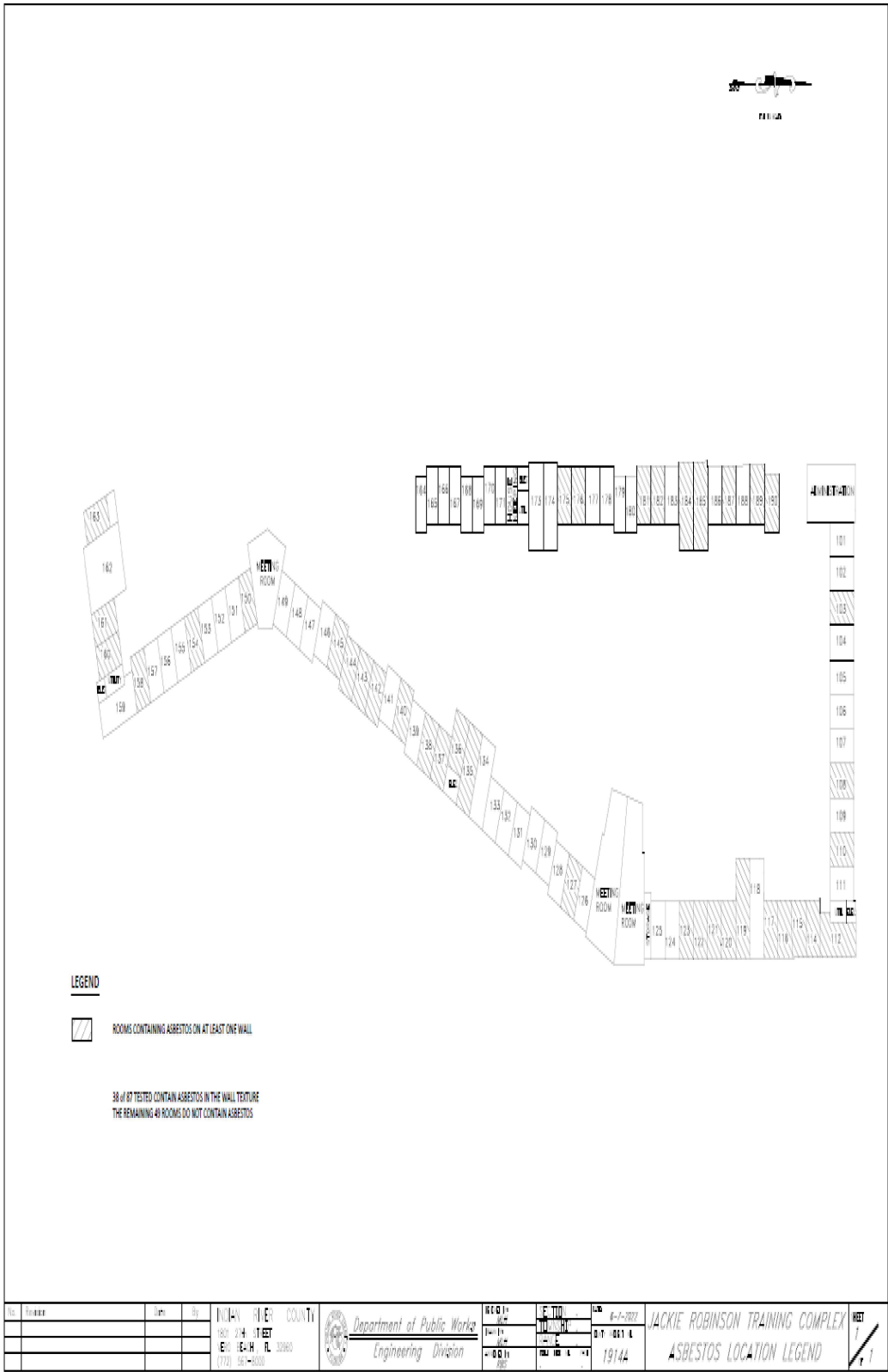


EXHIBIT “B”

Executive Building Rendering

Document comparison by Workshare Compare on Friday, July 8, 2022 3:45:30 PM

Input:	
Document 1 ID	iManage://USA-DMS.ONEFIRM.LAW/USA/604788755/13
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Document 2 ID	iManage://USA-DMS.ONEFIRM.LAW/USA/604788755/14
Description	#604788755v14<USA-DMS.ONEFIRM.LAW> - Mike-Jason Second Amendment to Amended and Restated Facility Lease Agreement (MLB 12.23.20)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	5
Moved from	1
Moved to	1
Style changes	0
Format changes	0

Total changes	16
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